



PUBLIC REPORT

OMBUDSMAN'S CRITICAL INCIDENT INVESTIGATION

OFFICER-INVOLVED SHOOTING

JUNE 12, 2000

FRANKLIN ROAD/WEST OF COLE ROAD

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by

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A NOTE OF SYMPATHY

The violent death of a person is always a tragedy. Death itself leaves behind family and friends who must deal with the loss of a loved one. When that death is violent, bereavement and healing are made even more difficult.

Such was the case in this death, one which the Office of the Community Ombudsman had the sad duty to investigate. This was a task that I wished never to undertake. My sympathy and hopes for healing are with the family and friends.

I also wish to acknowledge the traumatic impact such an event has on involved police officers, especially those who were faced with the difficult choice of using deadly force to protect their lives and the lives of others. This was not the outcome sought by any of the involved officers. Their goal, I believe, was a peaceful and voluntary resolution. It is my hope that they, too, will experience healing in the months ahead.

INCIDENT SYNOPSIS

On June 12, 2000 at approximately 12:13 PM, an armed individual was killed by a single gunshot wound to the head. He was also hit by one shot to the left shoulder. Both rounds were fired by Boise Police officers, as were five additional rounds that did not strike the man. This shooting took place following a standoff lasting approximately 53 minutes at the corner of Franklin and Cole. During the standoff, the man held a .25 caliber semi-automatic handgun to his head. Immediately preceding the shots fired by the police, the man broke out the back window of the truck, yelled a threat to shoot, and pointed the handgun out the same window in the direction of several police officers. The man was wanted on a felony arrest warrant and in connection with two instances of reported aggravated domestic battery with a handgun.

OMBUDSMAN=S INVESTIGATION

Section 2-22-04 (H) of the Boise City Code gives the Community Ombudsman the authority to conduct an independent administrative investigation whenever deadly force is used by a Boise Police officer. As a result of the critical incident on June 12, 2000, I conducted such an investigation. In the course of the investigation, I interviewed over 20 witnesses (including police officers and members of the public), reviewed hundreds of pages of documents, listened to recordings made during the event, inspected the scene, and examined physical evidence. I also attended the Ada County Coroner=s inquest, held on September 25 - 26, 2000. During this public inquest, testimony and evidence were presented.

As a result of my investigation into this incident, the following findings, analysis, and recommendations are presented to the community. They have also been presented to Mayor H. Brent

Coles, the Boise City Council, and Chief of Police, Donald Pierce.

FACTUAL FINDINGS

Based on a preponderance of the evidence available, it is my opinion that the following facts are true:

1. The subject was wanted on a felony arrest warrant for burglary and grand theft and this warrant was in force on June 12, 2000.
2. The subject was also wanted for questioning in connection with two reports from his estranged wife that, in the days leading up to June 12, 2000, he had assaulted her and threatened her with a gun.
3. With the intention of protecting the estranged wife of the subject and preventing him from harming her or anyone else, two Boise Police detectives attempted, on the morning of June 12, 2000, to find the subject at several locations where he had been seen in the past. The detectives observed him leave a residence and drive away in a blue Chevrolet pickup truck.
4. At approximately 11:00 AM, the detectives used their police radio to call for assistance in stopping the pickup truck. A police watch commander was in the area and attempted to stop the truck. However, the truck sped up and, driving recklessly, led the officers on a high speed chase.
5. The pickup truck became stuck in traffic in the center, eastbound lane of Franklin Rd., just west of Cole Rd. A patrol car driven by a Boise Police officer was directed by the watch commander to block the truck and prevent its escape.
6. The subject was ordered by the officers to put his hands in the air. He immediately raised a gun to his head and held it there.
7. For the next 53 minutes, trained Boise Police negotiators attempted to convince the subject to put down his gun and surrender to the police. Throughout these negotiations, the subject kept the gun pointed at himself and, at times, in the general direction of the officers surrounding him.
8. During the 53 minute incident, there were as many as 27 Boise Police officers and six Ada County Sheriff=s deputies located within a radius of approximately 100 feet surrounding the subject and his pickup truck. An additional 13 Boise Police officers and supervisors and two Ada County Sheriff=s Deputies were involved in assignments related to the incident, such as traffic control and incident management. These additional 15 officers were located more than 100 feet from the pickup truck.
9. At approximately 12:10 PM, the subject suddenly broke out the back window of the truck

with his left hand. He extended his left hand out the window and pointed his finger in a westerly direction down Franklin Rd. He shouted in an angry tone of voice and, using profanity, threatened to shoot someone if a camera was not moved.

10. At this same time, a video news camera was located next to a wooden sign on the southeast corner of Auto Drive and Franklin Road. Both the camera and the subject had a clear view of each other. A distance of approximately 190 feet separated the camera from the subject.
11. Immediately after shouting this angry threat, the subject pulled his left hand back into the cab of the truck. Approximately 5 seconds later, he used his right hand to point a handgun through the hole in the rear window of the truck. The gun was pointed west and directly at the police officers who had been negotiating with him.
12. Fearing for their own lives and the lives of others, four Boise Police officers fired their weapons at the subject. Their intent was to prevent him from firing his weapon and killing or seriously injuring another person. The first officer fired one round from a department-issued 12 gauge shotgun. A second officer fired four rounds from a department-issued .45 caliber semi-automatic handgun. A third officer fired one round from a department-issued .223 caliber rifle. The fourth officer fired one round from a department-issued .223 caliber rifle.
13. The subject was struck once in the head and once in the shoulder. The wound to his head was immediately fatal.
14. Following the shooting, all four officers who fired their weapons were driven from the scene to a local hotel. Two of these officers traveled together in the same car, while the other two officers were transported separately. Once at the hotel, all four officers, along with several other officers who were involved in the incident, remained together in the same hotel suite for an extended period of time. Some discussion of the incident took place among or in front of the four officers who fired their weapons.

ANALYSIS

Pre-shooting Incident Command

It must be pointed out that this incident took place at one of the busiest intersection of the city, at the height of noontime traffic, and in the rain. The many supervisors and officers at the scene and members of the Ada County Dispatch team are all to be commended for their professionalism in dealing with countless safety, tactical, traffic-control, and logistical concerns.

After reviewing all of the records, reports, and recordings available about the situation, and after interviewing over 20 officers and civilians who were involved as the crisis unfolded, I believe that reasonable and dedicated efforts were made by the police to end the situation peacefully. The armed

subject was given every opportunity to surrender to the police. Dedicated crisis negotiators used a number of different strategies in an attempt to convince him that it was in his best interest to end things without violence. Despite conditions that were far less than ideal, the negotiators did everything within their power to talk him out of either shooting himself or others. The negotiators exposed themselves to danger in their efforts to defuse the situation. They are to be commended for their efforts.

It was imperative that the commanders and officers on the scene make all reasonable efforts to prevent the armed subject from fleeing. He had already shown a reckless disregard for the safety of the public in his attempt to elude the police by speeding and driving through traffic signs and signals. He was armed with a handgun and posed an immediate threat to others. Police commanders directed an effective deployment of officers to prevent the subject from exiting his truck and fleeing the scene. The truck was also partially blocked by a police car. Once containment was achieved, however, it seems reasonable that police supervisors would begin to look at how many officers were at the immediate scene, how many were needed there, and where excess officers (if any) could be more effectively deployed. A careful review of all available information revealed the fact that there were as many as 30 police officers located within a radius of approximately 100 feet surrounding the armed man at the time of the shooting. It may have been possible, earlier in the standoff, to move some of these officers farther away and into different assignments without compromising safety or other objectives.

One of the many law enforcement priorities during an incident such as this should be to de-escalate the situation. De-escalation helps the person posing the threat to consider other options and pay attention to the negotiators. De-escalation also helps officers and commanders on the scene to slow the pace of events and consider a variety of tactics for assuring safety and ending the standoff. The presence of approximately 30 police officers, many of whom had their weapons drawn, may have made it difficult for the scene commanders to effectively work on de-escalation. This also may have hindered the negotiators' efforts to gain the subject's primary attention.

Extensive attention was paid, and properly so, to the safety of officers and members of the public, both to the east and north of the incident scene. A strong perimeter was established in both directions. However, inadequate attention appears to have been given to the area immediately to the west of the scene. A number of civilians, including a video camera operator from a local television station, were in direct sight of the armed man less than 200 feet from his truck. My investigation did show that at least two officers spoke to these civilians and moved them back out of sight. However, each time the officer left, the civilians moved back into positions that exposed them to possible gunfire. It is truly unfortunate that people would exercise such poor judgment and ignore the directions of officers. However, it is not an uncommon phenomenon and the police should have established a firmer western perimeter.

The evidence clearly indicates that, right before he broke out the truck window, the armed subject became enraged about the presence of a camera to his west. It will never be known what camera he was referring to and what his specific objection was. It is likely, however, that he was referring to the news camera that had set up near the corner of Franklin and Auto Drive a few minutes earlier.

By placing himself and his camera in plain view, within 190 feet of an armed person during a standoff with the police, the camera operator needlessly placed himself in harm=s way. He should not have been there and the police should have established a clear and strong perimeter west of the scene, so that no one was exposed as a potential target.

Use of Force

Section 1.0101 of the Boise Police Policy manual states, with regard to the use of force by officers:

Officers shall use only the amount of force that is reasonable and necessary to protect life, affect a lawful arrest, and/or gain control in any lawful circumstance. Officers may use deadly force when necessary to defend themselves or others when the officer reasonably believes that imminent danger of death or serious bodily injury exists. Officers may also use deadly force when necessary to effect the capture or prevent the escape of a suspect whose freedom is reasonably believed to represent an imminent danger of death or serious bodily injury to the officer or to others. Officers may also use any other reasonable force to gain control of the situation provided authorized techniques are not available or practical.

Furthermore, Section 1.0102 of the same policy manual states, in part:

The appropriateness of an officer=s actions will be determined by the totality of the circumstances and by the reasonableness of the officers perceptions at the time of the incident.

Officers are given the authority and responsibility to determine, based on the totality of the circumstances known to them at the time, whether the use of deadly force is warranted and permissible. The reasonableness of an officer=s decision to use deadly force, according to case law and generally accepted administrative practice among law enforcement executives, is to be judged on the basis of what the officer actually knew at the time, or could reasonably be expected to know at the time. This means that, even if the officer=s understanding of the circumstances was later proven to be incorrect, the reasonableness of his actions cannot be judged in the light of hindsight or Aperfect knowledge@.

Officers are trained to continuously assess the circumstances and information available to them in evaluating what level and type of force is both reasonable and tactically effective. This continuous reassessment is particularly important in dynamic situations, such as the one faced by the Boise Police on June 12, 2000. The existence of an immediate threat to life and safety is justification for the use of deadly force by an officer only so long as that threat remains.

Officers are also trained to aim their weapon at an area of the person=s body where it is most likely that a strike by a bullet will end the threat posed by that person, and end it as soon as possible. Boise officers, even those trained in the use of the .223 caliber rifle, are not trained to fire at hands or limbs in order to disable an armed person. It is felt that this sort of targeting poses too great a possibility that the bullet might miss its target and strike an innocent bystander. If this happened, the person

with the gun will still be a threat.

The Boise Police Department does deploy a number of non-deadly force options that can be used in certain situations. Among these options are so-called Abeanbag@ rounds, OC Apepper@ spray, and canines (police dogs). All three of these tools were at the scene of the critical incident on June 12, 2000. With some exceptions, the Boise Police Department does not train its officers to use these tools against a person who is armed with a firearm. Both the Abeanbag@ round and the OC spray require a relatively short distance between the officer deploying them and the target. The closest position with any adequate cover was over fifty feet from the cab of the truck. In addition, the subject had locked both doors of the truck, the passenger window was fully rolled up, and the driver=s side window was only halfway rolled down. There was no reasonable way to safely deploy any of the non-deadly force options available to the police. In fact, an attempt to use OC spray might have had the unintended effect of aggravating the situation.

In this particular situation, it appears very reasonable that all of the officers inside the inner perimeter of the scene at Franklin and Cole would have drawn the conclusion that the man inside the truck was armed with a handgun capable of killing or seriously wounding anyone at whom it was fired. By pointing this handgun to his head, the man demonstrated to those officers that he considered the gun to be a deadly weapon and that he was prepared to use it.

Throughout the 53 minute standoff, the man pointed the handgun at his own head and in the general direction of the officers behind his truck and to the north and south of his location. On some occasions, he placed the gun on top of his head and pointed it in the general direction of officers. Several officers voiced the opinion, both at the time and in the interviews conducted after the incident, that they felt threatened by this. They expressed fear that, should the subject fire the weapon at himself, a bullet might pass through him and strike an officer. At the end of the standoff, the man verbalized a threat to shoot someone else and immediately pointed the handgun out the back window of the truck and in the direction of several officers. A reasonable person could conclude from all of these circumstances that one or more of the officers would be killed or seriously wounded should the subject fire the handgun as he had just threatened. A number of the officers in the inner perimeter, including the four who fired their weapons, believed that the armed man was in the act of carrying out his threat and that their lives and/or the lives of others were immediately threatened.

Post-Shooting Incident Command

Two of the officers who fired their weapons were transported together to a local hotel immediately following the incident. They traveled in a car driven by a detective who had been present during the incident, and in the same car as a fourth officer involved in the incident. By traveling together, these officers exposed themselves to the possibility of a conversation among them about the event. Any such conversation would have made it difficult for those investigating the event to show that each individual=s statement about the event had not been colored by the recollections of others. This action might also open the door for later speculation that the officers discussed or rehearsed a common story while riding together, should doubts be raised about their testimony. Fortunately, there is no indication that any inappropriate conversation took place during the drive to the hotel. In

addition, the shooting incident was witnessed by many others and captured on video tape.

Both officers who fired .223 caliber rifles removed their weapons from the scene, unloaded them, and placed the magazines and rounds together in the trunk of a police car. This was in direct violation of the procedures set forth in General Order II-A-22 (Investigation of Officer-Involved Critical Incidents Within Boise City). This action would have made it difficult, if not impossible, for investigators to later verify exactly which magazines and which rounds had been removed from which weapon. Fortunately, this did not become an issue in this particular case.

All four of the officers who fired their weapons left the scene before briefing the incident commander. These four officers, along with several others, left the scene before the commander arrived from the incident command post, even though he had issued an order via the radio that all involved officers were to hold their position until he arrived. However, some of the involved officers may not have heard this command, or may have been unaware that it had been issued. Had the principal officers remained as ordered, they would have learned that arrangements had been made for them to go to a closer hotel that was holding enough rooms for each to be sequestered until they were interviewed by investigators.

Once at the hotel, all four principal officers, along with several other officers who were involved in the incident, remained together in the same suite for an extended period of time. This was in direct violation of the procedures set forth in General Order II-A-22 (Investigation of Officer-Involved Critical Incidents Within Boise City). One reason for the failure to separate the involved officers was that the hotel had not been notified that they were coming and was having difficulty making additional rooms available. Some discussion of the incident took place among or in front of the four officers who fired their weapons, the television was turned on, and news broadcasts about the incident may have been heard.

This procedural violation could have seriously compromised the independence and veracity of any statements given by the officers in the interviews that followed. As with the officers who traveled together in the same car, it is fortunate that the incident had so many other witnesses, audio tape, and video tape. If there had been significant questions about the sequence or specifics of the events, this failure to immediately separate and sequester the involved officers could have compromised the investigation and raised doubts that would have been difficult to address.

Post-Shooting Police Investigation

After careful observation and review of criminal and internal investigations conducted by the Boise Police Department, it is my opinion that both were conducted in a thorough and objective manner.

POLICY FINDINGS

From the evidence available, the factual findings clearly show:

1. All four officers reasonably believed that the actions of the subject put themselves and/or others in, *Aimminent danger of death or serious bodily injury.*@ Therefore, the use of deadly force was authorized.
2. All four officers used due caution and followed the training they had been given.

Therefore, it is the finding of the Ombudsman that the officers acted within policy and according to the training they had received.

Furthermore, it is my finding that several provisions of the Boise Police Department=s procedures governing the investigation of officer-involved critical incidents (General Order II-A-22) were violated in the removal of principal and involved officers and weapons from the scene, the transportation together of two principal officers and two involved officers away from the scene, and the failure of escort officers to separate the principal and involved officers from each other while they waited to be interviewed by investigators.

POLICY AND TRAINING RECOMMENDATIONS

Policy Recommendation

General Order II-A-22 (Investigation of Officer-Involved Critical Incidents Within Boise City) should include a specific supervisory role at the location to which principal and involved officers are transported after the incident. This supervisor should have specific responsibility to ensure that every principal and involved officer remains separate from others who were involved in the incident.

Training Recommendation

The Boise Police Department is encouraged to conduct a training review of this incident to see what lessons can be included in future training for officers, supervisors, and incident commanders. Specific areas to examine would include:

1. Perimeter establishment and control.
2. Delegation of responsibility and authority.
3. Re-assignment of excess officers outside of the immediate scene.
4. De-escalating and slowing down volatile and dynamic situations.
5. Scene containment immediately after a critical incident.
6. Process and timing of transporting principal and involved officers from the scene.
7. Process of deciding where to house principal and involved officers once they are removed from the scene while they awaited the arrival of investigators.
8. Keeping principal and involved officers separated from each other and sheltered from distractions.