



OMBUDSMAN'S REPORT

Critical Incident Investigation & Findings

OMB05/0039 - April 17, 2006

EXECUTIVE OVERVIEW

On March 9, 2005, Boise Police Department (BPD) officers located Subject #1 who was wanted for the attempted murder of two BPD officers ten days earlier and who was known to be armed. Subject #1 drove at a police roadblock at a high rate of speed and two BPD officers fired their weapons at Subject #1. He avoided the roadblock and was pursued by other officers. Subject #1 crashed into a canal and hid in tall brush. A BPD officer fired at the hidden Subject #1 to prevent Subject #1 from firing at him. No one was injured by the gunfire.

This use of deadly force by BPD officers was investigated by the Office of the Community Ombudsman. At the conclusion of this investigation, having concluded that the officer's use of deadly force was reasonable and necessary, the ombudsman issued findings that exonerated all three officers.

The ombudsman also made one policy and two training recommendations. The ombudsman recommended significant changes to the policy regarding shooting at moving vehicles and suggested that BPD evaluate their training for officers regarding the volume of rounds fired by officers.

THE SITUATION

On March 9, 2005, following leads developed by a BPD officer, BPD investigators learned that Subject #1 might be at a residence in Garden City. Subject #1 was wanted for the

attempted murder of two Boise police officers committed ten days prior. Working with the Garden City Police Department, Boise investigators attempted to confirm their information and to establish a perimeter around the residence. Ada County Sheriff's deputies also responded to secure the perimeter.

Before the perimeter was fully established, Subject #1 was seen at the rear of the residence with a handgun in his waistband. He left the residence and walked toward his vehicle in the driveway. Officers near the front of the house ordered him to stop. Subject #1 got into the vehicle and backed it out of the driveway rapidly. He stopped facing the end of the cul de sac where officers had placed three police vehicles across the roadway at Marigold and Waterside, Garden City. Subject #1 accelerated his vehicle rapidly, directly at the officers behind the roadblock.

At least six officers from three jurisdictions were at or near the roadblock. Two BPD officers, Officer #1 and Officer #2, and one Garden City officer fired at Subject #1 as they feared he was going to ram them with his vehicle. Instead, he veered to the right and drove across a lawn at the northwest corner of the intersection and avoided the roadblock. Rounds struck the vehicle at least four times and one struck the steering column. Other rounds struck three nearby residences. No one was injured by any of the shots or by Subject #1's vehicle.

After turning onto westbound Marigold, Subject #1's vehicle was closely followed by BPD Officer #3. Officer #3 followed the Subject onto southbound N. Brook where Subject #1 drove around the side of and into the backyard of a house at the end of the cul de sac. Subject #1 crashed through a metal garden shed and wire fence and then landed in a water-filled canal. Officer #3 followed by vehicle and by foot, and from the fence line, yelled for Subject #1 to stop. The Subject dove into some cattails and Officer #3 fired ten shots into the cattails and then held his fire. Subject #1 then raised his hands to surrender. Officer #3 held Subject #1 at gunpoint until other officers arrived on scene and took him into custody. One round struck a residence, but no one was injured.

REASON FOR THE INVESTIGATION

Boise City Code defines the authority and duties of the Community Ombudsman. Boise City Code § 2-22-04 (H) grants the ombudsman the authority to investigate and evaluate the

performance of officers whenever certain criteria are met:

Critical Incidents

In the event that an employee of the Boise Police or the Airport Peace Officers Division of the Aviation and Transportation Departments is involved as a principal, victim, witness or custodial officer, where death or bodily injury results, the Community Ombudsman shall be notified immediately and shall act as an observer to any criminal, administrative or civil investigation conducted by or on behalf of the such Departments. The Office of Community Ombudsman may also conduct an independent administrative investigation into such a critical incident. The Community Ombudsman shall assess the conduct of the Boise City law enforcement officer or police employee in light of the facts discovered through the investigation, the law, and the policies and training of the relevant department, and shall further make recommendations for personnel action to be taken. The report of investigation and recommendations shall be given to the relevant Department Head for purpose of discipline and/or commendation when warranted, and for use in the development of the affected law enforcement officer or police employee's formal personnel evaluation. A law enforcement officer, police employee, or citizen may waive their personal privacy right. Critical incidents include but are not limited to situations involving the following:

- (i) Use of force or any other Department action that results in death or serious bodily injury. (Serious bodily injury is an injury that results in the subject being admitted to a hospital.)*
- (ii) Use of Deadly Force where only minor bodily injuries occur.*
- (iii) Intentional use of Deadly Force but no injury occurs (excluding animals).*
- (iv) Vehicle pursuits, roadblocks or intercepts resulting in death or serious bodily injury.*

(v) Police employee involved in a traffic accident resulting in death or serious bodily injury, while operating a city vehicle or a private vehicle while on City business.

On March 9, 2005, at approximately 1:05 p.m., I was notified of the critical incident and commenced my investigation.

FOCUS OF THE INVESTIGATION

This investigation had, as its primary focus, the following acts and related sections of the BPD Policies and Procedures Manual (P.M.) in force at the time of this incident.

Officer #1

This officer's use of deadly force, specifically a firearm.

Officer #2

This officer's use of deadly force, specifically a firearm.

Officer #3

This officer's use of deadly force, specifically a firearm.

P.M. § 1.0101 (Use of Force) Authorization:

An officer 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. An officer may use deadly force when necessary to defend himself/herself or others when the officer reasonably believes that imminent danger of death or serious bodily injury exists. An officer may also use

deadly force when necessary to affect the capture or prevent the escape of a subject, whose freedom is reasonably believed to represent an imminent danger of death or serious bodily injury to the officer or to others. When authorized techniques are not available or practical, an officer may also use any other reasonable force to gain control of the situation.

P.M. § 1.0102 Criteria for Use of Force

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

The criteria for determining use of force shall include, but not be limited to,:

- *The severity of the crime*
- *The nature and extent of the threat posed by the suspect*
- *The degree to which the subject resists arrest or detention*
- *Attempts by the subject to evade arrest by flight*
- *Other factors, including*
 - *Nature and quality of intrusion upon the individual*
 - *Duration of that intrusion*
 - *Severity of injuries inflicted, if any*
 - *Officer/subject size and other physical attributes*
 - *Environmental considerations*
 - *Reaction time*
 - *Totality of circumstances*

THE INVESTIGATION

I responded immediately to the Garden City neighborhood. I was briefed by the scene commander and observed the investigators in the two crime scene areas, #1: Marigold and Waterside, #2 the south end of N. Brook, south of Marigold.

At 3:05 p.m. I was given access to crime scene #1 at the intersection of Marigold and Waterside. An evidence tech from the Garden City Police Department conducted the walk through. I took both digital and 35mm photographs of the overall area. I observed six spent .223 casings in the roadway and on the sidewalk. I observed what appeared to be two spent

.45 shell casings in the roadway. North of these casings, on the other side of the sidewalk, is a low wood fence. On the north side of that fence, inside the front yard of the corner residence I saw three additional .223 spent shell casings.

The evidence tech then showed me several residences along the west side of the street. Three of the four residences between the corner of Marigold and Waterside and the residence previously occupied by Subject #1 appeared to have been struck by bullets or ricochets. I took both digital and 35mm photographs of the fronts of all three houses.

Along the west side of N. Brook, I saw what looked like tire tracks in the front lawns of the last three houses from the south end of the street. I also saw tire tracks going into the side yard of the last house on N. Brook, damage to bushes, and damage to a utility box in the side yard which is southeast of the house. The tire tracks continued around the southwest side of the house. I noted extensive damage to a metal shed south of the house. A chain link fence directly west of the shed was down and heavily damaged. Between the metal shed and a fence to the south of the shed, I saw the tire tracks leading from the side yard and through where the chain link fence was lying. I also saw several spent large caliber shell casings lying on the ground and on the collapsed roof of the metal shed. North of the shed I saw a BPD K9 police car. The car was parked on the grass pointing west with its front bumper up against the chain link fence. I took both digital and 35mm photographs of these things.

I was shown the area of a canal west of the fallen metal shed and chain link fence. In the canal, about 40 to 50 feet west of the shed, lay a gray, four door sedan. The driver's side front door of the sedan was open and the car was sitting in a foot or two of water. To the south of the car was a patch of tall weeds with cattails.

Altogether, I took 32 digital and 37 35mm photographs at these two scenes.

On March 11, 2005, following a critical incident briefing, I returned to the scene at 2:30 p.m. I took additional photographs of the residences on Waterside struck by bullets and

interviewed some of the residents. I took additional photographs of the backyard and canal area at the rear of N. Brook.

I interviewed two residents on N. Oasis Drive. They showed me where a bullet had pierced the frame below their bedroom window that faces the canal and the direction from which Officer #3 had fired. The bullet lodged in their mattress. I took photographs of the damage caused by the bullet.

On April 4, 2005, copies of the bulk of the Garden City and Boise Police Department reports were received. These included statements, photographs, evidence logs and audio and video recordings. Supplements continued to be received over a period of time. These items were reviewed and analyzed.

Six civilian witnesses were interviewed. Five BPD officers were interviewed, including Officer #1, Officer #2 and Officer #3. Two Ada County Sheriff's Deputies were also interviewed. The Garden City officer who also fired at Subject #1 at the roadblock and who was present when Subject #1 surrendered refused to be interviewed. Subject #1 was interviewed while at the Ada County Jail.

WHAT THE COMPLAINT INVESTIGATION FOUND

Based on a thorough review of the criminal investigation conducted by the Boise and Garden City Police Departments, along with my own, independent investigation, I find that the available evidence supports the following factual findings:

1. Subject #1 was wanted for the attempted murder of two Boise police officers stemming from an incident on February 28, 2005, when he ambushed the officers during a traffic stop. Subject #1 committed a home invasion robbery that same

evening. Subject #1 had reportedly told other people that he would attempt to kill an officer if he was confronted by police.

2. On March 9, 2005, Boise investigators, following a lead supplied by a BPD officer, learned that Subject #1 was possibly at a residence located at the end of a cul de sac, N. Waterside Place, Garden City.
3. While investigators worked to confirm the information, a surveillance was set up on the residence by Garden City PD and BPD. A perimeter was begun to be set up around the residence.
4. Before the perimeter was fully set up and before all requested resources could arrive, Subject #1 was seen in the backyard of the residence and was seen to have a handgun in his waistband.
5. Subject #1 went back inside the residence and soon exited the front of the house. Officers just outside the residence ordered Subject #1 to stop, but he got into a vehicle in the driveway.
6. Subject #1 backed up rapidly until he faced south on Waterside. His vehicle faced the intersection with Marigold which was blocked by three police vehicles. At least six officers from BPD, GCPD and Ada County SO were at or near the roadblock.
7. Subject #1 accelerated his vehicle rapidly toward the roadblock.
8. As Subject #1's vehicle neared the roadblock, BPD Officer #1 and Officer #2 and a Garden City officer fired a total of twelve shots at Subject #1.

9. Subject #1's vehicle swerved around the roadblock by driving across a lawn at the residence at the northwest corner of the intersection.
10. Subject #1 was not struck by any of the bullets. His vehicle was struck four times and three nearby residences were struck by stray rounds. None of the residences were occupied at the time and no one was injured. None of the officers at the roadblock were struck by Subject #1's vehicle.
11. Subject #1's vehicle fishtailed west on Marigold and turned south at the first intersection, N. Brook Place. BPD Officer #3 had been approaching westbound on Marigold when Subject #1 turned in front of him on Marigold. Officer #3 pursued Subject #1.
12. At the end of N. Brook, which is also a cul de sac, Subject #1 turned into the yard of one of the last houses on the west side of the street. He struck some bushes, a utility box and drove around the south side of the residence into the backyard.
13. Subject #1's vehicle crashed through a metal garden shed, a chain link fence and landed in a water-filled canal.
14. Officer #3 followed Subject #1 in his vehicle and then on foot until he arrived at the remains of the fence.
15. Subject #1 got out of his vehicle and moved south across the narrow canal. Officer #3 yelled at Subject #1 to freeze, but he dove into some cattails and was hidden from view.
16. Officer #3 fired ten shots at Subject #1, none of which hit the hidden suspect. Subject #1 raised his hands in surrender when Officer #3 stopped firing.

17. Officer #3 held Subject #1 at gunpoint until assisting officers arrived and Subject #1 was taken into custody.
18. One stray round fired by Officer #3 struck a nearby residence. The residence was occupied at the time by two people, but no one was struck.

OMBUDSMAN'S ANALYSIS AND FINDINGS

The Boise Police Department Policy and Procedure Manual § 1.0101 (Use of Force) Authorization:

An officer may use deadly force when necessary to defend himself/herself or others when the officer reasonably believes that imminent danger of death or serious bodily injury exists. An officer may also use deadly force when necessary to affect the capture or prevent the escape of a subject, whose freedom is reasonably believed to represent an imminent danger of death or serious bodily injury to the officer or to others (in part)

Officer #1's Use of Deadly Force

Officer #1 responded to the corner of Waterside and Marigold and was in position on the northeast sidewalk using a wooden fence as concealment. He was aware that Subject #1 was believed to be in a residence at the end of the cul de sac which was blocked by marked police vehicles. He knew that Subject #1 was wanted for the attempted murder of two police officers approximately ten days earlier. He had heard over the police radio that Subject #1 was seen with a handgun in his waistband.

He saw Subject #1 exit the house and get into his vehicle which was in the driveway. He heard officers near the residence ordering Subject #1 to stop. He saw Subject #1 get in the

vehicle and back rapidly out of the driveway, stopping in the street, facing south, towards the roadblock. The vehicle accelerated rapidly towards the roadblock, behind which were Officer #2 and the Garden City officer. Officer #1 felt that Subject #1 was going to ram the roadblock in an attempt to get away which put Officer #2 and the Garden City officer in great danger.

In response to what he perceived as an imminent threat to Officer #2 and the Garden City officer, Officer #1 fired three or four times with his department issued Colt AR-15 using department issued .223 caliber ammunition. Officer #1 felt that if Subject #1 escaped the area, he posed an imminent danger to the public as well as other officers.

For these reasons, I find that Officer #1's use of deadly force was based on a reasonable fear of imminent death or great bodily injury to officers behind the roadblock. He also reasonably feared that Subject #1, if allowed to escape, posed a danger to the public as a violent fleeing felon. Therefore, I have issued a finding of exonerated in connection with Officer #1's use of deadly force on March 9, 2005.

Officer #2's Use of Deadly Force

Officer #2 was a detective who had been involved in the active investigation attempting to locate and apprehend Subject #1. He was fully aware of Subject #1's previous criminal history, including his assault on two police officers ten days earlier. He was aware that Subject #1 had boasted to friends that he would shoot a police officer to avoid capture. He heard over the police radio that Subject #1 was armed with a handgun. Officer #2 was in plainclothes at the time of the incident, but was standing behind marked police vehicles with other uniformed officers.

He responded to the roadblock and took a position behind the Garden City officer. He heard officers ordering Subject #1 to stop as he got into his vehicle in the driveway. He saw the

vehicle back out of the driveway rapidly and then head toward the roadblock at a high rate of speed. Fearing that the vehicle would strike the roadblock and cause death or serious bodily injury to himself and other officers at the roadblock, Officer #2 fired twice from his department issued Glock .45 caliber handgun. As he did so, he reached for the Garden City officer to try to pull him back out of the way of the speeding vehicle.

For these reasons, I find that Officer #2's use of deadly force was based on a reasonable fear of imminent death or great bodily injury to himself and other officers then present and to prevent the escape of Subject #1, a dangerous violent felon. Therefore, I have issued a finding of exonerated in connection with Officer #2's use of deadly force on March 9, 2005.

Officer #3's Use of Deadly Force

On March 9, 2005, Officer #3 was off duty when called out to respond with Special Operations Units to Garden City along with his canine. Officer #3 knew that Subject #1 was wanted for ambushing two Boise police officers who were members of Officer #3's team. He had been involved in the search for Subject #1 the night of the ambush. He was aware that Subject #1 was also wanted for a home invasion robbery, which occurred the same night as the ambush, and of his prior criminal history. Officer #3 heard over the police radio moments before that Subject #1 had been seen with a handgun in his possession.

Officer #3 quickly responded to the scene and took up his assigned position when he heard over the police radio that Subject #1 was getting into a vehicle. He returned to his police car and headed to the intersection of Marigold and Waterside. Just as he arrived, he saw the suspect vehicle headed directly at the roadblock. He saw officers fire at Subject #1 and saw the vehicle swerve across the lawn onto Marigold. Officer #3 followed immediately in his police car and pursued the vehicle onto N. Brook and behind the residence on N. Brook. He saw the vehicle as it crashed through the shed and fence until it came to rest in the canal.

Officer #3 saw Subject #1 get out of the car and head toward the cattails. He yelled at Subject #1 to stop, but Subject #1 dove into the cattails. Fearing that Subject #1 was preparing to shoot at him from his position, hidden in the cattails, Officer #3 fired ten shots at his hidden position. Officer #3 remained in a standing position without cover as he fired, so as to fire down into the canal. He did this to keep the canal bank as his backdrop to reduce the chance of a bullet hitting outside the canal area.

Officer #3 had a trained police dog in his vehicle. He did not use the dog, nor was he required to do so in this situation.

Officer #3 knew Subject #1's violent history and that he was armed with a handgun. Subject #1 had just failed to obey his command to stop after he exited the vehicle in the canal. He knew that Subject #1 posed a threat to the community if allowed to escape and reasonably feared that Subject #1 was preparing to shoot him from his concealed position in the cattails. Officer #3 fired to stop the threat of death or great bodily injury that Subject #1 posed. Therefore, I have issued a finding of exonerated in connection with Officer #3's use of deadly force on March 9, 2005.

OMBUDSMAN'S POLICY AND TRAINING RECOMMENDATIONS

Police Officer Response to Perceived Threat From a Moving Vehicle

This incident brings into clear relief the many dangers present when police officers perceive they are threatened by a moving vehicle. The fundamental danger to the officers is that they may be struck by a vehicle. Any collision between a motor vehicle and a pedestrian will likely result in the death or serious injury of the pedestrian. If the car being driven at a police officer is moving at a high rate of speed or being driven recklessly, there is also danger for nearby motorists and/or other pedestrians. The driver of the vehicle being driven towards the

officer also faces risk of injury or death, depending on speed or the recklessness with which the vehicle is being operated. If a roadblock using stationary vehicles or other heavy barriers is employed by the police, the danger to the driver is increased should the vehicle strike the roadblock.

There is no doubt that officers and the public alike are threatened when the driver of a motor vehicle points that vehicle at an officer and pushes down the accelerator. Traditional police thinking on this subject has focused on the officer's right to defend himself or herself and take immediate action to try and stop the threatening vehicle. Until recently, less attention has been given to evaluating the relative dangers and actual effectiveness of firing at an approaching vehicle, or in devising strategies likely to prevent such scenarios from ever developing.

While the law may excuse an officer who shoots the driver of a vehicle because the officer reasonably believed the driver was trying to run him or her down, not all vehicles heading toward a police officer are being operated by someone intending to strike the officer. Some drivers are simply attempting to escape, others intoxicated, and some simply confused. In fact, it is impossible for an officer to know the driver's intent when a vehicle is heading straight at him or her. Therefore, if an officer has the ability to get out of the way rather than shoot the driver, it is generally preferable to do so. Having the authority to use deadly force is not synonymous with possessing the necessity to do so.

Dangers Inherent In Shooting at a Moving Vehicle

As illustrated by the particular incident under investigation in this case, the decision by police officers to fire at an approaching vehicle and/or its driver adds additional dangers to the situation, apart from any resulting injury to the driver. Moving targets are more difficult to hit than stationary ones. Bullets that miss the target vehicle or pass through it pose a threat to other drivers, pedestrians, and occupants of downrange buildings. In the March 9, 2005,

incident on Waterside in Garden City, at least six of the rounds fired at the Subject's vehicle struck nearby houses. Fortunately, none of these rounds struck anyone inside the houses. However, some of the rounds went through walls and a few of the houses on the street were occupied at the time. In addition, police personnel were stationed at the north end of Waterside and may have been in the direct line of fire as officers at the south end of the street pointed their weapons down the street and fired at the approaching vehicle.

When a police bullet actually hits the driver of a vehicle being driven towards an officer, the vehicle may go from being a 2,000 pound guided missile to one that is unguided but still headed towards the officer; or the vehicle may change course and present an extreme danger to nearby drivers and/or pedestrians. The "made-for-television" scenario, in which an officer shoots and the vehicle rolls to a stop while the driver slumps over the steering wheel, is not the most likely outcome. The unguided vehicle may plow into the officer, run over pedestrians, or crash into occupied buildings. Dr. Bill Lewinski, Director of the Force Science Research Center at Minnesota State University-Mankato and a use of force expert often cited by law enforcement, is quoted in Police Magazine ("Cops vs. Cars" June 2005, page 56) on this very point, "You can assume that the [driver's] body might slump forward, but the pressure might increase to the gas pedal. This means the car might even accelerate in the direction in which it was moving." Dr. Lewinski goes on to say, "an officer standing in front of an oncoming car delivering .40-caliber rounds into the windshield is likely to be hit anyway." Chief Charles H. Ramsey of the District of Columbia Police Department makes the same point, "We put the emphasis on better training. Striking at a moving vehicle doesn't do you any good. If you think you had a problem before, try adding a corpse behind the wheel," (The Washington Post, February 28, 2006, page A1).

Policy and Training Questions Raised During This Investigation

As a result of our investigation into the events of March 9, 2005, the following questions

were identified regarding the challenge of on-coming vehicles reasonably perceived to be an immediate threat to the lives of law enforcement officers:

1. What can be done to avoid the danger in the first place?
2. What options does an officer have when a vehicle is being driven directly at him or her in a threatening manner, and how effective are they?
3. What are other police agencies doing in this regard?
4. What ought Boise law enforcement agencies do with regard to this issue?

Avoiding the Danger

Law enforcement is a dangerous job. Not even considering intentional violence and assaults, police officers face danger daily from traffic collisions, hazardous materials, blood and other bio-hazards, severe weather, etc. For example, and specific to the topic at hand, officers at the scene of a traffic collision must perform their duties amid moving traffic and other hazards. An officer may be required to stop traffic by stepping into a traffic lane and signaling to drivers that they must stop. In fact, using one's body to halt traffic or signal to a driver is common police behavior throughout the world. In the same Police Magazine article cited above, Sgt. Craig Stapp, a firearms instructor with the Tempe, Arizona Police Department is quoted as saying, "We're use to directing traffic, so we're use to standing in front of oncoming cars. What we are confusing is the everyday guy who will pretty much obey our commands vs. the guy who wants to get away at all costs."

Equally ingrained into the psyche of American police officers is the belief that they are expected to capture criminals and prevent their escape. This is true, of course; such is the public's expectation. Less clear, however, is the extent to which an officer should expose

himself or herself to danger in order to accomplish this mission. Many police policies and training programs recognize that a “capture at all cost” approach is fundamentally unwise. Police agencies direct their officers to weigh the relative risks and benefits inherent in potentially dangerous courses of action before proceeding or continuing. Over the last 20 years, police agencies have applied this line of thinking to the practice of vehicle pursuits. Most agencies have moved from a philosophy of “pursue until the suspect crashes or gives up” to one that directs officers to limit their pursuits to dangerous fleeing felons and end pursuits altogether if the risk to officers and the public outweighs the danger posed by a suspect if he is not immediately captured.

It is understandable that police officers might place themselves in front of or behind a vehicle they want to remain stationary; or crouch behind patrol cars being used to block a possible escape route. However, such strategies expose officers to unnecessary risks. The prevention of escape in such instances is far outweighed by the ensuing dangers to officers and the public when a driver decides to ignore an officer’s commands and drive directly at an officer. In addition, tactics that place officers in a position of potential danger from a moving vehicle have the unintended consequence of creating situations in which officers perceive they have no choice other than to shoot at a car being driven directly towards them. Geoffrey Alpert, one of the nations leading experts on the use of lethal force by the police and a professor of criminology at the University of South Carolina is paraphrased in The Washington Post (February 28, 2006, page A1) as saying that, “officers can put themselves in a position to fear for their lives.” Professor Alpert is quoted in the same article, “This is an issue that is well resolved at major departments for all the right reasons. You do not shoot at a moving vehicle when the only force being used against you is the moving vehicle.”

For these reasons, police agencies around the country (including Seattle, Los Angeles County Sheriff, San Diego, Boston, Philadelphia, Miami, and the California Highway Patrol) have added language to their policies and emphasis in their training programs that direct officers

not to position themselves in front of or behind a vehicle, or intentionally place themselves in an inherently dangerous location in order to prevent an escape.

Options

Sometimes, despite an officer's best efforts or due to the circumstances or the unique characteristics of a given location, an officer may find himself or herself in the path of a vehicle being driven by a suspect attempting to get away or run down an officer. In such a scenario, what options does an officer have?

Move out of the way. As simple as this seems, this may be counter-intuitive to some. Officers are trained to use the visible signs of their official role, their police uniform, badge, marked police car, etc., as a means of controlling individuals and situations. Under some training systems, "command presence" is identified as the lowest level of force an officer can employ in response to verbal and non-verbal indications that someone might attempt to flee or refuse to cooperate. In addition, "retreating" or letting a suspect get away runs counter to law enforcement culture and the commonly held self-concept of many officers. Unfortunately, not all suspects will stop rather than run down an officer and the danger to officers is too deadly to take the risk. Human life is too valuable and the impact on families and loved ones too devastating to risk the lives of officers. Moving out of the way of an oncoming vehicle, if at all possible, is the most effective response and should be required by policy, practiced in training, and reinforced through supervision.

Use blockades, tire deflation devices, and other mechanical means. Many situations encountered by law enforcement develop quickly and officers do not have the time to set up elaborate mechanisms to prevent suspect vehicles from being driven away. However, when practical, officers can take simple steps to reduce the likelihood that a suspect will be able to aim a moving vehicle directly at an officer. Examples include: use of police cars to "block in" a suspect vehicle, placement of "stop sticks" or other tire deflation devices, removal of

keys, and physical separation between the suspect and his or her vehicle. Each situation will be different and not all methods will work or be practical in any given incident. However, training and supervision should encourage officers to make use of these and other means when practical.

Shoot at the vehicle and/or its driver. In addition to the dangers this option creates for the officer and the public (cited above), shooting at a moving vehicle or its driver is not effective. In general, weapons used by the police do not fire rounds capable of reliably disabling a motor vehicle. The various calibers of law enforcement ammunition are not designed to disrupt an engine and cannot be relied upon to penetrate glass and metal. Shooting out the tires is easier said than done. Even if a tire is punctured, there is no guarantee the vehicle will stop. The dangers posed by ricochet and stray bullets further argue against using this option. As noted above, even if the driver is shot, the danger to the officer and others is not necessarily ended.

Best Practices

The Office of the Community Ombudsman researched this subject and reviewed the policies of 13 law enforcement agencies from around the United States:

- Boston Police Department
- California Highway Patrol
- Los Angeles Police Department
- Los Angeles County Sheriff's Office
- Louisville Metro Police Department
- Miami Police Department
- Miami Beach Police Department
- New York City Police Department
- Philadelphia Police Department

- Sacramento Police Department
- San Diego Police Department
- San Francisco Police Department
- Seattle Police Department

Eleven of these agencies limit, to some extent, the practice of shooting at a moving vehicle. Only two clearly permit shooting at a moving vehicle (or its driver and occupants) when the only threat to the officer is the approaching vehicle. However, the policies of these two agencies clearly prohibit officers from intentionally placing themselves in the path of a vehicle or in an inherently dangerous situation in order to prevent a subject from fleeing. Five other agencies have language in their policies prohibiting officers from placing themselves in an inherently dangerous location relative to a vehicle (such as standing immediately in front of or behind a stationary, driver-occupied vehicle) or remaining in the path of an on-coming vehicle if they have any means of getting out of the way. These policies make it clear that officers' use of deadly force may be considered unjustified if they created the dangerous situation by virtue of where they placed themselves, or if they failed to get out of the path of an approaching vehicle and had the ability to do so. Of particular note is the language of several policies reminding officers that retreating, repositioning, and seeking cover are not signs of cowardice or weakness, but examples of tactically superior police procedures that maximize officer safety and minimize the necessity for using deadly force. A number of agencies have language in their policies reminding officers that shooting at moving vehicles is inherently dangerous and rarely effective.

In limiting the practice of shooting at a moving vehicle, some agencies characterize it as a last resort if the officer has exhausted all other means to get out of the way or if shooting at the vehicle is the only action the officer can take to end an imminent threat of death or serious bodily injury to the officer or others. Some agencies further limit the practice to only those situations in which the officer is responding to a deadly threat other than the on-coming vehicle; for example, when someone inside the vehicle is firing a gun at the officer or at

someone else. Several agencies include in their policies the requirement that officers take into account the presence of other vehicles, pedestrians, and occupied buildings and weigh the potential dangers before deciding to shoot at a moving vehicle.

Current Boise Policy

Current BPD policy regarding the firing of weapons at moving vehicles is addressed in the section of the policy manual that deals with the use, safety, and care of firearms. This topic is not specifically addressed in use of force section of BPD's policy manual.

9.02.05 Discharge of Firearms in the Line-of-Duty

An officer shall be authorized to discharge firearms in the line-of-duty under the following conditions:

- To use his/her firearm to protect himself/herself or others from what he/she reasonably believes to be an imminent danger of death or serious bodily injury.*
- To use his/her firearm to effect the capture or prevent the escape of a felony suspect whose freedom is reasonably believed to represent an imminent threat of serious bodily injury or death to the officer or other persons.*
- During firearms training sessions as directed by the firearms instructors.*
- To shoot an animal as outlined in 11.03.24 Treatment of Animals.*

An officer shall not discharge firearms:

- As a warning*
- In any misdemeanor case*
- From (or at) at moving vehicle, except in extreme circumstances involving the defense of self or others*
- When the discharge of the weapon may unreasonably endanger the lives of persons not involved in the commission of the crime in progress*

The Boise Airport Police Department includes similar language in § 21.0202 i. (5) of its policy manual:

Officers shall not discharge firearms:

- As a warning.*
- In any misdemeanor case.*
- From (or at) at moving vehicle, except in self-defense or others or when the suspect vehicle has entered into the airport's AOA and there is believed to be an **imminent** threat of serious bodily injury or death to the officer or other person(s).*

- *When the discharge of the weapon may unreasonably endanger the lives of persons not involved in the commission of the crime in progress.*

Policy and Training Recommendations

Policy Recommendation

I recommend that, without delay, the Boise Police Department and the Boise Airport Police Department adopt policy language that:

1. Clearly articulates that shooting at a moving vehicle, its driver, and/or its passengers is inherently dangerous and generally ineffective.
2. Reminds officers of their public responsibility to avoid tactics that unnecessarily create dangerous circumstances or the need to use deadly force if other equally effective options are available.
3. Informs officers that moving out of the way of an on-coming vehicle, retreating, repositioning, and obtaining cover are sound police tactics, not examples of cowardice or weakness.
4. Requires officers to take into account the presence of other vehicles, pedestrians, innocent bystanders, and occupied structures and weigh the potential danger to others before shooting at a moving vehicle, its driver, or any occupants.
5. Prohibits officers from intentionally placing themselves in front of or behind a stationary occupied vehicle.
6. Prohibits officers from intentionally stepping in the path of a moving vehicle.

7. Directs officers to avoid placing themselves in an inherently dangerous position which would expose them to danger should the suspect vehicle become mobile.
8. Requires officers to get out of the path of a moving vehicle if at all physically possible.
9. Prohibits officers from firing their weapons at a moving vehicle, its driver, and/or its passengers except as a last resort when:
 - a. The officer is physically unable to either get out of the vehicle's path and/or
 - b. A deadly threat is present, other than the approach of the vehicle itself (e.g., shots are being fired at the officer or others from inside the vehicle) and the officer and/or those being threatened are unable to obtain sufficient cover.

In addition to enforcing local ordinances and state statutes, the Boise Airport Police Department provides security for commercial and civil air operations at the airport. As such, the Airport Police Department is subject to federal regulations which may impact how they implement these policy recommendations.

Training Recommendations

1. Policy Implementation. I recommend that, without delay, the Boise Police Department and the Boise Airport Police Department develop and implement education and training sufficient to implement the policy recommended above.
2. Volume of Fire. The incident on N. Brook Place presents an unusual circumstance in the use of deadly force. Officers are trained when using a firearm, to fire until the threat ends while continuously assessing the situation and the effectiveness of their

fire. This practice is designed to increase the effectiveness of their shots by assessing whether or not it is having the effect desired (stopping the threat) while reducing the volume of fire and thereby reducing the risk posed by stray rounds. While it is my finding that the use of deadly force was reasonable, the officer fired ten rounds before pausing to assess the effectiveness of his fire. Therefore, I recommend that BPD evaluate current training to determine its effectiveness in preparing officers to continuously assess and evaluate the effectiveness of his or her fire when discharging a firearm.



Pierce Murphy
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April 18, 2006

MEMORANDUM

TO: Mayor David H. Bieter
Members of Boise City Council

FROM: Chief Michael F. Masterson

RE: Response to Ombudsman's Report & Findings

Thank you for the opportunity to respond to the Ombudsman's public report and findings regarding the critical incident that occurred in Garden City on March 9, 2005 during the capture of Harlan Hale.

I concur with the Ombudsman's finding in exonerating the use of force of the three Boise Police officers who discharged their firearms during this incident. As you know, Harlan Hale was an extremely dangerous and violent wanted felon who had demonstrated a total disregard for human life. His capture was of vital importance to the safety and security of our community. His desperate attempt to escape capture on March 9, 2005, posed extreme challenges to Boise, Garden City, and Ada County officers working together on this day. Officers from these agencies did not hesitate to put their lives on the line for our community on March 9th, as they do day in and day out. I am thankful that no injuries occurred to citizens or officers during this incident in which officers were forced to quickly and decisively respond to the reckless and desperate actions of Harlan Hale which put the lives of both officers and civilians in great peril.

The Ombudsman provided a training recommendation that we "evaluate current training to determine its effectiveness in preparing officers to continuously assess and evaluate the effectiveness of his or her fire when discharging a firearm." In this incident, one officer fired 10 rounds at Hale in fairly rapid succession. This occurred after Hale had driven recklessly at high speeds, was able to maneuver around a roadblock, drove through several residential yards, striking various objects including a metal shed, and finally crashed into a canal. Upon crashing, Hale exited his vehicle, ignored the commands of the officer and dove into nearby cattails. In addition to knowing Hale's criminal past, the officer also knew that Hale was armed during this attempt to escape. The officer feared both that Hale may escape into the area of nearby homes, putting citizens at great risk, as well as that he may be able to gain target acquisition on the officer while hiding in the cattails and shoot the officer. The officer intentionally allowed himself to be more exposed in his position in order that the rounds he fired would more likely go into a canal bank rather than nearby homes. After firing 10 rounds at the spot Hale dove into, the officer ceased firing in anticipation of reloading his firearm. Hale then yelled out and indicated his intent to surrender. He was taken into custody without further incident. The rounds fired by the officer proved to be effective and brought this incident to a closure. We do train our officers on a consistent basis to continuously assess the effectiveness of their fire when discharging a firearm. The officer's actions in this incident were not unreasonable or outside training and I do not believe that this incident provides any cause to suggest modification to the training we currently provide our officers.

Boise Police Department

The Ombudsman also provided a policy recommendation concerning shooting at moving vehicles and related actions of officers when confronted with a threat from a moving vehicle. I appreciate the Ombudsman's thoughtful research and recommendations regarding these issues. For over a year, I have been following the national discussion on these issues amongst law enforcement colleagues. Last year I tasked the department's Policy Committee with reviewing our current policies in this area and providing recommendations for change. This committee has also have been conducting research into best practice policies across the nation and their recommendations are scheduled to be presented to me and the command staff in coming weeks. I concur with some, but not all, of the policy recommendations that the Ombudsman has made, and some of the recommendations are best addressed in training versus policy. Our new policy will incorporate those points on which we agree. In general, our new policy will reflect that in most instances an officer will not be authorized to shoot at a moving motor vehicle when the vehicle alone is the sole threat to the officer. I agree that the officer's tactical response in most instances should be to move out of the path of the oncoming vehicle rather than use deadly force, and our new policy will reflect this.

Policing is an inherently dangerous profession and one in which we cannot avoid all risks, however, through proper planning and training we can effectively manage the risks we encounter in situations like this. Policy is part of proper planning and training, however, written policy cannot cover every conceivable situation an officer may face. Some policies are absolute with no room for discretion while others may need to allow for some officer discretion and reasonable judgement given the facts known to the officer at the time. We must be careful to not be overly restrictive with policy to the extent that it prohibits an officer's reasonable discretion in handling the very complex and unpredictable situations with which they are presented. Our policies regarding the use of deadly force involving a moving motor vehicle must be carefully crafted to provide appropriate balance between guidance and reasonable discretion and always consistent within the framework of our laws.

All of the above being said, it should be noted that I do not anticipate that our new policy regarding these issues would have dictated a different response from our officers regarding the incident on March 9, 2005. There will be some situations that an officer will or must shoot at a moving vehicle in carrying out their obligation to protect and keep our community safe. The incident on March 9th was one such exceptional instance. Harlan Hale posed a very serious threat to the community if he was allowed to escape from the scene in Garden City. He was an extremely dangerous and violent wanted felon who was known to be armed at the time of the incident. Given the aggravated actions of Hale on this day and in prior events, it was appropriate and reasonable to fire at this vehicle in an effort to thwart his attempt to escape.

The Boise Police Department is committed to learning lessons from the critical incidents we and other law enforcement agencies face and improving upon our responses as appropriate. Those lessons we learn are incorporated into our ongoing training of our employees as we seek to provide professional police services and enhance safety and security in our community.

cc: Pierce Murphy, Community Ombudsman



Boise Airport

John W. Anderson
A.A.E.
Director

April 17, 2006

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Jim Tibbs

Mr. Pierce Murphy
Community Ombudsman

Dear Mr. Murphy,

Thank you for sending me your report on the March 9, 2005 incident involving the Boise Police Department's use of deadly force.

I have read over your policy recommendations and concur that this information should be included in a future update.

Attached is a copy of our current police policy regarding the shooting at or from a moving vehicle. This policy went into effect January 1, 2006.

Also attached (marked "new") is a copy of our proposed policy change that is currently being developed for our state departmental certification. We will review your recommendations in our final policy changes involving vehicles outside the airport's security fence.

However, if a vehicle has penetrated the airport's security fence and is believed to be an imminent danger to commercial aircraft that are moving in the airport operations area, our officers will take immediate action and use all means necessary to control the threat.

Sincerely,

Michael L. Johnson, Chief
Boise Airport Police Department