



## **OMBUDSMAN'S REPORT**

### **Critical Incident Investigation & Findings**

*OMB06/0174 - August 16, 2007*

#### ***EXECUTIVE SUMMARY***

On November 6, 2006, at approximately 9:50 a.m., three Boise Police Department (BPD) officers and three deputies from the Ada County Sheriff's Office (ACSO) fired their weapons at an armed male (the Subject) in the parking lot of a strip mall on the southwest corner of West Overland Road and South Five Mile Road in Boise. The Subject was wanted in connection with an aggravated assault that occurred approximately 20 minutes earlier at his former in-laws' house less than a mile away.

BPD officers spotted the Subject on foot near the strip mall and, after being challenged by the officers, the Subject pulled a handgun, held it to his head, and threatened suicide. A 20 minute standoff ensued during which numerous BPD officers and supervisors, together with ACSO deputies and supervisors, converged on the area. During this time, two BPD officers, who were very near the Subject, spoke to him and attempted to convince him to put down the gun and give himself up. The Subject, who by now was sitting on the ground in the parking lot, spoke with the two officers while simultaneously moving the gun back and forth between his head and his lap. After about 20 minutes, the Subject put the gun on the ground and was distracted for a moment. One of the two BPD officers who had been speaking with the Subject deployed a Taser at the Subject in hopes of incapacitating him, but the Taser deployment did not have the desired effect. The Subject then picked up the gun and began to raise it towards the police officers. Within the next few seconds 14 rounds and one beanbag projectile were fired at the subject; a combined total of ten .45 caliber handgun rounds from three BPD officers; three rounds from an ACSO deputy's .40 caliber handgun, one .223 caliber round from a ACSO deputy's .223 caliber M-16 rifle, and one beanbag round from an

ACSO deputy's shotgun.

The Subject sustained a total of eight gunshot wounds. He was immediately treated by emergency medical personnel, who had been staged nearby, and transported to a local hospital where he was later pronounced dead.

The Ada County Critical Incident Task Force (CITF), lead by the Idaho State Police, conducted a criminal investigation into the homicide. Following this investigation, the Ada County Prosecutor appointed a special prosecutor to review the case. On March 7, 2007, the Bannock County Prosecutor, acting as special prosecutor for Ada County, announced his finding that the officers' use of deadly force was legally justified and that no criminal charges would be filed.

The Office of the Community Ombudsman conducted a separate and independent investigation of the incident to evaluate the performance of the involved BPD officers. As a result of the ombudsman's investigation, it was found that all three BPD officers used deadly force in response to an immediate deadly threat. Findings of exonerated for the use of deadly force by each of the three BPD officers were issued by the ombudsman.

In the course of this investigation the actions and decisions of supervisors and command officers during the 20 minutes standoff were examined and evaluated. While no violations of policy or written procedures were noted, command and control of the incident was poorly handled. In this regard, specific areas in need of improvement were identified, both by the ombudsman's office and by BPD. These items have either been addressed by BPD or are currently in the process of being addressed.

## **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.*

## ***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, on the Subject (see P.M. § 1.01.01 & § 1.01.02).

### Officer #2

This officer's use of deadly force, specifically a firearm, on the Subject (see P.M. § 1.01.01 & § 1.01.02).

### Supervisor #1

This police supervisor's use of deadly force, specifically a firearm, on the Subject (see P.M. § 1.01.01 & § 1.01.02).

P.M. § 1.01.01 (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. § 1.01.02 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**

A few minutes after the shots were fired, BPD notified me that a critical incident had taken place. I responded to the area and waited until it was safe for me to go into the crime scene. I observed the CITF conducting their examination of the scene and identification of evidence. I also had an opportunity to personally inspect the scene and view the evidence.

While I was at the scene of the incident, I directed the deputy ombudsman to go to where all three involved officers were waiting to provide blood and urine samples as required by policy following an officer-involved shooting. The deputy ombudsman monitored the application of post-critical incident procedures by BPD.

Once the CITF completed their investigation and issued a report, I reviewed the entire CITF report and all associated evidence and documents; including six binders of documents and reports, over 70 computer discs (CD) containing digital photographs and audio recordings of

officers' belt recordings and investigators' interviews with witnesses, audio cassette tapes of police radio traffic and additional witness interviews, and DVD discs containing video footage and television news reports about the incident. In summary, the materials from the CITF investigation provided me with the following information.

1. The officers who made initial contact with the Subject in the strip mall parking lot had probable cause to believe that he had just committed a felony with a handgun (aggravated assault). The Subject was ordered by the officers to stop and show his hands.
2. Once contacted by police, the Subject displayed a semi-automatic handgun. He chambered a round in the gun and put it to his head, threatening to shoot himself.
3. As police officers and sheriff's deputies deployed around the Subject, he sat down on the pavement and alternately held the handgun to his head and on his leg.
4. By the time the shooting took place, at least 18 BPD personnel (officers and first line supervisors) and seven ACSO employees (deputies and lieutenants) were on scene and either actively engaged in the incident or close enough to be considered witnesses in the CITF investigation. All of these law enforcement officers were interviewed by the CITF.
5. The CITF also interviewed 24 non-law enforcement witnesses in the course of their investigation.
6. Six of the 25 officers mentioned in #4, above, fired a weapon at least one time at the subject. Approximately ten of the remaining 19 officers were close enough to have an unobstructed view of the Subject.

7. In addition to the law enforcement officers mentioned in #4, above, BPD command officers and lieutenants were on scene by the time that the shots were fired.
8. Supervisor #1 and Officer #1 were the closest officers to the Subject throughout the standoff and when the shooting took place; they were approximately 20 feet north of the Subject, give or take five feet.
9. Supervisor #1 and Officer #1 spoke with the Subject, off and on, throughout the 20 minute standoff in an attempt to convince him to peacefully surrender and to prevent him from shooting either himself or any of the many officers in the immediate vicinity. Supervisor #1 and Officer #1 were crouched behind some low bushes and using a ballistic shield as they interacted with the Subject.
10. The Subject told Supervisor #1 and Officer #1 that he had been in prison before and was determined not to go back. The Subject also told them that he was either going to kill himself or be shot by the police.
11. Supervisor #1 and Officer #1 told the Subject that he was considered a deadly threat and that he could be shot if he began to point the gun towards any of the officers.
12. Officer #1 had a Taser with him and deployed the Taser at the Subject. This took place when the Subject put the gun down on the ground, moved his hand away from it slightly, and looked away from Officer #1.
13. The Taser did not have the desired effect of temporarily incapacitating the Subject.
14. The Subject reacted to the Taser deployment by rising from the ground, picking up the handgun, and beginning to point it in the direction of police officers.

15. Officer #1 fired his BPD-issued Glock .45 caliber, semi-automatic handgun at the Subject. The evidence supports the conclusion that Officer #1 fired two rounds.
16. Supervisor #1 fired his BPD-issued Glock .45 caliber, semi-automatic handgun at the Subject. The evidence supports the conclusion that Supervisor #1 fired six rounds.
17. Officer #2, who was behind the cab of a delivery truck approximately 65 feet east of the Subject, fired his BPD-issued Glock .45 caliber, semi-automatic handgun at the Subject. The evidence supports the conclusion that Officer #2 fired two rounds.
18. ACSO Deputy #1, who was next to Officer #2, fired a 12-gauge shotgun at the Subject. The evidence supports the conclusion that ACSO Deputy #1 fired one less-than-lethal (LTL) beanbag round from the shotgun.
19. ACSO Deputy #2, who was behind the back end of the same delivery truck approximately 75 feet east the Subject, fired a Colt M-16 .223 caliber rifle at the Subject. The evidence supports the conclusion that ACSO Deputy #2 fired one round.
20. ACSO Deputy #3, who was approximately 85 feet east of the subject, fired a .40 caliber Glock, semi-automatic handgun at the Subject. The evidence supports the conclusion that ACSO Deputy #3 fired three rounds.
21. The Subject sustained a total of eight gunshot wounds. His death was a result of injuries caused by one or more of these gunshot wounds.

Following my review of the CITF materials and evidence, I interviewed the two BPD officers and one supervisor who fired their weapons. I interviewed two other BPD officers who had specific knowledge of the Subject and the incident. I also interviewed a BPD

supervisor, lieutenant, and captain who were responsible, in one way or another, for command and control of the incident prior to the shooting.

### ***WHAT THE OMBUDSMAN INVESTIGATION FOUND***

Based on the preponderance of the evidence reviewed and obtained in the course of this investigation, I have reached the following findings of fact regarding the events of November 6, 2006.

1. The Subject was armed with a handgun and stated that he was not going to allow the police to take him into custody.
2. The police had been told that the Subject threatened someone with a handgun just minutes earlier.
3. The Subject manually moved the slide on the handgun he was holding in a manner consistent with placing a live round into the chamber of the gun.
4. Supervisor #1 and Officer #1 attempted to talk the Subject into surrendering to the police.
5. Officer #1 deployed a Taser at the Subject.
6. The Subject was not disabled, even temporarily, by the Taser.
7. Following the Taser deployment, the Subject picked up the gun and raised it in the direction of one or more officers.

8. Officer #1 fired two rounds at the Subject with his BPD-issued .45 caliber handgun.
9. Supervisor #1 fired six rounds at the Subject with his BPD-issued .45 caliber handgun.
10. Officer #2 fired two rounds at the Subject with his BPD-issued .45 caliber handgun.
11. The Subject died as a result of one or more gunshot wounds.

## ***OMBUDSMAN'S ANALYSIS AND FINDINGS***

### Use of Deadly Force

BPD policy concerning the use of deadly force (§§ 1.01.01 & 1.01.02) clearly gives officers the authority to use deadly force when they reasonably conclude that they or others are in imminent danger of death or serious bodily injury. In the incident under review, there is no doubt that the Suspect was armed and had threatened himself and others with a gun. His statements to Supervisor #1 and Officer #1, captured by the officers' audio recorders, clearly indicated his desire to die violently rather than surrender to the police and face the possibility of returning to prison. The 20 minute standoff between the Subject and the police was fraught with danger for the Subject, the officers, and the general public.

Despite the danger the Subject posed to Supervisor #1 and Officer #1, they remained near him in a highly exposed position with only a few bushes for concealment and one ballistic shield between them for cover. The audio recordings of the interaction between these two law enforcement officers and the Subject are a compelling record of their determined attempts to deescalate the situation and convince the Subject to put down his gun and surrender peacefully. Both Supervisor #1 and Officer #1 are to be commended for these actions.

Officer #1 was equipped with a Taser brand “conducted energy device,” commonly referred to by the brand name “Taser.” The Taser uses compressed nitrogen to propel two metal probes up to 21 feet away. When both of the Taser’s probes, which are attached to the handheld unit by thin wires, come into direct contact with a person, a circuit is completed and electrical energy is transmitted through the person from one probe to the other. This electrical charge has the effect of causing the person to experience pain and the temporary loss of muscular control. Each activation of the Taser lasts five seconds. Officers are trained to disarm and/or control the person being tased during the five second activation.

From the time that officers first made contact with the Subject to the point when Officer #1 deployed the Taser, the Subject was in direct control of a handgun. On any one of the several occasions he moved the gun, one or more of the officers focused on the Subject could have reasonably concluded that his or her life, or the lives of other officers, were in immediate danger from the Subject. Instead, officers sought positions of concealment and cover and made certain that all non-law enforcement bystanders were far removed from the Subject.

The turning point in the situation came when Officer #1 saw an opportunity to use the Taser in hopes that the Subject could be disarmed and handcuffed during the five second window of opportunity normally brought on by the Taser. While it is indeed unfortunate that the Taser proved ineffective, its use in such a situation is the primary reason why such “less-lethal” weapons were developed: to disarm and control individuals who might otherwise have been shot by the police. Had the Taser probes made proper contact with the Subject, resulting in his temporary incapacitation, he might very well be alive today. In the same vein, had the Subject reacted differently to Officer #1’s deployment of the Taser, the outcome might have been far less tragic. However, once the Subject picked the gun back up and began to raise the muzzle towards nearby police officers, those officers who felt their lives or the lives of their fellow officers to be under immediate threat were authorized by BPD policy to use deadly force to stop the threat. Therefore, it is my conclusion that each of

the three BPD officers who fired his weapon at the Subject acted in compliance with the requirements and restrictions placed on them by §§ 1.01.01 and 1.01.02 of the BPD Policy and Procedures Manual. I have issued the following findings for each officer:

Officer #1 – EXONERATED

Supervisor #1 – EXONERATED

Officer #2 – EXONERATED

#### Incident Command and Control

The BPD Policy and Procedures Manual clearly outlines a set of procedures (Field Operations) to be followed in, “any multi-officer response where there exists a need for the coordination of officers or the assignment of officers to different tasks to accomplish a specific objective,” (§ 3.05.02 Field Operation Definitions: Field Operations). Given the nature of this incident (an armed, suicidal subject who had just committed an aggravated assault with a gun) the Field Operations procedures clearly called for the appointment of a single “Incident Commander” (IC) at the rank of lieutenant or above. The IC is defined in the policy as, “the individual responsible for the command of all functions at the field response level, including the inner perimeter, outer perimeter and assisting agencies,” (§ 3.05.02 Field Operation Definitions: Incident Commander). In situations that are relatively straight forward, the IC may retain direct responsibility for activities at both the inner and the outer perimeters. More complex incidents, particularly those involving multiple agencies, significant traffic control requirements, and on-going public safety concerns, typically call for an IC to delegate specific tactical responsibilities to other officers; e.g., inner perimeter operations, traffic control, outer perimeter security, inter-agency coordination, etc.

This incident quickly transformed from an encounter between an armed suspect and a handful of officers, to a “Barricaded Subject” incident involving an armed, suicidal suspect and 25 or more law enforcement officers. In addition, emergency medical personnel from the Boise Fire Department (BFD) and the Ada County Paramedics were staged nearby in case of necessity. Finally, the incident took place in a parking lot adjacent to a residential subdivision and in an area of heavy vehicular and foot traffic. Hundreds of people and vehicles needed to be kept out of harm’s way.

This incident was one in which Incident Command and assigned tactical responsibilities needed to be clear and unambiguous. However, by the time Officer #1 deployed the Taser and the shooting ensued, command and control of the incident was neither clear nor unambiguous. Even though at least one captain and one lieutenant had been on scene for several minutes prior to the shooting, a sergeant was still acting, de facto, as the IC. This single, front-line supervisor was juggling a multitude of tasks; including, but not limited to:

- Communicating with the two officers closest to the Subject (Officer #1 and Supervisor #1).
- Keeping track of BPD and ACSO officers deployed around the inner perimeter (some in uniform, some not; not all on the same radio channel; armed with handguns, rifles, and/or less-lethal shotguns).
- Dealing with cross-fire issues that arose as additional officers deployed around the Subject.
- Maintenance of the outer perimeter to ensure safety of the public, media, command staff, and others.
- Assigning individual officers to traffic-control duties.
- Coordination with resources from outside agencies (BFD, Paramedics, etc.).
- Communicating with command staff.

More importantly, Officer #1 and Supervisor #1 had not been advised who they should communicate with regarding tactical plans (specifically the decision to deploy the Taser from their position). They made this decision without the benefit of being able to consult with someone with a broader understanding of the whole situation; someone who was not 20 feet away from an armed person with nothing but a few bushes and a single ballistic shield between them. Adding to the confusion, a captain on scene declared himself to be the IC, then delegated the role to a lieutenant. The lieutenant, however, was not certain who the IC was, since he believed he had not received the required operational briefing from the captain. Command and control of this particular incident, above the first level of supervision, was not effective. It is impossible to say, however, what impact, if any, more effective command and control would have had on the eventual outcome of this incident.

While no violations of policy or written procedures were noted, command and control of the incident was poorly handled. In this regard, specific areas in need of improvement were identified, both by the ombudsman's office and by BPD. These items have either been addressed by BPD or are currently in the process of being addressed.

## ***TRAINING AND OTHER ORGANIZATIONAL CAPABILITIES***

### Training

In the months since this incident took place and the various criminal and administrative investigations were concluded, BPD identified several areas for improvement in how its personnel are trained and managed to handle similar situations. Commanders, supervisors, and officers have been given additional training. In addition, senior level law enforcement commanders from neighboring communities in Ada County have participated together in scenario-based training exercises to help them better coordinate and communicate during incidents involving multiple agencies. Continuation and expansion of such exercises will be

critical to developing these agencies' ability to effectively manage high risk incidents that involve multiple agencies and/or cross jurisdictional boundaries.

### Radio Communication

One of the barriers to optimal communication among all of the law enforcement officers from different agencies involved in this incident was the fact that the police radios they carried did not have the capability to easily switch to one common frequency. In addition, some of the plain clothes officers present did not have ready access to portable radios that they could use outside their unmarked cars. It is hoped that these problems will be addressed once all Ada County law enforcement agencies complete the transition to a digital radio system.

### Less Lethal Options

Two different less lethal weapons were utilized during this incident: a Taser and a beanbag round fired from a shotgun. BPD has recognized the need to provide its patrol officers with additional less lethal alternatives to a firearm. They recently ordered several 40 mm launchers which will be capable of propelling less lethal projectiles from a greater distance than the effective range of a Taser, and with more accuracy than a shotgun can deliver a beanbag round. While so called "less lethal" projectiles are not risk free and can cause either serious injury or (under some conditions) death, use of such tools in combination with sound de-escalation tactics can save lives and reduce the risk to of officers.

BPD also has Police Service Dogs (also known as a K9s) which can be used to contain, control, or take into custody someone who poses a danger to officers and refuses to surrender. Unfortunately, BPD's K9 units are not scheduled to work during the day and there was not sufficient time for an off-duty K9 unit to respond to this incident. As funding becomes available, I encourage BPD to consider adding K9 units to cover daytime shifts as

well.

I encourage BPD to continue to evaluate the effectiveness and relative safety of less lethal equipment and K9 units as alternatives to the use of deadly force.

### Crisis Negotiators

BPD has a skilled Crisis Negotiations Team (CNT). CNT members receive a significant amount of training and become experts at communicating effectively with a wide variety of individuals under highly stressful conditions. Officers who are selected to serve in this specialty continue in their full-time assignment as patrol officers, detectives, or in other functions. Because CNT members have other, full-time assignments, they operate on a call-out basis. When the incident under review in this case began to unfold, a BPD commander quickly initiated the process to call out the CNT. However, trained crisis negotiators were unable to get to the scene of the incident before the shooting took place. I encourage BPD to consider the feasibility of adding more trained negotiators to the CNT to provide better coverage and shorter callout times.

### Crisis Intervention Teams (CIT)

BPD is currently planning the implementation of Crisis Intervention Teams (CIT) throughout its Patrol Division. The plan is to provide all officers and police supervisors with four hours of training on the identification and initial response to persons in extreme crisis, whether due to drug use, severe emotional distress, or a mental health condition. Approximately 20% of the uniformed Patrol Division officers will receive an additional 40 hours of training in the safe de-escalation and peaceful resolution of crisis situations. The incident under review in this case points out the potential value of such training and of having a minimum number of CIT members on-duty at all times. I urge BPD to continue to make progress in this area and to implement their CIT plan as soon as possible.



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MEMORANDUM

Date: August 21, 2007

To: Pierce Murphy  
Boise City Ombudsman

From: Chief Michael F. Masterson

RE: OMB06/0174

A handwritten signature in cursive script that reads "Michael F. Masterson".

- The below is a list of actions which were taken by the Boise Police Department following a review of the critical incident occurring November 6, 2006 at Overland / Five Mile:
- Research into the best practices for gathering administrative statements following critical incidents was conducted and a list of recommendations was submitted to the CITF for review with a request for implementation.
- Review of evidence collection from the persons and property of involved officers was conducted and the use of photographs to document this evidence has been implemented.
- Incident Command Systems training has been administered through level 300 to all BPD commanders as of June 2007.
- Joint training exercises involving L.E. leaders from around the Valley was conducted on active shooter incidents to improve joint agency responses.
- A review of less lethal alternatives resulted in the purchase of 40mm launchers for the BPD. Training will be initiated upon receipt of the launchers.
- A request for daytime K-9's was made but did not make the six year budget forecast.
- The new digital radio system has been implemented and all valley officers have common channels in the radio system. ACSO, BPD and Meridian have been issued the radios. Garden City is hoping to issue radios prior to the end of the year.
- Command personnel have been counseled and trained on their required roles at the scene of a critical incident.
- Continued work to implement a CIT program to ensure trained negotiators are available throughout all hours of the week continues. It has been placed in the 2007/2008 training plan contingent on funding.

*Boise Police Department*