PLEASE NOTE:

Grand jury materials are protected from public disclosure under Minnesota Rule of Criminal Procedure 18.07.

On June 28, 2024, the Hennepin County Attorney's Office (HCAO) asked the court for permission to disclose the grand jury transcript to the public.

On July 19, 2024, the court denied that request. For that reason, the HCAO is not allowed to release the grand jury transcript to the public and had to redact references to grand jury materials in this report and the report’s supporting exhibits.

Special Prosecutors' Report and Recommendations

in *State v. Ryan Patrick Londregan*

Submitted to the Hennepin County Attorney's Office

June 4, 2024

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CONFIDENTIAL

I. Introduction

On July 31, 2023, at approximately 1:50 am, Trooper Brett Seide of the Minnesota State Patrol was on routine patrol on Interstate Highway 94 near the Broadway Avenue entrance in downtown Minneapolis.[1] Seide observed a Ford Fusion driven by Ricky Thomas Cobb II pass Trooper Seide's stationary location with the vehicle's rear lights not illuminated, a traffic violation.[2] Seide pulled out from the median and activated his car's emergency lights, causing Mr. Cobb to pull out of traffic and onto the right shoulder of the highway. Ricky Cobb should be alive today, but the incident ended less than 45 minutes later, with Minnesota State Trooper Ryan Londregan shooting and killing him.

A criminal investigation was launched immediately, conducted by the Minnesota Bureau of Criminal Apprehension (BCA) of the Minnesota Department of Public Safety, which the BCA submitted to the Hennepin County Attorney's office (HCAO) on September 19, 2023.[3] On January 24, 2024, the County Attorney charged Trooper Londregan by criminal complaint with three crimes—unintentional 2nd degree murder while committing the felony of assault in the 2nd degree; and 1st degree assault causing great bodily harm; and 2nd degree manslaughter—culpable negligence by Trooper Londregan that created an unreasonable risk of death or serious bodily injury.[4]

Over the last four months, in the face of pervasive media coverage and intense politicization of the case by law enforcement organizations and political officials, the HCAO continued to pursue the case. On April 22, 2024, the HCAO engaged a team of former federal prosecutors from Steptoe LLP ["Special Prosecutors"] who have extensive experience in matters relating to use of deadly force and law enforcement misconduct, to serve as special prosecutors in this case. Our initial task in this role was to undertake an independent review of the evidence collected and make any appropriate recommendations to the HCAO regarding the charges it had filed.

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[1] Exh. 1, [redacted] *see also* Exh. 2, Report of Minnesota State Trooper Brett Seide, Aug. 8, 2023, at 1; Exh. 3, Report of Minnesota State Trooper Garrett Erickson, Aug. 16, 2023, at 1.

[2] *Id.*

[3] Exh. 1, [redacted] Exh. 4, Press Release, Hennepin County Attorney's Office, Hennepin County Attorney's Office Receives Case in the Killing of Ricky Cobb II (Sept. 19, 2023), https://www.hennepinattorney.org/news/news/2023/September/Cobb-9-19-23.

[4] Exh. 5, Complaint, *State of Minnesota v. Ryan Patrick Londregan*, 27-CR-24-1844 (Hennepin County Fourth Judicial Dist. Ct., Jan. 24, 2024), MCRO No. 1, at 1–2.

At the time we were retained as special prosecutors, the evidence collected by the State and provided to us by the HCAO supported our preliminary assessment that the charges were an appropriate exercise of the Hennepin County Attorney's prosecutorial discretion.

As occurs in all criminal investigations and prosecutions, the defense has an opportunity to present evidence at any stage—pre-charge, post-charge, and at trial. In this case, despite declining to present evidence pre-charge—through a proffer of evidence from their client or otherwise—the defense presented several pieces of new evidence after the charges were filed that substantially impairs the State's ability to prove the charges beyond a reasonable doubt. In light of this new evidence, the preliminary assessment of a use of force expert retained by the HCAO, and the opinion of a highly qualified and experienced use of force expert retained by the Special Prosecutors, we have concluded that the charges against Trooper Londregan cannot be proven beyond a reasonable doubt.

This outcome does not mean that the County Attorney or special prosecutors believe that Trooper Londregan acted appropriately. The question of whether the charges can be proven beyond a reasonable doubt is different than whether a person's actions were correct under the circumstances. There are many points at which the incident could have been handled differently.

Because of the significance of this case to the community, and the repeated police force incidents that have occurred in the Minneapolis community, we have drafted at the County Attorney's request this report. It contains a detailed description and analysis of the facts that support that recommendation, but also includes an analysis of the poor tactics and inadequate Academy training that produced a result we believe to have been entirely avoidable. We have also provided recommendations that we believe would reduce the risk of similar tragedies in the future.

II. The Events of July 31, 2023

A. The Stop

Beginning at approximately 9:00 pm on July 30, 2023, Trooper Brett Seide was working a routine patrol shift in a marked Minnesota State Patrol car.[5] He was situated in a median on Interstate 94, near the West Broadway on-ramp in downtown

[5] Exh. 2, Report of Trooper Seide at 1.

Minneapolis.[6] At approximately 1:50 am, Seide observed a motorist drive past him in a silver Ford Fusion with the rear lights unilluminated,[7] in violation of Minnesota law.[8] Trooper Seide began following the Ford Fusion and came close enough to view the license plate, which he entered into his squad car's Computer Aided Dispatch (CAD) system.[9] Seide activated his emergency lights and the driver of the Ford Fusion promptly pulled his vehicle over to the right shoulder of the road.[10] At about the same time that the Ford Fusion and Seide's vehicle stopped on the shoulder, the CAD system notified Seide that the license number had generated a "critical hit,"[11] meaning the vehicle was registered to someone of interest to law enforcement.

B. Seide's Conversations with Ricky Cobb and the Decision to Arrest Him

Seide approached the Ford Fusion on foot from the right rear, identified himself, and asked the driver, Ricky Thomas Mr. Cobb II, through the open passenger side window for Mr. Cobb's license and proof of insurance.[12] Mr. Cobb asked why he had been pulled over; Seide advised him that his lights were not on.[13] Mr. Cobb then turned on his lights and, according to Seide, said that he must have inadvertently touched the light switch with his knee.[14] According to a report later provided by Seide, Mr. Cobb provided his license and some documentation from the Minnesota Department of Motor Vehicles but not proof of insurance.[15]

As recorded on Seide's body camera footage, Seide and Mr. Cobb had a conversation for approximately six minutes that focused on problems Mr. Cobb was having producing proof of insurance, but also ranged across topics that included where Mr. Cobb was coming from when he entered the highway (downtown), what he had eaten for dinner (sushi), and whether he had drunk any alcohol or consumed any drugs

[6] Exh. 2, Report of Trooper Brett Seide at 1; Exh. 6, [redacted]

[7] Exh. 2, Report of Trooper Seide at 1; *see also* Exh. 3, Report of Trooper Erickson at 1.

[8] Exh. 7, Minn Stat. § 169.50.

[9] Exh. 2, Report of Trooper Seide at 1; Exh. 8, Body Camera Footage of Minnesota State Trooper Brett Seide, July 31, 2023, at 01:50:00.

[10] Exh. 8, Trooper Seide Body Camera Footage at 01:51:25.

[11] Exh. 2, Report of Trooper Seide at 1; Exh. 8, Trooper Seide Body Camera Footage at 01:51:38.

[12] Exh. 8, Trooper Seide Body Camera Footage at 01:52:04–01:52:51.

[13] *Id*.

[14] Exh. 2, Report of Trooper Seide at 1.

[15] Exh. 8, Trooper Seide Body Camera Footage at 01:57:00–01:58:30; Exh. 2, Report of Trooper Seide at 1.

(Mr. Cobb said he had not).[16] In his subsequent report, Seide said he observed a green leafy substance which he believed to be marijuana in the car's ashtray.[17] Although much of Mr. Cobb's side of the conversation is inaudible on the body camera footage, Seide at one point questioned Mr. Cobb about what he characterized as an apparent hostility to law enforcement.[18] Seide also said Mr. Cobb seemed "a little edgy,"[19] although the basis for that characterization is not apparent from the body camera footage audio. In his subsequent report, Seide stated that Mr. Cobb "had a defensive nature and appeared to be agitated."[20] Again, the basis for that characterization is not clear from the body camera footage audio. During Seide's conversation with Mr. Cobb, Trooper Garrett Erickson arrived on the scene and remained in close proximity to the vehicle and to Seide.[21]

Seide returned to his vehicle and clicked on the critical information section on his CAD display to learn the basis for the alert on Mr. Cobb's vehicle.[22] He determined that the alert was from Ramsey County, MN, and related to a felony order of protection (OFP) violation[23] issued in connection with allegations of domestic violence.[24] The information in the alert matched Mr. Cobb's name and date of birth that appeared on his driver's license.[25] Seide then entered additional information into the CAD system and further confirmed that Mr. Cobb was the subject of the OFP, [26] and that the authorization to hold Mr. Cobb was issued on July 28, 2023, and was valid for four days—*i.e.*, through July 31, 2023.[27] Seide asked his District's dispatcher to determine Ramsey County's wishes regarding Mr. Cobb and the outstanding OFP.[28] While they waited for a response from Ramsey County, Seide and Erickson discussed what to do

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[16] Exh. 8, Trooper Seide Body Camera Footage at 01:52:18–01:58:40.

[17] Exh. 2, Report of Trooper Seide at 1.

[18] Exh. 8, Trooper Seide Body Camera Footage at 01:55:00–01:56:30.

[19] *Id*. at 01:55:58.

[20] Exh. 2, Report of Trooper Seide at 1.

[21] Exh. 8, Trooper Seide Body Camera Footage at 01:52:00–01:59:00; *see also* Exh. 3, Report of Trooper Erickson at 1.

[22] Exh. 8, Trooper Seide Body Camera Footage at 01:59:07–02:00:22; Exh. 2, Report of Trooper Seide at 1.

[23] *Id.*

[24] A felony order of protection violation under Minnesota law is described at Exh. 9, Minn. Stat. § 518B.01(14)(e).

[25] Exh. 8, Trooper Seide Body Camera Footage at 01:59:07–02:00:22; Exh. 2, Report of Trooper Seide at 1.

[26] *Id.*; *see also* Exh. 3, Report of Trooper Erickson at 1.

[27] Exh. 8, Trooper Seide Body Camera Footage at 02:06:50–02:07:00.

[28] Exh. 2, Report of Trooper Seide at 1–2.

and agreed that they did not want to use force to arrest Mr. Cobb if Ramsey County lacked sufficient interest in their doing so, and noted that the longer they waited for a response from Ramsey County, the more suspicious Mr. Cobb would become.[29] To buy time while waiting to hear definitively from Ramsey County, Seide encouraged Erickson to approach Mr. Cobb's vehicle and engage him in conversation.[30]

At approximately 2:11 am, Erickson approached Mr. Cobb's vehicle, asked him questions about his car insurance, and attempted to explain the reasons for the lengthy delay, omitting that Seide was checking on the Ramsey County matter.[31] During this approximately three-minute discussion, Mr. Cobb appeared to be calm and not at all "edgy" or "amped." Mr. Cobb showed Erickson information about his insurance from his cellphone and they had an amicable discussion about smoking versus chewing tobacco.[32]

While Erickson was speaking with Mr. Cobb, at approximately 2:11:45 am, Ryan Londregan arrived on the scene and was briefed by Seide on the status of the vehicle stop.[33] Seide told Londregan that Mr. Cobb was "amped," "a little sketchy" and that he was irritated about having lost his keys earlier in the evening and paying $200 to purchase a replacement.[34] Approximately one minute later, at 2:13 am, Seide received a phone call from the Ramsey County Sheriff's Office confirming that it wanted Mr. Cobb arrested.[35] Ramsey County Sheriff personnel told Seide that they wanted Mr. Cobb brought to the Ramsey County jail. Almost simultaneously, Erickson returned from speaking with Mr. Cobb and reported to Londregan, "We get along—me and this guy [Mr. Cobb]."[36] Londregan replied, "Just not Brett [Seide]" to which Erickson responded, with a laugh, "Yeah, he didn't like Brett" and recounted his discussion with Mr. Cobb about tobacco.[37]

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[29] Exh. 8, Trooper Seide Body Camera Footage at 02:09:40–02:10:51.

[30] *Id*.

[31] Exh. 10, Body Camera Footage of Minnesota State Trooper Garrett Erickson, July 31, 2023, at 02:10:57–02:13:00; *see also* Exh. 3, Report of Trooper Erickson at 1.

[32] Exh. 10, Trooper Erickson Body Camera Footage at 02:13:10–02:13:51.

[33] Exh. 8, Trooper Seide Body Camera Footage at 02:11:53–02:12:45.

[34] *Id*.

[35] Exh. 8, Trooper Seide Body Camera Footage at 02:12:55–02:15:04; Exh. 2, Report of Trooper Seide at 2.

[36] Exh. 10, Trooper Erickson Body Camera Footage at 02:14:02–02:14:31.

[37] *Id*.

Immediately after the phone call, Seide informed Londregan and Erickson that the Ramsey County Sheriff's Office "want him hooked [arrested]."[38] Seide then explained to Londregan and Erickson that he was going to proceed with a "driver's side approach."[39] Londregan said, "Garrett said he [Mr. Cobb] was nice to him [Erickson]."[40] Seide responded, "Yeah, he was nice to me too. He was just amped."[41] The three troopers did not make a plan for Mr. Cobb's arrest. There was no discussion among the three troopers about their respective roles, or—more importantly—of any contingencies in the event Mr. Cobb would not voluntarily comply. Nor was there any discussion about who should interact with Mr. Cobb. This is noteworthy because it was clear at that point that Erickson had developed a stronger rapport with Mr. Cobb than Seide had.[42]

C. The Attempt to Extract Mr. Cobb and the Shooting by Londregan

At 2:15 am, the three troopers walked towards Mr. Cobb's vehicle.[43] Seide went to the driver's window, Londregan took up a position at the front passenger window, and Erickson was at the rear of the vehicle.[44] Seide ordered Mr. Cobb to step out of the vehicle: "I'm going to need you to step out of the car…we have some stuff to talk about."[45] Mr. Cobb requested more information and did not get out of the car after Seide repeated the order. Seide then vaguely described that there was something related to Ramsey County. When Seide mentioned Ramsey County, the audio of the body camera footage suggests that Mr. Cobb was puzzled at the mention of Ramsey County. Seide requested that Mr. Cobb "take the keys out of the car," then reiterated to Mr. Cobb that he "ha[d] to step out."[46] Mr. Cobb asked Seide whether there was a warrant.[47] Seide responded there was no warrant, which was technically a true

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[38] Exh. 8, Trooper Seide Body Camera Footage at 02:15:13–02:15:38.

[39] *Id*.

[40] *Id*.

[41] Exh. 8, Trooper Seide Body Camera Footage at 02:15:13–02:15:38; *see also* Exh. 2, Report of Trooper Erickson at 1.

[42] Exh. 8, Trooper Seide Body Camera Footage at 02:15:00; Exh. 10, Trooper Erickson Body Camera Footage at, 02:15:00; Exh. 11, Body Camera Footage of Minnesota State Trooper Ryan Londregan, July 31, 2023, at 02:15:00.

[43] Exh. 8, Trooper Seide Body Camera Footage at 02:15:38–02:16:20; Exh. 11, Trooper Londregan Body Camera Footage at 02:15:38–02:16:20.

[44] *Id*.

[45] *Id*.

[46] *Id*.

[47] *Id*.

response, although the "pick up" order from Ramsey County was the functional equivalent of a warrant.[48] Seide repeated the order.[49] Mr. Cobb asked the officers to "hold on," again requesting more detail. Seide pulled on the driver's side door handle, and it was locked. He then requested Mr. Cobb hand him the car keys.[50] Mr. Cobb responded: "Can y'all keep it a buck with me? Y'all pulled me over for my headlights."[51] Seide stated, "We're way past that…You need to step out of the vehicle." Mr. Cobb became frustrated with the repeated demand for his keys without a complete explanation and did not turn over his keys. Seide did not ask him to turn off the motor, which could have reduced the threat posed by Mr. Cobb's car if he decided to flee. Mr. Cobb asked, "Where we at though…When you say "Step out of the vehicle…you gonna explain it to me, and then y'all say—." Seide interrupted and stated, "This is now a lawful [arrest]—Hey, man, you've been super cool."[52]

Londregan was at the passenger-side window, listening to the discussion between Seide and Mr. Cobb.[53] Observing the exchange, Londregan extended his right arm into the open passenger side window, pressed the button to unlock the door, and opened the passenger side door, illuminating the lights in Mr. Cobb's car.[54] Less than one second after Londregan opened the passenger side door, in quick succession, Mr. Cobb reached the gear selector with his right hand, shifted the car into drive, the car lurched forward, and then abruptly stopped. When Londregan first opened the passenger side door, he did not have his weapon unholstered; he grabbed his weapon after the car began moving forward. Mr. Cobb's car again lurched forward slightly and again abruptly stopped.[55] After seeing Londregan open the passenger door, Seide opened the driver's side door and moved his head and part of his body into Mr. Cobb's vehicle, saying, "Get out of the car." At almost the same moment, Seide attempted to

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[48] *Id*.

[49] *Id*.

[50] *Id*.

[51] *Id*.; In his report provided through counsel on August 8, 2023, Seide provided characterizations that are not strictly factual— such as "Cobb became verbally defiant," when a more neutral description would have described Cobb as requesting an explanation—as well as characterizations that match his narrative to permissible conduct under applicable policies and law, such as explaining his decision to extract Cobb from the car because he "wanted to remove the vehicle as a possible weapon that could be used to hurt or kill my partners and I [sic] or others on the road if Cobb decided to flee."

[52] Exh. 8, Trooper Seide Body Camera Footage at 02:16:18–02:16:58.

[53] Exh. 8, Trooper Seide Body Camera Footage at 02:16:59; Exh. 11, Trooper Londregan Body Camera Footage at 02:16:59.

[54] *Id*.

[55] Exh. 3, Report of Trooper Erickson at 2.

extract Mr. Cobb from the vehicle by first trying to unbuckle his seatbelt.[56] With the passenger door open, and the car again moving forward, Londregan screamed, "GET OUT OF THE CAR NOW!" and almost simultaneously fired two shots from his firearm, both of which struck Mr. Cobb.[57] Mr. Cobb's car accelerated; both Seide and Londregan fell to the ground causing minor injuries.[58]

Seide, Londregan, and Erickson gave chase on foot but Mr. Cobb's car was traveling at a speed that made it impossible for the pursuing troopers to catch up to it. The three troopers returned to their vehicles and pursued Mr. Cobb's car,[59] which achieved a top speed of approximately 60 MPH.[60] Mr. Cobb's car crossed the lanes of the highway, moving from the right shoulder across several lanes to a point where it was bumping against the center median.[61] Seide and Londregan angled their squad cars against Mr. Cobb's car so that it was blocked from moving forward. Seide, Erickson, and Londregan approached Mr. Cobb's vehicle, opened the passenger door, and observed Mr. Cobb lying motionless and slumped in the driver's seat.[62] Seide and Erickson recognized the grievous wounds to Mr. Cobb and said, "Stay with me," recognizing the severity of Mr. Cobb's wounds.[63] They maneuvered Mr. Cobb's body out of the car through the passenger door (the driver's door was pinned against the median) and began providing lifesaving assistance.[64] They detected no pulse and, with assistance from other troopers who had arrived on the scene, administered CPR and breathing assistance for several minutes, but to no avail.[65] Mr. Cobb was pronounced dead at the scene by Emergency Medical Services (EMS) personnel at 2:35 am.[66] The

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[56] Exh. 8, Trooper Seide Body Camera Footage at 02:17:00–02:17:03; Exh. 2, Report of Trooper Seide at 2–3.

[57] Exh. 8, Trooper Seide Body Camera Footage at 02:17:02–02:17:05; Exh. 11, Trooper Londregan Body Camera Footage at 02:17:02–02:17:05.

[58] *Id*.; Londregan's body camera fell off of his uniform at this time. As a result, there is no further footage of the encounter from Londregan's perspective.

[59] Exh. 8, Trooper Seide Body Camera Footage at 02:17:08–02:18:03; *see also* Exh. 3, Report of Trooper Erickson at 2.

[60] Exh. 12, BCA Case Report 2023_724_147.

[61] Exh. 8, Trooper Seide Body Camera Footage at 02:18:12–02:24:40.

[62] *Id*.

[63] *Id*.

[64] *Id*.

[65] Exh. 8, Trooper Seide Body Camera Footage at 02:18:12–02:24:40; *see also* Exh. 3, Report of Trooper Erickson at 3.

[66] Exh. 13, Hennepin County Medical Examiner's Office Autopsy Report for Ricky Thomas Mr. Cobb II, Jul. 31, 2023, at 1.

autopsy of Mr. Cobb by the Hennepin County Medical Examiner's Office determined that the cause of death was two gunshot wounds to his torso.[67]

III. The Investigation

A. Organizational Structure

1. Bureau of Criminal Apprehension—Investigative Responsibilities

The Bureau of Criminal Apprehension ("BCA") was created in 1927 as a division of the Office of the Attorney General to assist Minnesota peace officers in solving local crimes and apprehending criminals.[68] Today, the BCA is a division of the Minnesota Department of Public Safety, employs over 500 people, and is comprised of three main divisions: Forensic Sciences Services, Investigations, and Minnesota Justice Information Services.[69] Within the BCA's Investigations division is the Force Investigations Unit, which investigates incidents involving the use of deadly force by law enforcement officers resulting in death or serious injury.[70] In these instances, the BCA conducts a criminal investigation of the use-of-force incident if requested by the local jurisdiction. In this role, BCA agents act as independent investigators. The BCA's mandate is to conduct an unbiased investigation to determine what occurred, and then provide that information to a prosecutor—usually a county attorney—for review under Minnesota criminal statutes. The limits of BCA's mandate are clear: to find the facts only. BCA's role is not to determine whether an officer is guilty of violating Minnesota criminal law, nor is it to make recommendations to the reviewing prosecutor.

We understand from prosecutors involved in reviewing deadly force matters that the BCA's Force Investigations Unit has historically conducted investigations with sufficient cooperation from members of the involved law enforcement agencies. However, following the conviction of the Derek Chauvin and two other Minneapolis Police Department officers in connection with the killing of George Floyd Jr., BCA investigators have reportedly faced new challenges securing the cooperation of members of involved agencies. The challenges have included witness officers refusing to participate in interviews, or officers' attorneys insisting on arbitrary limitations on the scope of interviews or seeking immunity agreements in connection with their interviews.

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[67] *Id*. at 1–2.

[68] Exh. 14, Bureau of Criminal Apprehension: A Division of the Minnesota Department of Public Safety, https://dps.mn.gov/divisions/bca/about/Pages/default.aspx.

[69] *Id.*

[70] Exh. 15, Bureau of Criminal Apprehension: BCA Force Investigations Unit, https://dps.mn.gov/divisions/bca/Pages/use-of-force-investigations.aspx.

The BCA's Assistant Special Agent In-Charge (ASAC) Thomas Roth was the lead investigator into the shooting death of Ricky Cobb. ASAC Roth has participated in approximately 30 shootings by officers since he joined the BCA in 2021. His investigation into Mr. Cobb's death began when the BCA responded to the scene of the shooting on July 31, 2023, at approximately 3:00 a.m.

2. Minnesota State Patrol

a. History, Mandate, Size and Responsibilities

The Minnesota Highway Patrol was created by the state legislature in 1929 in response to the invention and proliferation of automobiles.[71] In 1969, when the Department of Public Safety ("DPS") was created, the Minnesota Highway Patrol was placed under the new DPS umbrella.[72] For the first approximately 40 years of its existence, the Minnesota Highway Patrol's jurisdiction was limited to state and federal highways, but in 1971, it was expanded to all roadways within the state. With this increased jurisdiction, the Highway Patrol changed its name to the State Patrol in 1973.[73] The law enforcement officers within the State Patrol henceforth were referred to as troopers.[74] While Minnesota State Patrol troopers have full powers of arrest throughout the state, their primary function is traffic safety and vehicle law enforcement.[75]

The Minnesota State Patrol ("MSP") employs more than 600 state troopers. According to its website, the MSP's mission is "to protect and serve all people through assistance, education and enforcement; provide support to allied agencies; and provide for the safe, efficient movement of traffic on Minnesota's roadways."[76] The MSP lists its core values as, "Respect, Integrity, Courage, Honor, Excellence."[77] Further, the MSP

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[71] Exh. 16, Minnesota State Patrol: History Timeline, https://dps.mn.gov/divisions/msp/about/Pages/History-Timeline.aspx.

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] Exh. 17, Minnesota State Patrol: What We Do, https://dps.mn.gov/divisions/msp/about/Pages/default.aspx.

[76] Exh. 18, Minnesota State Patrol: State Patrol Mission, https://dps.mn.gov/divisions/msp/about/Pages/state-patrol-mission.aspx.

[77] *Id.*

states that one of its four organizational goals is to "[p]revent deaths, injuries, property damage and life changing events on Minnesota's roadways."[78]

The legal authority of MSP troopers is established by Minnesota State Statute 299D.03, which, among other things, states that troopers have the authority "(1) as peace officers to enforce the provisions of the law relating to the protection of and use of trunk highways[79] . . . (9) to assist and aid any peace officer whose life or safety is in jeopardy . . . [and] (12) as peace officers to make arrests for public offenses committed in their presence anywhere within the state. Persons arrested for violations other than traffic violations shall be referred forthwith to the appropriate local law enforcement agency for further investigation or disposition…."[80]

b. Training of Recruits Regarding Vehicle Contacts, Extraction, and Use of Force

Minnesota Statute §609.066, Subd. 2, which governs when peace officers are authorized to use deadly force, states that deadly force is justified only if an "objectively reasonable officer" would believe that such force is necessary based on the totality of the circumstances and without the benefit of hindsight. For that reason, a criminal prosecution of a law enforcement officer for the use of unjustified deadly force may be informed, in part, by the officer's training and the existence of evidence establishing that the officer disregarded his training or acted in a manner inconsistent with the use of force training he received. Accordingly, the Special Prosecutors have undertaken a detailed review of the Academy training curriculum provided by the MSP to its new hires, the training materials for Londregan's academy class, and the interviews of Londregan's Academy use of force trainer. Our review is summarized here.

State Patrol Trooper candidates, referred to as "cadets," are required to attend a 14-week residential academy ("Academy training") that takes place at Camp Ripley, a military and civilian training facility located near Little Falls, Minnesota.[81] Cadet

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[78] Exh. 19, Minnesota State Patrol: Strategic Plan 2020: https://dps.mn.gov/divisions/msp/about/Documents/strategic-plan.pdf.

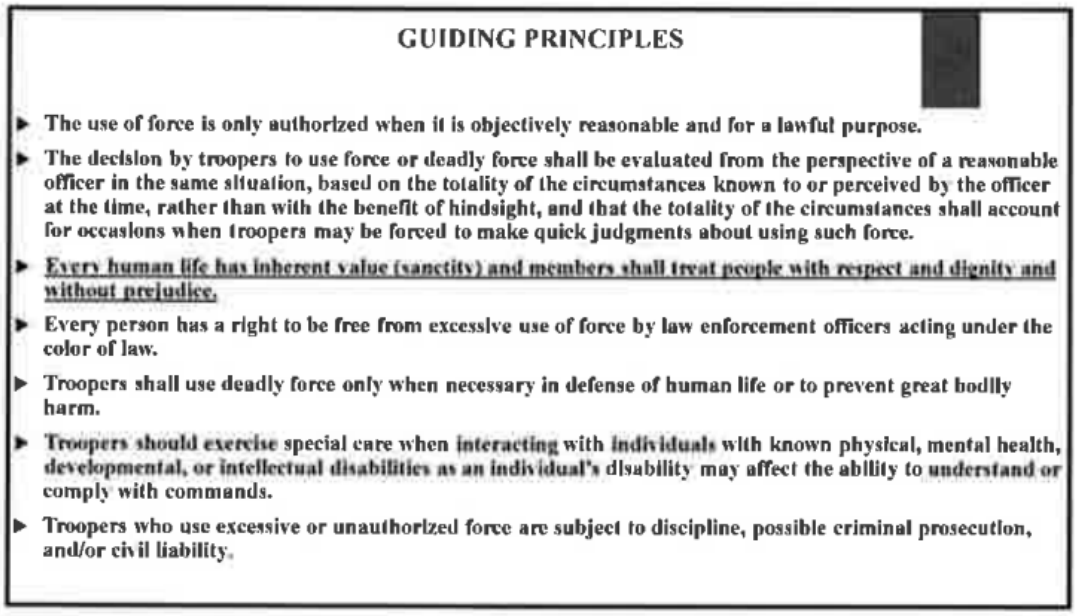
[79] A trunk highway is a major road, usually connecting two or more cities, ports, airports and other places, which is the recommended route for long-distance and freight traffic. *See* Tim Harlow, *Minnesota trunk or state highway, what's the difference?*, StarTribune (Mar. 8, 2020), https://www.startribune.com/minnesta-trunk-or-state-highway-what-s-the-difference/568611692.

[80] Exh. 20, Minn. Stat. § 299D.03(b)(1)–(12).

[81] *See* Exh. 21, Minnesota Department of Public Safety Blog: *Cadets train to become the best during Minnesota State Patrol academy at Camp Ripley*, https://dps.mn.gov/blog/Pages/20220728-minnesota-state-patrol-academy.aspx; Exh. 22, Minnesota National Guard: Camp Ripley Partners, https://ngmnpublic.azurewebsites.us/camp-ripley-partners.

training covers 46 areas of coursework taught by MSP instructors and other experts. Upon graduation from the academy, new troopers complete twelve weeks of field training with an experienced field training officer. In this setting, new troopers are expected to apply their Academy training to real-world situations under the supervision of their field training officer. New troopers are evaluated and provided feedback during their field training. After successful completion of the program, troopers are assigned to solo patrol duties.

The 14-week academy includes a module on Use of Force, which covers MSP General Orders or policies regarding the use of force, as well as Minnesota state statutes and seminal United States Supreme Court caselaw relevant to the use of force by law enforcement officers. MSP trainers commonly use PowerPoint presentations during their lessons.[82] A review of the presentations used during the 63rd Academy, which Londregan attended as a cadet, reveals that cadets are taught, among other guiding principles: "the use of force is only authorized when it is *objectively reasonable* and for a *lawful purpose*;" "every human life has inherent value (sanctity) and members shall treat people with respect and dignity, and without prejudice;" and "troopers shall use deadly force only when necessary in defense of human life or to prevent great bodily harm."[83] These principles were displayed on the following slide during the 63rd Academy:



GUIDING PRINCIPLES

- The use of force is only authorized when it is objectively reasonable and for a lawful purpose.
- The decision by troopers to use force or deadly force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when troopers may be forced to make quick judgments about using such force.
- Every human life has inherent value (sanctity) and members shall treat people with respect and dignity and without prejudice.
- Every person has a right to be free from excessive use of force by law enforcement officers acting under the color of law.
- Troopers shall use deadly force only when necessary in defense of human life or to prevent great bodily harm.
- Troopers should exercise special care when interacting with individuals with known physical, mental health, developmental, or intellectual disabilities as an individual's disability may affect the ability to understand or comply with commands.
- Troopers who use excessive or unauthorized force are subject to discipline, possible criminal prosecution, and/or civil liability.

As to whether to use force on a person, cadets were instructed that they must "evaluate each situation in light of the known circumstances, including but not limited

[82] *See, e.g.*, Exh. 23, 63rd Academy Use of Force PowerPoints.

[83] *Id.* at 1 (emphasis added).

to, the seriousness of the crime, the level of threat or resistance presented, and the danger to the community."[84] The training also provided that "[a]lthough troopers have many options, he or she must exercise the application of force in a manner that is *reasonable* and *necessary* to arrest or detain a suspect. Many variables affect the level of force one can justify. These situations can be very fluid, dynamic, and unpredictable. Troopers must be ready to utilize force at any level."[85]

The MSP use of force training also covered de-escalation, which is defined in lessons as "[t]aking action or communicating verbally or non-verbally during a potential use of force encounter in an attempt to stabilize the situation . . . so that more time, options and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary."[86] Cadets of the 63rd Academy were instructed that de-escalation includes the use of such techniques as command presence, warnings, verbal persuasion and tactical repositioning. De-escalation is also memorialized in MSP General Order 23-10-027, the use of force policy, which requires troopers to use de-escalation techniques whenever reasonably possible before using force on subjects. The General Order provides:

IV. PROCEDURES

A. De-Escalation

1. Troopers shall use de-escalation techniques and other alternatives to higher levels of force consistent with their training whenever reasonably possible and appropriate before resorting to force. The goal of de-escalation is to reduce and/or eliminate the need for force.
2. Whenever possible and when such delay will not compromise the safety of the trooper(s) or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, troopers shall allow an individual time and opportunity to submit to verbal commands before force is used.

The academy use of force training regarding the use of deadly force provided that the MSP and Minnesota state law authorize troopers in the line of duty "to use deadly force only if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary to protect the peace officer or another from death or great bodily harm, provided that the threat can be articulated with specificity by the law enforcement officer; is reasonably likely to occur absent action by the law enforcement officer; and must be addressed through the use of deadly force without unreasonable delay."[87] Further, cadets of the 63rd Academy were instructed that where feasible, they should identify themselves as law enforcement officers and warn of their

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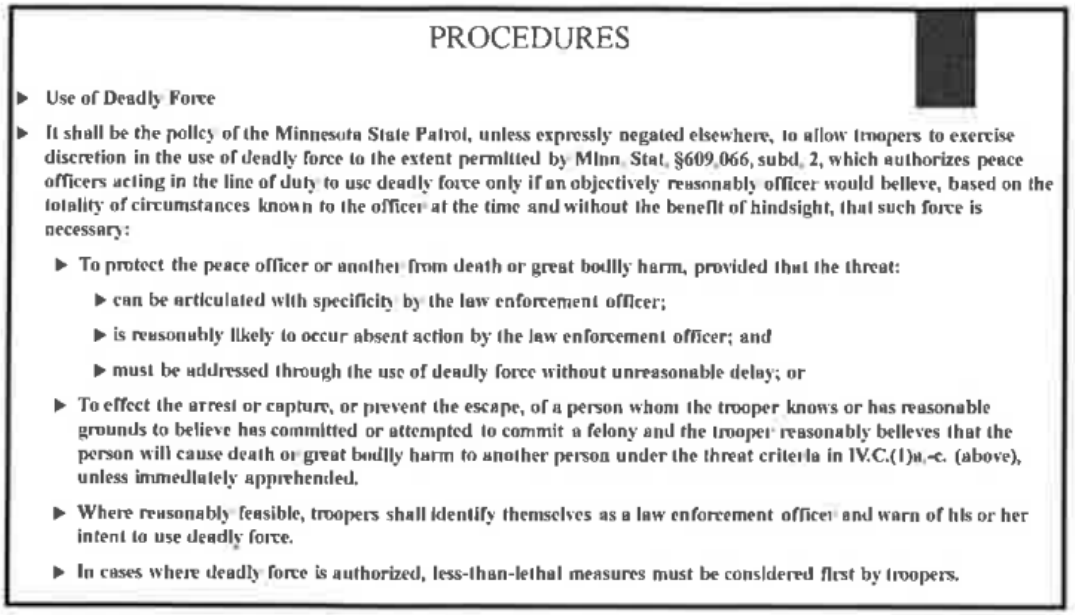
[84] *Id.* at 2.

[85] *Id.* (emphasis added).

[86] *Id.* at 2.

[87] Exh. 23, 63rd Academy Use of Force PowerPoints at 3; *see also*, Exh. 24, Minn. Stat. § 609.066(2).

intent to use deadly force. Also, in cases where deadly force is appropriate, less-than-lethal measures must be considered first by troopers.[88] These tenets were displayed during the 63rd Academy on the following slide:



PROCEDURES

- Use of Deadly Force
- It shall be the policy of the Minnesota State Patrol, unless expressly negated elsewhere, to allow troopers to exercise discretion in the use of deadly force to the extent permitted by Minn. Stat. §609.066, subd. 2, which authorizes peace officers acting in the line of duty to use deadly force only if an objectively reasonably officer would believe, based on the totality of circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary:
  - To protect the peace officer or another from death or great bodily harm, provided that the threat:
    - can be articulated with specificity by the law enforcement officer;
    - is reasonably likely to occur absent action by the law enforcement officer; and
    - must be addressed through the use of deadly force without unreasonable delay; or
  - To effect the arrest or capture, or prevent the escape, of a person whom the trooper knows or has reasonable grounds to believe has committed or attempted to commit a felony and the trooper reasonably believes that the person will cause death or great bodily harm to another person under the threat criteria in IV.C.(1)a.-c. (above), unless immediately apprehended.
  - Where reasonably feasible, troopers shall identify themselves as a law enforcement officer and warn of his or her intent to use deadly force.
  - In cases where deadly force is authorized, less-than-lethal measures must be considered first by troopers.

According to training materials we have reviewed, use of force trainers at the Academy also instructed that "firearms may be readied for use in situations where it is reasonably anticipated that they may be required."[89]

Londregan's use of force instructors at the 63rd Academy in the fall of 2021 included MSP Sergeant Jason Halvorson and Lieutenant Jonathan Wenzel. The PowerPoint presentation generally utilized by Halvorson and Wenzel in teaching use of force states that the purpose of the training course was to enable cadets "to make lawful decisions about when to use force and to know how much force is acceptable."[90] Sgt. Halvorson and Lt. Wenzel's course covered the Fourth Amendment's prohibition of unreasonable or excessive force and seminal Supreme Court cases *Graham v Connor,* 490 U.S. 386 (1989), which established the "objective reasonableness" standard by which all excessive force claims are judged, and *Tennessee v. Garner,* 471 U.S. 1 (1985), which held that it is unconstitutional for an officer to use deadly force to apprehend an unarmed person who does not pose a significant threat of death or serious physical injury to the officer or others.[91] According to the PowerPoint they used, Halvorson and Wenzel's

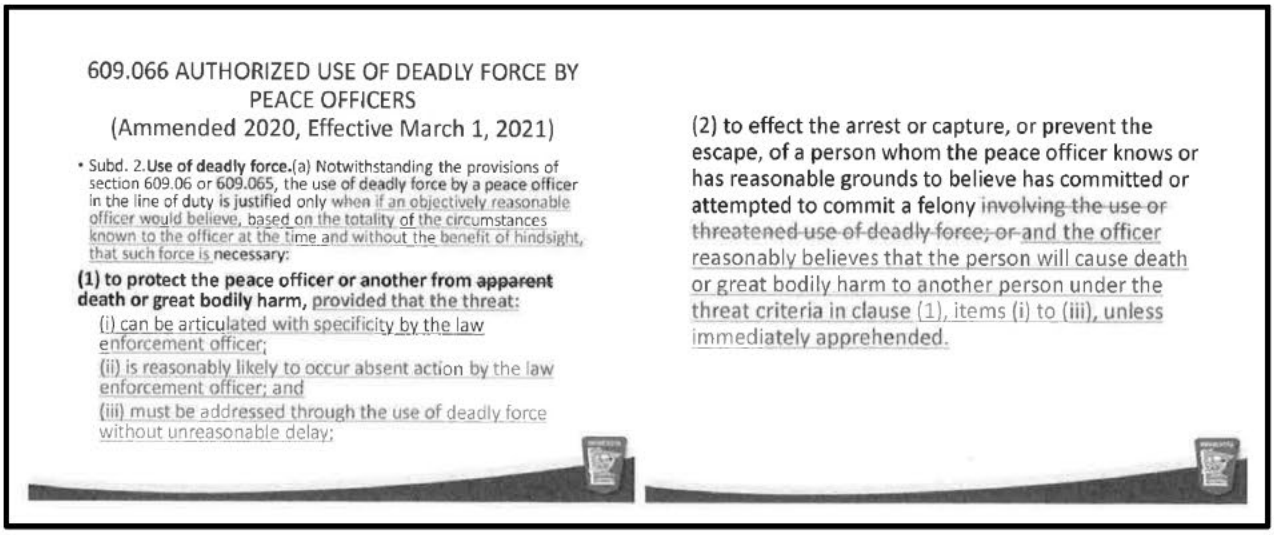
[88] Exh. 23, 63rd Academy Use of Force PowerPoints at 3.

[89] *Id*. at 4.

[90] *Id*. at 13.

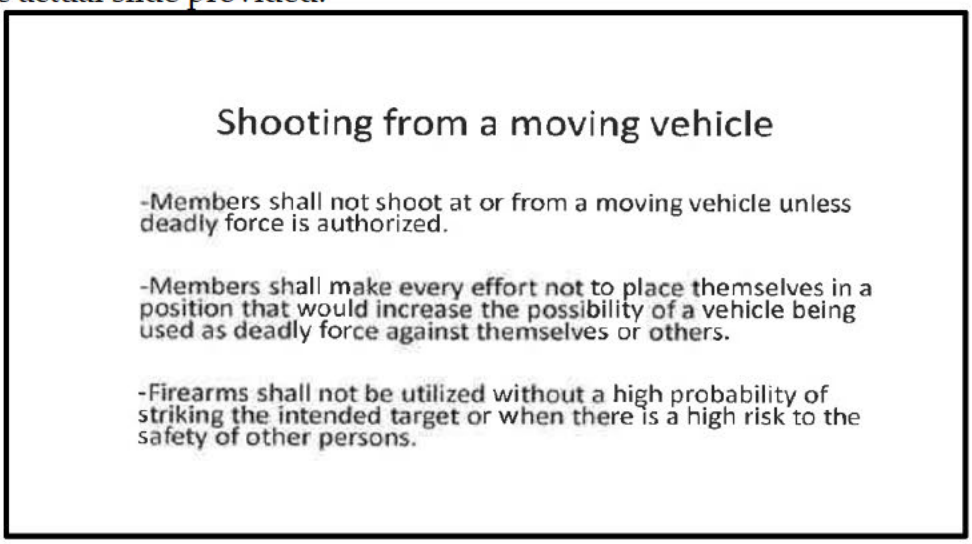
[91] *Id*. at 14–16, 17–18.

lesson also covered Minn. Stat. § 609.066's authorization of the use of deadly force by peace officers under the circumstances outlined in the presentation slide below:



Halvorson and Wenzel's presentation included instruction that troopers "shall not shoot at or from a moving vehicle unless deadly force is authorized."[92] Also, troopers "shall make every effort not to place themselves in a position that would increase the possibility of a vehicle being used as deadly force against themselves or others."[93] Additionally, "firearms shall not be utilized without a high probability of striking the intended target or when there is a high risk to the safety of other persons."[94]

The actual slide provided:



[92] *Id.* at 23.

[93] *Id.*

[94] *Id.*

This training slide suggests Londregan may have either violated MSP policy or acted inconsistently with this training when he shot Mr. Cobb inside of a moving vehicle. However, while not noted on the slide, the language in the slide reflects MSP's Vehicle Pursuit Policy, General Order 22-20-12, Section VII. Pursuant to that Policy, the three requirements provided apply to vehicle pursuits.[95] Because Troopers Seide and Londregan were not operating patrol units and the traffic stop had been on-going for approximately 25 minutes before Londregan shot Mr. Cobb, there was no motor vehicle pursuit occurring at the time of the shooting; thus, the prohibitions of MSP's vehicle pursuit policy do not apply. It is unclear why MSP limits this policy's application to vehicle pursuits.

In addition to the classroom lessons, MSP instructors also provided hands-on training to the 63rd Academy cadets. This included "soft empty hand control," "hard empty hand control," handcuffing, searches and like topics.[96] The hands-on Academy training also covered the use of force in extracting individuals from vehicles. Trainees received approximately 30 to 40 minutes of training on vehicle extractions.[97] During this training, instructors demonstrated the proper way to perform extractions before the cadets attempted to do so in role-playing scenarios in which they attempted the extractions themselves.

During the investigation in this matter, Sgt. Halvorson was interviewed twice—initially by BCA agents on September 15, 2023, and later jointly by Hennepin County Assistant County Attorneys and BCA agents on November 1, 2023. According to Sgt. Halvorson, during hands-on Academy training, cadets learned what it would feel like to be extracted from a car and what to expect from a suspect during an extraction.[98] The trainers used different scenarios and required the cadets to perform both single extraction and double extractions, meaning they are either working alone or working with a partner to extract an occupant out of a vehicle.[99]

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[95] *See* Exh. 25, Minnesota State Patrol (MSP) General Order 22-20-012, *Motor Vehicle Pursuit* at VII.

[96] Exh. 23, 63rd Academy Use of Force PowerPoints at 1.

"Soft Hand Control" is the "use of physical strength and skill in defensive tactics to control arrestees" by methods that "are not impact oriented and include pain compliance pressure points, takedowns, joint locks, and simply grabbing a subject."

"Hard Hand Control," also known as "hard empty hand" control, include impact-oriented techniques such as "elbow strikes, punches, and kicks" used to "subdue a subject" and "may include strikes to pressure points."

[97] *See* Exh. 26, BCA Investigative Interview of Sgt. Jason Halvorsen, Nov. 1, 2023, at 9.

[98] *Id*.

[99] *Id.*

During the November 1 interview, Sgt. Halvorson explained that to perform a single extraction of the driver of a vehicle, Academy instructors taught cadets to push the head of the driver in the direction away from the officer and reach into the vehicle to remove the driver's seatbelt. Once the seatbelt is removed, the trooper should attempt to grab the hand of the driver to pull it away from the gear shift and the steering wheel, and pull the driver back toward the trooper to gain "positive control" over the driver.[100] Sgt. Halvorson stated that coordinating the extraction with a partner can be difficult.[101] The role of the second officer in a double extraction is to remove the seatbelt.[102] The role of the trooper on the driver side is to gain positive control over the suspect while the trooper on the passenger side is to remove the seatbelt and help to push the suspect out of the vehicle.[103]

Here, Troopers Seide and Londregan failed to employ the tactics Sgt. Halvorson stated he taught for a double extraction. The video of the incident demonstrates that Seide did not push Mr. Cobb's head away from him, and Londregan did not attempt to remove Mr. Cobb's seatbelt. Rather, Seide attempted to remove Mr. Cobb's seatbelt by reaching over his body from the driver's side. When asked by investigators whether he recalled training regarding pushing the driver's head when performing an extraction, Trooper Seide responded that he did not remember that training, explaining "nothing about pushing the head, you could do, you could grab an arm to use arm as leverage to pull…. Um but we stay away from the head and neck."[104]

During his interview with Assistant County Attorneys, Sgt. Halvorson discussed initiating an extraction on a subject in a running vehicle. The investigators asked why troopers are not trained in the Academy to grab the vehicle's keys as the first step of such an extraction, rather than unbuckling the driver's seatbelt. Sgt. Halvorson explained that because modern cars vary widely—some use keys, others have a push button ignition, and the push buttons are located in different places on different makes and models – turning off the car or looking for keys, would consume valuable time.[105] Extractions should occur rapidly so that troopers can establish immediate control over the subject.[106]

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[100] *Id.* at 16.

[101] *Id.* at 11.

[102] *Id.* at 35.

[103] *Id.* at 35.

[104] Exh. 27, BCA Investigative Interview of Trooper Brett Seide, Dec. 7, 2023, at 10.

[105] Exh. 26, BCA Investigative Interview of Sgt. Jason Halvorson, Nov. 1, 2023, at 11.

[106] *Id.* at 10–11.

When investigators asked Halvorson if troopers should try to box in a vehicle before attempting to arrest the subject, Sgt. Halvorson responded "no," explaining that "to position the vehicle in the front of the other car, puts yourself at a tactical disadvantage."[107] He further explained that in the MSP Academy, boxing in a vehicle is not part of extraction training.[108] Sgt. Halvorson acknowledged that cadets are taught about the risks of physically entering vehicles, including the risk that the driver will seek to elude the officers during the extraction attempt.[109] When asked about whether the decision to extract a person from a vehicle is affected by whether the vehicle is running, Sgt. Halvorson stated it is not.[110]

During the November 1 interview, the prosecutors also asked Sgt. Halvorson several questions related to his experience as a trooper and a trooper's decision-making process in extracting a person from a vehicle. Investigators asked whether Halvorson had a practice of asking drivers to shut off their vehicles during a traffic stop. Halvorson stated that he does not do so.[111] Halvorson provided a confusing answer when asked if a trooper's decision to extract a person should change if the driver shifts the car from park to drive, but suggested that a trooper's decision will likely depend on whether the car was in drive and the driver had his foot on the brake, or whether the car was shifted into drive after the extraction attempt had already begun and the trooper had already taken actions to gain positive control over the driver.[112] Halvorson acknowledged that the vehicle being in drive could impact the decision of whether or not to extract, but he acknowledged that the extraction training he provided does not address the situation raised by the hypothetical.[113]

The investigators also asked Sgt. Halvorson if he understood that after a driver is extracted from a vehicle that is in drive, the vehicle would continue to move forward. Halvorson agreed that would likely happen.[114] When Halvorson was asked about alternatives to extraction when a driver refuses to exit a vehicle as instructed by troopers, he explained that the options are either to extract or to use de-escalation to convince the driver to exit the vehicle.[115] Sgt. Halvorson initially explained that at some

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[107] *Id.* at 13.

[108] *Id* at 13–14.

[109] *Id*. at 15.

[110] *Id.* at 17.

[111] *Id* at 17.

[112] *Id.* at 17–18.

[113] *Id.*

[114] *Id.*

[115] *Id.* at 19.

point, if verbal de-escalation has not worked, the only other option is to extract. However, he later clarified that the option to extract is an option, but "not the only other option."[116] For reasons unknown, Halvorson did not offer the third option of a trooper letting a driver who refuses to exit his vehicle go, nor did he mention that the trooper should consider placing a tire deflation device (Stop Sticks) in front of the vehicle's back tires to prevent the flight.

Next, investigators presented Halvorson with a series of hypotheticals involving a trooper's decision to pull a firearm during a traffic stop. Sgt. Halvorson stated that a trooper is authorized to pull his weapon if he reasonably believes he or his partner is at risk of great bodily harm or death.[117] Halvorson acknowledged that it is not recommended for a trooper to pull and point their firearm at a person during a traffic stop if the trooper does not have reasonable fear of great bodily harm or death to themselves or another.[118] While discussing hypothetical situations involving potential justifications for a trooper pulling his firearm, Halvorson was asked if it would be reasonable for a trooper to believe that a fleeing driver would stop if that trooper pointed his gun at a that fleeing driver. After some back and forth with the investigator, in which the hypothetical was limited to involving only a single trooper, Sgt. Halvorson stated that he would not expect the driver to stop. An investigator then asked, "[i]t would be foreseeable to expect the exact opposite, meaning he would continue to leave?" Sgt. Halvorson confirmed "that was probably [the driver's] intention was [sic] to flee the area, so he's gonna keep going in that direction away from me."[119] This language from Halvorson's interview is quoted in the Statement of Probable Cause attached to the criminal complaint charging Londregan with three crimes.[120]

Investigators also asked Halvorson during the November 1, 2023, interview if it is reasonable for a trooper to believe that using deadly force against a driver of a moving vehicle would stop the vehicle from endangering others. Halvorson would not answer that question, because he indicated there are too many different potential circumstances, and he could not envision that scenario.[121] Sgt. Halvorson

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[116] *Id.*

[117] *Id.* at 22–23.

[118] *Id.* at 23.

[119] *Id.* at 24–25.

[120] In a sworn declaration filed on March 20, 2024, Sgt. Halvorson suggested that his statement was taken out of context because the probable cause statement did not make clear that he was speaking about a hypothetical based on a single-trooper stop, which is factually different than the July 31, 2023 shooting incident.

[121] *Id.* at 28.

acknowledged that if a trooper on the side of a vehicle shoots the driver while the vehicle is in drive, the vehicle will not immediately stop unless the driver's foot hits the brake.[122] Importantly, Halvorson was also asked if cadets were taught that shooting someone does not cause immediate immobilization of their vehicle, and he responded that is not something that the State Patrol trains.[123]

c. Londregan and Seide's Backgrounds

Trooper Brett Seide studied liberal arts at North Hennepin Community College and Law Enforcement at Hennepin Technical College. He was hired as State Patrol Trooper Trainee 2 on July 17, 2022 and was appointed State Patrol Trooper on October 26, 2022. Seide had been a trooper for less than one year when Mr. Cobb was shot and killed during the traffic stop that Seide initiated.

Trooper Seide was trained at MSP's 65th Academy. His academy training included, among other courses, Use of Force beginning on October 11, 2022, Vehicle Contacts beginning on the same date, and Firearms beginning on October 4, 2022. Prior to joining the State Patrol, Seide was an Anoka County Sheriff's Deputy from August 2020 to June 2021. As of August 2023, Trooper Seide had no disciplinary actions or complaints with the MSP.

Defendant Ryan Londregan received his bachelor of science in Business Administration from Saint Michael's College in December 2018. He was hired as a State Patrol Trooper Trainee 1 on February 22, 2021, appointed to State Patrol Trooper Trainee 2 on July 19, 2021, and appointed State Patrol Trooper on October 22, 2021. He was a full trooper for under two years when he used deadly force on Mr. Cobb on July 31, 2023.

Londregan was trained at MSP's 63rdAcademy. His academy training included, among other courses, Vehicle Contacts beginning on October 5, 2021, Firearms beginning on October 5, 2021, and Use of Force/Combatives beginning on October 12, 2021. Trooper Londregan took Firearms in-service courses on April 21, 2022 and April 13, 2023, as well as additional Use of Force training on September 23, 2022. Prior to the shooting incident involving Mr. Cobb, Trooper Londregan had no complaints, charges, or disciplinary action with the MSP.

As a result of the use of force incident, Troopers Londregan and Seide were placed on administrative leave, where they remain today.

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[122] *Id.*

[123] *Id*. at 28.

B. Investigative Steps

The BCA's investigation into the shooting began on July 31, 2023, when agents responded to the scene where Mr. Cobb's vehicle came to rest (or near the scene of the shooting). BCA agents collected body camera footage, squad car video, Mr. Cobb's vehicle, the firearm and magazines used by Londregan, Londregan's uniform and biological specimen, and numerous other pieces of physical evidence. Additionally, BCA agents conducted 16 witness interviews and received written reports from Trooper Seide, Trooper Erickson, and 22 other MSP members. The written reports from Seide and Erickson were submitted by their respective lawyers 8 days (Seide) and 16 days (Erickson) after the incident.[124] BCA also collected written statements from 25 law enforcement officers from agencies others than MSP. All interviews and statements were voluntary, meaning the witnesses were not compelled to provide statements. Approximately 37 MSP troopers either refused to be interviewed or did not reply to the BCA's interview requests. We view this as a stunning and unacceptable failure to cooperate with an important investigation.

On September 19, 2023, the BCA presented its investigation to the Hennepin County Attorney's Office for review. Thereafter, additional investigative steps were taken with the involvement of one deputy and three senior County Attorneys.

1. Lack of Immediate Interviews with Londregan, Seide and Erickson

A prompt and thorough investigation was stymied by the fact that Troopers Seide, Erickson, and Londregan, along with the 37 state patrol troopers noted above, did not agree to be interviewed. Ultimately, Trooper Seide submitted a written report of the incident 8 days after the shooting, on August 8, 2023, and Trooper Erickson provided his written report to BCA 16 days after the shooting, on August 16, 2023.

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[124] We find it highly irregular for a law enforcement agency to permit its members to wait more than a week to provide a report about a fatal use of force incident. By way of contrast, Washington DC's Metropolitan Police Department requires officers involved in use of force incidents to make best efforts to submit to an interview (not a report submitted by counsel, as in this case) within two business days for all involved officers and three business days for officer-targets of the use of force investigation. District of Columbia Metropolitan Police Department (MPD), GO-RAR-901,07, *General Order: Use of Force* (May 28, 2024), at 9. https://go.mpdconline.com/GO/GO_901_07.pdf.

The Baltimore Police Department requires all police department witnesses to use of deadly force to submit a written report by the end of their tour of duty, *i.e.,* within hours, unless they invoke their Constitutional rights against self-incrimination. Baltimore Police Department (BPD), *Transparency, BPD Policies and Training Materials, Level 3 Use of Force Investigations/Special Investigation Response Team (SIRT)* (last visited May 31, 2024), https://www.baltimorepolice.org/transparency/bpd-policies/710-level-3-use-force-investigationsspecial-investigation-response-team, at 4.

Troopers who witness the use of force are required to submit "field reports" pursuant to MSP General Order 23-10-027.[125] At the time Troopers Erickson and Seide provided their reports, they had retained counsel.

In order to obtain Trooper Seide's interview [redacted], the Hennepin County Attorney's Office granted him immunity [redacted] Thereafter, Trooper Seide's interview with prosecutors and BCA agents took place on December 7, 2023. Trooper Erickson never provided an interview to the BCA [redacted]

Trooper Londregan exercised his right to remain silent and did not prepare an incident report or provide an interview to the BCA.[126] On November 2, 2023, a Senior County Attorney spoke with one of Londregan's attorneys to invite Londregan to provide his version of the events of the shooting at a proffer with the HCAO with the protection of his 5th Amendment privilege.[127] Londregan's attorney did not accept the invitation.

The Special Prosecutors renewed the invitation for a proffer with Londregan on May 15, 2024. Londregan once again declined, offering the pale substitute of a one sentence written proffer, which indicated that Trooper Londregan used deadly force to protect himself and Trooper Seide from death and/or great bodily harm. Thereafter, at the defense's invitation to provide any specific questions for Londregan, the Special Prosecutors submitted 31 specific questions about Londregan's encounter with Mr. Cobb to Londregan's attorney, with full 5th Amendment protection for any responses

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[125] Exh. 28, Minnesota State Patrol (MSP), General Order 23-10-027, *Use of Force*, at VIII(B), (July 31, 2023), https://dps.mn.gov/divisions/msp/dashboard/Documents/msp-general-orders-section-10-administration.pdf.

[126] Exh. 28, MSP General Order 23-10-027 requires, "[i]n all instances in which a trooper(s) uses force, the trooper(s) shall prepare a TraCs Use of Force Report in a manner consistent with his/her training in addition to all other reports concerning the incident, including a Field Report. All reports shall be validated and submitted for review and approval." Trooper Londregan did not comply with this requirement.

[127] A proffer, in some jurisdictions called a "queen for a day," is a meeting between a criminal suspect and the relevant prosecutor's office. At the proffer, the criminal suspect is represented by counsel and the meeting is typically covered by a limited immunity agreement where the purpose is for the suspect to truthfully answer questions regarding the incident under investigation, without the potential consequence of his responses being used against him in a prosecution for that incident, except under very limited circumstances.

received from Londregan. Londregan did not provide any responses to the Special Prosecutors' questions.[128]

2. Lack of Cooperation from Members of the Minnesota State Patrol

Whereas the MSP provided requested documentation and physical evidence promptly to the BCA, many of its members were otherwise uncooperative with the investigation. Approximately 37 troopers refused to participate in interviews with the BCA or never responded to requests for interviews. Trooper Seide delayed his participation in an interview for months. According to investigators, many of the troopers interviewed had retained counsel for the interviews with the BCA agents, and some of the troopers' attorneys attempted to block certain questions during the interviews for a variety of reasons, including that the questions were too closely related to the facts of the shooting; or conversely, questions were too hypothetical.[129] Trooper Garrett Erickson and Sergeant (Retired) Troy Morrell, the latter of whom had served as a trainer during the academy session that Londregan attended, and neither of whom were subjects or targets of the criminal investigation, did not agree to participate in BCA interviews. Accordingly, [redacted].

Generally speaking, the lack of full cooperation by members of the MSP was not only disappointing to investigators, given that these members pledged to uphold the law, but it also created an unnecessary challenge to BCA and the HCAO's necessary fact-gathering. Such selective cooperation depending on whether witnesses are sympathetic to the investigation is unacceptable. It undermines the rule of law.

3. Preliminary Discussions with Experts

a. Jeff Noble

On August 21, 2023, the HCAO retained Jeff Noble to serve as a consulting and potentially testifying use-of-force expert for the criminal investigation into Londregan's shooting of Ricky Cobb. Mr. Noble had served as the Deputy Chief of Police for the Irvine Police Department in California from 1984 until 2012; and the Deputy Chief of Police for the Westminster Police Department in California from 2014 to 2015. Since 2005, Noble has provided consulting and expert witness services on a range of law enforcement issues including use of force. Noble has served as an expert use-of-force

[128] Exh. 29, Proffer Letter dated May 23, 2024.

[129] *See, e.g.* Exh. 26, BCA Investigative Interview of Sgt. Jason Halvorson, Nov. 1, 2023, at 4, 12–13; *see also, e.g.*, Exh. 27, BCA Investigative Interview of Trooper Brett Seide at 12, 16, 26; Exh. 30, BCA Investigative Interview of Lieutenant Jonathan Wenzel, Dec. 12, 2023, at 12–13.

witness in prior prosecutions, including Derik Chauvin's criminal trial in Hennepin County for the murder of George Floyd, Jr.

Noble's involvement in the case began with a videoconference with HCAO personnel to review body camera footage, squad videos, and the relevant statute, Minn. Stat. §609.066. Shortly thereafter, the HCAO provided Mr. Noble with the BCA investigative file.

On October 13, 2023, Noble and HCAO personnel met via video-conference to check in on Mr. Noble's progress in reviewing the initial investigative material and to discuss Mr. Noble's preliminary impressions and questions regarding the evidence he had reviewed.[130] Noble did not offer an opinion during this preliminary meeting about whether Trooper Londregan's use of force was legal or justified but stated that the two primary issues for his review were: whether Trooper Londregan's use of deadly force was reasonable in the moment it was used; and whether Trooper Londregan and Trooper Seide's actions prior to the shooting were reckless such that they created an unreasonable danger, which in turn resulted in Trooper Londregan's using deadly force. Mr. Noble said that his review of the reasonableness of Londregan's actions was complicated by Londregan's refusal to provide a statement or incident report. As a result, Mr. Noble did not know whether Londregan fired at Mr. Cobb because he feared for his or Seide's safety, or because he did not want Mr. Cobb to flee. If the latter, Mr. Noble indicated that he would deem the use of deadly force to be unreasonable. However, Mr. Noble stated that his opinion would change if Trooper Londregan shot Mr. Cobb because he feared for Trooper Seide's safety. Mr. Noble noted that, given Trooper Seide's position in the vehicle at the time of the shooting, a reasonable officer in Trooper Londregan's position could have perceived that Trooper Seide was in danger of death or great bodily harm from being dragged by the vehicle as it continued to accelerate. Mr. Noble and the prosecutors discussed whether there were alternatives to the use of deadly force, including: (1) doing nothing and waiting for the situation to play out without shooting Mr. Cobb; or (2) verbally encouraging Trooper Seide to remove himself from Mr. Cobb's vehicle. Mr. Noble was asked whether, given these potential alternatives, the use of force was "necessary" as required by Minn. Stat. 609.66. Mr. Noble indicated the word necessary was complicated and it is unclear what the state legislature meant when they included that word in the statute. Mr. Noble indicated he could not offer an opinion on what "necessary" means under the Minnesota Statute.[131]

Mr. Noble also noted that the necessity of using deadly force is difficult to evaluate because if deadly force is used in a rapidly-evolving situation, no one can know what would have occurred in its absence. Mr. Noble refrained from offering an

[130] Exh. 31, Video Conference with Jeff Noble (Oct. 13, 2023).

[131] *Id.*

ultimate opinion during this meeting on whether a reasonable officer would have believed that deadly force was necessary to prevent death or great bodily harm when Trooper Londregan shot Mr. Cobb. Mr. Noble said that Trooper Londregan's aiming his firearm in the direction not only of Mr. Cobb but also Trooper Seide, was "not the best decision," but since Trooper Londregan did not injure Trooper Seide, it was not an important issue to the case. Mr. Noble and the HCAO personnel discussed whether the troopers created the danger that resulted in Trooper Londregan's using deadly force. Noble observed that Mr. Cobb's vehicle was moving forward before the troopers entered his vehicle and if Trooper Seide had never entered the vehicle, Trooper Londregan would not have been prompted to use deadly force against Mr. Cobb.

During the meeting, Mr. Noble said he would need additional training materials or information demonstrating how troopers were trained on removing people from vehicles, especially vehicles which are running and/or moving. Mr. Noble stated that he was prepared to opine that Seide should not have reached into the vehicle. Also, if the plan was to pull Mr. Cobb out of the moving car, that was a "bad idea."[132] However, Mr. Noble noted that even if Seide's decision to enter Mr. Cobb's vehicle was unreasonable, this determination does not necessarily make Londregan's use of deadly force unreasonable. He explained that even if Seide should not have entered Mr. Cobb's car (because he created a danger to himself), Londregan was nevertheless authorized to respond reasonably to the danger to Trooper Seide. The meeting ended with Mr. Noble requesting additional time to review the materials and consider the issues raised in the meeting.

Noble's preliminary observations were provided verbally to the HCAO before the grand jury testimony of [redacted], before BCA agents and HCAO prosecutors interviewed Sgt. Jason Halvorson, Trooper Brett Seide, and Lt. Jonathan Wenzel; and before the April 29, 2024, court hearing during which Trooper Londregan's attorney proffered his version of the events of the shooting.[133] Noble later told the HCAO that, rather than taking notes on a case, it is his practice to put notes directly into a document formatted as a draft report as he is working on a case, instead of maintaining separate notes. Such a document ultimately becomes his final report if he continues on a case to that point.

But, in this case, Mr. Noble did not generate or provide any final report or opinion regarding Londregan's use of force—neither before the charges against Trooper Londregan were filed on January 24, 2024, nor at any point thereafter.[134]

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[132] *Id.*

[133] We understand that these materials were not provided to Mr. Noble.

[134] On January 26, 2024, HCAO personnel informed Mr. Noble that Trooper Londregan had been charged and that he should discontinue further work on the case until requested by the HCAO.

On April 9, 2024, more than two months after the charges were filed, and in response to a subpoena issued by Trooper Londregan's attorney, Mr. Noble was compelled to produce a "draft report" dated October 12, 2023, which contained his preliminary opinion that

> *A reasonable police officer in Trooper Londregan's position **may** have believed that Trooper Seide was at imminent threat of death or serious bodily injury at the moment that Trooper Londregan used deadly force, but without Trooper Londregan's Statement, I am unable to determine whether Trooper Londregan's Use of Deadly Force was Consistent with Generally Accepted Police Practices.*[135]

To explain the preliminary opinion, the draft report stated:

> The video evidence, that included the troopers' body worn cameras and in-car videos, provided both audio and video from the incident. The videos show that Mr. Cobb moved his vehicle forward a few feet as Troopers Seide and Lundregan [sic] opened the vehicle's doors. About two seconds later, Mr. Cobb stopped his vehicle and Trooper Seide leaned inside and tried to remove Mr. Cobb's seatbelt by reaching over Mr. Cobb. Within five seconds of the time that Trooper Seide opened the driver's door, Mr. Cobb again accelerated his vehicle and Trooper Londregan fired one round at Mr. Cobb. As Mr. Cobb drove forward, both Trooper Seide and Trooper Londregan fell to the ground.
>
> While Trooper Seide used poor judgment in his attempt to extricate Mr. Cobb from the vehicle, especially after Mr. Cobb drove the vehicle forward a few feet before Trooper Seide leaned into the vehicle, that decision was made by Trooper Seide – not Trooper Londregan. Trooper Londregan was forced to react in less than three seconds from the time that Trooper Seide leaned into the vehicle until the time he used deadly force. Police officers who make critical decisions in dangerous situations should be provided some deference even if there is a plausible claim that the situation could have been handled differently or better.
>
> A reasonable police officer in these circumstances could believe that Trooper Seide was at imminent threat of death or serious bodily injury as he was leaning inside the vehicle as Mr. Cobb

[135] Exh. 32, J. Noble Draft Report (Oct. 12, 2023) at 4.

> began to accelerate. However, without Officer Londregan's statement regarding his reason for using deadly force, I cannot determine if the force was consistent with generally accepted police practices or if a reasonable officer would believe that the use of deadly force reasonably appeared necessary consistent with Minnesota state law.[136]

Notably, Noble's "draft report" was not provided to the HCAO until he produced it on April 9, 2024, to the defense, pursuant to the defendant's subpoena. It is not Noble's typical practice to submit reports prior to completing them. Mr. Noble explained in the cover letter for his production that the date on the draft report does not indicate that the report had been finalized or that he did not do any work on the report after that date.

b. Jody Stiger

Mr. Jody Stiger offered to assist Hennepin County as a use-of-force expert for the prosecution of Trooper Londregan on February 1, 2024. Stiger contacted one of the Senior County Attorneys prosecuting the case after receiving a voicemail and email from one of Londregan's attorneys, purportedly requesting assistance as an expert for the defense, or assistance finding other experts for the defense. On March 1, 2024, Stiger was retained by the HCAO to provide expert witness consultation and testimony.

Mr. Stiger is currently the Systemwide Director of Community Safety for the University of California. Earlier in his career, he served as the Aide to the Inspector General for the Los Angeles Police Commission, Sergeant with the Los Angeles Police Department (LAPD), and Senior Tactics/Use of Force Instructor for LAPD and the State of California. Mr. Stiger was a witness for the prosecution on use of force issues in the criminal prosecution of Derek Chauvin.

On April 4, 2024, the case file containing witness interviews, videos, video composites, grand jury transcripts, dispatch recordings, MSP policies, medical examiner records, training and personnel documents, and defense discovery, along with other items, was sent to Stiger. On May 8, 2024, Stiger advised the HCAO that due to the violent protest and encampments at UCLA and other UC Campuses where Stiger works as Director of Community Safety, he was not able to assist with the prosecution of Londregan. He then promptly returned to the HCAO all of material that the HCAO had previously sent him. The Special Prosecutors are not aware of any analysis or opinions offered by Mr. Stiger to the HCAO. Indeed, Mr. Stiger never presented an invoice to the HCAO for any services.

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[136] *Id.* at 5.

4. Grand Jury Testimony of [redacted]

[redacted]

137 [redacted]

138 [redacted]

139 [redacted]

140 [redacted]

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142 [redacted]

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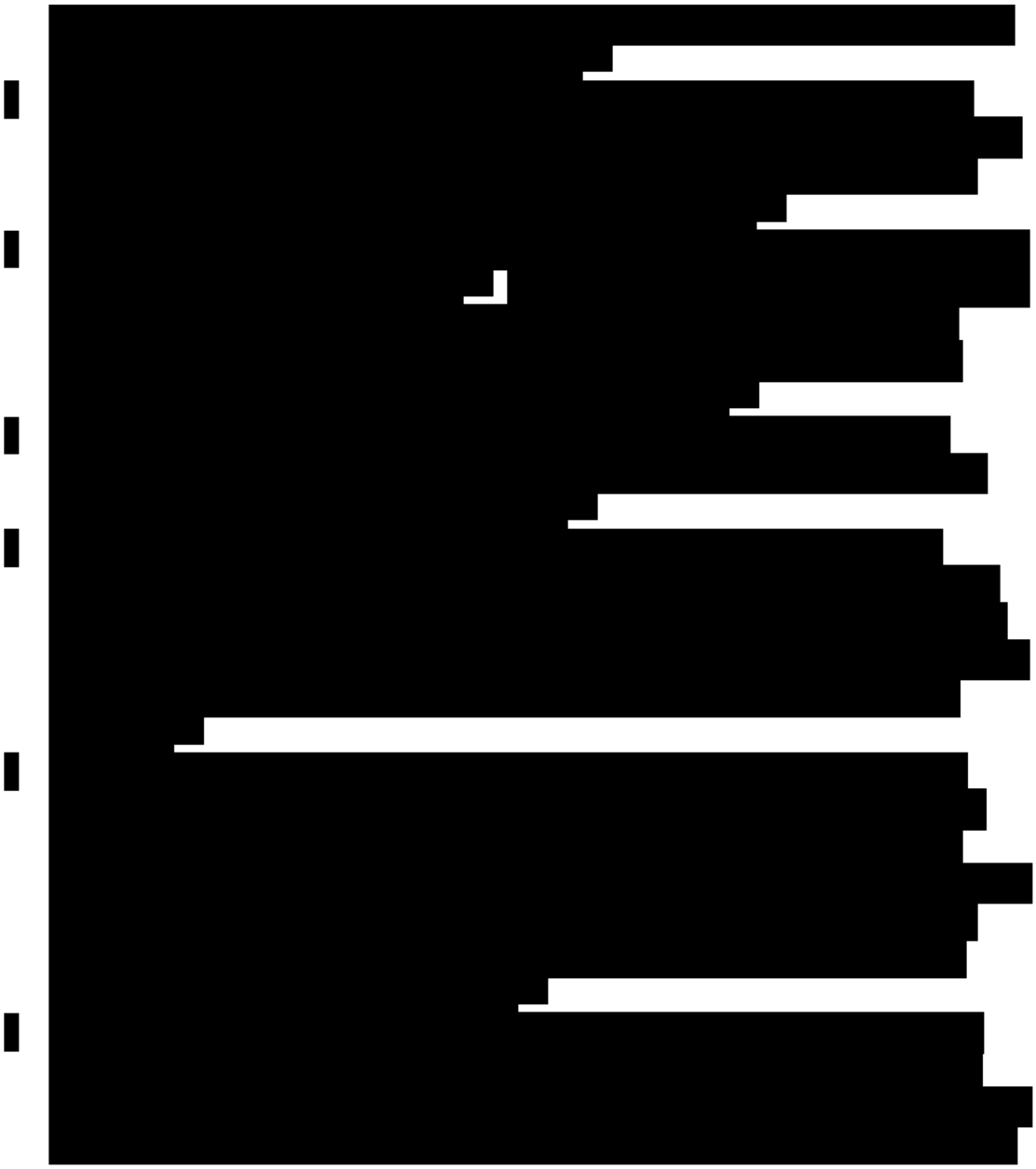

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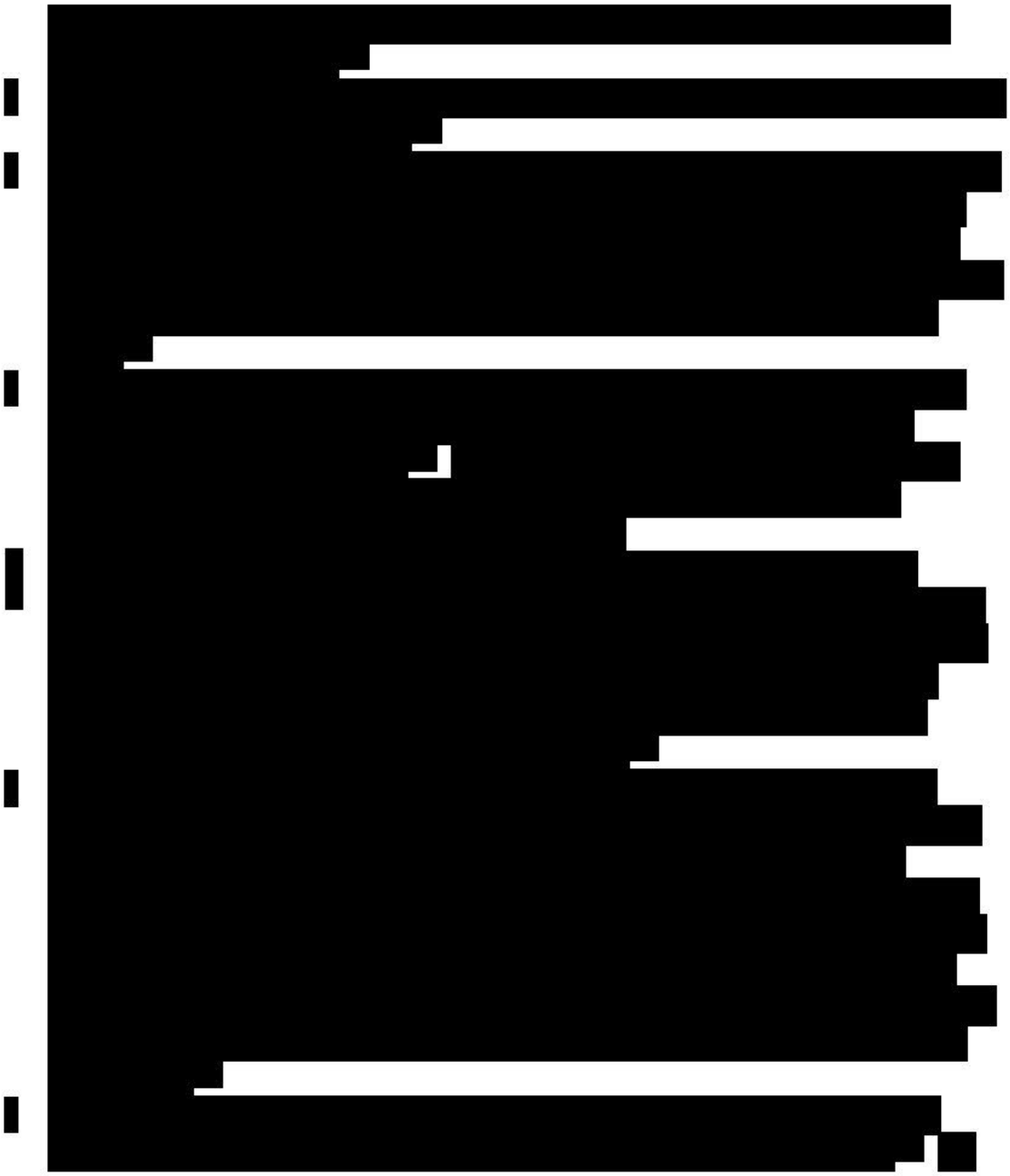

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188 [redacted]

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203 [redacted]

204 [redacted]

205 [redacted]

206 As discussed elsewhere, at least one expert opined that the troopers had the option of letting Mr. Cobb depart and arrest him later, having identified him and his residence. Additionally, MSP policy acknowledges that when the risks to human life become too great to take certain actions, the better option is to abandon that effort. *See e.g.,* Ex. 25, MSP General Order 22-20-012, Motor Vehicle Pursuit, providing "there are situations where the risk of personal injury or death associated with a motor vehicle pursuit is too high to justify anything other than discontinuing the pursuit. No member will be disciplined for making a decision to discontinue a pursuit."

207 [redacted]

208 [redacted]

[redacted]

C. **The Charges**

On January 24, 2024, the Hennepin County Attorney's Office filed a three-count criminal complaint against Ryan Londregan. The complaint was supported by a three-page Statement of Probable Cause ("Statement") submitted by BCA's ASAC Thomas Roth, and approved by Mark Osler of the Hennepin County Attorney's Office. Based on ASAC Roth's Statement, the Honorable Tamara Garcia of the Fourth Judicial District for Hennepin County made a finding of probable cause and issued a summons for Trooper Londregan.

Count One charged Londregan with unintentional 2nd degree murder, causing the death of Ricky Cobb while Londregan was committing 2nd degree assault with his firearm. Count Two charged Londregan with 1st degree assault, alleging that he had inflicted "great bodily harm" on Ricky Cobb while using his firearm. Count Three charged Londregan with 2nd degree manslaughter through engaging in actions that constituted "culpable negligence" and that created an unreasonable risk of death or great bodily harm to Mr. Cobb.

Special Agent Roth's three-page narrative detailed the actions of Londregan, Trooper Seide (referred to in the Complaint as "Trooper A"), and Trooper Erickson (referred to in the Complaint as "Trooper B"). The Statement also described the subsequent actions taken by the troopers, including their pursuit of Mr. Cobb's vehicle, pinning it against the median, their discovery of a mortally wounded Mr. Cobb, and their efforts to apply lifesaving measures.

As described above, Count One charged Londregan with 2nd degree murder based on Mr. Cobb's death being the direct result of Londregan's assault on Mr. Cobb with his firearm. Minnesota Statute § 609.19.2(1) defines unintentional 2nd degree murder in relevant part as follows:

> Whoever does…the following is guilty of unintentional murder in the second degree…:

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209 [redacted]

210 [redacted]

(1) causes the death of a human being without intent to effect the death of any person, while committing or attempting to commit a felony offense, . . .[211]

In order to prove Londregan guilty of 2nd degree, unintentional murder, the State would have to prove that Londregan 1) caused the death of Ricky Cobb, while 2) Londregan was committing 2nd degree assault, which, in relevant part, is defined by Minnesota law as someone who assaults another person with a dangerous weapons and "inflicts substantial bodily harm."[212] If the elements are satisfied by legally admissible evidence, Londregan could be found guilty beyond a reasonable doubt by a jury unless his actions were deemed justified by the totality of the facts and circumstances. In other words, to prove guilt, the State must prove beyond a reasonable doubt that the defendant's use of deadly forced was not authorized by law. If proven guilty of this crime in Minnesota, a defendant with no criminal history would face a presumptive sentence of 150 months in prison.[213]

Count Two charged Londregan with 1st degree assault, which is defined by Minnesota law as "whoever assaults another and inflicts great bodily harm."[214] The Complaint alleges that Londregan "assaulted [Mr. Cobb] and inflicted great bodily harm while using a firearm." In order to prove Londregan guilty of 1st degree assault, the State would have to prove that 1) Londregan assaulted Mr. Cobb, and 2) Mr. Cobb suffered great bodily harm. If the elements are satisfied by legally admissible evidence, Londregan could be found guilty beyond a reasonable doubt by a jury unless his actions were deemed justified by the totality of the facts and circumstances. In other words, to prove guilt, the State must prove beyond a reasonable doubt that the defendant's use of deadly forced was not authorized by law. In Minnesota, a defendant with no criminal history would face a presumptive sentence of 86 months in prison.[215]

Count Three charged Londregan with 2nd degree manslaughter through culpable negligence because his actions created unreasonable risks for Mr. Cobb and others. In relevant part, Minnesota state law defines this category of 2nd degree manslaughter as follows:

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[211] Exh. 37, Minn. Stat. § 609.19(1).

[212] Exh. 38, Minn. Stat. § 609.222(2).

[213] Minn. Court Rules, §4.A., Sentencing Guidelines, https://mn.gov/sentencing-guidelines/assets/1August2023MinnSentencingGuidelinesGridSection4A_tcm30-586297.pdf (2023).

[214] Exh. 39, Minn. Stat. § 609.221(1).

[215] Minn. Court Rules, §4.A., Sentencing Guidelines, https://mn.gov/sentencing-guidelines/assets/1August2023MinnSentencingGuidelinesGridSection4A_tcm30-586297.pdf (2023).

> A person who causes the death of another by any of the following means is guilty of manslaughter in the second degree...
>
> > (1) by the person's culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death or great bodily harm to another…

In order to prove Londregan guilty of 2nd degree manslaughter, the State would have to prove 1) that Londregan's actions created an unreasonable risk, and 2) that Londregan consciously took chances of causing death or great bodily harm to Mr. Cobb through those actions.[216] If the elements are satisfied by legally admissible evidence, Londregan could be found guilty beyond a reasonable doubt by a jury unless his actions were deemed justified by the totality of the facts and circumstances. In other words, to prove guilt, the State must prove beyond a reasonable doubt that the defendant's use of deadly forced was not authorized by law. In Minnesota, a defendant with no criminal history would face a presumptive sentence of 48 months in prison.[217]

As described above, the HCAO brought the criminal charges against Londregan using the instrument of a sworn complaint rather than seeking an indictment from a grand jury. The HCAO, and Ms. Moriarty specifically, have been criticized for proceeding in that fashion. However, a grand jury indictment is required by law only in cases involving 1st degree murder. Moreover, the use of the complaint process in use of force cases involving law enforcement officers was not fashioned specifically for this case; indeed, quite the opposite is true. In her campaign for Hennepin County Attorney in 2022, Ms. Moriarty squarely addressed the issue, arguing that because the grand jury is by law a secret process, accountability and transparency, at least in certain cases, dictated that the Hennepin County Attorney personally take responsibility for the charging decision. As she stated in August 2022, in response to a specific question on whether to use the grand jury in officer-involved shooting cases, Ms. Moriarty said she would not.[218] She explained the policy's specific application to the Londregan case:

> I believe that it is the prosecutor's job to take ownership and accountability of the charges that are issued by this office…That is the reason why we will not be using a grand jury for charging purposes in

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[216] Exh. 40, Minn. Stat. § 609.205(1).

[217] Minn. Court Rules, §4.A., Sentencing Guidelines, https://mn.gov/sentencing-guidelines/assets/1August2023MinnSentencingGuidelinesGridSection4A_tcm30-586297.pdf (2023).

[218] Cathy Wurzer and Ellen Finn, *Meet the Candidate: Mary Moriarty runs for Hennepin County Attorney*, MPRNews, (Aug. 2, 2022), https://www.mprnews.org/episode/2022/08/02/meet-the-candidate-mary-moriarty-runs-for-hennepin-county-attorney.

> cases involving officers and the death of one of our community members.[219]

Ms. Moriarty's decision to take personal responsibility for the charging decisions was fully consistent with the policy she announced prior to taking office. Moreover, it was consistent with the position taken by her predecessor, Mike Freeman, as far back as 2016 in officer-involved shooting cases.

Charging Londregan by complaint rather than grand jury indictment was consistent not only with Ms. Moriarty's previously announced policy but it was consistent with decisions made by her predecessor as Hennepin County Attorney.

D. Post-Charge New Evidence

1. The Declarations

Nearly two months after Trooper Londregan was charged on January 24, 2024, his attorneys filed the first of four sworn declarations from MSP members responsible for either training or policy development. The first sworn declaration, filed on March 20, 2024, was from MSP's use of force coordinator, Sgt. Jason Halvorson. As outlined above, before this declaration, Halvorson had provided two voluntary interviews to BCA and the HCAO [redacted]. Despite these many contacts with investigators, his declaration was the first record of Halvorson's opinion that Trooper Londregan acted in accordance with his training on July 31, 2023, and that Trooper Londregan did not violate MSP's use of force General Orders.[220] [221]

Sgt. Halvorson stated in his sworn declaration that in reaching his conclusion he reviewed the criminal complaint, his voluntary interviews with BCA and the HCAO, [redacted] publicly available video of the shooting, State Patrol General Orders, and applicable training materials.[222] Sgt. Halvorson stated that he had not performed a complete use-of-force review because that requires speaking with Trooper Londregan to understand his thought process.

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[219] Paul Bloom, *Ricky Cobb shooting: Grand Jury process explained as defense seeks dismissal*, Fox9 KMSP, (Jan. 29, 2024), https://www.fox9.com/news/ricky-cobb-shooting-grand-jury-process-explained-as-defense-seeks-dismissal.

[220] Exh. 41, Decl. of Sgt. Jason Halvorson, *State v. Londregan*, 27-CR-24-1844 (Hennepin County Fourth Judicial Dist. Ct., Mar. 19, 2024) (filed under seal) at ¶ 34–35.

[221] In his sworn declaration, Sgt. Halvorson identifies himself as "Sargeant Halvorson" [sic] and signed the document as SSG, which suggests he is Staff Sergeant Halvorson.

[222] *Id*. at ¶ 32.

On April 1, 2024, two additional sworn declarations were filed on behalf of Trooper Londregan: one from Lt. Jonathan Wenzel and the other from Sgt. (retired) Troy Morrell. Prior to providing these declarations, Lt. Wenzel had provided a voluntary interview to BCA and [redacted]

Lt. Wenzel stated in his sworn declaration that he was a firearms instructor and coordinator for the MSP Academy. Lt. Wenzel stated that he reviewed the publicly available videos of the July 31, 2023, incident, and that "it appears that Trooper Londregan acted in accordance with his training."[223] Finally, Lt. Wenzel stated that could not see any violation by Trooper Londregan of Minnesota State Patrol's use-of-force General Orders.[224] Wenzel did not provide explanations for his conclusions and had not shared these conclusions when he was interviewed by the BCA or [redacted]

Sgt. (retired) Troy Morrell's sworn declaration was very similar to Lt. Wenzel's. He stated that he was the EVOC/vehicle contacts coordinator during the 63rd Academy, which was attended by Londregan. Morell opined that MSP's Vehicle Pursuit Policy did not apply to this situation because it was not a vehicle pursuit.[225] Morrell also stated that he was responsible for training cadets on the MSP Pursuit Policy, which provides, among other things, that: "[m]embers shall not shoot from or at a moving vehicle, except when deadly force is authorized pursuant to General Order 10-027" and "[f]irearms shall not be utilized without a high probability of striking the intended target or when there is a high risk to the safety of other persons."[226] Further, Morrell stated that he had reviewed the publicly available video recordings and concluded Londregan acted in accordance with this training and did not violate MSP's pursuit policy or General Orders including the use of force policy.[227] [redacted]

On April 24, 2024, Londregan's attorneys filed Major Christopher Erickson's sworn declaration. Major Erickson has been employed with MSP since 1999 and is currently responsible for the oversight of numerous patrol districts and is responsible, with others, for developing policies and procedures, and reviewing pursuit and use of

[223] Exh. 42, Decl. of Lieutenant Jonathan Wenzel, *State v. Londregan,* 27-CR-24-1844 (Hennepin County Fourth Judicial Dist. Ct., Mar. 24, 2024) (filed under seal) *at* ¶¶ 11-12.

[224] *Id*. at ¶ 13.

[225] Exh. 43, Decl. of Troy Morrell, *State v. Londregan*, 27-CR-24-1844 (Hennepin County Fourth Judicial Dist. Ct., Apr. 1, 2024) (filed under seal) at ¶ 6.

[226] *Id*. at ¶ 8.

[227] *Id* at ¶¶ 7, 10-11.

force incidents within the agency. He also serves at the statewide on-call major. Major Erickson's declaration contains several relevant opinions based on his training and experience.

Major Erickson opined that MSP General Order 22-20-012, also known as MSP's Motor Vehicle Pursuit Policy, would not be applicable to the shooting incident on July 31, 2023.[228] He stated that a motor vehicle pursuit is defined in the relevant policies as "an active attempt by a sworn member operating a patrol unit to apprehend the driver of a motor vehicle…" and that because Seide and Londregan were not operating a patrol unit at the time of the shooting incident, the Motor Vehicle Pursuit Policy would not be implicated.[229] Major Erickson stated that he believes the Hennepin County Attorney's Office incorrectly relied on MSP Vehicle Pursuit Policy in its charging decisions based on statements made during a January 24, 2024 press conference. Major Erickson's declaration provides his interpretation of the vehicle pursuit policy, which he maintains was not applicable to this shooting, but also opined that the policy was not violated by the involved troopers even if it were deemed to be applicable.

Major Erickson stated that the Pursuit Policy's prohibition against shooting from or at a moving vehicle does not apply when deadly force is authorized.[230] He also stated that the Pursuit Policy's requirement that members make every effort not to place themselves in a position that would increase the possibility that the vehicle they are approaching can be used as a deadly weapon against them or others was intended to discourage troopers from purposefully placing themselves in a situation that could later require deadly force as a means for justifying the deadly force. He stated this policy would be violated if a trooper ran in front of a car with his gun drawn as the car was driving off.[231] He distinguished such policy violations from the extraction of a non-compliant suspect. He said that such extractions are common, and that Seide and Londregan were justified in their attempt to extract Mr. Cobb from the vehicle in order to effect his lawful arrest.[232] Major Erickson also stated that the Pursuit Policy's final requirement that firearms shall not be utilized without a high probability of striking the intended target or when there is a substantial risk to the safety of others was satisfied by Trooper Londregan's conduct. He opined that Trooper Londregan had a high probability of striking Mr. Cobb despite the danger it presented to Trooper Seide.[233]

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[228] Exh. 44, Decl. of Major Christopher Erickson, *State v. Londregan*, 27-CR-24-1844 (Hennepin County Fourth Judicial Dist. Ct., Apr. 23, 2024) (filed under seal) at ¶ 26.

[229] *Id*. at ¶¶ 27–29.

[230] *Id*. at ¶¶ 30–32.

[231] *Id.* at ¶¶ 33–35.

[232] *Id.* at ¶¶ 36–37.

[233] *Id.* at ¶¶ 38–39.

In his declaration, Major Erickson takes issue with a statement of the Hennepin County Attorney made during a press conference, which he quoted as: "very extensive training by the State Patrol was that shooting someone was not likely to stop the person from driving." According to Major Erickson, to the contrary, most troopers are aware of past incidents that establish the effective use of a firearm to slow or stop the danger of dragging. He cited to the three past dragging incidents he was referencing, but he did not purport to know whether Londregan knew of any of these three incidents.[234]

Major Erickson's lengthy declaration next stated that after his review of the body cameras and dash cameras capturing the interaction between the troopers and Mr. Cobb, and based on his deep familiarity with MSP's policies and training and 36 years of experience as a law enforcement officer, it is his opinion that Trooper Londregan was justified in his use of deadly force and acted within MSP policy.[235] Major Erickson's declaration included a comprehensive summary of the circumstances of the traffic stop with Mr. Cobb, and Erickson concludes that the decision to arrest Mr. Cobb was lawful. Further, according to Major Erickson, Trooper Seide had appropriately used de-escalation techniques but, according to Erickson, Mr. Cobb became increasingly agitated and was non-compliant with lawful commands.[236] Major Erickson's declaration states that Trooper Londregan fired two shots when both troopers were partially in the vehicle and that the troopers began to be dragged by the forward motion of the vehicle. Major Erickson provided a list of 15 circumstances that he believed rendered Trooper Londregan's use of deadly force lawful, including:

> h. As Trooper Londregan unlocked and opened the passenger door, Mr. Cobb placed the vehicle into gear and the vehicle suddenly and abruptly lurched forward. At this moment, both Trooper Seide and Londregan's upper torsos were mostly within the interior compartment of Mr. Cobb's vehicle leaving their lower extremities unstable and exposed to external risk. This action would cause a reasonable police

[234] We are not aware of evidence that any of these past MSP dragging incidents, aside from the incident involving Trooper Thelen, were brought to the attention of the HCAO prior to the filing of Major Erickson's declaration. [redacted]

[235] *Id.* at ¶ 50.

[236] *Id.* at ¶¶ 57, 61.

> officer in Londregan's position to fear great bodily injury or death to himself or is partner. . . .
>
> i. Almost immediately, the car began to accelerate a second time. A motor vehicle can accelerate to highway speeds within a matter of a few seconds. Any number of scenarios exist that would cause a reasonable police officer to fear great bodily injury or death.[237]

The sworn declarations of Londregan's Academy trainers—who at one time may have been considered witnesses for the State—along with one of the highest-ranking members of the MSP all stating that Londregan acted in accordance with his training and policy, or opining that the shooting was justified, has significantly altered the balance of evidence available to the State to prove beyond a reasonable doubt that Londregan's conduct was unlawful.

2. The Defense Expert Submissions

Defendant Londregan retained Scott A. DeFoe to serve as an expert witness. From 1989 to 2016, DeFoe served in various law enforcement capacities with the Los Angeles Police Department. Since 2016, he has been engaged in private security and expert witness consultancy.

DeFoe's report titled "Preliminary Opinions" is dated April 24, 2024, and was provided to the HCAO after that date. In his report, Mr. DeFoe offers a series of opinions, some of which are discussed further below. For each opinion, DeFoe relied on his review of the discovery in the case as well as his 28-year law enforcement career, during which he states he has investigated over 100 use of force incidents.[238]

DeFoe opined that, based on the totality of the circumstances, Troopers Seide, Erickson, and Londregan, made "a prudent tactical and reasonably objective decision to conduct an Investigative Vehicle Pullover/High-Risk Vehicle Pullover" of the vehicle driven by Mr. Cobb.[239] This opinion incorrectly included Trooper Londregan in the decision to pull Mr. Cobb over.

Next, DeFoe opined that Troopers Seide, Erickson and Londregan used proper de-escalation and defusing techniques and tactics during the investigative vehicle pullover. This opinion is also incorrect in its inclusion of Londregan, because there is

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[237] *Id.* at ¶ 70.

[238] Exh. 45, Scott Defoe Preliminary Opinions, Apr. 24, 2024, at 8.

[239] *Id*.

no evidence that Londregan used de-escalation techniques during the stop. Rather, the first and only time Londregan spoke to Mr. Cobb was when he screamed, "Get out the car now" seconds before firing two shots at him.

DeFoe also opined that Trooper Londregan used "appropriate, necessary, and reasonable lethal force when he fired 2 rounds… at Mr. Ricky Cobb II to stop him for dragging Trooper Brett Seide or causing Trooper Brett Seide to be ejected from the vehicle where Trooper Brett Seide could have been struck and killed by the silver 2012 Ford Fusion…or by oncoming traffic."[240] According to DeFoe, less than lethal force would have been ineffective and would have placed Seide in an immediate threat of physical harm or death. DeFoe did not appear to analyze or formulate opinions on the questions of whether Seide or Londregan's conduct in performing the extraction created or contributed to the danger that Londregan responded to with deadly force.

Londregan also retained John J. Ryan who authored an expert report dated April 26, 2024. Mr. Ryan was a police officer for twenty years in Providence, Rhode Island. Since serving last as Captain of the Providence Police in 2002, Ryan has worked as a private consultant regarding law enforcement issues.

Ryan based his opinions on his background, education, training, experience and research. He opined "the use of deadly force by Trooper Ryan Londregan was consistent with generally accepted polices, practices, training, and industry standards as well as the training and polices of the Minnesota State Patrol."[241] Ryan drew support for his conclusion based on the fact that Londregan was in the process of assisting with the arrest of Mr. Cobb. Based on Mr. Cobb's resistance, which placed both Londregan and Seide at risk of serious bodily harm or death, deadly force became necessary to stop Mr. Cobb from causing serious injury or death to the officers, particularly Seide, whose body was inside the vehicle.[242] Ryan's report includes still photos from Londregan's body cam, including one that shows Seide inside the vehicle as Mr. Cobb has hold of the gear shift.[243] According to Ryan, the videos demonstrate the threat to both officers of being dragged along the highway.[244] Ryan stated that when an officer is confronted with an immediate threat of serious bodily harm or death, the trained response is to use deadly force to eliminate the threat.[245]

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[240] *Id.* at 13.

[241] Exh. 46, John J. Ryan Report, Apr. 26, 2024, at ¶ 128.

[242] *Id.* at ¶ 134.

[243] *Id.* at ¶¶ 136–138.

[244] *Id.* at ¶ 141.

[245] *Id.* at ¶ 150.

3. The Proffer of Londregan's Testimony

On January 24, 2024, after the charges were filed, Londregan's attorneys filed a Notice of Defenses that stated that Londregan used deadly force against Ricky Cobb II ("Cobb") to protect: (1) Trooper Brett Seide ("Seide") from death and/or great bodily harm; and secondarily, (2) himself from death and/or great bodily harm.[246] Significantly, this Notice included Seide's and Erickson's accounts of the shooting, but it did not provide Trooper Londregan's account of what occurred either before or during the shooting of Mr. Cobb. This Notice also did not include Londregan's claim that Mr. Cobb reached for Londregan's firearm.

However, it was not until April 29, 2024, that Trooper Londregan's version of events and reasons for shooting Mr. Cobb were revealed in court. On that date, an omnibus hearing before the Honorable Tamara Garcia of the Fourth Judicial District Court was held. During the hearing, the parties presented arguments regarding the scope of a future probable cause hearing requested by Londregan referred to as a *Florence* hearing.[247] As part of that argument, counsel for Londregan proffered to the court that, if permitted to testify at the *Florence* hearing, Trooper Londregan's testimony would include the following:

> [When] Trooper Londregan arrived[,] Trooper Erickson was speaking with the driver at the suspect vehicle's front-side window, and Trooper Seide then advised Trooper Londregan that the driver was, in fact, a suspect wanted by [Ramsey County] for a felony order for protection violation. [He] also said that the driver was, quote, "amped up." Trooper Seide then told Trooper Londregan that the RCSO wanted the driver arrested and transported to Ramsey County jail. They then exited their squad car. Trooper Seide approached the driver's side, Trooper Londregan approached the front-passenger side window. Trooper Seide began speaking with the driver. Trooper Seide repeatedly requested that the driver exit his vehicle. Despite many requests, the driver refused to do so. After hearing a number of Trooper Seide's lawful commands, Trooper Londregan observed Trooper Seide move his hand out of view and towards the exterior door handle of the driver's door multiple times. To Trooper Londregan, he appeared—Trooper Seide appeared to be unsuccessfully attempting to open the door, so Trooper Londregan checked the passenger door handle and felt that it was locked. Trooper Londregan then reached through the open passenger-side window and

[246] Exh. 47, Defendant Ryan Londregan's Notice of Defenses, *State of Minnesota v. Ryan Patrick Londregan*, 27-CR-24-1844 (Hennepin County Fourth Judicial Dist. Ct., Jan. 24, 2024), MCRO No. 4, at 1.

[247] *See State v. Florence*, 306 Minn. 442, 446, 239 N.W.2d 892, 896 (1976).

used the electronic locking control to unlock the vehicle's door at that time.

He then proceeded to open the front passenger door to show Trooper Seide that the doors were now unlocked and to assist Trooper Seide in persuading the driver to exit the vehicle, and ultimately, take him into custody. As Trooper Londregan opened the passenger door, Trooper Londregan noticed the driver move his right hand to the gear shift, place the vehicle in gear, and abruptly accelerate. Trooper Seide was entering the vehicle now through the open driver's door.

At this moment, Trooper Londregan recalled his training and immediately recognized the driver's conduct posed an immediate threat of great bodily injury and death to Trooper Seide. He feared the driver would drag Trooper Seide to his death. He also feared that the driver would drag Trooper Seide into oncoming traffic or run him over, thus endangering Trooper Seide's life again, not to mention, innocent drivers.

Trooper Londregan drew his service weapon and extended his arms into the vehicle through the open front-passenger door to put himself into a position, if necessary, [to] use deadly force to protect Trooper Seide from great bodily harm or death should the driver continue to accelerate, as Trooper Seide moved further inside the vehicle. The driver stopped the vehicle momentarily. Trooper Londregan then observed Trooper Seide's head, shoulders, torso, and arms now inside the vehicle and over the driver's body. Trooper Londregan ordered the driver to get out of the car now in a loud clear voice. The driver responded by reaching for Trooper Londregan's service weapon with his right hand, attempting to disarm him, as the driver, again abruptly accelerated the vehicle with, approximately, one-half of Trooper Seide's body inside the vehicle.

Trooper Londregan observed Trooper Seide, who is now in imminent danger of being dragged by the vehicle. At that moment, Trooper Londregan knew that Trooper Seide and he were in imminent danger of great bodily harm or death. The driver was using his vehicle as a deadly weapon against Trooper Seide and Trooper Londregan. . . .

In the extremely short amount of time available, Trooper Londregan concluded that it was necessary for him to prevent the driver from continuing to control and use his vehicle as a deadly weapon. To prevent Trooper Seide and Trooper Londregan [from] incurring great bodily injury or death, Trooper Londregan aimed his service weapon at the

driver's right high center mass and pelvic area, so as not to shoot Trooper Seide. He discharged his duty weapon twice.[248]

Notably, Londregan's claim that Mr. Cobb reached for Londregan's weapon with his right hand had never been reported by Trooper Seide or Trooper Erickson and was not included in any of the reports or analyses of Londregan's experts DeFoe, Ryan, or Major Erickson. We have reviewed the video footage to determine whether any of the body camera footage corroborates this claim. At 02:17:04 am, within several tenths of a second after Trooper Londregan yelled the word "now," Mr. Cobb removed his right hand from the gear selector and lifted it in an upward motion to approximately the height of his own head. This occurred at approximately the same time that Londregan's right arm, holding his gun, entered the vehicle, heading towards Mr. Cobb. Due to the positioning and angling of the available body camera footage, the ultimate location and movement of Mr. Cobb's right hand cannot be conclusively determined.[249]

4. Opinion of Additional Use of Force Expert

The Special Prosecutors engaged Chief Kerr Putney as a use-of-force expert to assist in their independent review of this prosecution. Putney served as the Chief of the Charlotte-Mecklenburg, North Carolina Police Department from 2015 until his retirement in 2020. He began his career with Charlotte-Mecklenburg Police in 1992. During his career, he held a variety of patrol, training, and specialized assignments. Chief Putney holds a Bachelor of Science and a Master Degree in Criminal Justice. He has served as a use-of-force expert on numerous occasions, including in connection with the 2021 report for the Office of the D.C. Auditor regarding Metropolitan Police Department's use of deadly force on five occasions.

Chief Putney was provided with both the original investigation materials the Special Prosecutors received from the HCAO that led to the charges in this case, as well as the new declarations and proffer recently provided by the defense. The materials he reviewed included the criminal complaint, body camera, dash camera and composite videos, MSP Academy training materials, written reports of Troopers Seide and Erickson, interviews of Seide and the MSP trainers, the declarations of MSP trainers and Major Erickson, MSP's policies/general orders, all grand jury testimony and exhibits, Londregan's proffered testimony read by his attorney at the April 29, 2024 hearing, and numerous other case documents. Based on his review of these materials and his extensive background, training and experience, Chief Kerr concluded, based on the totality of the circumstances, that the use of deadly force by Trooper Londregan may

[248] Exh. 48, Transcript of Omnibus Hearing, *State v. Londregan*, 27-CR-24-1844 (Hennepin County Fourth Judicial Dist., Apr. 29, 2024), MCRO No. 105 at 65–68.

[249] Exh. 11, Trooper Londregan Body Camera Footage at 02:17:04.

have been objectively and reasonably necessary, and was within the legal and departmental standards for using deadly force. He further found, however, that the MSP policies, training and practices require updating and modification. Specifically, his conclusions can be summarized as follows:

- Trooper Londregan acted within the boundaries of the legal standard of using deadly force because, given the totality of the circumstances, Trooper Londregan could have, with objective reasonableness, perceived that he and Trooper Seide were in imminent danger of serious bodily injury or death.
- The de-escalation tactics were reasonable when viewed considering the Academy training they had been provided and the actions of the driver that precipitated their responses to the levels of resistance they encountered during the traffic stop. Specifically, given his multiple requests for compliance, it was reasonable for Trooper Seide to expect that his further requests for compliance would be refused. Based on the number of requests for compliance and the consistent refusal to comply by Mr. Cobb, reasonable attempts to de-escalate the situation and gain compliance were achieved by Trooper Seide. The body camera footage confirmed Trooper Seide's assertion that he repeatedly attempted to gain willing compliance before higher levels of control were employed such as the extraction technique.
- The extraction tactics used by the troopers were horribly executed, dangerous to the life of Trooper Seide, and not aligned with best policing practices.
- Specifically, Troopers Seide and Londregan's tactical use of contact and cover was problematic. That issue concerns the position of Trooper Londregan and Trooper Seide when Londregan drew his weapon from the holster. The likelihood was high that Trooper Seide could have been struck by one of the rounds fired by Trooper Londregan, as Seide's body was across the torso of Mr. Cobb when the rounds were fired. Tactically, this positioning by Trooper Seide when Londregan fired his service weapon was not consistent with best practices and could have caused the death or serious bodily injury to Trooper Seide. Despite this, a reasonable officer may have made the same decision as Trooper Londregan if his/her partner's poor tactics placed him/her in such a precarious position. In contrast to the extraction technique performed by Troopers Seide and Londregan during the Mr. Cobb traffic stop, the ideal extraction technique would require critical steps that were missed which could have positively affected the outcome. Trooper Seide attempted a one-officer extraction technique with two officers. His decision to reach into the vehicle across the torso of Mr. Cobb increased his exposure to risk. The cover officer (Trooper Londregan) ideally should have reached into the vehicle to unbuckle the seatbelt. However, given the vehicle's initial lurch forward, ideally both troopers should have simply disengaged altogether.

- Due to the speed at which the Mr. Cobb traffic stop unfolded, however, it is difficult to determine if a perfectly performed two-officer extraction would have been successful in extracting the driver. Given the fact that a Stop Stick® device was not utilized in this case, the driver would still have flight from the stop as an option. To properly perform the two-officer extraction, Trooper Londregan would have been further inside of the vehicle to successfully unbuckle the driver, thereby further exposing himself to the perceived threat of being dragged or run over that the troopers spoke about in their above statements.
- Given the vehicle's initial lurch forward, ideally both troopers should have simply disengaged altogether. The reasons for this preference are: 1) Trooper Seide had information identifying the driver, thus allowing for a less risky attempt to apprehend the driver at a later time, 2) The driver has demonstrated his potential intent to flee the detention at that moment, and 3) Trooper Londregan would have been able to avoid the need to escalate to a higher level of control (deadly force).

IV. Analysis

Mr. Cobb should be alive today. As discussed below, the troopers' initial stop and discussion with Mr. Cobb were appropriate and lawful. Later, once the troopers decided to arrest Mr. Cobb, the tactics they employed to extract Mr. Cobb from his vehicle were "horribly executed," according to the assessment of our use-of-force expert, Chief Putney, and deeply flawed, according to the State's initial use of force expert, Jeff Noble. Still those tactics were not demonstrably contrary to their training – and that is a problem. Had the Minnesota State Patrol established sounder policies and provided more effective training, Troopers Seide, Erickson, and Londregan would likely not have chosen to extract Mr. Cobb from his vehicle—if at all—in the manner in which they did. Had the Minnesota State Patrol established sounder policies and provided more effective training, Troopers Seide and Londregan would not have helped to create a situation which led to Trooper Londregan killing Mr. Cobb.

Nonetheless, there is insufficient evidence to defeat Trooper Londregan's affirmative defense that the shooting was justified. That defense is supported by his trainers and the two eye witnesses to the shooting. In light of the new evidence recently provided by the defense, Trooper Londregan's actions, while tactically flawed, cannot be proved beyond a reasonable doubt to have been criminal in nature.

A. The Officers' Actions

1. The Initial Traffic Stop Was Lawful

On July 31, 2023, at approximately 1:50:00 am, Trooper Seide was positioned inside of his marked Minnesota State Trooper squad car at a stationary location on the northbound side of I-94 along highway median near Broadway Avenue. Parked alongside Trooper Seide in a separate Minnesota State Trooper squad car was Trooper Garrett Erickson.[250] Mr. Cobb, operating a grey, four-door Ford Fusion sedan with no taillights activated, passed Troopers Seide and Erickson, driving northbound.[251] Trooper Seide pulled onto the highway and followed Mr. Cobb northbound. Approximately 90 seconds later, at 1:51:31 am, Trooper Seide initiated a traffic stop of Mr. Cobb's vehicle by activating the police lights of his squad car.[252] Mr. Cobb yielded and pulled over to the right shoulder of the highway. At the time that the traffic stop was initiated, Mr. Cobb's vehicle did not have its taillights activated. Trooper Seide's traffic stop was lawful, pursuant to Minn Stat. 169.50.[253]

2. The Initial Interactions with Mr. Cobb Were Lawful

At approximately 1:52:01 am, Trooper Seide exited the driver's side door of his squad car and walked around the rear of his vehicle before approaching Mr. Cobb's vehicle. As Trooper Seide walked towards the front, passenger side window of Mr. Cobb's car, he stopped very briefly and shined his flashlight into the rear passenger seat of the Ford Fusion.[254]

When Mr. Cobb lowered the front passenger door window, Trooper Seide introduced himself and requested Mr. Cobb's driver's license and proof of automobile insurance.[255] Seide advised Mr. Cobb that the reason he was pulled over was because his rear lights were not activated.[256] Mr. Cobb initially denied that his rear lights were off, but later stated that he may have inadvertently turned the lights off with his knee.[257]

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[250] Exh. 2, Report of Trooper Seide at 1; Exh. 3, Report of Trooper Erickson at 1.

[251] *Id.*

[252] Exh. 8, Trooper Seide Body Camera Footage at 01:51:31.

[253] Exh. 7, Minn. Stat. § 169.50.

[254] Exh. 8, Trooper Seide Body Camera Footage at 01:51:00–01:52:24.

[255] Exh. 8, Trooper Seide Body Camera Footage at 01:52:04–01:52:51.

[256] *Id.*

[257] Exh. 2, Report of Trooper Seide at 1.

Mr. Cobb produced his driver's license but did not provide proof of automobile insurance.[258]

At approximately 1:53:40 am, while Seide was still speaking with Mr. Cobb, Trooper Erickson approached Mr. Cobb's vehicle and stood several feet behind Seide near the rear passenger side of the Ford Fusion.[259] Trooper Seide made a nonverbal gesture to direct Erickson to walk to the driver's side of Mr. Cobb's car and look into the driver's side windows.[260] Mr. Cobb explained that he earlier lost the keys to his car and had to pay approximately $200 to have a new set made.[261] Trooper Seide remarked at various times during the traffic stop—first to Mr. Cobb and later to Trooper Erickson—that he perceived Mr. Cobb as "a little edgy" or "amped," and he asked Mr. Cobb if Mr. Cobb had "problems with law enforcement."[262] By 1:58:55 am, Troopers Seide and Erickson had returned to Trooper Seide's squad car.[263] At this point, while we do not see evidence that Mr. Cobb's behavior was edgy or agitated, the troopers' conduct was appropriate and lawful.

3. The "Pick-up" Order

Trooper Seide was connected to his squad car's computer-aided dispatch (CAD) system, which returned an informational alert from the Ramsey County, Minnesota, Sheriff's Office. The informational alert, set to expire on July 31, 2023—that very day--identified Mr. Cobb as a person of interest wanted in connection with a felony order for protection violation.[264] While awaiting confirmation whether Mr. Cobb was to be arrested and delivered to the custody of the Ramsey County Sheriff's Office, Troopers Seide and Erickson discussed whether they should place Mr. Cobb in handcuffs to effectuate the Ramsey County pick-up order. Troopers Seide and Erickson verbally acknowledged that Mr. Cobb was likely "getting suspicious," given the increasing length of the traffic stop;[265] Trooper Seide suggested that, in order assuage Mr. Cobb's suspicions, Trooper Erickson "chat" with Mr. Cobb "about sushi" or "talk about something random" in order to make sure that Mr. Cobb is "chilled out."[266] The

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[258] Exh. 8, Trooper Seide Body Camera Footage at 01:57:00–01:58:30; Exh. 2, Report of Trooper Seide at 1.

[259] Exh. 10, Trooper Erickson Body Camera Footage at 01:53:40.

[260] *Id*. at 01:54:49.

[261] Exh. 8, Trooper Seide Body Camera Footage at 02:11:53–02:12:45.

[262] Exh. 8, Trooper Seide Body Camera Footage at 01:55:58, 02:11:53–02:12:45, 02:15:13–02:15:38, and 01:55:19.

[263] Exh. 10, Trooper Erickson Body Camera Footage at 01:58:00.

[264] Exh. 8, Trooper Seide Body Camera Footage at 02:06:50–02:07:00.

[265] *Id*. at 02:09:40–02:10:51.

[266] *Id*. at 02:09:40–02:10:51.

troopers' conduct, intended to de-escalate the situation given Mr. Cobb's alleged "agitated" state, was appropriate and lawful. Likewise, the "pick-up" order requesting that Mr. Cobb be arrested was also lawful.

4. The Failure to Formulate a Plan

Despite having sufficient time to formulate a plan for how to effectuate Mr. Cobb's potential arrest, Troopers Seide and Erickson failed to do so. In fact, they discussed what they were not going to do. For example, at approximately 2:00:40 am, Trooper Seide remarked to Trooper Erickson that Mr. Cobb is "kind of edgy." Trooper Erickson replied, "Oh, absolutely." Trooper Seide further remarked to Trooper Erickson that "I don't want to say 'grab a pair of [stop] sticks and get ready to throw them in front of the car if [the Ramsey County Sheriff does] want him, because I'm gonna have him step out . . . 'cause he might . . . get a little freaky."[267]

At around 2:11:45 am, Trooper Londregan arrived at the traffic stop in his own squad car and waited alongside Trooper Seide. Although Londregan had not interacted with Mr. Cobb himself, he was told by Seide that Mr. Cobb was "amped" and by Erickson that Mr. Cobb "had been nice to [him]."[268] Londregan's arrival was before the troopers approached the vehicle to effectuate the arrest, and he too failed to take the opportunity to formulate a plan for the arrest with his colleagues.

There were now three squad cars along Interstate 94, all three parked behind Mr. Cobb's vehicle. At approximately 2:15:22 am, having received verbal confirmation from Ramsey County of its request to arrest Mr. Cobb, Seide explained to Troopers Erickson and Londregan that Ramsey County "want[s Mr. Cobb] hooked up and brought down, so I'm just gonna go driver's side approach."[269] At approximately 2:15:37 am, without discussing anything more about options or alternative tactics, the three troopers walked in silence towards Mr. Cobb's vehicle.[270] The troopers did not say another word to one another between this time and when Trooper Londregan shot and killed Mr. Cobb.[271]

This decision to proceed in silence, without a plan, led to multiple tactical failures. The troopers either failed to consider their options or dismissed them with

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[267] *Id*. at 02:00:45–02:00:59.

[268] Exh. 8, Trooper Seide Body Camera Footage at 02:11:53–02:12:45; Exh. 10, Trooper Erickson Body Camera Footage at 02:14:02–02:14:31.

[269] Exh. 8, Trooper Seide Body Camera Footage at 02:15:22–02:15:30.

[270] Exh. 8, Trooper Seide Body Camera Footage at 02:15:37–02:15:44; Exh. 11, Trooper Londregan Body Camera Footage at 02:15:37–02:15:44.

[271] Exh. 8, Trooper Seide Body Camera Footage at 02:15:37-2:17:05.

little to no analysis. These options included a more considered discussion about the use of stop sticks. Rather than "throw them in front of the car," as Trooper Seide had phrased it while immediately rejecting the notion, a viable option apparently not considered by the troopers would have been to place the stop sticks in front of the rear tires, thus not exposing the troopers to the same dangers had they placed them in front of Mr. Cobb's car. This option is considered a best practice to prevent a stationary vehicle from fleeing a location, according to our expert, Chief Putney.[272]

Before attempting the extraction, the troopers could have also briefly reviewed their individual roles involved in a team extraction. Even though they had sufficient time to do so as it would have taken just a few seconds to clarify the responsibilities of each trooper, they did not. Sgt. Halvorson, MSP's use-of-force coordinator and Londregan's former Academy trainer, confirmed that the MSP Academy training covered identifying and assigning the roles that various troopers would play in a team extraction. During that training, the troopers were taught that the driver's side trooper should push the driver's head to one side, while the passenger side trooper (the "cover officer") should attempt to reach into the vehicle and unbuckle the seatbelt. As discussed elsewhere, Trooper Seide did not act in accordance with that training, and he claimed not to know about the technique of shoving the driver's head. As a consequence, Trooper Londregan's actions were affected, and he was not in a position to act as a cover officer consistent with his training.

The troopers also failed to discuss whether they should let Mr. Cobb drive away in the event that he refused to exit his vehicle. The car's engine was running. A reasonable trooper would have recognized the potential that Mr. Cobb would refuse to exit the vehicle, place the car in drive, and attempt to drive away. In fact, Trooper Seide himself acknowledged in his written report that he knew that "Cobb was still in physical control of running car [sic] that he could quickly put into drive and speed away . . . ." For that reason, the troopers could have discussed their options in the event Mr. Cobb put the gear shift into drive. They did not do so. Had they done so, the troopers would have likely recognized that they had Mr. Cobb's identity, they knew his address, and they (or a different agency) could arrest him at a later time. They had already determined he did not pose an immediate threat of harm to himself or any third party, which explains why they had not previously pulled their firearms and pointed them at Mr. Cobb. The lack of any discussion concerning this potential option—that is, allowing him to drive away and effectuate a later arrest, even if it would have required the approval of a supervisor—was a major tactical failure. [redacted] Unfortunately,

[272] Exh. 49, Kerr Putney Report, May 31, 2024, at 19.

[273] [redacted]

Sgt. Halvorson's Academy training did not cover or warn against extracting a driver from a moving vehicle in any sense, so there is no evidence that Seide or Londregan's actions contravened their training. Thus, because there was no legal requirement that Trooper Londregan formulate a plan or choose a different option, his actions in failing to do so did not amount to a criminal violation.

5. Mr. Cobb's Reactions to Officer Commands

At approximately 2:15:45 am, nearly twenty minutes after Trooper Seide last interacted with Mr. Cobb, Trooper Seide approached the front driver's side door of Mr. Cobb's car and immediately instructed Mr. Cobb to step out of the car. Mr. Cobb asked why, and Trooper Seide replied, "We have some stuff to talk about."[274] Mr. Cobb, with both hands raised, approximately shoulder height, with open palms facing outward, replied: "Every time y'all talk about, 'We have some stuff to talk about,' y'all take me to jail."[275] Trooper Seide persisted, stating, "Just take your keys out."[276] Mr. Cobb refused to step out of the vehicle, instead stating that he would call his attorney.

The two continued to engage in a back-and-forth exchange. Trooper Seide repeated his command that Mr. Cobb exit the vehicle, without divulging a reason. Mr. Cobb asked whether he was subject to a warrant, to which Trooper Seide replied "No, it's not a warrant, you need to step out."[277] Mr. Cobb replied: "Hold on, hold on, hold on . . . 'cause y'all finna get on some funny shit, y'all [need to] keep it a buck with me bro. But if y'all finna doing some funny shit with me, y'all can tell me right now."[278] At 2:16:28 am, Trooper Seide extended part of his left hand (with his palm facing upward) towards Mr. Cobb through the open driver's door window and stated: "Hand me the keys. Can you hand me the keys?" Mr. Cobb replied: "Hand you my keys?" to which Trooper Seide answered, "Hand me the keys to the vehicle."[279] In response, Mr. Cobb asked, "Why? Can y'all keep it a buck with me bro? You pulled me over for my headlights."[280]

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[274] Exh. 8, Trooper Seide Body Camera Footage at 02:15:48.

[275] *Id*. at 02:15:53.

[276] *Id*. at 02:16:16-02:16:19.

[277] *Id*. at 02:16:19-02:16:28.

[278] *Id*. at 02:16:28-02:16:30.

[279] *Id*. at 02:16:31-02:16:35.

[280] *Id*. at 02:16:35-02:16:41.

Trooper Seide replied: "We're already past that. So, like I said, you're gonna need to step out of the vehicle."[281] Mr. Cobb replied: "Ok, if we past that, then where are we at then?"[282] After additional back and forth, Seide responded, "Ok. You need to step out of the vehicle," and "I'm gonna explain it all when you step out. . . . This is now a lawful [arrest]. Hey, man, you've been super cool."[283]

Notwithstanding the failure to formulate a plan, Trooper Seide's efforts to de-escalate the situation to gain compliance through verbal communication were lawful and consistent with his training.

6. Opening the Passenger Door

Just as Trooper Seide told Mr. Cobb, "Hey, man, you've been super cool," Trooper Londregan opened the passenger side door of Mr. Cobb's car without warning. As previously described, the troopers had not discussed a plan with one another, and Londregan's move appeared to have surprised both of the other troopers, which is demonstrated by the fact that Erickson was looking completely away from Mr. Cobb's vehicle at that precise moment, and Seide himself has stated, on two separate occasions, that, "When Trooper Londregan opened the passenger door . . . I *decided* to open the driver's side door to *assist* with Mr. Cobb's apprehension and entered the vehicle." (emphasis added).[284] [285] In other words, it appears that Seide decided to act at that moment because of Londregan's unexpected move and believed—*wrongly*—that he would be assisting Trooper Londregan in the latter's effort to extract Mr. Cobb. However, the evidence does not support the claim that Londregan entered the vehicle to extract Mr. Cobb; he did not reach for Mr. Cobb's seatbelt, and he did not attempt to push Mr. Cobb out of the vehicle.

Prior to Trooper Londregan's arrival, the other troopers had been at the scene for approximately 20 minutes and had developed a rapport with Mr. Cobb. At this point, Londregan had been at the scene for only about five minutes and had stood at the passenger side door of Mr. Cobb's car for only one minute and 14 seconds. Londregan's precipitously unlocking and opening the passenger door of the running vehicle, without warning or signaling his intentions to the other troopers, was a dangerous tactical blunder, because it leads to the type of [redacted] reactions from drivers that [redacted]

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[281] *Id.* at 02:16:42-02:16:45.

[282] *Id.* at 02:16:45-02:16:47.

[283] *Id.* at 02:16:47-02:17:00.

[284] Exh. 2, Report of Trooper Seide at 4; *see* Exh. 27, BCA Investigative Interview of Trooper Brett Seide at 33.

[285] [redacted]

[redacted] Mr. Cobb, in fact, experienced when he immediately shifted the car into drive allowing it to lurch forward. Trooper Londregan's blunder also led to Trooper Seide opening his door and launching his torso into a running vehicle controlled by a now-surprised driver—an exercise of "poor judgment" by Seide, as noted by the HCAO's initial use of force expert, Jeff Noble.[286] Even so, Trooper Londregan's tactical failure did not amount to criminal conduct. As our expert consultant, Chief Putney, has advised, there is no requirement—in law, MSP policy, or MSP training--that troopers attempt to de-escalate the situation for a set period of time. Furthermore, Trooper Londregan was permitted to open Mr. Cobb's passenger side door in an effort to extract Mr. Cobb, even if there were multiple—and better—options available.

Trooper Londregan's options included continuing to allow Trooper Seide to de-escalate the situation, advising Trooper Seide that they should step back (in order to formulate a plan), advising Seide that he was going to unlock the door (or motioning to Seide and Erickson that he was going to do so if he was concerned about alerting Mr. Cobb as to his intention). Instead, Londregan opened the passenger door without warning. This appears to have prompted Mr. Cobb to place the car in drive, prompting Trooper Seide to attempt an extraction method that was not provided in training. Specifically, Seide failed to follow his training and push the driver's head away from him. In addition, he, rather than Londregan, attempted to unbuckle the driver's seatbelt, placing him in an extremely exposed and vulnerable position.

7. The Extraction

When Londregan first opened the passenger side door of Mr. Cobb's vehicle, he had not unholstered his weapon. At 2:16:59 am, less than one second after Trooper Londregan opened the passenger side door, Mr. Cobb reached the gear selector with his right hand and pulled it backwards, placing the car into drive.[287] At 2:17:00 am, Mr. Cobb's car lurched forward slightly and abruptly stopped.[288] Londregan (now standing by the open front passenger side door) and Seide (standing by the open driver side door) took steps forward and remained parallel to the sides of the car.[289] At 2:17:01 am, Mr. Cobb's car again lurched forward slightly and again abruptly stopped.[290] At

[286] Exh. 32, J. Noble Draft Report (Oct. 12, 2023) at 5.

[287] Exh. 11, Trooper Londregan Body Camera Footage at 02:16:59.

[288] Exh. 50, Trooper Seide Squad Car Camera Footage, Jul. 31, 2023, at 02:17:00.

[289] Exh. 11, Trooper Londregan Body Camera Footage at 02:17:00; Exh. 8, Trooper Seide Body Camera Footage at 02:17:00; Exh. 50, Trooper Seide Squad Car Camera Footage at 02:17:00.

[290] Exh. 11, Trooper Londregan Body Camera Footage at 02:17:01; Exh. 8, Trooper Seide Body Camera Footage at 02:17:01; Exh. 50, Trooper Seide Squad Car Camera Footage at 02:17:01.

around the same time, Seide began to enter the vehicle while Londregan remained outside the vehicle, reached with his right hand onto the right side of his duty belt and unholstered his service weapon.[291] At 2:17:03 am, Londregan pointed his service weapon at Mr. Cobb and yelled, "Get out of the car now!"[292]

At 2:17:05 am, within several tenths of a second after Trooper Londregan yelled the word "now," Mr. Cobb removed his right hand from the gear selector and lifted it in an upward motion to approximately the height of his own head. At this point, Trooper Seide was partially inside Mr. Cobb's Ford Fusion.

During this sequence, the troopers made multiple mistakes that led to the tragic shooting of Mr. Cobb. According to Sgt. Halvorson, the MSP academy training did not include teaching troopers how to extract a driver from a vehicle that is in drive and the driver's foot is on the brake.[293] This scenario is not taught, again according to Sgt. Halvorson, because an extraction under these circumstances would be deemed "too risky."[294] That said, the training failed to address that such a scenario should be avoided. The academy simply provides no training and issues no policy guidance for this situation. Perhaps as a result, the troopers failed to consider the inherent risks to themselves and the driver in performing an extraction under these circumstances, just as they seemingly failed to consider what would have happened to passersby if they had actually removed Mr. Cobb from a vehicle while that car was still in drive on an interstate highway. Nevertheless, the troopers' decision to attempt to extract Mr. Cobb while the car was in drive—while dangerously and fatally misguided—was not contrary to their training or any policy in place at that time.

8. Trooper Londregan's Shooting of Mr. Cobb

At 2:17:05 am, just after yelling, "Get out of the car now!" Trooper Londregan fired two shots at Mr. Cobb, which caused his death minutes later.[295] Both troopers were pulled forward by the vehicle's momentum, which caused them to fall to the ground.

Minnesota Statute § 609.066(2), authorizes peace officers acting in the line of duty to use deadly force only if an objectively reasonably officer would believe, based on the

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[291] Exh. 11, Trooper Londregan Body Camera Footage at 02:17:01; Exh. 50, Trooper Seide Squad Car Camera Footage at 02:17:01.

[292] Exh. 11, Trooper Londregan Body Camera Footage at 02:17:03.

[293] *See* Exh. 26, BCA Investigative Interview of Sgt. Jason Halvorson, Nov. 1, 2023, at 18.

[294] *Id.*

[295] Exh. 11, Trooper Londregan Body Camera Footage at 02:17:04; Trooper Seide Squad Car Camera Footage at 02:17:04.

totality of circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary:

1. To protect the peace officer or another from death or great bodily harm, provided that the threat:
    i. can be articulated with specificity;
    ii. is reasonably likely to occur absent action by the law enforcement officer; and
    iii. must be addressed through the use of deadly force without unreasonable delay; . . .[296]

As explained elsewhere, the troopers' missteps helped to create a deadly situation. First, the troopers could have continued to attempt to de-escalate. Second, they could have developed an extraction plan. Third, they could have considered options other than extraction. Fourth, they could have considered the use of stop sticks on the rear tires. Fifth, Trooper Seide could have remained outside of Mr. Cobb's vehicle as it began to lurch forward. That said, none of these options were required by law, policy, or training, according to the expected testimony of MSP academy trainers and the State's own experts. Therefore, we must necessarily look at the moment that Trooper Londregan shot Mr. Cobb to determine if he was authorized to do so under the Minnesota statute.

The evidence at trial would likely show that at the time of the shooting, Trooper Seide was partially inside Mr. Cobb's vehicle as it began to move forward, creating the risk that Seide may have been dragged or runover. Recently, through counsel, Londregan provided a statement that, in relevant part, asserted that he believed Mr. Cobb, at the moment immediately before the shooting, was reaching for Trooper Londregan's weapon.[297] Accordingly, we would anticipate that Trooper Londregan would testify at trial that he believed it was necessary for him to shoot Mr. Cobb to protect Trooper Seide and himself from death or great bodily harm. According to our use of force expert, "a reasonable officer may have made the same decision as Trooper Londregan if his/her partner's poor tactics placed him/her in such a precarious position."

As stated in his "draft report" provided on April 9, 2024, use of force expert Jeff Noble used similar reasoning in his explanation of what a reasonable officer may have believed:

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[296] Even with the benefit of hindsight, it will remain unknown whether Trooper Londregan's shooting of Mr. Cobb changed what would have otherwise happened to both Trooper Seide and himself.

[297] Regardless of the validity of this claim, the State would have no evidence at trial to contradict Trooper Londregan's testimony. The body worn camera video is unhelpful, as Mr. Cobb's hand is blocked by Trooper Londregan's extended arms.

> While Trooper Seide used poor judgment in his attempt to extricate Mr. Cobb from the vehicle, especially after Mr. Cobb drove the vehicle forward a few feet before Trooper Seide leaned into the vehicle, that decision was made by Trooper Seide – not Trooper Londregan. Trooper Londregan was forced to react in less than three seconds from the time that Trooper Seide leaned into the vehicle until the time he used deadly force. Police officers who make critical decision in dangerous situations should be provided some deference even if there is a plausible claim that the situation could have been handled differently or better. A reasonable police officer in these circumstances could believe that Trooper Seide was at imminent threat of death or serious bodily injury as he was leaning inside the vehicle as Mr. Cobb began to accelerate.

Given the recent sworn declarations from MSP trainers and an MSP policymaker, which highlight the insufficient training and policies provided by the MSP academy, Trooper Londregan's proffered testimony, and the State's own experts' opinions, we believe there is no likelihood that the State could defeat the defendant's affirmative defense and prove its case on any of the three charges beyond a reasonable doubt.

B. The Ethical Standards for Prosecutors

Because of the substantial power prosecutors wield over the life and liberty of those living in this country, a variety of organizations have developed specific ethical standards applicable to prosecutors. The most well-known and widely cited source for those ethical obligations is the American Bar Association's Criminal Justice Standards for the Prosecution Function ("ABA Standards"), which has gone through four editions, with the most recent version published in 2017.[298]

The most relevant part of the Standards for the Prosecution Function for this matter involves the decision to bring and maintain charges against a defendant. The full text of Standard 3-4.3 that governs charging decisions is as follows:

> (a) A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that

[298] One measure of the authority of the Standards is that they have been cited countless times by the United States Supreme Court and other courts throughout the country. As of 2009, they had been cited by the Supreme Court more than 120 times. Exh. 51, Martin Marcus, *The Making of the ABA Criminal Justice Standards: Forty Years of Excellence*, 23 Crim. Just. 10, (2009), https://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/makingofstandards_marcus.pdf.

admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice.

(b) After criminal charges are filed, a prosecutor should maintain them only if the prosecutor continues to reasonably believe that probable cause exists and that admissible evidence will be sufficient to support conviction beyond a reasonable doubt.

(c) If a prosecutor has significant doubt about the guilt of the accused or the quality, truthfulness, or sufficiency of the evidence in any criminal case assigned to the prosecutor, the prosecutor should disclose those doubts to supervisory staff. The prosecutor's office should then determine whether it is appropriate to proceed with the case.

(d) A prosecutor's office should not file or maintain charges if it believes the defendant is innocent, no matter what the state of the evidence.[299]

The most relevant provision to the Special Prosecutors' work is subsection (b) above, which establishes the standard for maintaining a prosecution once it has been commenced.

In addition to the ABA Standards, other governmental entities and organizations have established ethical standards for commencing and continuing prosecutions that are fully consistent with the ABA Standards.

The Principles of Federal Prosecution ("Principles") govern the actions by prosecutors in the United States Department of Justice (DOJ).[300] Like the ABA Standards, the Principles establish that probable cause is the standard for initiating a prosecution in the federal system, but that the prosecution should be continued only if "the admissible evidence will probably be sufficient to obtain and sustain a conviction."[301] While largely tracking the principles embodied in the ABA Standards, the DOJ standards address various other considerations, including whether there is a sufficient federal interest to warrant the federal government's involvement. But as to

[299] Exh. 52, American Bar Association, Fourth Edition (2017) of the Criminal Justice Standards for the Prosecution Function, Standard 3-4.3 Minimum Requirements for Filing and Maintaining Criminal Charges, (last accessed May 31, 2024, 4:00 PM), https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition.

[300] Exh. 53, U.S. Dep't of Just., Justice Manual, Title 9: Criminal 9-27.000 – Principles of Federal Prosecution, https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution#9-27.001.

[301] Exh. 54, U.S. Dep't of Just., Justice Manual, Title 9: Criminal Sections 9-27.200 and 9-27.220 - Principles of Federal Prosecution, https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution#9-27.220.

the standard of probable cause and the minimum standard for continuing a prosecution, there is no separation between the ABA Standards and the DOJ standards.

The same is generally true for the standards for pursuing a prosecution adopted by the National District Attorneys Association (NDAA). As to the decision to prosecute, the NDAA standards state the following:

> 4-2.2 Propriety of Charges
>
> A prosecutor should file charges that he or she believes adequately encompass the accused's criminal activity and which he or she reasonably believes can be substantiated by admissible evidence at trial.

However, unlike the ABA Standards and the DOJ standards, the NDAA standards do not explicitly require the duty to continuously evaluate the evidence and be prepared to discontinue the prosecution if new evidence comes to light, which is the obligation of a prosecutor on any level—whether federal, state, or local.[302]

C. Special Prosecutors' Unanimous Recommendation

In this case, the standards for initiating a prosecution were met and the charging decision was an appropriate exercise of prosecutorial discretion. The HCAO, together with the BCA, conducted a thorough investigation in the face of an inexcusable lack of cooperation from personnel in the Minnesota State Patrol, which caused the investigation to take longer than necessary. Trooper Londregan's counsel failed to present any evidence during the six-month period prior to the January 24, 2024, filing of charges that might have affected the HCAO's assessment of the strength of the evidence against Trooper Londregan. However, in the four months since charges were filed, a significant amount of new evidence has been submitted by the defense, including the declarations of several prospective expert witnesses and witnesses involved directly in Trooper Londregan's training that Trooper Londregan's use of deadly force was justified under all of the circumstances.

A significant factor in our conclusion that the charges cannot be proven beyond a reasonable doubt is the opinion of the State's own expert, former Charlotte-Mecklenburg Chief of Police Kerr Putney, whom we have worked with on use of deadly force cases and has a balanced and sophisticated perspective on such cases. Chief Putney's review of the relevant evidence, including the newly provided evidence, has caused him to conclude that, even though the tactics used by Trooper Londregan

[302] Exh. 55, Nat'l Dist. Att'y Ass'n, National Prosecution Standards (3rd Ed.), https://ndaa.org/wp-content/uploads/NDAA-NPS-3rd-Ed.-w-Revised-Commentary.pdf.

and his colleagues were profoundly flawed—and contributed to a disastrous result—Trooper Londregan's action in firing the fatal shots at Ricky Cobb was likely justified at the moment he did so.[303]

Accordingly, the combination of the evidence submitted by the defense since charges were brought, our own independent examination of the evidence, and multiple use of force experts' opinions and analysis have convinced us that the State now would likely not disprove Trooper Londregan's claim the shooting was justified beyond a reasonable doubt. After reviewing the new evidence, the County Attorney agrees.

V. Recommendations

Recommendation No. 1

The Minnesota Commissioner of Public Safety must ensure that in investigations involving deaths caused by the use of deadly force, or other deaths that occur to individuals in the custody of State law enforcement personnel, prompt and complete cooperation be provided to the Bureau of Criminal Apprehension.

We understand that MSP members did not provide prompt and full cooperation to the Bureau of Criminal Apprehension in this investigation. Lack of such cooperation is unacceptable, especially in cases such as this where the need to ensure the public's trust in the speed, objectivity, and independence of the investigation is paramount. We recommend that the Commissioner consider authorizing an internal affairs investigation into the cooperation—or lack of cooperation—by MSP members in this matter. More broadly, we recommend that the Commissioner issue a directive requiring full and prompt cooperation by any and all personnel under his supervision with BCA investigations of law enforcement misconduct. We do not suggest that this directive include compelling any involuntary statements by officers involved in uses of force.

Recommendation No. 2

The Minnesota State Patrol should require its members who witness uses of force to submit written reports promptly and provide voluntary interviews within 48 hours of the event.

[303] The State's initial use of force expert, Jeff Noble, also explained that a reasonable officer in Londregan's position may have believed that Trooper Seide was in imminent threat of death or serious bodily injury however, he stated that he was unable to complete his analysis without more information regarding Londregan's version of events.

We recommend that the BCA modify its current policy, MSP General Order 23-10-027, which simply requires troopers who witness the use of force to submit "field reports," to mandate the submission of a written report by the end of the trooper's tour of duty and to require members who are willing to provide a statement, to do so within 48 hours of the incident. [304] Here, MSP permitted troopers Seide and Erickson to wait 8 and 16 days (respectively) before submitting reports of the relevant incident involving Ricky Cobb. Waiting so long, and allowing lawyers for the law enforcement personnel to draft the reports for their clients, is not an efficient or effective method for gathering first-hand critical information about the incident being investigated. The reports and interviews of officers who witness uses of force should be provided promptly. Participants in the event being investigated who have a good faith basis for asserting their Fifth Amendment privilege would, of course, be permitted to exercise that right, until and unless they are compelled administratively to participate in the interview.

Recommendation No. 3

The Minnesota State Patrol should conduct an administrative investigation of this matter to determine whether any agency policies were violated and whether any changes in policy or training are necessary to minimize the chances that this type of incident happens again.

We recommend that the appropriate components of the MSP conduct a detailed administrative investigation of the events of July 31, 2023, involving the three troopers and Ricky Cobb. Across the nation, in cases that are declined for prosecution, parallel

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[304] Other law enforcement agencies across the country have implemented such policies. For example, Baltimore's use of force investigation police provides:

> Interviewing Law Enforcement Officers (Level 3 Use of Force)
>
> 17. All members involved in a Level 3 Use of Force incident shall be granted all applicable rights under the law. Members of SIRT and/or Homicide shall not solicit counsel for the member. 18. A SIRT member shall ask the member involved if they are willing to provide a voluntary statement.
>
> 18.1. If the member is willing to provide a statement, SIRT shall administer the Miranda advisement immediately.
>
> 18.2. If a statement is compelled, it shall be taken in accordance with the Maryland Police Accountability Act (MPAA) and Garrity.
>
> 19. All interviews shall be recorded (audio and/or video) and take place as soon as practical.
>
> 20. SIRT shall ensure the member files a Use of Force Statement – Involved Officer, Form 96A, (see Appendix A) prior to the conclusion of the member's shift/tour of duty. The report shall be submitted to SIRT.

administrative investigations are conducted by the agency that employs the personnel involved in the incident. The goal of such an administrative investigation is to determine whether existing policies may have been violated, and whether the incident suggests the need for changes in policy, training, and/or tactics. The results of such administrative investigations involving death should be made public.

Recommendation No. 4

The Minnesota State Patrol should place greater emphasis on de-escalation in its use of force policies and training.

The Minnesota State Patrol's use of force policy is appropriate and helpful. General Order 23-10-027 was most recently revised in 2023 and, coincidentally, became effective the same day that Ricky Cobb was killed. It defines de-escalation as follows:

> K. De-Escalation
>
> Taking action or communicating verbally or non-verbally during a potential use of force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include, but is not limited to, the use of such techniques as command presence, warnings, verbal persuasion and tactical repositioning.

The classic elements of de-escalation are to use time, cover, and distance to minimize the need for any force to be used, and especially deadly force. Because of the critical role that de-escalation can and should play as a matter of policy, training, and practice, we recommend giving de-escalation greater prominence in the structure of the policy itself, preferably on page one under Guiding Principles, in addition to its current listing under Definitions.

De-escalation needs to be a guiding principle on paper and in practice. Although Troopers Seide and Erickson tried to defuse the situation through engaging Mr. Cobb in discussions, there is no evidence that any consideration was given to the option of letting Mr. Cobb go, which would have been the ultimate de-escalation. The troopers had Mr. Cobb's license, they knew where he lived, and they were in a perilous situation on a highway with significant oncoming traffic. Troopers should understand that in cases like this, deferring an arrest to a time and place that is a safer option, and is

perhaps the best and safest option.[305] The principles of de-escalation need to receive substantial emphasis during training.

Recommendation No. 5

The Minnesota State Patrol's use of force policy should be amended to prohibit shooting into or from a moving vehicle.

We recommend that the Minnesota State Patrol's use of force policy be amended to prohibit shooting into or from a moving vehicle. At present, the Minnesota State Patrol's Vehicle Pursuit policy, General Order 22-20-012, provides as follows:

> VIII. SHOOTING FROM OR AT A MOVING VEHICLE
> A. Members shall not shoot from or at a moving vehicle, except when deadly force is authorized pursuant to General Order 10-027 (Use of Force).
> B. Members should make every effort not to place themselves in a position that would increase the possibility that the vehicle they are approaching can be used as a deadly weapon against members or other users of the road.
> C. Firearms shall not be utilized when the circumstances do not provide a high probability of striking the intended target or when there is substantial risk to the safety of other persons, including risks associated with vehicle crashes.

The concern about the risks of shooting from or into a moving vehicle would seem to be squarely applicable to this case—but this was not a vehicle pursuit and therefore the prohibition was not applicable. Many law enforcement agencies around the country incorporate the prohibition into their use of force policies and provide very narrow

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[305] For an example of a more detailed de-escalation policy, see the use of force policy recently adopted by the Phoenix Police Department, which states the following:

"(1) Whenever possible, employees shall attempt to avoid the Use of Force by using DeEscalation Techniques, which include the following: • Verbal persuasion, commands, and warnings; • Slowing down the pace of an incident, including waiting; • Using barriers; • Creating distance between the employee and the threat; • Withdraw from the scene; and • Requesting additional resources such as specialized units, CIT trained employees, behavioral health care providers, or negotiators."

Phoenix Police Department, Operations Order 1.5, *Use of Force,* (Mar. 28, 2024), www.phoenix.gov/policesite/Documents/1.5%20Use%20of%20Force%202023.pdf. *See also* the de-escalation provisions in the Chicago Police Department's use of force policy. Chicago Police Department (CPD), General Order G03-02, *Use of Force*, (Mar. 28, 2024), https://home.chicagopolice.org/wp-content/uploads/2017/05/G03-02_Use-of-Force_TBD.pdf.

exceptions to the prohibition, which would apply to the facts of this case.[306] We recommend that the Minnesota State Patrol do so as well.

Recommendation No. 6

The Minnesota State Patrol should sharpen its policies and training regarding vehicle extractions, with greater emphasis on the risks involved.

We recommend that MSP clarify its policies and training regarding vehicle extractions. As this case dramatically demonstrates, such extractions are inherently dangerous for troopers and subjects. MSP should consider drafting a policy specifically addressed to vehicle extractions—both one trooper and two trooper extractions—with clearer guidelines on whether, when, and how to perform such extractions and specifically incorporating requirements for de-escalation and the need to assess the risks and benefits of attempting such an extraction. Training, especially cadet recruit training, should include multiple scenarios, with trainers emphasizing that in certain circumstances, the balance of risks and benefits will dictate that the subject be released, especially if the person does not pose an immediate threat and where the person's future whereabouts are known or can easily be determined.

Recommendation No. 7

The Minnesota State Patrol should adopt and implement the Integrating Communications, Assessment, and Tactics™ (ICAT) training curriculum currently being taught in law enforcement agencies throughout the country.

ICAT is an evidence-based approach to use of force training developed by the Police Executive Research Forum (PERF), an independent research organization that has focused on critical issues in policing for almost 50 years. ICAT has been shaped by law enforcement personnel throughout the country and has been implemented in law enforcement agencies across the United States. Its training program equips law enforcement personnel with the options, tools, and skills to deal with a wide range of situations, make safe and effective decisions, and learn from past experience. Although

[306] The Metropolitan Police Department (MPD) of Washington DC has such a broad prohibition and narrow exception: "Members shall not discharge a firearm either at or from a moving vehicle unless deadly force is being used against the member or another person. For purposes of this order, a moving vehicle is not considered deadly force except when it is reasonable to believe that the moving vehicle is being used to ram, or attempt to ram, a crowd of people with the intent to inflict fatal injuries. Members shall avoid tactics that could place them in a position where a vehicle could be used against them." Metropolitan Police Department (MPD) District of Columbia, GO-RAR-901.07, *General Order: Use of Force*, (Mar. 28, 2024), https://go.mpdconline.com/GO/GO_901_07.pdf.

originally designed to focus on dealing with persons in mental health crisis, its value extends to a broad range of situations, including this one: It requires the systematic assessment of the situation, including threats and risks; the identification of options; and the careful selection of the best course of action.[307]

Recommendation No. 8

The Minnesota State Patrol should build a training module for recruits and experienced troopers centering on this incident to learn from the mistakes and poor tactics that were used.

Mr. Cobb's death was tragic. It would be a compounded tragedy if law enforcement personnel failed to learn from this event. To that end, we recommend that the MSP create a training module focused on the decisions made by the troopers in this case. Our experience is that careful analysis of such cases that have arisen in the agency whose members are being trained has far more impact than episodes that have occurred elsewhere.

VI. Conclusion

Ricky Thomas Cobb II should be alive today. His death, in the early morning hours of July 31, 2023, as the result of an encounter with three Minnesota State troopers, was entirely avoidable. It was precipitated by the most minor of traffic violations—the failure by Mr. Cobb to turn on his vehicle lights at night. Less than 45 minutes after that innocuous traffic stop, Ricky Cobb was lying dead on the median of I-94 from two gunshots fired at close range by Ryan Londregan.

We have concerns about many of the events leading up to Mr. Cobb's death and those that unfolded thereafter: the tactics employed by the three troopers, the method by which they tried to extract Mr. Cobb from the vehicle, the lack of cooperation with the BCA's investigation by MSP members, and the delayed in-court proffer of Trooper Londregan's account which could have been provided months earlier before a charging decision had been made. But in the end, based on our independent review of all of the evidence provided to us, including the views of multiple use of force experts, we have concluded that there is insufficient evidence to defeat Londregan's affirmative defense and prove any one of the three charges in the Complaint beyond a reasonable doubt. That conclusion compels our recommendation that the charges against Ryan Londregan be dismissed.

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[307] Police Executive Research Forum, Integrating Communications, Assessment, and Tactics (ICAT), *A Training Guide for Defusing Critical Incidents,* (last visited May 31, 2024), https://www.policeforum.org/icat-training-guide.

EXHIBIT 1

PLEASE NOTE:

Grand jury materials are protected from public disclosure under Minnesota Rule of Criminal Procedure 18.07.

On June 28, 2024, the Hennepin County Attorney's Office (HCAO) asked the court for permission to disclose the grand jury transcript to the public.

On July 19, 2024, the court denied that request. For that reason, the HCAO is not allowed to release the grand jury transcript to the public and cannot include transcript excerpts in the exhibit included here.

EXHIBIT 2

https://mnbca.sharefile.com/share/view/s5f4e656cfec643e69503d04d573a7eb2/fod1c799-db89-48ab-a878-1e4d19679c64

From home page: Documents - > 2023-724 MSP UDF-Cobb Redacted PDF. Pages 402-405

PRELIMINARY:
On July 30, 2023, I Trooper Brett Seide 160 was working the 2100-0700 shift in the 4580 Station of the 2500 District for the MN State Patrol. I was on routine patrol in my fully marked State issued B class squad car #49081. Weather was clear skies and roads were dry.

INITIAL OBSERVATION:
I was positioned stationary on ISTH 94 facing northbound in the median near Broadway Ave. At approximately 0150, a silver/grey Ford Fusion passed my location with no rear lights illuminated. I then pulled out of the median and began to follow the vehicle northbound on ISTH 94 from Broadway Ave. As I closed the distance to the vehicle, I could read the displayed Minnesota license plate DBF402. I entered the information into my CAD system and began to close the distance behind the vehicle.

STOP:
I then activated my squad car's emergency lights at ISTH 94 and Dowling Ave due to the vehicle continuing to drive in the dark without its lights on. The vehicle yielded and pulled to the right shoulder just north of the Dowling Ave bridge. As the vehicle stopped, CAD informed me of a critical hit. I then advised dispatch via radio that I acknowledged the hit. I then exited my squad and approached the vehicle on the passenger side and noted one occupant in the driver seat.

FACE-TO-FACE CONTACT:
As I reached the passenger side window the driver rolled down the passenger window. I advised the driver who I was and asked for his driver's license and proof of insurance. The driver provided his driver's license, and I noted a VOID stamp on the license from the DMV. The driver also provided me with the DMV papers to go with the license. He did not provide proof of insurance.

The male driver was identified by his Minnesota DL as (Ricky Thomas Cobb II 05/05/1990). I could tell that Cobb had a defensive nature and appeared to be agitated. Cobb asked why he was stopped, and I told him because his lights were not on. After this, Cobb immediately went to the light instruments dial and turned on the lights. Cobb said that he must have hit the light dial with his knee to explain why the lights were not on. I asked additional questions about where he was coming from and where he was going. Cobb said he was coming from Crave restaurant.

While speaking with Cobb I could see an ashtray with one green leafy substance. Based on my training and experience, I believed that to be a piece of marijuana. I asked Cobb whether he had consumed any alcohol or illicit street substances, including marijuana. Cobb told me he had nothing to drink or smoke. We continued to have a short conversation before I returned to my squad car to run his license. Trooper Erickson arrived at the traffic stop as backup while I was speaking with Cobb.

DL CHECK:
While looking at my CAD, I clicked on the critical information section which provided an informational alert (KOPS) on the vehicle. I could see the informational alert was from Ramsey County regarding a felony OFP violation. The alert requested the suspect to be detained and to contact Ramsey County. The alert also identified the person of interest as Ricky Cobb II. I confirmed that the KOPS information matched the name and date of birth with the person who was driving Ford Fusion that I had stopped. I entered Cobb's name into the call and received another critical alert advising that Cobb was the person of interest.

I advised 2500 dispatch that this was the person of interest in the KOPS alert and asked them to notify Ramsey County to determine what Ramsey County wanted me to do with Cobb. I waited for dispatch to contact Ramsey County. I requested Trooper Erickson to go

to Cobb and keep him calm while I waited for Ramsey County to get back to me. While waiting, Trooper Londregan arrived on the scene as additional backup. I advised Trooper Londregan of Cobb's demeanor that I had observed earlier.

After approximately 5 to 10 minutes, a Ramsey County Duty Sergeant called me regarding Cobb. The Duty Sergeant confirmed that the KOPS information was still correct and requested me to make the arrest of Cobb. I confirmed that Ramsey County had a case number and was given Case No. 039039.

SECOND APPROACH:

I exited my squad car and informed Troopers Erickson and Londregan that we were authorized to make an arrest. I told my partners that I would conduct a driver's side approach. Trooper Londregan made a passenger side approach. Trooper Erickson was behind me on the driver's side to provide support. At the driver's side window, I asked Cobb to step out of the vehicle. Cobb became verbally defiant and was not complying with my requests. I continued to ask Cobb to exit the vehicle with little effectiveness. I attempted to open the driver's side door without Cobb noticing and I could tell the door was locked. In a calm and peaceful manner, I continued to request Cobb to exit the vehicle voluntarily. To make the scene safer for my safety as well as the safety of my partners, I asked Cobb to hand me the keys to his car. I wanted to remove the vehicle as a possible weapon that could be used to hurt or kill my partners and I or others on the road if Cobb decided to flee.

I tried to keep Cobb calm by asking politely for him to comply with my requests. Although I had done a brief visual inspection of the car as I stood next to his driver's door, I could not confirm whether there might be a gun or some other weapon in the car that could be used against me or my partners. Cobb responded by repeatedly asking me "why" and he refused to shut off the vehicle or exit the vehicle.

As we spoke, Cobb became more agitated as I peacefully continued to request his compliance with my requests. He continued to question why I was requesting him to get out of the car. Cobb started waiving his hands to emphasize his points. He continued to argue with me. I then advised him that my request was a lawful order. Throughout my interaction with Cobb, I tried to stay calm and avoid in-depth details with him in order to keep him calm and avoid the possibility of Cobb fleeing or using his car to hurt myself of my partners. My goal was to get him out of the car in an effort to remove the vehicle as one of the potential dangers we were presented with at that time. I noted that Cobb's deflection of requests and failure to make an attempt to comply were consistent with someone who is preparing to flee or fight.

I then observed Trooper Londregan open the passenger door and the lights illuminated the interior of the vehicle. I then started to open the driver's door. Cobb then reached for the gear shifter and put the vehicle into drive. I knew at this time Cobb was actively making an attempt to flee, escalating the event. The vehicle lurched forward as I was opening the driver's side door.

I entered the vehicle to physically remove Cobb from the vehicle and with my upper body now inside of the vehicle, I attempt to gain physical control of Cobb. At the same time, I witnessed Trooper Londregan enter the vehicle on the passenger side with his gun drawn and pointed at Cobb. Due to my close proximity to Cobb, I decided not to draw my service weapon because I did not want to introduce my gun into a physical altercation with him as I

was afraid that he could grab my gun and use it against me or my partners. Trooper Londregan was at a safe enough distance to draw his weapon. My intention was to keep him from fleeing or doing something to hurt me or my partners.

At this time, I heard Trooper Londregan yell at Cobb to "get out of the car now." I then could feel the vehicle accelerate forward. As the vehicle accelerated, I started feeling myself getting pulled with the vehicle. I feared for my safety and my life as Cobb accelerated with me half inside the vehicle. My upper torso was inside the car while my legs and feet were outside. As the vehicle increased speed I tried run alongside so as not to fall and get run over. At that time, I knew that Trooper Londregan and I were in danger of being run over by Cobb's car, being hit by an oncoming car on the highway, or otherwise being dragged away at a high rate of speed. Any of these scenarios were extremely dangerous and would likely lead to serious injuries or death to of any of us. During this time, I heard at least one gunshot. I continued to try and maintain my balance as Cobb accelerated with the hopes of apprehending him. However, Cobb continued to speed up and eventually I lost my footing and fell violently to the ground. After hitting the ground, I rolled head over heels at least one time—suffering minor injuries.

PURSUIT:
I then got to my feet and ran after the vehicle. After a few seconds, I realized I would not be able to catch the car on foot, so I returned to my squad in order to continue the pursuit. I then got into my squad, activated my squad's forward facing emergency lights and siren. I began my pursuit and caught up to the vehicle at ISTH 94 and 42nd. I radioed dispatch about Cobb's position. I could see Cobb's vehicle grinding against the center concrete median. I closed the distance with my squad car and intentionally contacted the rear quarter panel of Cobb's vehicle in an attempt to stop it. At this time, I noticed Trooper Londregan contact the front quarter panel, securing it against the wall.

I exited my squad car and jumped over the hood to support Trooper Londregan. I entered the vehicle from the passenger side and noticed the Cobb appeared to be unconscious. I asked Trooper Erickson for lethal cover as I was untangling Cobb from his seat belt. Trooper Londregan entered the back seat and assisted me with extracting Cobb from the vehicle. After removing Cobb from the vehicle, he was laid onto the pavement with his chest facing up. My partners and I began life saving measures on Cobb. Cobb had some agonal breathing at times. I felt for a pulse and did not feel one. I performed CPR on Cobb. Shortly thereafter, another Trooper brought up an AED but no shock was advised; so no shock was given. I continued CPR on Cobb until other officers arrived on the scene to render aid.

POST INCIDENT:
Troopers Londregan and Erickson and I were escorted away from Cobb pursuant to critical incident protocol. I was later transported by Minneapolis Police back to Minnesota State Patrol's District Office in Golden Valley, MN.

SUMMARY:
In sum, I stopped Cobb's car for not having his lights on at dark. [redacted]. I confirmed with Ramsey County that they wanted him detained and brought in for questioning. At this point, I was legally authorized to arrest Cobb, which is what I attempted to do.

I made numerous requests of Cobb in a peaceful and non-threatening manner to get him to exit his vehicle. I did not tell him specifically that I was planning to arrest him because he was already visibly agitated and argumentative, and I did not want to elevate this situation to a dangerous or hostile level. While standing at the driver's door repeatedly requesting Cobb to exit his car and to shut off his car, I was aware of several potential dangers that existed based on my training, education and experience, including:

- That Cobb was still in physical control of running car that he could quickly put into drive and speed away- putting law enforcement and others on the roadway at serious risk.
- That Cobb may use his car as a weapon against me and my partners.
- That Cobb may have a gun or other weapon in his car that could be used against me and my partners.
- That Cobb had at least one prior violent crime on his record suggesting that he may have a history of being violent.
- That we were standing on the side of a major interstate highway with traffic passing by at high rates of speed that could hit one of us if a physical altercation was to take place with Cobb.
- That Cobb was non-compliant to my peaceful requests and was showing a growing level of resistance and hostility which could quickly escalated to violent and intentional behavior.
- When Cobb shifted the vehicle into drive, I knew he was attempting to flee.
- While being pulled by the vehicle as it was accelerating Trooper Londregan and I were at risk of great bodily harm or death.

I had all of this in mind when Trooper Londregan opened the passenger door and the lights inside car turned on. I decided to open the driver's side door to assist with Cobb's apprehension and entered the vehicle. Cobb put the car in drive and the car lurched forward. It was clear to me at this time that Cobb was not willing to voluntarily exit the vehicle. Trooper Londregan gave Cobb a strong verbal command to get out of the car. As I got closer and more entangled with Cobb, he began to accelerate, and I felt my body being pulled forward against my will along with the forward momentum of the car. I immediately felt like I was in danger of being hurt or killed by falling underneath the car or being hit by an oncoming car if Cobb was able to continue to accelerate in his attempt to flee. Trooper Londregan was in a better position than I was to use necessary force to get Cobb to stop the threat against myself and Trooper Londregan. It was reasonable to believe that Cobb was going to speed away with no regard for the safety of the public, myself, or Trooper Londregan.

Cobb's conduct was terrifying, dangerous, and lethal force was needed before he could kill me and Trooper Londregan. Cobb posed an enormous threat to public safety.

EXHIBIT 3

https://mnbca.sharefile.com/share/view/s5f4e656cfec643e69503d04d573a7eb2/fod1c799-db89-48ab-a878-1e4d19679c64

From home page: Documents - > 2023-724 MSP UDF-Cobb Redacted PDF. Pages 657-659

On 07/31/2023, at approximately 0150 hours, I was working my regular scheduled shift in the West Metro District of the Minnesota State Patrol.

I was sitting stationary observing traffic that was coming onto northbound ISTH 94 from downtown Minneapolis. I observed a black passenger car that was not displaying tail lights approaching northbound ISTH 94 from 4th Street. Trooper Seide, who was also positioned at the same location, left his position in an attempt to stop the vehicle. A short time later, dispatch advised Trooper Seide that there was an informational alert in regards to the registered owner of the vehicle. I headed towards Trooper Seide's traffic stop location to provide assistance.

When I arrived, I observed Trooper Seide had the vehicle stopped at the location of northbound ISTH 94 near Dowling Avenue in the city of Minneapolis. I approached the vehicle and observed Trooper Seide was already speaking with the driver. The vehicle was a gray Ford Fusion bearing Minnesota license plate (DBF402).

Trooper Seide was positioned on the passenger side of the vehicle. I approached the subject vehicle on the passenger side and began to look inside the vehicle. I then repositioned to the driver's side of the vehicle to get a better view inside of the vehicle**.** This is common practice to ensure there are no visible weapons or contraband inside that would be hard to see from the passenger side of the vehicle.

Trooper Seide identified the driver by his Minnesota driver's license as RICKY THOMAS COBB II (05/05/1990). After Trooper Seide was finished obtaining the driver's information, myself along with Trooper Seide returned back to his patrol vehicle.

After Trooper Seide entered COBB's information into the computer, it was confirmed that COBB was the registered owner of the vehicle. It was also confirmed that the information alert was for COBB. The information alert stated that COBB was the subject of an investigation for a Felony Order for Protection Violation in Ramsey County. Dispatch advised Trooper Seide that a Ramsey County Deputy would give him a call.

Due to the amount of time it took for Trooper Seide to receive the phone call from Ramsey, I returned to COBB's vehicle. I explained to COBB that we had to run some information through dispatch that we were unable to run ourselves. I spoke with COBB for a short time before returning back to Trooper Seide's patrol vehicle. When I returned, I observed Trooper Londregan #532 had arrived on scene.

Trooper Seide informed Trooper Londregan and I that Ramsey County wanted a hold placed for the violation. I approached the driver's side of the vehicle directly behind Trooper Seide. Trooper Londregan approached the vehicle on the passenger side.

While listening to Trooper Seide ask COBB to step out of the vehicle, it became apparent that COBB was not listening to commands. Trooper Seide also asked COBB to remove the keys of the vehicle to which he refused. After Trooper Seide gave COBB multiple opportunities to step out, Trooper Seide opened the driver's side door.

As soon as Trooper Seide opened the door, I observed the vehicle begin to move forward. Trooper Seide struggled with him inside the vehicle. The vehicle stopped for a short period of time then began to accelerate. The second time the vehicle began to accelerate, it visually appeared to be at a much higher rate of speed. It became clear that COBB was attempting to drive the vehicle away from the scene. I observed Trooper Seide being pulled by the vehicle as it was driving away. From the position in which I was standing, I was unsure if Trooper Seide was holding onto COBB or if he somehow stuck inside the vehicle. Due to the fact that Trooper Seide was inside the vehicle, I was concerned that Trooper Seide was in an extremely vulnerable position. I feared for Trooper Seide's life because he could fall out and be run over, or that Trooper Seide would be trapped in the vehicle for an unknown amount of time traveling down the freeway. I could hear what I believed to be three gunshots from inside the vehicle. I observed Trooper Seide fall out of the vehicle onto the roadway from the driver's side. Trooper Seide was not able to stay on his feet and fell onto the freeway. I also observed Trooper Londregan fall out of the vehicle on the passenger side. Trooper Londregan also was not able to stay on his feet and fell onto the ground.

I ran towards the vehicle for a short period of time until it became clear that we would not be able to catch the vehicle on foot. During this time, my camera was covered due to my attempt to communicate with dispatch along with other officer's on my portable radio. I returned back to my patrol vehicle and began to pursue COBB's vehicle. I activated my front emergency lights and siren and attempted to catch up to the vehicle. A short time later, I observed the vehicle was traveling on the left shoulder at slow speeds. Trooper Seide along with Trooper Londregan boxed the vehicle in so it was no longer able to flee.

I positioned my patrol vehicle directly behind COBBS vehicle. I then exited my patrol vehicle. I drew my firearm and approached COBB's vehicle on the passenger side. Trooper Seide and Trooper Londregan were already there accessing COBB's condition. I ran to the driver's side of the vehicle to provide cover for the Trooper's while they were attempting to remove COBB from the vehicle. When I got to the driver's side, I observed COBB appeared to be unconscious. I could see a small amount of blood that was on the center console. I held COBB at gunpoint until Trooper Seide and Trooper Londregan were able to remove COBB from the vehicle. COBB was held at gunpoint due to the fact that Trooper Seide asked for lethal cover while they were attempting to remove COBB from the vehicle. It is also common practice to hold subjects at gunpoint after they have fled a traffic stop until it is clear that the subject is no longer a threat.

COBB was pulled through the car and taken out on the passenger side due to the driver's side of the vehicle being against the concrete median wall.

Once COBB was out of the vehicle, I ran back to my patrol vehicle to retrieve my medical bag. When I returned to COBB, Trooper Seide and Trooper Londregan were assessing COBB's injuries. After we removed COBB's shirt, I observed what appeared to be a gunshot wound to the right shoulder along with a couple of holes in the abdomen area. COBB did not appear to be losing a large amount of blood externally. Another Trooper who arrived on scene later on provided and attached an AED to COBB. Trooper Seide advised that he could not find a pulse on COBB and began CPR. Several other Minneapolis Officer's along with other Trooper's arrived on scene to provide assistance. I provided air to COBB using a bag valve mask. After other officers on scene became fatigued from CPR, I began to do CPR on COBB. After being relieved by another officer, Myself, along with Trooper Seide and Trooper Londregan were removed from the scene. We stood by the scene until we were able to be transported to a different area.

Incident recorded on Axon body worn camera along with Axon dash camera.

EXHIBIT 4

Hennepin County, Minnesota

Hennepin County Attorney's Office Receives Case in the Killing of Ricky Cobb II

Today, the Minnesota Bureau of Criminal Apprehension submitted the findings of its investigation into the police shooting of Ricky Cobb II to the Hennepin County Attorney's Office. Yesterday, following notification by the BCA that submission of the case was imminent, Hennepin County Attorney Mary Moriarty met with Ricky Cobb II's family to alert them we would soon be receiving the case and to recommit to a fair decision-making process. Hennepin County Attorney Mary Moriarty today released the following statement.

"We thank the BCA for their hard work and we will begin our own thorough review of the case immediately.

"We have learned from the BCA that there are state patrol employees who have thus far refused to cooperate with the BCA's investigation. These are individuals who are not the subject of the investigation but may have relevant information. We are disappointed by this lack of cooperation as the family, the community, and the troopers involved in this incident all deserve answers. For our part, I am committed to ensuring that our office utilizes all resources available to us to conduct a complete and thorough review, and reaches a decision as quickly as possible.

"We have already identified a use-of-force expert – the type of expert who examines evidence in nearly every case where an officer uses force. Their independent review is a critical part of our process. We selected this expert even before we received the completed investigation so that we could move forward with our work immediately upon receipt of the file. To ensure a fair and just process, we cannot disclose any further information at this time.

"I hear the community calls for an immediate charging decision, but I also know that rushing can lead to mistakes. Thank you for your patience as we work diligently to get this right."

EXHIBIT 5

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

COURT FILE NO.
PROSECUTOR CASE NO. 23A11299
SILS ID. 931758
SILS TRACKING. 3377270
CONTROLLING AGENCY. MNBCA0000
CONTROL NO. 23000724

State of Minnesota,

Plaintiff,

v.

RYAN PATRICK LONDREGAN (DOB: 08/10/1996)
c/o Wold Morrison Law
331 2nd Ave S
Minneapolis, MN 55401,
Defendant.

CRIMINAL COMPLAINT

☒ Summons ☐ Warrant
☐ Order of Detention

☐ Amended
☐ Tab Charge Previously Filed

The Complainant, being duly sworn, makes complaint to the above-named Court and states that there is probable cause to believe that Defendant committed the following offense(s):

Count I

Charge: **Murder - 2nd Degree - Without Intent - While Committing a Felony**
Minnesota Statute: **609.19.2(1)**, with reference to: 609.19.2(1), 609.11.5(a)
Offense Level: **Felony**
Maximum Sentence: **40 YEARS**
Offense Date (on or about): **07/31/2023**
Charge Description: That on or about July 31, 2023, in Minneapolis, Hennepin County, Minnesota, RYAN LONDREGAN did cause the death of Victim, a human being, while committing or attempting to commit the felony offense of Assault in the Second Degree while using a firearm.

Count II

Charge: **Assault-1st Degree-Great Bodily Harm**
Minnesota Statute: **609.221.1**, with reference to: 609.11.5(a), 609.101.2, 609.221.1
Offense Level: **Felony**
Maximum Sentence: **20 YEARS AND/OR $30,000**
Offense Date (on or about): **07/31/2023**
Charge Description: That on or about July 31, 2023, in Minneapolis, Hennepin County, Minnesota, RYAN LONDREGAN assaulted Victim and inflicted great bodily harm while using

a firearm.

Count III

Charge: **Manslaughter - 2nd Degree - Culpable Negligence Creating Unreasonable Risk**
Minnesota Statute: **609.205(1)**, with reference to: 609.205
Offense Level: **Felony**
Maximum Sentence: **10 YEARS AND/OR $20,000**
Offense Date (on or about): **07/31/2023**
Charge Description: That on or about July 31, 2023, in Minneapolis, Hennepin County, Minnesota, RYAN LONDREGAN caused the death of Victim by his culpable negligence whereby RYAN LONDREGAN created an unreasonable risk and consciously took a chance of causing death or great bodily harm to Victim.

STATEMENT OF PROBABLE CAUSE

The Complainant states that the following facts establish probable cause:

Complainant has investigated the facts and circumstances of this offense and believes the following establishes probable cause:

On July 31, 2023, at 2:11:46 AM, Minnesota State Patrol Trooper Ryan Londregan, described here as "the Defendant," drove a marked squad car to the scene of a traffic stop along the shoulder of Interstate 94 in Minneapolis, Hennepin County, Minnesota. At the scene, there were two other troopers, Trooper A and Trooper B, whose squad cars were parked behind a silver Ford Fusion driven by a single occupant, identified here as "the Victim." Trooper A was seated in his squad car. Trooper B was standing along the passenger side of the Fusion, engaging in conversation with the Victim. The Victim had been stopped because he was driving at night without his lights on. The initial stop occurred approximately twenty minutes before Londregan arrived.

After the Defendant arrived at the scene, Trooper A told him that the Victim was wanted for violation of a protective order in Ramsey County, though there was no arrest warrant outstanding in that case. As Trooper A and the Defendant waited for officials from Ramsey County to confirm they wanted the Victim arrested, Trooper B continued his conversation with the Victim. At 2:14:00 AM, Trooper B walked back from the Victim's vehicle and told Defendant that he and the Victim "get along" but that the Victim did not like Trooper A.

The conversation between Trooper A and Trooper B before Londregan's arrival included a discussion of possibly using "stop strips," which would have hindered the Victim from driving away. Stop strips were not used.

At 2:15:14 AM, Trooper A told Trooper B and the Defendant that Ramsey County wanted the Victim arrested and brought to jail. After a brief discussion between the troopers, Trooper A approached the driver's side of the Victim's vehicle, and the Defendant approached the vehicle's passenger door. Trooper B positioned himself behind Trooper A near the rear of the vehicle. The Victim's vehicle was in park with its doors locked and with its front windows rolled down.

At 2:15:45 AM, Trooper A told the Victim that he needed to step out of the vehicle because they had "some stuff to talk about [having to do with] Ramsey County." The Victim asked why he was being required to leave the car. Trooper A repeated that they had "stuff to talk about" and that the Victim needed to step out of the vehicle, without divulging a reason. The Victim asked Trooper A whether there was a warrant for his arrest. Trooper A acknowledged that the Victim was not subject to a warrant and that Trooper A would "explain it all out when you get out of the car."

Soon after, Trooper A asked the Victim to hand over his keys while the Victim repeated, "Why? Why?" The Victim then asked, "Can y'all keep it a buck with me, bro? Y'all pulled me over for my headlights." Trooper A responded, "Yep. We're way past that." Trooper A told the Victim to step out of the vehicle three more times, and the Victim asked "Where we at though?" and

said "When you say, 'Step out of the vehicle [and] you gonna – explain it to me,' and then y'all say…" Trooper A interjected by stating for the first time, "This is now a lawful arrest."

Throughout this one-minute exchange, the Victim's hands were in the air as he gestured while talking, and the vehicle remained in park. The Victim's hands were not touching the steering wheel or gear shifter, and Victim had not stepped on the brake.

At 2:16:57 AM, just as Trooper A told the Victim that he was under arrest, the Defendant moved his hand into the inside of the passenger door of the Victim's car and unlocked the vehicle's doors. This movement attracted the Victim's attention, and the Victim turned his head and looked over to the Defendant on the passenger side.

At 2:16:58 AM, the Defendant began opening the passenger-side door. While the door was opening, the Victim placed his foot on the brake and moved his hand to the transmission shift.

At 2:16:59 AM, the Defendant pulled the passenger door fully open, and the Victim shifted the vehicle into drive and took his foot off the brake. Trooper A grabbed the driver's side door handle and began opening the door.

At. 2:17:00 AM, the Victim's vehicle began to slowly move several feet forward, as the Victim's foot was off the brake. Both the Defendant and Trooper A took steps forward to remain at the vehicle's side as Trooper A opened the driver's side door wider. At that moment, the Defendant and Trooper A were fully outside of the vehicle.

At 2:17:01 AM, Trooper A leaned down and began to reach into the Victim's driver's door. The Defendant remained on the passenger side and reached for his firearm on the right side of his duty belt.

At 2:17:02 AM, Trooper A leaned his torso into the vehicle and began reaching over the Victim's body toward the Victim's seatbelt. At that moment, the Victim stepped on the brake, stopping the vehicle's forward movement. The Defendant pulled his firearm from his duty belt and pointed it directly at the Victim.

At 2:17:03 AM, Trooper A continued to lean his torso into the vehicle over the Victim's body, while the Victim kept his foot on the brake. At this moment, the Defendant continued to point his firearm directly at the Victim, and the Defendant loudly and aggressively yelled, "Get out of the car now!" As Defendant uttered the word, "car" and Trooper A physically grabbed at the Victim, the Victim took his foot off the brake and the vehicle began to move slowly forward.

At 2:17:04 AM, within several tenths of a second after the Defendant yelled the word "now," the Defendant fired his handgun twice at the Victim's torso, striking the Victim both times. After the Victim was shot, the Victim's vehicle increased its acceleration forward as Trooper A's torso remained inside the vehicle. Trooper A and the Defendant continued stepping forward to keep pace with Victim's vehicle for 6-10 feet until they both lost their footing and fell to the ground. Victim's vehicle then proceeded down Interstate 94.

At 2:17:07, Trooper A and the Defendant stood up. They then ran to their squad cars and drove after the Victim's vehicle. By that time, the Victim's vehicle had traveled approximately a quarter-mile down the road and collided with a concrete median. Trooper A drove his squad into the Victim's vehicle to confirm it was stopped. The troopers then pulled the Victim out of the vehicle, assessed his gunshot wounds, and attempted life-saving measures without success.

Multiple law enforcement agencies and EMS responded to the scene. EMS pronounced the Victim dead at the scene. A subsequent autopsy determined that the cause of Victim's death was "multiple gunshot wounds." The medical examiner located two gunshot wounds, each of which passed through the Victim's torso. The gunshot wounds which caused the death were those fired by the Defendant.

Agents from Minnesota Bureau of Criminal Apprehension (BCA) conducted an investigation into the Victim's death. Investigators also interviewed those members of the State Patrol who were willing to meet for voluntary interviews, including Trooper A, who acknowledged that by shooting the Victim, the Defendant did not prevent the Victim's vehicle from moving forward and did not prevent the Victim's vehicle from dragging him briefly until he fell out of the vehicle and onto the road.

BCA agents attended an interview with the State Patrol's lead use-of-force trainer, Trainer A, who provided use-of-force training to the Defendant and Trooper A. Trainer A was asked whether a reasonable officer would believe that pointing a gun at a fleeing driver and yelling at the driver to stop would cause the driver to stop. Trainer A said, "No." Trainer A was asked, "Would it be foreseeable to expect the exact opposite, meaning [the driver] would continue to leave?" Trainer A responded, "That was probably his intention was to flee the area, so he's gonna keep going in that direction away from me."

Under State Patrol policy, any use of a firearm is deadly force. A firearm may be readied for use only in situations where it is reasonably anticipated that firearms may be required. State Patrol policy also states that members shall not shoot from or at a moving vehicle, except when deadly force is authorized, and that troopers should make every effort not to place themselves in a position that would increase the possibility that the vehicle they are approaching can be used as a deadly weapon against them or others.

Complainant requests that Defendant, subject to bail or conditions of release, be:
(1) arrested or that other lawful steps be taken to obtain Defendant's appearance in court; or
(2) detained, if already in custody, pending further proceedings; and that said Defendant otherwise be dealt with according to law.

COMPLAINANT'S NAME: THOMAS ROTH

COMPLAINANT'S SIGNATURE: TR TR 1317

Subscribed and sworn to before the undersigned this 24 day of JANUARY, 2024.
@0915

NAME/TITLE: Senior Admin Assistant

SIGNATURE: Paula Ann Mahnke Breuer

Being authorized to prosecute the offenses charged, I approve this complaint.

Date: 1/24/24

PAULA ANN MAHNKE BREUER
NOTARY PUBLIC – MINNESOTA
My Commission Expires Jan. 31, 2025
Commission #20286996

PROSECUTING ATTORNEY'S SIGNATURE:

Mary W. Bahn for
AR# 0403225

Name: Mary Moriarty
~~Assistant~~ County Attorney

Minneapolis, MN

Attorney Registration # 0203567

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps be taken to obtain Defendant's appearance in court, or Defendant's detention, if already in custody, pending further proceedings. Defendant is therefore charged with the above-stated offense.

☒ SUMMONS

THEREFORE YOU, THE ABOVE-NAMED DEFENDANT, ARE HEREBY SUMMONED to appear on the ___ day of _____, 20___ at _____ a.m./p.m. before the above-named court at _____ _____ to answer this complaint.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

☐ WARRANT

To the Sheriff of the above-named county; or other person authorized to execute this warrant: I hereby order, in the name of the State of Minnesota, that the above-named Defendant be apprehended and arrested without delay and brought promptly before the above-named court (if in session), and if not, before a Judge or Judicial Officer of such court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon as such Judge or Judicial Officer is available to be dealt with according to law.

☐ ***Execute in MN Only*** ☐ ***Execute Nationwide*** ☐ ***Execute in Border States***

☐ ORDER OF DETENTION

Since the above-named Defendant is already in custody, I hereby order, subject to bail or conditions of release, that the above-named Defendant continue to be detained pending further proceedings.

Bail: $
Conditions of Release:

This complaint, duly subscribed and sworn to, is issued by the undersigned Judicial Officer this 24 day of January, 20 24.

JUDICIAL OFFICER:
NAME: TAMARA CHACIA
TITLE: JUDGE OF DISTRICT COURT

SIGNATURE: _____

Sworn testimony has been given before the Judicial Officer by the following witnesses:

COUNTY OF HENNEPIN
STATE OF MINNESOTA

STATE OF MINNESOTA
Plaintiff,

vs.

Ryan Patrick Londregan,
Defendant

Clerk's Signature or File Stamp:

RETURN OF SERVICE
I hereby Certify and Return that I have served a copy of this COMPLAINT upon Defendant herein named.

Signature of Authorized Service Agent:

_____

EXHIBIT 6

PLEASE NOTE:

Grand jury materials are protected from public disclosure under Minnesota Rule of Criminal Procedure 18.07.

On June 28, 2024, the Hennepin County Attorney's Office (HCAO) asked the court for permission to disclose the grand jury transcript to the public.

On July 19, 2024, the court denied that request. For that reason, the HCAO is not allowed to release the grand jury transcript to the public and cannot include transcript excerpts in the exhibit included here.

EXHIBIT 7

169.50 REAR LAMPS.

Subdivision 1. **Requirements; exception.** (a) Every motor vehicle and every vehicle that is being drawn at the end of a train of vehicles must be equipped with at least one tail lamp, exhibiting a red light plainly visible from a distance of 500 feet to the rear.

(b) Every motor vehicle, other than a truck-tractor, and every vehicle that is being drawn at the end of a train of vehicles, registered in this state and manufactured or assembled after January 1, 1960, must be equipped with at least two tail lamps mounted on the rear and on the same level and as widely spaced laterally as practicable. When lighted, the tail lamps must comply with the provisions of this section.

(c) An implement of husbandry being towed by a motor vehicle at a speed of not more than 30 miles per hour, displaying a slow-moving vehicle emblem, and complying with section 169.55, subdivision 2, paragraph (a), clause (4), is not subject to the requirements of this section.

Subd. 2. **License plates.** Either such rear lamp or separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it legible from a distance of 50 feet to the rear. Any rear lamp or rear lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted.

Subd. 3. **Reflectors.** On and after January 1, 1960, each new motor vehicle, trailer, or semitrailer, hereafter sold and each such vehicle hereafter operated on a highway, shall carry at the rear either as a part of the rear lamp, or separately, at least two reflectors. The reflectors shall be of a type approved by the commissioner of public safety and shall be mounted as close as is practicable to the extreme edges of the vehicle at a height not more than 60, nor less than 20 inches above the surface upon which the vehicle stands. Each such reflector shall be so designed and maintained as to be visible at night from all distances within 300 to 50 feet from the vehicle, except that on a commercial vehicle the reflectors shall be visible from all distances within 500 to 50 feet from the vehicle, when directly in front of a motor vehicle displaying lawfully lighted headlamps.

History: *(2720-236) 1937 c 464 s 86; 1947 c 428 s 25; 1953 c 201 s 1; 1957 c 754 s 2; 1959 c 215 s 1; 1959 c 521 s 6,7; 1971 c 491 s 15; 2001 c 43 s 1; 2005 c 10 art 1 s 29*

EXHIBIT 8

https://mnbca.sharefile.com/share/view/s5f4e656cfec643e69503d04d573a7eb2/fo623fb3-f075-46da-bed1-7628ebacfd97

From main page: Video -> BWC - > Trooper Seide

EXHIBIT 10

https://mnbca.sharefile.com/share/view/s5f4e656cfec643e69503d04d573a7eb2/fo8ee709-fd26-4b4e-9cb7-2a7cc08e66db

From main page: Video -> BWC - > Trooper Erickson

EXHIBIT 11

https://mnbca.sharefile.com/share/view/s5f4e656cfec643e69503d04d573a7eb2/fo9ae6b2-144d-40c4-baca-6ec7bff0b970

From main page: Video -> BWC - > Trooper Londregan

EXHIBIT 12

https://mnbca.sharefile.com/share/view/s5f4e656cfec643e69503d04d573a7eb2/fod1c799-db89-48ab-a878-1e4d19679c64

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IMPORTANT NOTICE: Robert Bosch LLC and the manufacturers whose vehicles are accessible using the CDR System urge end users to use the latest production release of the Crash Data Retrieval system software when viewing, printing or exporting any retrieved data from within the CDR program. Using the latest version of the CDR software is the best way to ensure that retrieved data has been translated using the most current information provided by the manufacturers of the vehicles supported by this product.

CDR File Information

User Entered VIN	3FAHP0HG2CR323346
User	Schultz
Case Number	000257-2836
EDR Data Imaging Date	08/16/2023
Crash Date	07/31/2023
Filename	3FAHP0HG2CR323346_ACM.CDRX
Saved on	Wednesday, August 16 2023 at 10:22:08
Imaged with CDR version	Crash Data Retrieval Tool 23.1.1
Imaged with Software Licensed to (Company Name)	Wisconsin State Patrol- Technical Reconstruction Unit
Reported with CDR version	Crash Data Retrieval Tool 23.1.1
Reported with Software Licensed to (Company Name)	Wisconsin State Patrol- Technical Reconstruction Unit
EDR Device Type	Airbag Control Module
ACM Adapter Detected During Download	No
Event(s) recovered	unlocked events

Comments

Imaging Authority - Search Warrant
Imaging Method: DLC
Power: Vehicle Power
VCI used: Can Plus Interface Module
Vehicle Cable: 287 DLC
Adapter: None.
Drive Tire Size: 225/50R17
Recommended tire size from the tire pressure Sticker: 225/50R17

The retrieval of this data has been authorized by the vehicle's owner, or other legal authority such as a court order or search warrant, as indicated by the CDR tool user on Wednesday, August 16 2023 at 10:22:08.

Data Limitations

Restraints Control Module Recorded Crash Events:
Deployment Events cannot be overwritten or cleared from the Restraints Control Module (RCM). Once the RCM has deployed any airbag device, the RCM must be replaced. The data from events which did not qualify as deployable events can be overwritten by subsequent events. The RCM can store up to two deployment events.

Airbag Module Data Limitations:

- Restraints Control Module Recorded Vehicle Forward Velocity Change reflects the change in forward velocity that the sensing system experienced from the point of algorithm wake up. It is not the speed the vehicle was traveling before the event. Note that the vehicle speed is recorded separately five seconds prior to algorithm wake up. This data should be examined in conjunction with other available physical evidence from the vehicle and scene when assessing occupant or vehicle forward velocity change.
- Event Recording Complete will indicate if data from the recorded event has been fully written to the RCM memory or if it has been interrupted and not fully written.
- If power to the Airbag Module is lost during a crash event, all or part of the crash record may not be recorded.
- For 2011 Ford Mustangs, the Steering Wheel Angle parameter indicates the change in steering wheel angle from the previously recorded sample value and does not represent the actual steering wheel position.

Airbag Module Data Sources:

- Event recorded data are collected either INTERNALLY or EXTERNALLY to the RCM.

  - INTERNAL DATA is measured, calculated, and stored internally, sensors external to the RCM include the following:
    > The Driver and Passenger Belt Switch Circuits are wired directly to the RCM.
    > The Driver's Seat Track Position Switch Circuit is wired directly to the RCM.
    > The Side Impact Sensors (if equipped) are located on the side of vehicle and are wired directly to the RCM.
    > The Occupant Classification Sensor is located in the front passenger seat and transmits data directly to the RCM on high-speed CAN bus.
    > Front Impact Sensors (right and left) are located at the front of vehicle and are wire directly to the RCM.

- EXTERNAL DATA recorded by the RCM are data collected from the vehicle communication network from various sources such as Powertrain Control Module, Brake Module, etc.

02007_RCM-RC6_r002

System Status at Time of Retrieval

VIN as programmed into RCM at factory	3FAHP0HG2CR323346
Current VIN from PCM	3FAHP0HG2CR323346
Ignition cycle, download (first record)	10,544
Ignition cycle, download (second record)	10,544
Restraints Control Module Part Number	BE53-14B321-BD
Restraints Control Module Serial Number	3080803100000000
Restraints Control Module Software Part Number (Version)	BL84-14C028-AB
Left/Center Frontal Restraints Sensor Serial Number	15C326B3
Left Side Restraint Sensor 1 Serial Number	ED933862
Left Side Restraint Sensor 2 Serial Number	15C43F09
Right Frontal Restraints Sensor Serial Number	15C55A41
Right Side Restraint Sensor 1 Serial Number	F0233C62
Right Side Restraints Sensor 2 Serial Number	15C60D5F

System Status at Event (First Record)

Recording Status	Unlocked Record
Complete file recorded (yes,no)	Yes
Multi-event, number of events (1,2)	1
Time from event 1 to 2 (msec)	N/A
Lifetime Operating Timer at event time zero (seconds)	8,859,255
Key-on Timer at event time zero (seconds)	2,440
Vehicle voltage at time zero (Volts)	13.932
Energy Reserve Mode entered during event (Y/N)	No

Faults Present at Start of Event (First Record)

No Faults Recorded

Deployment Data (First Record)

Maximum delta-V, longitudinal (MPH [km/h])	-3.14 [-5.06]
Time, maximum delta-V longitudinal (msec)	300
Maximum delta-V, lateral (MPH [km/h])	7.07 [11.37]
Time, maximum delta-V lateral (msec)	177
Longitudinal Delta-V Time Zero Offset	8.0 ms
Lateral Delta-V Time Zero Offset	8.0 ms

Pre-Crash Data -1 sec (First Record)

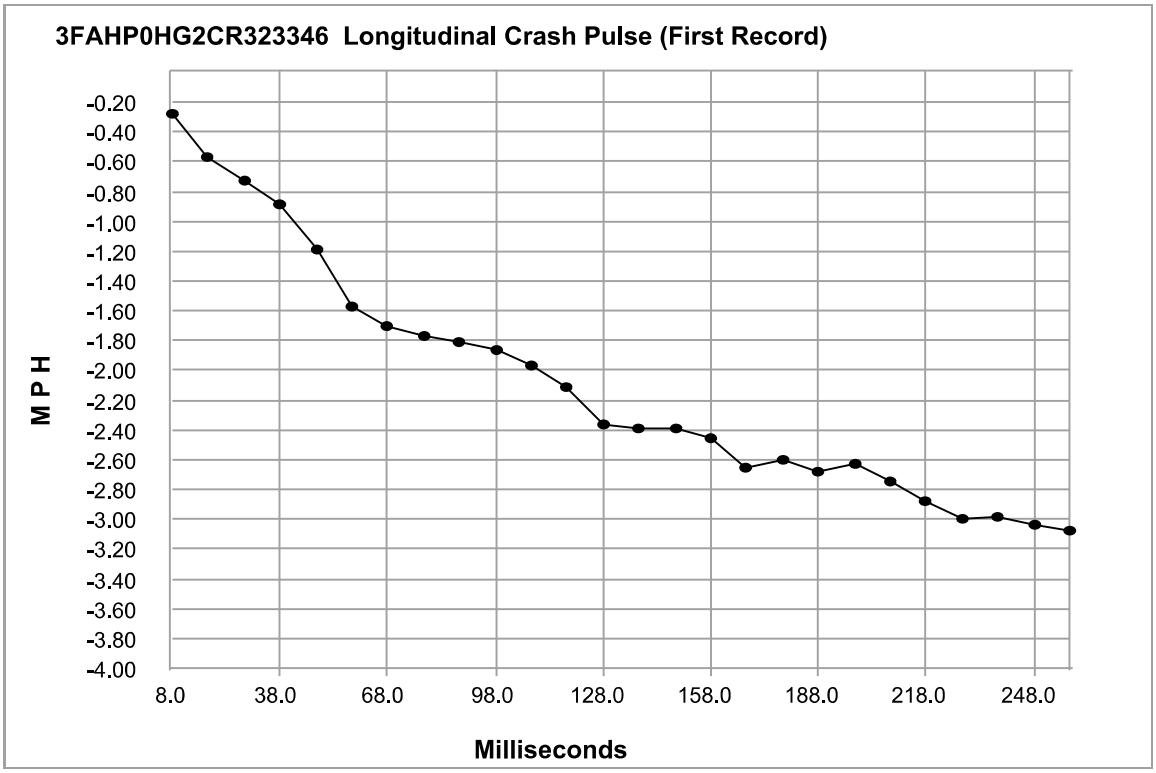
Ignition cycle, crash	10,543
Frontal air bag warning lamp, on/off	Off
Occupant size classification, front passenger (Child size Yes/No [Hex value])	Yes [$02]
Safety belt status, driver	Driver Not Buckled
Seat track position switch, foremost, status, driver	Not Forward
Safety belt status, front passenger	Passenger Buckled
Brake Telltale	Off
ABS Telltale	Off
Stability Control Telltale	Off
Speed Control Telltale	Off
Powertrain Wrench Telltale	Off
Powertrain Malfunction Indicator Lamp (MIL)Telltale	Off

Pre-Crash Data -5 to 0 sec [2 samples/sec] (First Record)

Times (sec)	Speed vehicle indicated MPH [km/h]	Accelerator pedal, % full	Service brake, on/off	Engine RPM	ABS activity (engaged, non-engaged)	Stability control (engaged, non-engaged)	Traction Control via Brakes (engaged, non-engaged)	Traction Control via Engine (engaged, non-engaged)
- 5.0	31.1 [50.0]	80	Off	3,100	non-engaged	non-engaged	non-engaged	non-engaged
- 4.5	32.3 [52.0]	86	Off	4,300	non-engaged	non-engaged	non-engaged	non-engaged
- 4.0	36.0 [58.0]	85	Off	4,800	non-engaged	non-engaged	non-engaged	non-engaged
- 3.5	39.1 [63.0]	85	Off	5,300	non-engaged	non-engaged	non-engaged	non-engaged
- 3.0	42.9 [69.0]	89	Off	5,700	non-engaged	non-engaged	non-engaged	non-engaged
- 2.5	46.0 [74.0]	92	Off	6,100	non-engaged	non-engaged	non-engaged	non-engaged
- 2.0	49.7 [80.0]	93	Off	6,500	non-engaged	non-engaged	non-engaged	non-engaged
- 1.5	52.2 [84.0]	98	Off	5,000	non-engaged	non-engaged	non-engaged	non-engaged
- 1.0	54.7 [88.0]	100	Off	4,800	non-engaged	non-engaged	non-engaged	non-engaged
- 0.5	57.2 [92.0]	100	Off	5,000	non-engaged	non-engaged	non-engaged	non-engaged
0.0	59.7 [96.0]	100	Off	5,100	non-engaged	non-engaged	non-engaged	non-engaged

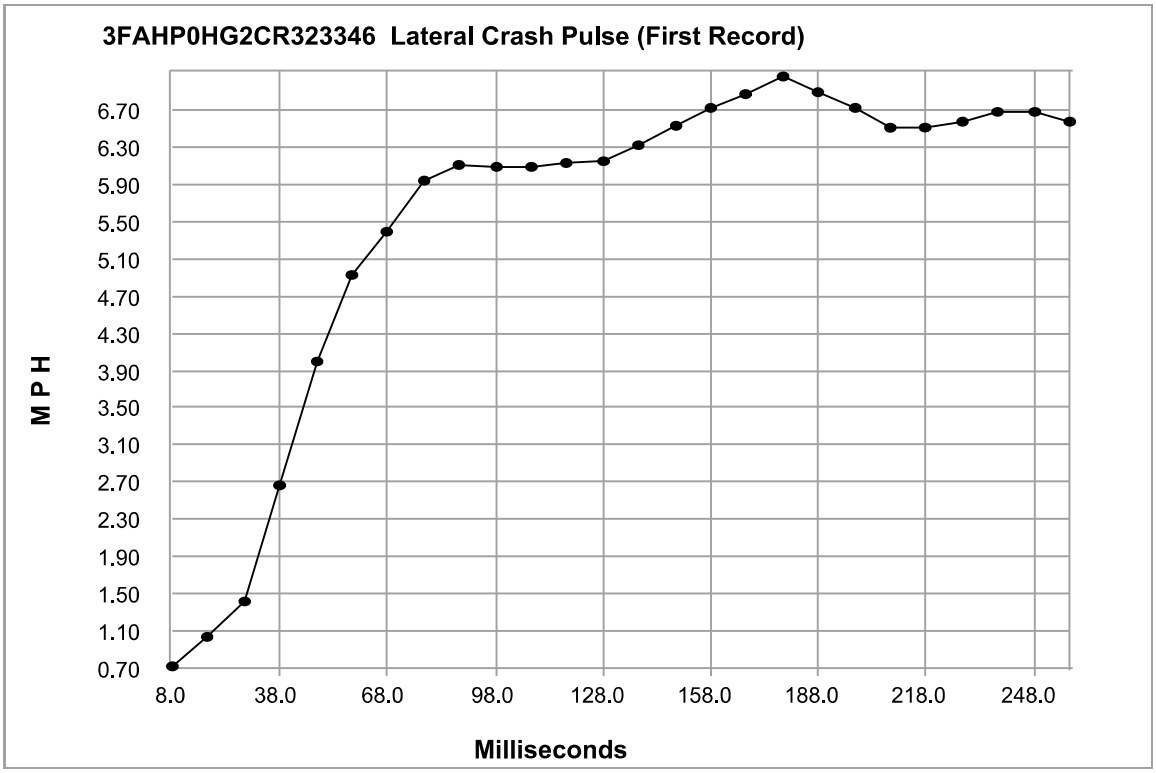
Pre-Crash Data -5 to 0 sec [10 samples/sec] (First Record)

Times (sec)	Steering Wheel Angle (degrees)	Stability Control Lateral Acceleration (g)	Stability Control Longitudinal Acceleration (g)	Stability Control Yaw Rate (deg/sec)
- 5.0	1.3	0.012	0.1	0.5
- 4.9	1.3	0.012	0.157	0.12
- 4.8	1.2	0.0	0.299	0.12
- 4.7	1.2	0.012	0.328	0.87
- 4.6	1.2	0.02	0.33	0.37
- 4.5	1.0	0.002	0.348	0.37
- 4.4	0.9	-0.004	0.318	0.75
- 4.3	0.8	-0.015	0.338	0.62
- 4.2	0.5	-0.015	0.323	0.12
- 4.1	0.3	-0.009	0.34	0.12
- 4.0	0.3	0.001	0.318	0.0
- 3.9	-0.1	-0.025	0.338	0.12
- 3.8	-0.1	-0.019	0.299	0.0
- 3.7	-0.1	-0.015	0.301	0.0
- 3.6	-0.1	-0.004	0.314	0.37
- 3.5	-0.1	-0.007	0.335	0.25
- 3.4	-0.1	-0.009	0.338	0.75
- 3.3	-0.1	-0.028	0.322	0.25
- 3.2	-0.2	-0.012	0.298	0.0
- 3.1	-0.2	-0.025	0.354	0.25
- 3.0	-0.2	-0.014	0.338	0.0
- 2.9	-0.2	-0.037	0.315	0.0
- 2.8	-0.2	-0.035	0.301	0.12
- 2.7	-0.2	-0.05	0.308	0.0
- 2.6	-0.2	-0.054	0.284	-0.12
- 2.5	-0.1	-0.047	0.298	-0.25
- 2.4	-0.1	0.002	0.298	0.25
- 2.3	0.0	0.002	0.252	0.12
- 2.2	0.0	-0.046	0.229	0.12
- 2.1	0.0	-0.015	0.28	0.37
- 2.0	0.0	-0.025	0.242	0.12
- 1.9	0.0	-0.035	0.239	0.37
- 1.8	0.0	-0.045	0.239	0.75
- 1.7	0.0	-0.007	0.209	0.37
- 1.6	0.1	-0.029	0.22	0.75
- 1.5	0.1	-0.005	0.234	0.5
- 1.4	0.1	-0.026	0.201	0.75
- 1.3	0.1	-0.015	0.234	0.75
- 1.2	0.1	-0.065	0.22	-0.12
- 1.1	0.1	-0.007	0.23	0.12
- 1.0	0.3	-0.025	0.215	0.25
- 0.9	0.3	-0.025	0.24	0.12
- 0.8	0.1	-0.048	0.222	0.75
- 0.7	0.1	-0.034	0.24	0.5
- 0.6	0.1	-0.035	0.205	0.12
- 0.5	0.1	-0.039	0.217	0.37
- 0.4	0.1	-0.053	0.239	0.12
- 0.3	0.3	-0.046	0.199	0.37
- 0.2	0.3	0.002	0.242	0.25
- 0.1	0.3	-0.016	0.195	0.5
0.0	0.3	-0.158	0.195	0.62



Longitudinal Crash Pulse (First Record)

Time (msec)	Delta-V, longitudinal (MPH)	Delta-V, longitudinal (km/h)
8.0	-0.28	-0.45
18.0	-0.56	-0.90
28.0	-0.72	-1.16
38.0	-0.89	-1.43
48.0	-1.19	-1.92
58.0	-1.57	-2.52
68.0	-1.70	-2.73
78.0	-1.77	-2.85
88.0	-1.81	-2.91
98.0	-1.86	-2.99
108.0	-1.96	-3.16
118.0	-2.11	-3.39
128.0	-2.36	-3.80
138.0	-2.39	-3.85
148.0	-2.38	-3.84
158.0	-2.46	-3.96
168.0	-2.66	-4.28
178.0	-2.60	-4.19
188.0	-2.68	-4.31
198.0	-2.63	-4.24
208.0	-2.75	-4.42
218.0	-2.88	-4.63
228.0	-2.99	-4.81
238.0	-2.98	-4.79
248.0	-3.04	-4.89
258.0	-3.08	-4.95



Lateral Crash Pulse (First Record)

Time (msec)	Delta-V, lateral (MPH)	Delta-V, lateral (km/h)
8.0	0.72	1.15
18.0	1.03	1.65
28.0	1.42	2.28
38.0	2.67	4.30
48.0	4.00	6.43
58.0	4.93	7.94
68.0	5.39	8.68
78.0	5.95	9.57
88.0	6.12	9.84
98.0	6.09	9.79
108.0	6.10	9.81
118.0	6.13	9.86
128.0	6.14	9.88
138.0	6.32	10.18
148.0	6.52	10.50
158.0	6.71	10.80
168.0	6.88	11.07
178.0	7.06	11.36
188.0	6.89	11.08
198.0	6.72	10.81
208.0	6.52	10.49
218.0	6.50	10.46
228.0	6.58	10.59
238.0	6.69	10.76
248.0	6.67	10.74
258.0	6.57	10.57

System Status at Event (Second Record)

Recording Status	Unlocked Record
Complete file recorded (yes,no)	Yes
Multi-event, number of events (1,2)	2
Time from event 1 to 2 (msec)	2,700
Lifetime Operating Timer at event time zero (seconds)	8,859,260
Key-on Timer at event time zero (seconds)	2,445
Vehicle voltage at time zero (Volts)	13.851
Energy Reserve Mode entered during event (Y/N)	No

Faults Present at Start of Event (Second Record)

No Faults Recorded

Deployment Data (Second Record)

Maximum delta-V, longitudinal (MPH [km/h])	-1.05 [-1.69]
Time, maximum delta-V longitudinal (msec)	245
Maximum delta-V, lateral (MPH [km/h])	4.17 [6.72]
Time, maximum delta-V lateral (msec)	218
Longitudinal Delta-V Time Zero Offset	7.5 ms
Lateral Delta-V Time Zero Offset	7.5 ms

Pre-Crash Data -1 sec (Second Record)

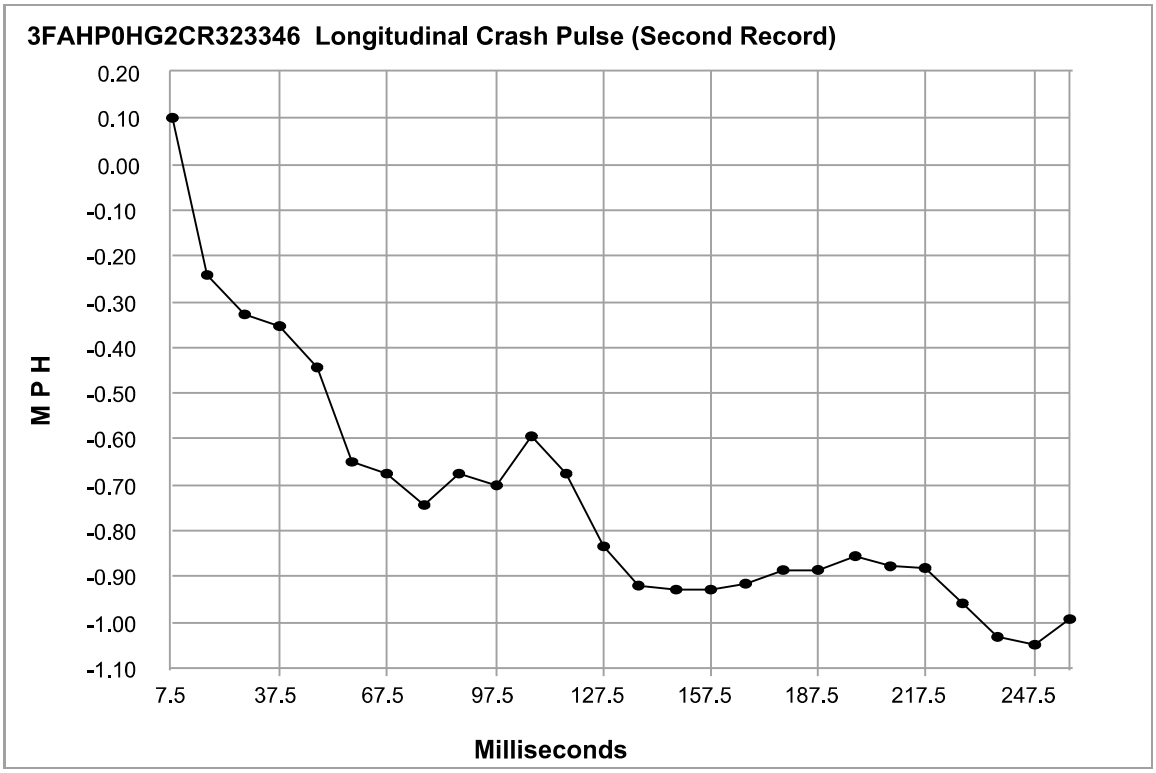
Ignition cycle, crash	10,543
Frontal air bag warning lamp, on/off	Off
Occupant size classification, front passenger (Child size Yes/No [Hex value])	Yes [$02]
Safety belt status, driver	Driver Not Buckled
Seat track position switch, foremost, status, driver	Not Forward
Safety belt status, front passenger	Passenger Buckled
Brake Telltale	Off
ABS Telltale	Off
Stability Control Telltale	Off
Speed Control Telltale	Off
Powertrain Wrench Telltale	Off
Powertrain Malfunction Indicator Lamp (MIL)Telltale	Off

Pre-Crash Data -5 to 0 sec [2 samples/sec] (Second Record)

Times (sec)	Speed vehicle indicated MPH [km/h]	Accelerator pedal, % full	Service brake, on/off	Engine RPM	ABS activity (engaged, non-engaged)	Stability control (engaged, non-engaged)	Traction Control via Brakes (engaged, non-engaged)	Traction Control via Engine (engaged, non-engaged)
- 5.0	49.7 [80.0]	93	Off	6,500	non-engaged	non-engaged	non-engaged	non-engaged
- 4.5	52.2 [84.0]	98	Off	5,000	non-engaged	non-engaged	non-engaged	non-engaged
- 4.0	54.7 [88.0]	100	Off	4,800	non-engaged	non-engaged	non-engaged	non-engaged
- 3.5	57.2 [92.0]	100	Off	5,000	non-engaged	non-engaged	non-engaged	non-engaged
- 3.0	59.7 [96.0]	100	Off	5,100	non-engaged	non-engaged	non-engaged	non-engaged
- 2.5	61.5 [99.0]	100	Off	5,300	non-engaged	non-engaged	non-engaged	engaged
- 2.0	74.6 [120.0]	0	Off	6,100	non-engaged	engaged	non-engaged	engaged
- 1.5	58.4 [94.0]	0	Off	5,300	non-engaged	engaged	non-engaged	non-engaged
- 1.0	58.4 [94.0]	0	Off	4,500	non-engaged	non-engaged	non-engaged	non-engaged
- 0.5	57.8 [93.0]	0	Off	3,600	non-engaged	non-engaged	non-engaged	non-engaged
0.0	57.2 [92.0]	0	Off	3,400	non-engaged	non-engaged	non-engaged	non-engaged

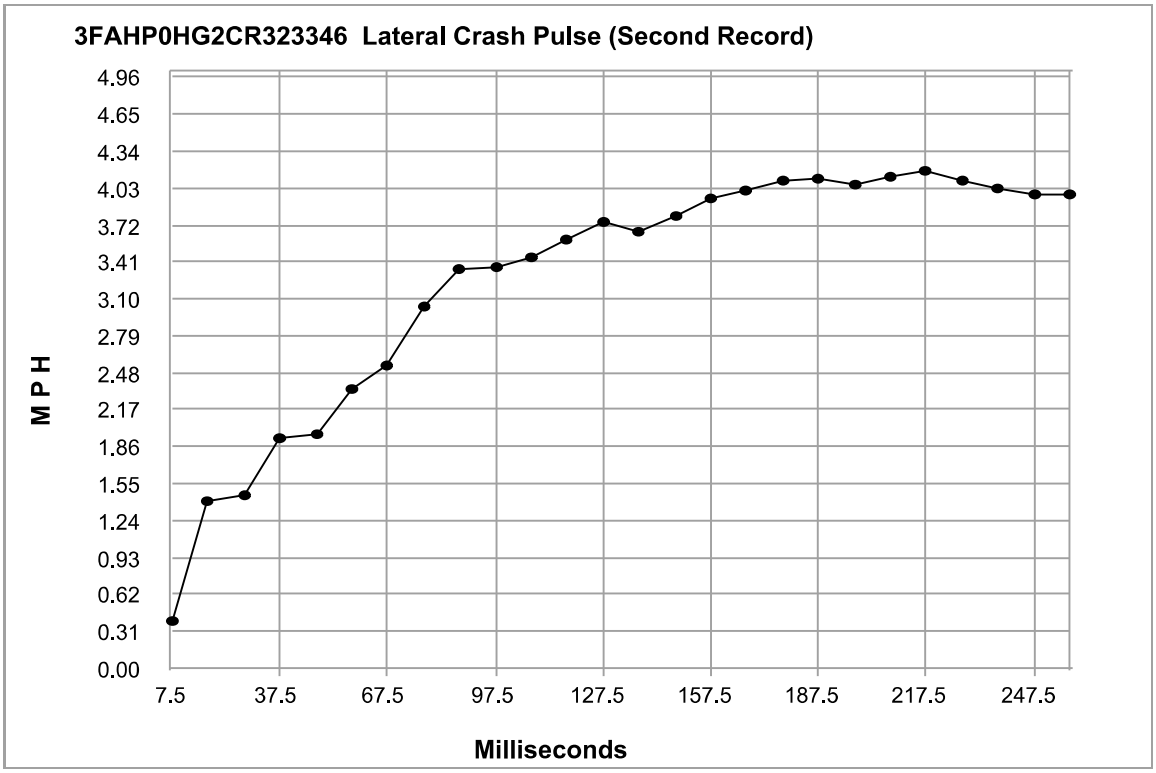
Pre-Crash Data -5 to 0 sec [10 samples/sec] (Second Record)

Times (sec)	Steering Wheel Angle (degrees)	Stability Control Lateral Acceleration (g)	Stability Control Longitudinal Acceleration (g)	Stability Control Yaw Rate (deg/sec)
- 5.0	0.0	-0.046	0.229	0.12
- 4.9	0.0	-0.015	0.28	0.37
- 4.8	0.0	-0.025	0.242	0.12
- 4.7	0.0	-0.035	0.239	0.37
- 4.6	0.0	-0.045	0.239	0.75
- 4.5	0.0	-0.007	0.209	0.37
- 4.4	0.1	-0.029	0.22	0.75
- 4.3	0.1	-0.005	0.234	0.5
- 4.2	0.1	-0.026	0.201	0.75
- 4.1	0.1	-0.015	0.234	0.75
- 4.0	0.1	-0.065	0.22	-0.12
- 3.9	0.1	-0.007	0.23	0.12
- 3.8	0.3	-0.025	0.215	0.25
- 3.7	0.3	-0.025	0.24	0.12
- 3.6	0.1	-0.048	0.222	0.75
- 3.5	0.1	-0.034	0.24	0.5
- 3.4	0.1	-0.035	0.205	0.12
- 3.3	0.1	-0.039	0.217	0.37
- 3.2	0.1	-0.053	0.239	0.12
- 3.1	0.3	-0.046	0.199	0.37
- 3.0	0.3	0.002	0.242	0.25
- 2.9	0.3	-0.016	0.195	0.5
- 2.8	0.3	-0.158	0.195	0.62
- 2.7	1.8	-2.0	-0.744	-29.25
- 2.6	-24.2	-0.925	-0.152	-43.0
- 2.5	-35.3	-0.636	0.126	-13.62
- 2.4	-32.0	-0.178	0.242	-9.62
- 2.3	-30.5	-0.626	0.312	-9.37
- 2.2	-24.5	-0.68	-1.331	-5.75
- 2.1	-1.9	-0.376	-0.298	5.0
- 2.0	22.6	0.049	-0.298	7.37
- 1.9	28.8	0.214	-0.108	9.0
- 1.8	21.4	0.22	-0.11	9.5
- 1.7	12.4	0.199	-0.094	7.75
- 1.6	8.6	0.0	-0.134	5.0
- 1.5	8.2	0.19	-0.138	1.5
- 1.4	9.2	0.143	-0.084	1.12
- 1.3	11.4	-0.01	-0.057	2.87
- 1.2	13.3	0.029	-0.046	4.75
- 1.1	14.1	0.181	-0.093	5.87
- 1.0	13.8	0.09	-0.019	5.87
- 0.9	13.4	0.309	-0.066	5.0
- 0.8	13.0	0.144	-0.156	3.87
- 0.7	13.7	0.012	-0.099	4.25
- 0.6	14.6	0.111	-0.14	5.25
- 0.5	15.6	0.04	-0.12	5.37
- 0.4	15.4	0.119	-0.087	6.25
- 0.3	15.0	0.21	-0.008	5.25
- 0.2	16.5	0.072	-0.091	3.5
- 0.1	14.5	0.079	-0.152	5.0
0.0	16.6	-1.358	-0.213	2.0



Longitudinal Crash Pulse (Second Record)

Time (msec)	Delta-V, longitudinal (MPH)	Delta-V, longitudinal (km/h)
7.5	0.10	0.17
17.5	-0.24	-0.39
27.5	-0.33	-0.53
37.5	-0.35	-0.57
47.5	-0.44	-0.72
57.5	-0.65	-1.04
67.5	-0.68	-1.09
77.5	-0.74	-1.20
87.5	-0.68	-1.09
97.5	-0.70	-1.13
107.5	-0.59	-0.95
117.5	-0.67	-1.08
127.5	-0.83	-1.34
137.5	-0.92	-1.48
147.5	-0.93	-1.49
157.5	-0.93	-1.49
167.5	-0.91	-1.47
177.5	-0.89	-1.43
187.5	-0.88	-1.42
197.5	-0.86	-1.38
207.5	-0.88	-1.41
217.5	-0.88	-1.42
227.5	-0.96	-1.54
237.5	-1.03	-1.66
247.5	-1.05	-1.69
257.5	-0.99	-1.60



Lateral Crash Pulse (Second Record)

Time (msec)	Delta-V, lateral (MPH)	Delta-V, lateral (km/h)
7.5	0.40	0.65
17.5	1.41	2.27
27.5	1.45	2.34
37.5	1.93	3.11
47.5	1.96	3.16
57.5	2.35	3.78
67.5	2.55	4.10
77.5	3.04	4.90
87.5	3.36	5.40
97.5	3.36	5.41
107.5	3.45	5.56
117.5	3.60	5.79
127.5	3.75	6.03
137.5	3.66	5.89
147.5	3.80	6.12
157.5	3.94	6.34
167.5	4.01	6.45
177.5	4.10	6.60
187.5	4.12	6.62
197.5	4.05	6.53
207.5	4.13	6.64
217.5	4.17	6.72
227.5	4.09	6.59
237.5	4.03	6.48
247.5	3.98	6.40
257.5	3.98	6.41

Hexadecimal Data

Data that the vehicle manufacturer has specified for data retrieval is shown in the hexadecimal data section of the CDR report. The hexadecimal data section of the CDR report may contain data that is not translated by the CDR program. The control module contains additional data that is not retrievable by the CDR system.

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42 4C 38 34 2D 31 34 43 30 32 38 2D 41 42 00 00 00 00 00 00 00 00 00 00

15 C3 26 B3 00 00 00 00 00 00 00 00 00 00 00 00

ED 93 38 62 00 00 00 00 00 00 00 00 00 00 00 00

15 C4 3F 09 00 00 00 00 00 00 00 00 00 00 00 00

15 C5 5A 41 00 00 00 00 00 00 00 00 00 00 00 00

F0 23 3C 62 00 00 00 00 00 00 00 00 00 00 00 00

15 C6 0D 5F 00 00 00 00 00 00 00 00 00 00 00 00

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33 46 41 48 50 30 48 47 32 43 52 33 32 33 33 34 36 00 00 00 00 00 00 00
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Event Record 1

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C9 07 B3 07 CB 07 B6 07 C1 07 8F 07 C9 07 B7 07 B7 07 A0 07 AE 07 AD 07 A9 07 9B 07
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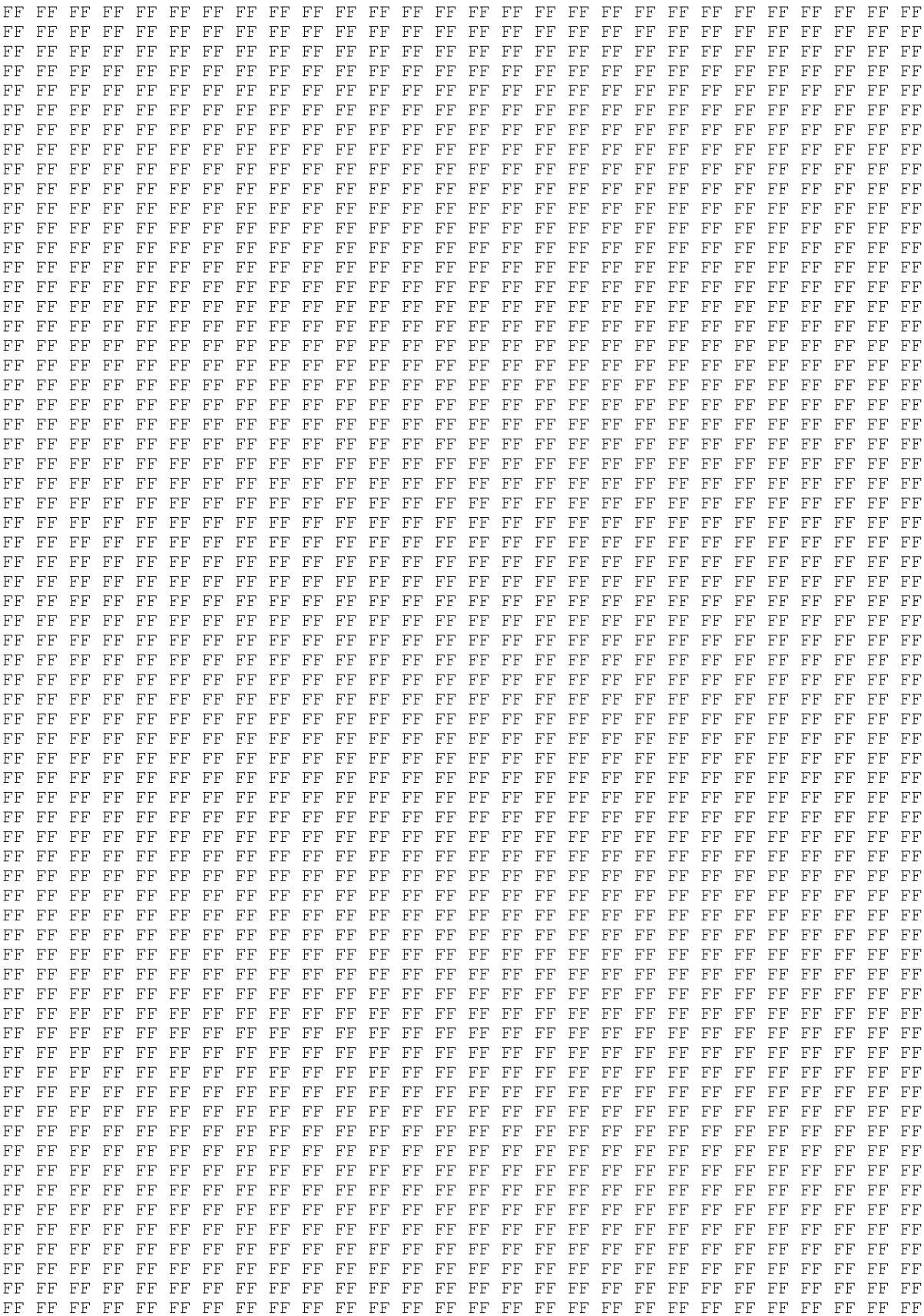

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Event Record 2

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48 5B 25 00 5F 5B 25 00 9C 5B 25 00 60 5B 25 00 78 5B 25 00 16 5B 25 00 5E 5B 25 00
EB 5B 25 00 39 5C 25 00 3F 5C 25 00 41 5C 25 00 34 5C 25 00 1B 5C 25 00 19 5C 25 00
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3F E7 DA FF 57 E8 DA FF 5B E8 DA FF AC E8 DA FF 2F E9 DA FF B2 E9 DA FF 67 E9 DA FF
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Disclaimer of Liability

EXHIBIT 13

PLEASE NOTE:

Pursuant to Minn. Stat. Sec. 13.83, autopsy reports contain private or nonpublic data. For that reason, Exhibit 13 is the press release issued by the Medical Examiner to the public regarding Mr. Cobb's death.

HENNEPIN COUNTY
MEDICAL EXAMINER

Andrew M. Baker, M.D., Medical Examiner of Hennepin, Dakota and Scott counties

Cobb II, Ricky Thomas Case No: 2023-04995

Press Release

Decedent:	Cobb II, Ricky Thomas		
Age:	33 years		
Race:	Black/African American		
Sex:	Male		
City:	Plymouth	State:	Minnesota
Date of Injury:	7/31/2023		
Location of Injury:	I-94 West and 42nd Avenue North Minneapolis MN 55411		
Date of Death:	7/31/2023		
Time of Death:	02:35		
Location of Death:	I-94 West and 42nd Avenue North Minneapolis MN 55411		
Manner of Death:	Homicide		
Cause of Death:	Multiple Gunshot Wounds		
Investigating Agency:	BCA - Bureau of Criminal Apprehension		

Comments:

Manner of death classification is a statutory function of the medical examiner, as part of death certification for purposes of vital statistics and public health. Manner of death is not a legal determination of culpability or intent.

Under Minnesota state law, the Medical Examiner is a neutral and independent office and is separate and distinct from any prosecutorial authority or law enforcement agency.

Please direct any media inquiries to Carolyn Marinan, Hennepin County Communications at carolyn.marinan@hennepin.us

EXHIBIT 14

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- BCA History
- Leadership Team

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About

What We Do

The Bureau of Criminal Apprehension (BCA) provides investigative and specialized law enforcement services to prevent and solve crimes in partnership with law enforcement, public safety and criminal justice agencies. Services include criminal justice training and development, forensic laboratory analysis, criminal histories and investigations.

Read the BCA's Strategic Plan.

Related Minnesota Statutes

Minnesota statute 299C.01 placed the Bureau of Criminal Apprehension under the direction of the Minnesota Department of Public Safety in 1969. Dozens of other state statutes, state rules, and federal laws govern BCA operations in a variety of areas including criminal histories, lab operations, investigations and more. Links to those statutes and rules can be found in the related sections of this website.

Superintendent

Drew Evans was named the Superintendent of the BCA in 2015. Prior to this role, Evans worked for the BCA Investigations Division: Homicide Unit as a special agent and senior special agent where he conducted and oversaw violent crime investigations throughout Minnesota. He most recently served as the BCA Assistant Superintendent since 2012. Evans also served as a police officer for the city of White Bear Lake where he held a variety of roles, last as a detective, prior to joining the BCA.

Evans is a graduate of Metropolitan State University and received his Juris Doctor from William Mitchell College of Law. He is an alumnus of the FBI National Academy, has completed the IACP Leadership in Police Organizations program, and is a graduate of the BCA Management Series.

Evans serves on the Minnesota POST Board, the Violent Crime Coordinating Council, the U.S. Attorney's Project Safe Neighborhoods Steering Committee, the International Association of Chiefs of Police (IACP) - Police Investigative Operations Committee, the Association of State Criminal Investigative Agencies (ASCIA) - Use of Force Investigations Committee, and is vice-chair of the North Central High Intensity Drug Trafficking Area (HIDTA).

Learn more about BCA leadership.

Staff

The BCA employs more than 300 agents, analysts, scientists, trainers and support staff at its headquarters and lab in St. Paul, its Bemidji regional office and lab, and 11 field offices.

History

The Minnesota legislature created the BCA in 1927 to assist peace officers statewide in solving crimes and apprehending criminals. The division of statistics, a forerunner of the Minnesota Justice Information Services (MNJIS), was added in 1935, as were additional personnel and full police power for the bureau's agents.

The BCA lab became operational in 1947, and the BCA became a part of the newly-created Department of Public Safety in 1969. The BCA established one of the first DNA laboratories in the nation in 1990, and shortly afterward became the first in the nation to identify a suspect based solely on DNA. Read more about the BCA's history.

Partnerships

The Bureau of Criminal Apprehension partners with state and local criminal justice agencies on investigations, Amber Alerts, Crime Alerts and criminal justice data integration. Efforts to improve public safety are also furthered through relationships with federal programs like the FBI, the National Center for Missing & Exploited Children, the DARE Program and more.

EXHIBIT 15

Public Services
Forensic Science Services
Investigative Services
Justice Information Services
Training / Administrative Services
Statistics / Reports
Careers Minnesota
Duty Officer Program
Related Links
Use of Force Investigations
Submit a Tip
Expand All | Collapse All

BCA Force Investigations Unit

Use-of-Deadly-Force Investigations: When a law enforcement officer uses force and a person dies or is seriously injured, the officer(s) actions are investigated and reviewed under Minnesota statute 609.066, subdivision 2, to determine whether they were legally justified. The Minnesota Bureau of Criminal Apprehension (BCA) will conduct a criminal investigation of an officer use-of-force incident if requested by the local jurisdiction.

Criminal Sexual Conduct Investigations: All sexual assault allegations involving Minnesota peace officers are also investigated by the BCA. Under Minnesota statute 299C.80, subdivision 3, a BCA investigation begins as soon as the agency is notified about an incident.

Conflict Investigations: The BCA also investigates conflict of interest cases involving peace officers. These are cases where the agency involved has a real or perceived interest in the outcome of the investigation.

The BCA conducts an independent and unbiased investigation to find out what happened, and then provides that information to a prosecutor (usually a county attorney) without recommendation. The prosecutor reviews the case under the law. The BCA does not determine whether an officer is guilty or innocent.

How the BCA Investigates Officer Use-of-Force Incidents

The BCA conducts a thorough and independent investigation of the incident. The BCA does not investigate whether officers followed their agencies policies or procedures. Rather, the BCA conducts a criminal investigation to determine the facts of the incident for review under Minnesota statutes.

Collecting Evidence and Conducting Interviews

BCA agents and crime scene personnel respond to the scene and immediately begin gathering information and evidence.

- BCA agents talk to people to find out who may have seen something or may have information that may be valuable to the BCA's investigation. BCA agents interview witnesses as quickly as possible. Often, the information is gathered at the scene or at witnesses' homes.
- Agents and scientists on the BCA crime scene team collect evidence from the scene including weapons, casings, vehicles and other items. They also photograph the scene, take measurements, and much more.
- Agents interview the parties involved in the incident away from the scene – at the BCA, at a hospital (if one of the parties is hospitalized), or at another location. Oftentimes an attorney representing one of the parties also attends their interview.
- The BCA cannot require any person to speak with investigators. The constitution protects the right of all parties (those involved in the incident and witnesses) to remain silent.

Examining Evidence and Conducting Follow-Up Interviews

- Scientists, medical examiners and other experts analyze the evidence to identify fingerprints, understand the direction of gunfire, find out who touched a weapon and whether it was fired, learn whether any of the parties were substance-impaired and much more. These processes can include many steps and often take weeks to complete.
- Once agents receive test results and other information about the evidence, agents will often interview the parties again with to ask follow-up questions.
- BCA agents provide updates to the prosecutor throughout the investigation. Once the agents have gathered all of the information and finished all of the interviews, they provide their findings to the prosecutor for review.

If one of the parties was killed during the incident, the BCA will ensure that the family is notified.

It is common practice for officers to be placed on administrative leave following a use of force incident. Their agency decides whether the officer(s) are placed on leave and for how long.

Release of Evidence

The BCA releases information about its investigation when it is legally able to do so and when it will not hurt the integrity of the investigation. Minnesota statute 13.82 identifies what information is public and when it is public. Most information becomes public when the case is closed. This happens when all court proceedings have finished or if the prosecutor decides against pressing charges.

The BCA provides information from the case file to the parties involved in the incident – or, if they are deceased, to their family – before releasing it to the public.

BCA Victim, Family and Community Relations Coordinator

The BCA Victim, Family and Community Relations Coordinator is the primary contact for families during a BCA investigation of an officer use-of-force incident.

- Explains the BCA investigative process.
- Provides status updates during the investigation.
- Notifies families about the county attorney's decision in the case. Their review and decision process can take months to complete.
- Provides references to resources as needed.

The Victim, Family and Community Relations Coordinator will reach out to the family within 24 hours of the incident or as soon as possible to establish contact and open a line of communication that will last until the case is closed.

Victim, Family and Community Relations Coordinator
Bureau of Criminal Apprehension
1430 Maryland Ave. E., St. Paul, MN 55106
Phone: 651-793-7000

vfc.coordinator@state.mn.us

609.066 AUTHORIZED USE OF DEADLY FORCE BY PEACE OFFICERS.

Subd. 2. Use of deadly force. Notwithstanding the provisions of section 609.06 or 609.065, the use of deadly force by a peace officer in the line of duty is justified only when necessary:
(1) to protect the peace officer or another from apparent death or great bodily harm;
(2) to effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened use of deadly force; or
(3) to effect the arrest or capture, or prevent the escape, of a person whom the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person will cause death or great bodily harm if the person's apprehension is delayed.

EXHIBIT 16

History Timeline

State Patrol "History Highway"

1929

- Minnesota State Legislature creates the Highway Patrol in response to the boom in automobiles.
- The first chief was Earle Brown.
- Initial force was comprised of nine men, including Brown.
- One of Chief Brown's core values: "They must be courteous in all contacts with the public." That's something that is still stressed today.

1930

- Henry Ford's Model A was the standard patrol vehicle in the winter. Patrolmen exchanged milk cans full of hot water for heat.
- In the spring, summer and early fall, troopers patrolled on Harley-Davidson motorcycles, which they were required to supply themselves.
- The early years of the patrol were spent on "goodwill work" — courtesy patrols to help motorists in difficulty. Enforcement was mostly limited to warnings.
- Officers worked 12-16 hours per day, seven days per week, with one day off per month for a maximum pay of $150 per month.
- Chief Brown almost lost his job when he and another highway patrol officer chased and subsequently arrested three individuals who had robbed the Elk River bank. We were reprimanded for following them off of the trunk highway before making the arrest," Brown remembered.

1931

- First academy to be held at Camp Ripley.

1934

- First patrolman killed in the line of duty: William Kozlak.
- Patrol was authorized to enforce speed limits on trunk highways.
- Many motorists arrested for driving under the influence of alcohol (despite prohibition.) The DWI cases were written up as "careless driving."
- The original trooper uniform — long gray coat, riding boots, gray knee-high pants and eight-corner hat — was replaced by maroon and gold uniforms. The change was made to honor the University of Minnesota football national championship team.

1943

- The State's radio network begins to take shape with the construction of two radio towers

1948

- Motorcycles retired from patrol fleet.

1957

- Traffic law enforcement took to the air. Patrol purchased two fixed-wing aircraft.

1958

- Black squad cars replaced with maroon cars with white doors.
- Safety Education Officers (now know as Public Information Officers) are assigned in each District to help educate people on traffic safety issues.

1962

- First academy to be held at the MnDOT training center in Arden Hills.

1968

- Officer Bill O'Brien saves a driver from a burning vehicle after a car-train collision. Officer O'Brien receives the Patrol's first Meritorious Service award.

1969

- The Department of Public Safety is created. The Highway patrol moves from the Department of Highways to the new DPS.
- Capitol Security Division is formed.

1970

- The first helicopter is purchased to enhance traffic enforcement.

1971

- Since 1929, the Highway Patrol only had jurisdiction on state and federal highways. The Legislature increased that jurisdiction to all roadways within the borders on the state.

1973

- With the increased jurisdiction in 1971, the Highway Patrol changed its name to the State Patrol, Officers were now called Troopers, and the uniform hat was changed to the widely recognized campaign hat.

1974

- Sergeant Mike Lofgren begins to develop the accident reconstruction program; using mathematical formulas to determine causal factors in motor vehicle crashes.

1976

- First women troopers join the State Patrol
- The patrol Commercial Vehicle Division is formed; tasked with the compliance and enforcement of commercial vehicle on Minnesota roadways.

1978

- The CU High Voltage Project demonstrations drew national attention when farmers protested the construction of high voltage power lines in west-central Minnesota. For over two years over 200 state troopers (nearly 1/2 of the Patrols staff) were assigned to protect workers and property and ensure that the construction of the line continued.

1980

- Project 20 sees 20 new troopers hired and funded by the federal government for the sole purpose of enforcing the new 55 MPH national speed limit.

1987

- The Minnesota State Patrol is selected as the Best Dressed State Police Agency.

1994

- The Special Response Team is established to respond to incidents on state property.
- The Drug Recognition Evaluator program begins and the State Patrol is tasked with its coordination.

1994

- First drug detection dog (Pasja) begins work.

1997

- Anna Beers is promoted to Colonel of the State Patrol; the first female head of a state police agency in the U.S.

2001

- The Investigative Services Section is formed, encompassing the Metro Crash Team, K-9 units and Motor Vehicle Crimes Task Force.

2007

- The I-35W bridge in Minneapolis collapses, killing 13 and injuring 145. The State Patrol is instrumental in assisting with the reconstruction of the incident.

2008

- Motorcycles return for metro freeway traffic enforcement. They are used for three years before being retired.

EXHIBIT 17

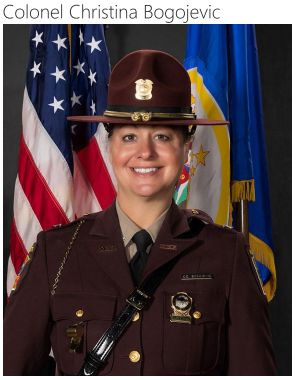
About

What We Do

State Patrol provides for safe and efficient movement of traffic on Minnesota's roads and highways; assists motorists at crashes; partners with allied city and county agencies; and inspects school buses and commercial vehicles. Capitol Security/Executive Protection provides security for all persons and property in the Capitol complex and state buildings in the Twin Cities.

Chief of the State Patrol

Colonel Christina Bogojevic



Col. Christina Bogojevic has been with the Minnesota State Patrol since 2003.

Prior to being named Colonel in April 2024, she held positions including lieutenant colonel, captain of the Rochester district, mobile response commander, lieutenant in the commercial vehicle section, investigator, recruiter, instructor, academy staff trooper, and crash reconstruction specialist.

Col. Bogojevic currently co-leads the State Patrol 30x30 initiative and is a member of IACP.

Col. Bogojevic has an associate's in law enforcement from Rochester Community and Technical College and a bachelor's degree in political science with a concentration in campaign management from Southern New Hampshire University.

Staff

The Minnesota State Patrol is comprised of 886 employees of which 591 are uniform personnel. The State Patrol is located across the state, based in 11 district headquarters.

History

The Minnesota State Legislature created the Minnesota Highway Patrol in 1929, in response to the boom of automobiles. The first chief of the Highway Patrol was Earle Brown, who was among the initial force of nine men.

Today, around 550 state troopers provide assistance, education and enforcement to state citizens and provide for safe, efficient movement of traffic on Minnesota's roadways.

Learn more about the history of the State Patrol.

State Patrol Mission, Vision and Core Values

Mission

Protect and serve all people in the state through assistance, education, and enforcement; provide support to allied agencies; and provide for the safe, efficient movement of traffic on Minnesota's roadways. Read the patrol's strategic plan.

Vision Statement

The Minnesota State Patrol is a progressive law enforcement agency providing superior service to Minnesota's residents, visitors, and allied agencies. We strive for excellence in all that we do through the development of forward thinking leadership, technology, innovation, and a quality workforce.

State Patrol Core Values

- Respect
- Integrity
- Courage
- Honor
- Excellence

EXHIBIT 18

State Patrol Mission

State Patrol Mission, Vision and Core Values

Mission

To protect and serve all people through assistance, education and enforcement; provide support to allied agencies; and provide for the safe, efficient movement of traffic on Minnesota's roadways. Read the patrol's strategic plan.

Vision

To eliminate vehicle crashes in Minnesota through highly professional service and the implementation of evolving best practices.

State Patrol Core Values

- Respect
- Integrity
- Courage
- Honor
- Excellence

EXHIBIT 19

MINNESOTA STATE PATROL
STRATEGIC PLAN 2020

MISSION

To protect and serve all people through assistance, education and enforcement; provide support to allied agencies; and provide for the safe, efficient movement of traffic on Minnesota's roadways.

VISION

To eliminate vehicle crashes in Minnesota through highly professional service and the implementation of evolving best practices.

CORE VALUES

Respect • Integrity • Courage • Honor • Excellence

GOALS	STRATEGIES
Goal A: Prevent deaths, injuries, property damage and life changing events on Minnesota's roadways.	■ Focus resources, education and enforcement on changing driving behaviors to make Minnesota's roads safer. ■ Proactively address emerging traffic safety issues. ■ Leverage collaborative efforts with allied agencies to improve traffic safety. ■ Create a culture of open roads and quick clearance to ensure the safety of the public and first responders. ■ Continue traffic safety education efforts to support crash reduction, recruitment, and community engagement.
Goal B: Provide superior service and assistance to the public and our allied agencies.	■ Continual commitment to our core values in all we do. ■ Provide specialized capabilities to assist the public and our allied agencies. ■ Collaborate with allied agencies to meet mutual goals. ■ Serve the motoring public by assisting with events that occur on the highway.
Goal C: Seek and deploy resources to enhance organizational effectiveness and efficiency.	■ Commit to staying current with existing technologies while planning for advancements. ■ Ensure the stability and recurrence of current and future funding sources. ■ Use relevant data to support and inform our decision making. ■ Routinely review structure and assignments. ■ Research future staffing needs in anticipation of societal shifts and technology.
Goal D: Recruit, retain and invest in a quality workforce that is reflective of our communities.	■ Continuously refine our comprehensive plan for recruitment to all positions. ■ Provide advanced training opportunities in core mission areas to current employees. ■ Identify and work to remove barriers to recruitment and retention. ■ Expand the culture of emotional intelligence, mutual understanding, and a harmonious working environment. ■ Aid in the wellness of our members through education and peer support.

EXHIBIT 20

299D.03 STATE PATROL.

Subdivision 1. **Members, powers, and duties.** (a) The commissioner is hereby authorized to employ and designate a chief supervisor, a chief assistant supervisor, and such assistant supervisors, sergeants and officers as are provided by law, who shall comprise the Minnesota State Patrol.

(b) The members of the Minnesota State Patrol shall have the power and authority:

(1) as peace officers to enforce the provisions of the law relating to the protection of and use of trunk highways;

(2) at all times to direct all traffic on trunk highways in conformance with law, and in the event of a fire or other emergency, or to expedite traffic or to insure safety, to direct traffic on other roads as conditions may require notwithstanding the provisions of law;

(3) to serve search warrants related to criminal motor vehicle and traffic violations and arrest warrants, and legal documents anywhere in the state;

(4) to serve orders of the commissioner of public safety or the commissioner's duly authorized agents issued under the provisions of the Driver's License Law, the Safety Responsibility Act, or relating to authorized brake- and light-testing stations, anywhere in the state and to take possession of any license, permit, or certificate ordered to be surrendered;

(5) to inspect official brake and light adjusting stations;

(6) to make appearances anywhere within the state for the purpose of conducting traffic safety educational programs and school bus clinics;

(7) to exercise upon all trunk highways the same powers with respect to the enforcement of laws relating to crimes, as sheriffs and police officers;

(8) to cooperate, under instructions and rules of the commissioner of public safety, with all sheriffs and other police officers anywhere in the state, provided that said employees shall have no power or authority in connection with strikes or industrial disputes;

(9) to assist and aid any peace officer whose life or safety is in jeopardy;

(10) as peace officers to provide security and protection to the governor, governor elect, either or both houses of the legislature, and state buildings or property in the manner and to the extent determined to be necessary after consultation with the governor, or a designee. Pursuant to this clause, members of the State Patrol, acting as peace officers have the same powers with respect to the enforcement of laws relating to crimes, as sheriffs and police officers have within their respective jurisdictions;

(11) to inspect school buses anywhere in the state for the purposes of determining compliance with vehicle equipment, pollution control, and registration requirements;

(12) as peace officers to make arrests for public offenses committed in their presence anywhere within the state. Persons arrested for violations other than traffic violations shall be referred forthwith to the appropriate local law enforcement agency for further investigation or disposition; and

(13) to enforce the North American uniform out-of-service criteria and issue out-of-service orders, as defined in Code of Federal Regulations, title 49, section 383.5.

(c) After consultation with the governor or a designee, the commissioner may require the State Patrol to provide security and protection to supreme court justices, legislators, and constitutional officers other than the governor, for a limited period and within the limits of existing resources, in response to a credible threat on the individual's life or safety.

(d) The state may contract for State Patrol members to render the services described in this section in excess of their regularly scheduled duty hours and patrol members rendering such services shall be compensated in such amounts, manner and under such conditions as the agreement provides.

(e) Employees thus employed and designated shall subscribe an oath.

Subd. 1a. **Commissioner.** For the purposes of this section, the term "commissioner" means the commissioner of public safety.

Subd. 2. **Salary and reimbursement.** (a) Each employee other than the chief supervisor, lieutenant colonel, majors, captains, corporals, and sergeants hereinafter designated shall be known as patrol troopers.

(b) There may be appointed one lieutenant colonel; and such majors, captains, corporals, sergeants, and troopers as the commissioner deems necessary to carry out the duties and functions of the State Patrol. Persons in above-named positions shall be appointed by law and have such duties as the commissioner may direct and, except for troopers, shall be selected from the patrol troopers, corporals, sergeants, captains, and majors who shall have had at least five years' experience as either patrol troopers, corporals, sergeants, or supervisors.

(c) The salary rates for all State Patrol troopers, corporals, and sergeants shall be deemed to include $6 per day reimbursement for shift differential, meal and business expenses incurred by State Patrol troopers, corporals, and sergeants in the performance of their assigned duties in their patrol areas; business expenses include, but are not limited to: uniform costs, home garaging of squad cars, and maintenance of home office.

Subd. 2a. **Salary and benefits survey.** (a) By January 1 of 2021, 2024, 2027, and 2030, the legislative auditor must conduct a compensation and benefit survey of law enforcement officers in every police department:

(1) in a city with a population in excess of 25,000, located in a metropolitan county, as defined in section 473.121, subdivision 4, that is represented by a union certified by the Bureau of Mediation Services; or

(2) in a city of the first class.

The State Patrol must also be included in the survey.

(b) The legislative auditor must base the survey on compensation and benefits for the past completed calendar year. The survey must be based on full-time equivalent employees. The legislative auditor must calculate compensation using base salary, overtime wages, and premium pay. Premium pay is payment that is received by a majority of employees and includes but is not limited to education pay and longevity pay. The legislative auditor must not include any payments made to officers or troopers for work performed for an entity other than the agency that employs the officer or trooper, regardless of who makes the payment. The legislative auditor must also include in the survey all benefits, including insurance, retirement, and pension benefits. The legislative auditor must include contributions from both the employee and employer when determining benefits.

(c) The legislative auditor must compile the survey results into a report. The report must show each department separately. For each department, the survey must include:

(1) an explanation of the salary structure, and include minimum and maximum salaries for each range or step; and

(2) an explanation of benefits offered, including the options that are offered and the employee and employer contribution for each option.

Wherever possible, the report must be designed so that the data for each department is in the same table or grid format to facilitate easy comparison.

(d) By January 15 of 2021, 2024, 2027, and 2030, the legislative auditor must transmit the survey report to the chairs and ranking minority members of the house of representatives and senate committees with jurisdiction over the State Patrol budget.

(e) It is the legislature's intent to use the information in this study to compare salaries between the identified police departments and the State Patrol and to make appropriate increases to patrol trooper salaries. For purposes of this paragraph, "patrol troopers" has the meaning given in subdivision 2, paragraph (a).

Subd. 3. [Repealed, 1982 c 568 s 13]

Subd. 3a. [Repealed, 1977 c 452 s 36]

Subd. 4. [Repealed, 1977 c 455 s 95]

Subd. 5. **Traffic fines and forfeited bail money.** (a) All fines and forfeited bail money collected from persons apprehended or arrested by officers of the State Patrol shall be transmitted by the person or officer collecting the fines, forfeited bail money, or installments thereof, on or before the tenth day after the last day of the month in which these moneys were collected, to the commissioner of management and budget. Except where a different disposition is required in this subdivision or section 387.213, or otherwise provided by law, three-eighths of these receipts must be deposited in the state treasury and credited to the state general fund. The other five-eighths of these receipts must be deposited in the state treasury and credited as follows: (1) the first $1,000,000 in each fiscal year must be credited to the Minnesota grade crossing safety account in the special revenue fund, and (2) remaining receipts must be credited to the state trunk highway fund. If, however, the violation occurs within a municipality and the city attorney prosecutes the offense, and a plea of not guilty is entered, one-third of the receipts shall be deposited in the state treasury and credited to the state general fund, one-third of the receipts shall be paid to the municipality prosecuting the offense, and one-third shall be deposited in the state treasury and credited to the Minnesota grade crossing safety account or the state trunk highway fund as provided in this paragraph. When section 387.213 also is applicable to the fine, section 387.213 shall be applied before this paragraph is applied. All costs of participation in a nationwide police communication system chargeable to the state of Minnesota shall be paid from appropriations for that purpose.

(b) All fines and forfeited bail money from violations of statutes governing the maximum weight of motor vehicles, collected from persons apprehended or arrested by employees of the state of Minnesota, by means of stationary or portable scales operated by these employees, shall be transmitted by the person or officer collecting the fines or forfeited bail money, on or before the tenth day after the last day of the month in which the collections were made, to the commissioner of management and budget. Five-eighths of these receipts shall be deposited in the state treasury and credited to the state highway user tax distribution fund. Three-eighths of these receipts shall be deposited in the state treasury and credited to the state general fund.

Subd. 6. **Training program.** The commissioner of public safety may provide training programs for the purpose of obtaining qualified personnel for the State Patrol. Persons accepted by the commissioner of public safety for training under this training program shall be designated State Patrol trainees and shall receive a

salary no less than 70 percent of the basic salary for patrol officers as prescribed in subdivision 2, during the period of the training. Nothing contained in this subdivision shall be construed to prevent the commissioner of public safety from providing in-service training programs for State Patrol officers. The commissioner of transportation shall furnish the commissioner of public safety with lands and buildings necessary in providing in-service training programs and the Department of Public Safety shall reimburse the Department of Transportation for all reasonable costs incurred due to the provision of these training facilities.

Subd. 7. **Discharge of trooper.** Every person employed and designated as a state trooper under and pursuant to the provisions of this section, after 12 months of continuous employment, shall continue in service and hold the position without demotion, until suspended, demoted, or discharged in the manner hereinafter provided for one or more of the causes specified herein.

Subd. 8. **Just causes for discharge.** A trooper who has completed six months of continuous employment shall not be suspended, demoted or discharged except for just cause. For purposes of this section, just cause includes, but is not limited to:

(1) conviction of any criminal offense in any court of competent jurisdiction subsequent to the commencement of such employment;

(2) neglect of duty or willful violation or disobedience of orders or rules;

(3) inefficiency in performing duties;

(4) immoral conduct or conduct injurious to the public welfare, or conduct unbecoming an officer; or

(5) incapacity or partial incapacity affecting the trooper's normal ability to perform official duties.

Subd. 9. **Charge against trooper.** (a) Charges against any state trooper shall be made in writing and signed and sworn to by the person making the same, which written charges shall be filed with the commissioner. Upon the filing of same, if the commissioner shall be of the opinion that such charges constitute a ground for suspension, demotion, or discharge, a hearing shall be held on them. The hearing shall be conducted by an arbitrator selected by the parties from a list of five arbitrators provided by the Bureau of Mediation Services. At least 30 days before the time appointed for the hearing, written notice specifying the charges filed and stating the name of the person making the charges, shall be served on the employee personally or by leaving a copy thereof at the employee's usual place of abode with some person of suitable age and discretion then residing therein. If the commissioner orders a hearing the commissioner may suspend such employee before the hearing.

(b) Members of the State Patrol shall have the option of utilizing either the contractual grievance procedure or the legal remedies of this section, but in no event both.

(c) The commissioner, after having been informed by the exclusive representative that the employee against whom charges have been filed desires to utilize the grievance procedure of the labor agreement, may immediately suspend, demote, or discharge the employee without the hearing required by paragraph (a).

Subd. 10. **Hearing on charges, decision, punishment.** The arbitrator may compel the attendance of witnesses at the hearing and examine them under oath, and may require the production of books, papers, and other evidence at the hearing, and for that purpose may issue subpoenas and cause them to be served and executed in any part of the state. The employee accused is entitled to be confronted with the witnesses against the employee and may cross-examine them and may introduce at the hearing testimony in the employee's own behalf, and to be represented by counsel at the hearing.

Subd. 11. **Review of arbitration award.** Any state trooper who is so suspended, demoted, or dismissed may have the decision or determination of the arbitrator reviewed pursuant to the Uniform Arbitrator Act in the district court of the county where the trooper resides. If the decision or determination of the arbitrator is finally rejected or modified by the court, the trooper shall be reinstated in the position, and the commissioner shall pay to the trooper so suspended out of the funds of the state the salary or wages withheld pending the determination of the charges or as may be directed by the court.

Subd. 12. **Applicability.** Subdivisions 5 to 12 shall apply to all persons employed and designated under and pursuant to this section, except the chief supervisor and chief assistant supervisor of the State Patrol. If the chief supervisor or the chief assistant supervisor is removed for other than cause as defined herein the chief or assistant supervisor shall be reinstated to the position held in the patrol prior to being promoted to the position of chief supervisor or chief assistant supervisor.

Upon the effective date of Laws 1969, chapter 1129, the individual occupying the position of chief assistant supervisor of the State Patrol shall retain such position for a period of at least 12 months, or until removed for cause.

History: *(2554) 1929 c 355 s 1; 1931 c 44 s 1; 1935 c 304 s 1; 1937 c 30 s 1; 1939 c 400 s 1; 1941 c 175 s 1; 1943 c 623 s 1; 1945 c 422 s 1; 1945 c 516 s 1; 1947 c 562 s 1; 1951 c 554 s 1,2; 1955 c 593 s 1; 1955 c 667 s 1; 1957 c 824 s 1,3; 1957 c 838 s 1; 1959 c 419 s 1; 1959 c 500 art 2 s 47; 1959 c 603 s 1,2; Ex1959 c 54 s 1; 1961 c 448 s 1,2; 1963 c 458 s 3; 1963 c 884 s 8 subds 1,2; 1965 c 863 s 8 subds 1,3; 1967 c 62 s 1; 1967 c 86 s 1; 1967 c 419 s 1,2; 1969 c 399 s 1; 1969 c 580 s 1; 1969 c 758 s 1; 1969 c 865 s 1,2; 1969 c 1129 art 1 s 5-10; 1971 c 25 s 102; 1971 c 435 s 1; 1971 c 540 s 1; Ex1971 c 32 s 29; 1973 c 35 s 47,48; 1973 c 492 s 14; 1973 c 653 s 23; 1973 c 734 s 1; 1974 c 271 s 1; 1974 c 462 s 1; 1975 c 204 s 79; 1975 c 431 s 22,23; 1976 c 163 s 60; 1976 c 166 s 7; 1977 c 403 s 8; 1977 c 452 s 32,33; 1977 c 454 s 28; 1978 c 487 s 1; 1978 c 793 s 71; 1979 c 332 art 1 s 79-81; 1980 c 614 s 133; 1981 c 37 s 2; 1981 c 363 s 49; 1982 c 568 s 5; 1982 c 617 s 22; 1983 c 177 s 3; 1983 c 247 s 130; 1983 c 293 s 93-96; 1984 c 387 s 1; 1984 c 654 art 3 s 83; 1985 c 248 s 70; 1Sp1985 c 17 s 12; 1986 c 444; 1989 c 311 s 1; 1989 c 335 art 1 s 191; 1991 c 298 art 5 s 5; 1991 c 326 s 16; 1993 c 326 art 7 s 8; 1994 c 465 art 3 s 3; 1999 c 243 art 11 s 4; 1Sp2001 c 5 art 5 s 9; 2003 c 112 art 2 s 38; 2005 c 10 art 2 s 4; 1Sp2005 c 6 art 3 s 88; 2008 c 350 art 1 s 81; 2009 c 83 art 2 s 20; 2009 c 101 art 2 s 109; 2010 c 351 s 58; 2012 c 258 s 1; 1Sp2017 c 3 art 3 s 113; 2020 c 100 s 20; 1Sp2021 c 5 art 4 s 105*

EXHIBIT 21

Cadets train to become the best during Minnesota State Patrol academy at Camp Ripley

July 28, 2022

Minnesota State Patrol troopers face different challenges every day. They promote traffic safety through enforcement, education and assistance. They are also trained in crisis intervention, conflict management and cultural diversity.

It's a lot to learn. That's where the 14-week State Patrol Cadet Academy comes in.

The 37 cadets started the academy July 18 at Camp Ripley, becoming the latest class in the program's **91-year history**. Ask any trooper and they will tell you: The academy isn't easy. But by the end, the graduates are trained to handle all the challenges troopers face daily.

Cadets' training includes classroom work and programs such as firearms, emergency driving, traffic stops and defensive tactics. The academy begins with an in-depth discussion on the **Minnesota State Patrol's Core Values: Respect, Integrity, Courage, Honor and Excellence**.

Those values are tied into everything the cadets do, said Eric Barthel, captain of the Training and Development Section of the Minnesota State Patrol.

“The core values are extremely important to the mission of the agency. By demonstrating those values in the academy, we expect that to transition to when they are troopers and interacting with the public," Barthel said.

Cadets are put into stressful situations and evaluated on how they handle them. They are trained in what to do in every scenario their instructors can think up. Cadets learn active shooter response, crowd control, and what to do if they suspect they have uncovered human trafficking. They attend a water confidence course hosted by Minnesota Department of Natural Resources conservation officers in the event they are called to a vehicle crash that involves a water rescue. They are trained in crisis intervention, and they take part in controlled drinking labs that teach them to identify impaired drivers.

Going through the academy is a life-changing experience that pushes a cadet to be their very best on and off the road. Instructors teach leadership skills and emphasize service and lifelong learning.

The cadets are slated to graduate Oct. 25. If they complete the training, they will join the more than 600 state troopers who provide assistance, education and enforcement to Minnesota's drivers and provide for safe, efficient movement of traffic on Minnesota's roadways.

Information about becoming a trooper, career/internship opportunities and the ride-along program is found on the Minnesota State Patrol **“Join the State Patrol" web page**.

DPS Blog
Archive 2024
Archive 2023
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Blog Home
Expand All | Collapse All

EXHIBIT 22

Camp Ripley Partners

[DNR Enforcement Center] - Camp Ripley houses the Minnesota Department of Natural Resources (DNR) Enforcement Center. DNR conservation officers train year-round in Camp Ripley's diverse habitat. The DNR also offers many benefits to service members and their families.

[State Patrol Training Academy] - Camp Ripley has been the host for the Minnesota State Patrol Academy since 1996. The front gates have welcomed many women and men as recruits and ushered them out as members of Minnesota's finest - the Minnesota State Patrol.

[MN Department of Public Safety - Homeland Security and Emergency Management]

[Minnesota Military Museum] - Located on Camp Ripley. Discover the stories and contributions of Minnesota citizens who served and sacrificed in all branches of service an don the home front, from our state's earliest years to the present.

[MN State Veterans Cemetery] - The Minnesota State Veterans Cemetery - Little Falls was opened in 1994 and is located seven miles north of Little Falls. The State Veterans Cemetery offers a final resting place for Minnesota Veterans and their families.

EXHIBIT 23

https://mnbca.sharefile.com/share/view/s5f4e656cfec643e69503d04d573a7eb2/fo5546f7-37ce-4a6f-92c9-26123cd63482

From home page: Documents - > Additional Documents. Pages 767-792.

Use of Force
GO- 21-10-027

Purpose

- GENERAL ORDER
- Effective: March 1, 2021 Number: 21-10-027 HRLFNDT
- Subject: FORCE; USE OF
- Reference: General Orders 30-005, 30-007, 30-018; Use of Force Report
- Special Instructions: Rescinds General Order 20-10-027 Distribution: A,B,C
- The purpose of this policy is to provide troopers with guidelines for the use of force and deadly force in accordance with the following Minnesota Statute sections: 609.06 (Authorized Use of Force); 609.065 (Justifiable Taking of Life); 609.066 (Authorized Use of Force by Peace Officers); 626.8452 (Deadly Force and Firearms Use; Policies and Instruction Required); 626.8475 (Duty to Intercede and Report).

GUIDING PRINCIPLES

- The use of force is only authorized when it is objectively reasonable and for a lawful purpose.
- The decision by troopers to use force or deadly force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when troopers may be forced to make quick judgments about using such force.
- Every human life has inherent value (sanctity) and members shall treat people with respect and dignity and without prejudice.
- Every person has a right to be free from excessive use of force by law enforcement officers acting under the color of law.
- Troopers shall use deadly force only when necessary in defense of human life or to prevent great bodily harm.
- Troopers should exercise special care when interacting with individuals with known physical, mental health, developmental, or intellectual disabilities as an individual's disability may affect the ability to understand or comply with commands.
- Troopers who use excessive or unauthorized force are subject to discipline, possible criminal prosecution, and/or civil liability.

DEFINITIONS

- Levels of Resistance are the amounts of force used by a subject to resist compliance with the lawful order or action of a trooper. These actions may include:
- 1. Non-Verbal and Verbal Non-Compliance
- When a subject expresses his/her intentions not to comply with a trooper's directive through verbal and non- verbal means. Troopers may encounter statements ranging from pleading to physical threats. Such statements may also include physical gestures, stances, and subconscious mannerisms.
- 2. Passive Resistance
- When a subject does not cooperate with a trooper's commands but does not take action to prevent being taken into custody. For example, a demonstrator who lies down on a roadway and must be carried away.
- 3. Active Resistance (defensive resistance)
- When a subject makes physically evasive movements to interfere with a trooper's attempt to control that subject; including bracing, tensing, pulling away, actual or attempted flight, or pushing.
- 4. Active Aggression
- Actions by a subject that are aggressive in nature with intent to injure or instill fear of injury or death to the member or another.
- 5. Deadly Force Assault
- Any action which would cause a reasonable officer to believe it will result in death or great bodily harm to the member or another.

DEFINITIONS

- Levels of Control are the amounts of force used by troopers to gain control over a subject and include the following:
  - Verbal Commands
- The use of advice, persuasion, warnings, and or clear directions prior to resorting to actual physical force. In an arrest situation, troopers shall, when reasonably feasible, give the arrestee simple directions with which the arrestee is encouraged to comply. Verbal commands are the most desirable method of dealing with an arrest situation.
  - Soft Hand Control
- The use of physical strength and skill in defensive tactics to control arrestees who are reluctant to be taken into custody and offer some degree of physical resistance. Such techniques are not impact oriented and include pain compliance pressure points, takedowns, joint locks, and simply grabbing a subject. Touching or escort holds may be appropriate for use against levels of passive physical resistance.

DEFINITIONS

- Hard Hand Control (hard empty hand)
- Impact oriented techniques that include knee strikes, elbow strikes, punches, and kicks. Control strikes are used to subdue a subject and may include strikes to pressure points such as: the common peroneal (side of the leg), radial nerve (top of the forearm), or brachial plexus origin (side of neck).
- Defensive strikes are used by troopers to protect themselves from attack and may include strikes to other areas of the body, including the abdomen or head. Techniques in this category include stunning or striking actions delivered to a subject's body with the hand, fist, forearm, legs, or feet. In extreme cases of self-defense, the trooper may need to strike more fragile areas of the body where the potential for injury is greater.
  - Contact Weapons
- All objects and instruments used by troopers to apply force which includes striking another or defending a trooper or another from an active aggressive person. Contact weapons include, but are not limited to, MSP issued equipment such as the expandable baton, flashlight, and riot baton.

DEFINITIONS

- **Deadly Force**
- All force actually used by trooper(s) against another which the trooper(s) know or reasonably should know, creates a substantial risk of causing death or great bodily harm. The intentional discharge of a firearm in the direction of another person, or at a vehicle (including tires) in which another person is believed to be, constitutes deadly force. The use of a chokehold, as defined in this policy, constitutes deadly force.
- Exigent Circumstances
- Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.
- Bodily Harm means physical pain or injury.
- Chokehold
- A method by which a person applies sufficient pressure to a person to make breathing difficult or impossible and includes but is not limited to any pressure to the neck, throat, or windpipe that may prevent or hinder breathing, or reduce intake of air. Chokehold also means applying pressure to a person's neck on either side of the windpipe, but not to the windpipe itself, to stop the flow of blood to the brain via the carotid arteries. Chokehold includes any type of neck restraint. Such actions are considered deadly force.

DEFINITIONS

- **Approved Weapon**
- **A device or instrument which troopers are authorized from the Minnesota State Patrol to carry and use in the discharge of their duties, and, for which the troopers have (1) obtained training in the technical, mechanical, and physical aspects of the device; and (2) has developed a knowledge and understanding of the law, rules, and regulations regarding the utilization of such weapons.**
- **OC Aerosol is the Oleoresin Capsicum (OC) spray device classified as an inflammatory agent.**
- **Chemical Agents**
- **Devices containing Oleoresin Capsicum (OC) classified as an inflammatory agent and/or Chlorobenzylidene Malononitrile (CS) classified as an irritant agent.**
- **Distraction Device**
- **A device that produces a loud sound and/or light distraction, which creates a temporary physiological and/or psychological disorientation of an individual.**
- **Impact Munition is a less lethal munition which functions by striking the intended target.**

DEFINITIONS

- **De-Escalation**
- **Taking action or communicating verbally or non-verbally during a potential use of force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De- escalation may include, but is not limited to, the use of such techniques as command presence, warnings, verbal persuasion and tactical repositioning.**
- **Great Bodily Harm**
- **Bodily injury which creates a high probability of death, or which causes serious, permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.**
- **Less-Lethal Force**
- **All force actually used by troopers which does not have the purpose or likelihood of causing death or great bodily harm. This includes use of approved chemical agent, OC aerosol, impact munitions and distraction devices used to maintain civil order, prevent property damage, and protect life.**

DEFINITIONS

- **Weapon is any instrument used or designed to be used to apply force to the person of another.**
- **Objectively Reasonable**
- **In determining the necessity for force and the appropriate level of force, troopers shall evaluate each situation in light of the known circumstances, including, but not limited to, the seriousness of the crime, the level of threat or resistance presented, and the danger to the community. Although troopers have many options, he or she must exercise the application of force in a manner that is reasonable and necessary to arrest or detain a suspect. Many variables affect the level of force one can justify. These situations can be very fluid, dynamic, and unpredictable. Troopers must be ready to utilize force at any level.**

PROCEDURES

- De-Escalation
  - Troopers shall use de-escalation techniques and other alternatives to higher levels of force consistent with their training whenever reasonably possible and appropriate before resorting to force. The goal of de- escalation is to reduce and/or eliminate the need for force.
  - Whenever possible and when such delay will not compromise the safety of the trooper(s) or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, troopers shall allow an individual time and opportunity to submit to verbal commands before force is used.
- Use of Non-Deadly Force
  - When de-escalation techniques are deemed not effective or appropriate, it shall be the policy of the Minnesota State Patrol, unless expressly negated elsewhere, to allow troopers to exercise discretion in
- the use of agency-approved, non-deadly force techniques and approved equipment to the extent permitted by Minn. Stat. §609.06:
  - In effecting a lawful arrest; or
  - In the execution of legal process; or
  - In enforcing an order of the court; or
  - In executing any other duty imposed on the trooper by law, including when bringing an unlawful situation he/she is tasked with handling safely and effectively under control
  - In defense of self or another

PROCEDURES

- **In determining the degree of non-deadly force which is reasonable under the circumstances, troopers shall consider:**
  - **The severity of the crime at issue;**
  - **Whether the suspect poses an immediate threat to the safety of trooper(s) or others; and**
  - **Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.**

PROCEDURES

- Use of Deadly Force
- It shall be the policy of the Minnesota State Patrol, unless expressly negated elsewhere, to allow troopers to exercise discretion in the use of deadly force to the extent permitted by Minn. Stat. §609.066, subd. 2, which authorizes peace officers acting in the line of duty to use deadly force only if an objectively reasonably officer would believe, based on the totality of circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary:
  - To protect the peace officer or another from death or great bodily harm, provided that the threat:
    - can be articulated with specificity by the law enforcement officer;
    - is reasonably likely to occur absent action by the law enforcement officer; and
    - must be addressed through the use of deadly force without unreasonable delay; or
  - To effect the arrest or capture, or prevent the escape, of a person whom the trooper knows or has reasonable grounds to believe has committed or attempted to commit a felony and the trooper reasonably believes that the person will cause death or great bodily harm to another person under the threat criteria in IV.C.(1)a.-c. (above), unless immediately apprehended.
  - Where reasonably feasible, troopers shall identify themselves as a law enforcement officer and warn of his or her intent to use deadly force.
  - In cases where deadly force is authorized, less-than-lethal measures must be considered first by troopers.

RULES GOVERNING USE OF FORCE AND WEAPONS

- Use of Force
  - **Troopers should, when practicable, announce their intention to use only that type and degree of force that is reasonably necessary under the circumstances. This provision shall not be construed to authorize or endorse the use of discourteous, abusive, or unprofessional language.**
  - **Troopers shall only use the type and degree of force that is objectively reasonable to bring an incident under control. Use of physical force should be discontinued when resistance ceases or when the incident is under control.**
  - **Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent escape or imminent bodily harm or when noncompliant physically (including passive physical resistance such as refusing to stand, etc.). In these situations, only the amount of force necessary to control the situation shall be used.**

RULES GOVERNING USE OF FORCE AND WEAPONS

- Weapons – General
  - Troopers shall carry and use only Minnesota State Patrol approved weapons, unless circumstances exist which pose an imminent threat to the safety of the trooper(s) or the public requiring the immediate use of an improvised weapon to counter such a threat. This provision shall not be construed as authorizing troopers to use a non-approved weapon where, under the circumstances, it would be reasonably feasible to procure approval for use of the particular weapon prior to its use.
  - Troopers must be trained in the proper use of issued weapons prior to use.
  - On-duty members may carry a concealed utility knife (clip may be visible); however, the use of knives as weapons is not authorized except in those situations where deadly force may be used.
  - Troopers shall not modify, alter, or cause to be altered a Minnesota State Patrol approved weapon in his or her possession or control unless permission is granted according to General Order 30-007. The issued expandable baton, riot baton, OC aerosol device, 40 mm launcher, and Taser device are the only less lethal weapons authorized to be carried in a State Patrol unit and carried by troopers.
    - All issued less lethal chemical or impact munition equipment shall be carried in the member's patrol unit so that it is readily available.
    - If a Taser is carried, troopers must also carry either the baton or the OC aerosol device on their duty belt. Troopers exempted from carrying a Taser device must carry the baton on their duty belt.

RULES GOVERNING USE OF FORCE AND WEAPONS

- Taser devices may only be carried and utilized in compliance with General Order30-018.
- Weapons – Contact Weapons
  - Contact weapons shall be used only where hard and soft empty hand control options have failed to bring the subject/situation under control or where it reasonably appears that such methods would be ineffective if attempted. Contact weapons may be used only in the following manner:
- to defend trooper(s) from an actively aggressive suspect; or
- to strike an actively aggressive suspect for the purpose of rendering that person temporarily incapacitated in order to bring the situation under control; or
- to restrain persons; or
- in appropriate crowd control situations the MSP-issued riot baton can be utilized to direct and control the movement of people or persons, or as a barricade

RULES GOVERNING USE OF FORCE AND WEAPONS

- **Troopers engaging another person with a contact weapon should attempt to strike, if possible, bodily areas likely to result only in incapacity. These areas include the arms, legs, torso, thighs, and calves.**
- **If worn, the issued expandable baton is to be worn on the gun belt in the issued baton carrier.**
- **The issued riot baton is to be used only when necessary for crowd control situations and shall be readily available along with other mobile field force equipment when responding to crowd control situations.**
- **Intentionally striking the head or neck with any contact weapon is only justified in the use of deadly force.**

RULES GOVERNING USE OF FORCE AND WEAPONS

- Less Lethal Devices
  - OC Aerosol use is considered less-lethal force. Only approved Minnesota State Patrol-issued OC aerosol are authorized.
    - Hand-held OC Aerosol
      - Troopers shall exercise due care to ensure, as much as practicable, that only intended persons are sprayed or otherwise subject to the application of chemical agents and that the chemical agents are applied consistent with training. When feasible and tactically appropriate a verbal warning and/or dispersal order should be issued prior to the use.
      - The OC aerosol device (MK2) must be in the possession of all uniformed troopers and may be carried on the person.
    - High volume OC delivery system, such as MK9, are designed for and may be used in civil disturbances against individuals and/or groups of individuals engaged in unlawful acts or endangering public safety and security.

RULES GOVERNING USE OF FORCE AND WEAPONS

- Chemical Agents, Distraction Devices, Impact Munitions or the use of any combination thereof is considered less-lethal force. Only approved Minnesota State Patrol issued devices are authorized.
  - Troopers are only authorized to use these devices after receiving agency training within the last three years. The training consists of a written exam and practical proficiency qualification.
  - Devices must be non-expired and agency issued.
  - Troopers are authorized to deploy the devices in accordance with their training and manufacture specifications.
  - When reasonably feasible and tactically appropriate, a verbal warning and/or dispersal order should be issued prior to the use.
- Any individual taken into custody who was exposed to OC Aerosol, Chemical Agents, Distraction Devices, Impact Munitions or any combination thereof the trooper should be aware of and utilize the following procedures:
  - The areas of the body exposed to chemical agents and/or OC aerosol should be thoroughly flushed with water as soon as practicable.
  - If the chemical agent and/or OC aerosol has struck the subject's clothing and the subject is to be held in custody, the subject must be permitted to shower and change clothes.
  - Medical attention should be offered to those in custody who have been exposed to less lethal devices.

RULES GOVERNING USE OF FORCE AND WEAPONS

- **3. Less-lethal devices shall not be used on any person for the purpose of punishment.**
- **Firearms**
  - **Firearms may be readied for use in situations where it is reasonably anticipated that they may be required.**
  - **The carry and use of firearms is covered in General Orders 30-005 and30-007.**
  - **The use of a firearm is deadly force. If reasonably feasible and tactically appropriate, troopers should give a verbal warning before using or attempting to use deadly force. Warning shots are not authorized. Any use of deadly force other than authorized above, is unlawful.**
- **Restraints**
- **The following types of restraints shall not be used unless use of deadly force is authorized and other less than lethal measures were already considered:**
  - **Chokeholds (Neck restraints)**
- **Securing all of a person's limbs together behind the person's back to render the person immobile**
- **Securing a person in any way that results in transporting the person face down in a vehicle.**

MEDICAL TREATMENT

- **After any use of force situation, the subject of the force shall be asked about and inspected for injuries as soon as practicable. Medical attention must be offered by members consistent with their training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility. If a person is offered and then refuses treatment, this refusal should be documented whenever possible.**

DUTY TO INTERCEDE AND REPORT

- **Any trooper(s) observing another peace officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, safely intercede to prevent the use of such excessive force.**
- **Troopers shall prepare reports for such incidents as required in section VIII. Troopers who observe unreasonable force must notify a supervisor as soon as practicable and in all cases must report the observation in writing to the Chief within 24 hours of the incident.**
- **Retaliation against any member who intervenes against excessive use of force, reports misconduct, or cooperates in an internal investigation is prohibited**

REPORTING REQUIREMENTS

- **In all instances in which a trooper(s) uses force, the trooper(s) shall prepare a TraCS Use of Force Report in a manner consistent with his/her training in addition to all other reports concerning the incident, including a Field Report. All reports shall be validated and submitted for review and approval.**
- **Any trooper(s) who witnesses the use of force shall prepare a Field Report.**

TRAINING

- **Required members shall receive training, at least annually, on the agency's Use of Force policy and related legal updates.**
- **In addition, training shall be provided on a regular and periodic basis and designed to:**
  - **Provide techniques for the use of and reinforce the importance of de-escalation.**
  - **Provide scenario-based training, including simulating actual shooting situations and conditions; and**
  - **Enhance Member's discretion/judgment in using non-deadly and deadly force in accordance with this policy.**
- **The Chief, or designee, will maintain records of the agency's compliance with use of force training requirements**

REVIEW

- District/Section Commander
  - Review, evaluate, and when appropriate, investigate all incidents involving the use of force with all troopers involved. Indicate on the Use of Force Report whether the trooper's actions complied with department policy.
  - Submit the Use of Force Tracking Report to Headquarters once the reports are accepted in TraCS and no later than 14 days of the occurrence. Exemptions to the 14-day requirement must be approved by the Regional Major.
- Regional Major
  - Review and evaluate Use of Force Reports in TraCS for compliance with policy.
  - The Training and Development Section shall review approved Use of Force Reports in TraCS.
  - Ensure that the BCA is notified of information required to be documented in the National Use-of-Force Report database through the BCA Supplemental Reporting System, including the following:

REVIEW

- The death of a person due to law enforcement use of force;
- The serious bodily injury of a person due to law enforcement use of force;
- The discharge of a firearm by law enforcement at or in the direction of a person that did not otherwise result in death or serious bodily injury.
- Ensure that the BCA is notified through the BCA Supplemental Reporting System within 30 days of the firearms discharge of information required to be documented in the Minnesota Firearms Discharge Report database, including:
  - When a peace officer discharges a firearm in the course of the duty, pursuant to Minnesota Statutes 626.553, subdivision 2. This does not include discharges for training purposes, nor the killing of an animal that is sick, injured, or dangerous;
  - Firearm accidental discharge (e.g. gun cleaning)
- By the 5th of each month, if there are no incidents to report to the BCA that meets the criteria of X. B. 3 and 4 above, this information must be reported to the BCA in the Supplemental Reporting System as "No incidents to report."

QUESTIONS ?

Minnesota State Patrol

Jason Halvorson

Course Objectives

- Understanding the Physiological & Physical
- Risk Management for Survival
- Fear Management and Control
- Environment Awareness for Survival
- Symptoms of emotional trauma

Proper Mindset

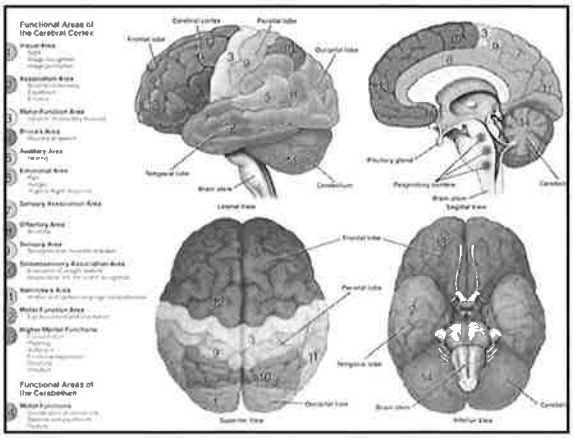
- Realistic Training
- "Fight like you Train."
- Combat Skills to fit your needs
- Anaerobic Fitness (Fighting Fitness)
- Mindset – Mental Preparedness
- Tactically Sound
- Purpose!

Survival

- Environmental Awareness
- Watch your suspect- HANDS-HANDS-HANDS
- Body language is 85% of communication
- Identify what you see immediately...not later.
- Measure of compliance.
- Is there a 6th sense

Neuroanatomy : The Brain

- Brain can divided into:
  - Two Cerebral hemispheres
    - Left and right
    - Connected by neural fibers
  - (midbrain) primitive
  - Brain stem
  - Spinal cord



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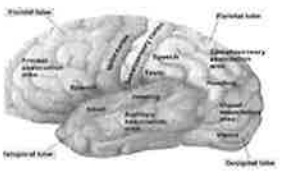
Neuroanatomy

- Basic Overview
  - Nervous system can be divided into two components
    - CNS: Brain and Spinal Cord (Stroke)
    - PNS: Everything Else (Pinched Nerve)
- Never that Simple
  - Autonomic Nervous System
    - Outside conscious control
      - Sympathetic nervous system (SNS)
      - Parasympathetic nervous system (PNS)

Cerebral Hemispheres

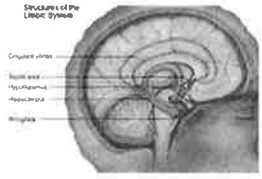
- Each hemisphere contains:
  - Frontal lobe
    - Prefrontal cortex
    - I-pod of brain
  - Parietal lobe
    - Reading
    - Speech
    - taste
  - Temporal lobe
    - Smell
    - hearing
  - Occipital lobe
    - Vision
  - Limbic lobe



Limbic system: Fear

- Portions of the brain concerned with memory, emotional response, and behavior
- Serves as a bridge between conscious and automatic responses.
- Hippocampus : Memory
- Amygdala: Emotions
  - Two Limbic subsystems

This is where fear exists

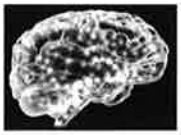


Amygdala

- Considered the location of emotional response in the brain
- Especially important for "powerful" emotions of fear, anxiety, panic, and aggression
- Amygdala has extensive connections with the hypothalamus and the PFC.
  - Hypothalamus has overall control of the autonomic nervous system
- Able to influence both behaviors and feelings that accompany these activities.

Autonomic Nervous System

- Responsible for monitoring and controlling primitive activity
- Outside conscious awareness for the most part, and therefore automatic.
- Yin-Yang relationship



ANS Control

- Hypothalamus releases hormones into the blood stream.
- Hormones stimulate pituitary gland
- Pituitary gland releases hormones which then affect you and your response.
  - Hypothalamus: CRF (corticotropin/activates the pituitary gland)
    - causes the pituitary and adrenal glands to increase the secretion of hormones that cause the body to be on alert and ready to defend itself.
  - Pituitary: ACTH (cortisol/response to stress)
    - produced in response to biological stress
  - Adrenal Gland: CORT + EPI (cortisol) (Epinephrine)
    - drives the autonomic nervous system's fight-or-flight response

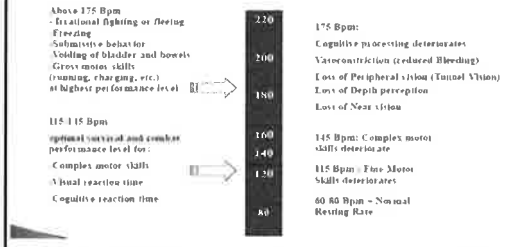
2

Epinephrine

- released into the bloodstream when dangerous circumstances occur, in an emergency requiring immediate action, and in stressful situations or environments. When in the bloodstream, epinephrine rapidly prepares the body for action. It boosts the supply of oxygen and glucose to the brain and muscles while suppressing other non-emergency bodily processes (digestion in particular).
- Epinephrine increases heart rate and stroke volume, dilates the pupils, and constricts arterioles in the skin and gastrointestinal tract while dilating arterioles in skeletal muscles. It increases catabolism of glycogen to glucose in the liver, thereby elevating the blood sugar level. At the same time, epinephrine begins the breakdown of lipids in fat cells. Like some other stress hormones, epinephrine has a suppressive effect on the immune system

Performance

Heart Rate Performance Chart



Advantages

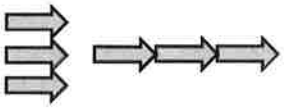
- Prepares body for the physical stress and fight
- Insensitivity to pain
- Increase in speed
- Surge in gross motor strength
- Cave man thoughts/survival

Disadvantages

- Severe decrease in fine motor coordination
- Dexterity decreases
- Hands tremble
- Verbal commands
  - Will not make sense
  - Will not know what you said

Performance

- "Laws of Attention"
  - We can only attend to one thing at a time
  - Attention is selective- we can concentrate on one thing or another
  - Attention requires effort



Visual Changes

- Vision is a key survival advantage to humans
- Multiple perceptual changes occur during high stress encounters
- Problematic as perception and memory are related

3

Visual Changes

- Sensory distortions are a normal part of fear events.
- Sensory gating
  - Shift towards survival senses, ignore the rest
- Loss of peripheral vision/irrelevant events
  - 2-4 degrees of view

Visual Changes

- Inability to accurately gauge distance
  - Thought you were ten feet but were touching
- Cannot see behind the threat
- Inability to focus on front sight

Sight

Scared Shitless

- Hearing distortion
- Tunnel vision/auditory exclusion
- Time distortions
- 25 % urination in combat
- 25% defecation in combat
- Time speeds up
- Freeze
- Why did I do that?

Cave Man

Control your fear

- Fear of injury
- Fear of Death
- Fear of internal affairs
- Fear of civil suits
- Fear of criminal charges
- Fear of hurting the suspect
- Fear of not knowing what to do

4

Fear Management

- Redirection of a thought process,
- When threatened with harm,
- Become the predator and your opponent the prey!
- A Plan of action,
- Become offensive not defensive,
- Practice your use of force techniques consistently and realistically.
- Breath, breath, breath

Post Traumatic Stress

- Smells
- Sounds
- Sights
- Strong reaction pulled from memory of Critical stress incident

Post Traumatic Stress

- What Can I Do?
- Identify the stimulus
- Recognize that's its normal
- Discussion with family
- Get help
  - Counseling
  - Support groups

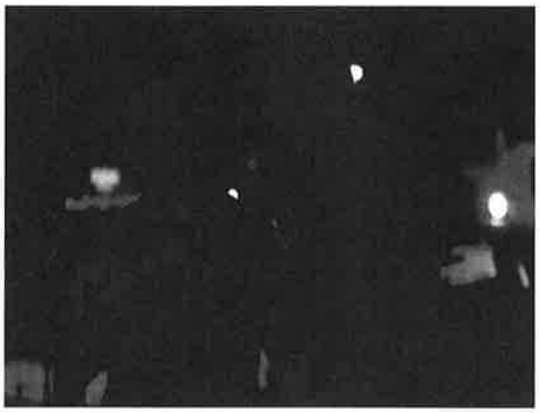
Use of Force

Minnesota State Patrol
Sgt. Jason Halvorson #133
Sgt. Jonathan Wenzel #184

RESPECT • INTEGRITY • COURAGE • HONOR • EXCELLENCE

Sgt. Halvorson:
- MSP Defensive Tactics Coordinator
- (To be added)

Sgt. Wenzel:
- MSP Firearms Coordinator
- MSP SFST/ DRE/ Radar/ Lidar/ 3C and Less Lethal Instructor
- MACP/USACS Level 3
- US Army Medical Instructor
- US Army Team Leader



Use of Force Training

The goal of this presentation is to enable you to make lawful decisions about when to use force and to know how much force is acceptable.

The decisions that you make in a split second may determine whether someone lives or dies.

Rules pertaining to the Use of Force
- Federal case law
- State law
- General order policy

Performance Objectives

Upon completion of this course, the student will:
- Be able to correctly apply the legal definition of force to factual scenarios.
- Correctly identify the three-factor test for objectively reasonable force established by the U.S. Supreme Court in Graham v. Conner.
- Identify when force is authorized under MN Statutes 609.06 and 609.066.

Objectives Continued

Relate how Minnesota Statutes 629.32 and 629.33 are relevant to use of force decisions.

Recognize how less-than-lethal techniques and weapons may become lethal.

Verbal de-escalation; value human life in every encounter.

Be familiar with the civil, criminal, licensing, and employment consequences of unlawful uses of force or unreasonable force.

What is Force

- Force is:
- An intentional bodily contact that causes pain or injury
- Intentionally placing someone in fear of such a contact
- Restricting freedom of movement in a way that causes injury
- Using handcuffs to restrain someone

Force Concepts

Reasonable Force – Force used within the constraints presented by Graham v. Conner.

Use of Deadly Force – Force used within the parameters of Tennessee v. Garner.

Force is used as defense or control.

Use of Force

The 4th Amendment:

Protects an individual against illegal search and seizure. A person is seized within the meaning of the 4th Amendment only when, by means of physical force or show of authority, his/her freedom of movement is restrained, and in the circumstances surrounding the incident, a reasonable person would believe that he/she was not free to leave.

Use of Force

Graham v. Connor, 490 U.S. 386 (1989)

The U.S. Supreme Court case that defined the standard under which excessive force claims would be judged. The standard established was that of **"objective reasonableness."** Prior to this, the standard was "police behavior that shocks the conscience." In this case, the court redefined and set forth a less subjective standard.

Graham v. Connor, 490 U.S. 386 (1989)

Officer Connor completed an investigatory stop about a ½ mile from the store. Berry explained that his friend was suffering from a diabetic reaction. Officer Connor asked them to wait in the car while he checked to see if anything happened at the convenience store. Officer Connor returned to his car and called for backup. While waiting, Graham, exited the car and ran around it twice. Graham then sat down at the curb and briefly passed out.

Graham v. Connor, 490 U.S. 386 (1989)

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Graham v. Connor, 490 U.S. 386 (1989)

Several officers arrived and attempted to handcuff Graham, making comments they thought he was drunk. During the scuffle and placement in the patrol car, Graham injured his shoulder, broke foot, bruised his forehead and had some cuts to his wrist. It was later determined nothing happened in the convenience store and Graham was released. Graham filed an excessive force claim.

Graham v Conner

Graham v Conner was ultimately reviewed by the U.S. Supreme Court and established the "Objectively Reasonableness" standard for use of force in an arrest and/or seizure of a person under the 4th Amendment.

Graham v Conner

Because reasonableness "is not capable of precise definition or mechanical application, when reviewing an excessive force claim, a reviewer should give attention to the facts and circumstances of each particular case, including:

- **The severity of the crime at issue**
- **Whether the suspect poses an immediate threat to the safety of the officers or others**
- **Whether suspect is actively resisting arrest or attempting to evade arrest by flight**

Graham v Conner

The Court also recognized that the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer, rather then with 20/20 hindsight. The Court also cautioned that "not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers violates the Fourth Amendment. The reasonableness must allow for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving about amount of force necessary in particular situation

Graham v Conner

Graham gave guidance to lower courts

- What information is known to the officer at the time of the call?
- How would a reasonable officer interpret the information and respond?
- How did the officer actually respond?
- What were the totality of the circumstances?

Paradise California

PPD Officer observes vehicle speed off out of a parking lot with its headlights off.

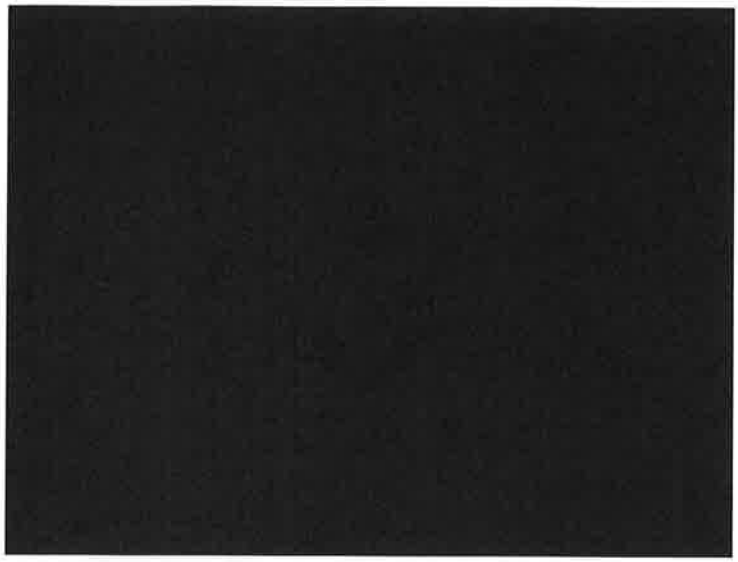
Outcome

- Female passenger ejected. Deceased.
- Male driver shot through spine. Paralyzed.

Eden Prairie Shooting

Shooting of Walter Scott

April 4th, 2015



Outcome

-On December 7, 2017, U.S. District Judge David C. Norton sentenced Officer Slager to 20 years in prison.

1. Failure to know policy. Too often, Praet says, "cops have the attitude, 'Why would I look at the policy manual unless I'm either studying for promotion or about to get disciplined?" But many civil trials involve policy issues, and failure to know specifics can prove at least embarrassing if not disastrous.

He cites this witness-stand exchange from a recent dog-bite case:

PLAINTIFF'S ATTORNEY: Isn't it true, officer, that you can only use that amount of force that's necessary to overcome resistance?

OFFICER: Yes, sir. That's correct.

"Wrong!" Praet declares. That department's policy actually permits only the amount of force "that *reasonably appears* necessary," a significant distinction.

"When some seasoned attorney cross-examines you, unless you're really up to speed on policy, your [imprecise] memory is not going to serve you," Praet says.

(Later the officer quoted above said he's going to get a tattoo: "RAN," for "*R*easonably *A*ppears *N*ecessary.")

Tennessee v. Garner, 471 U.S. 1 (1985)

- Tennessee v. Garner, 471 U.S. 1 (1985)[1], was a case in which the Supreme Court of the United States held that, under the Fourth Amendment, when a law enforcement officer is pursuing a fleeing suspect, he or she may not use deadly force to prevent escape unless "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others."

Tennessee v. Garner, 471 U.S. 1 (1985)

- At about 10:45 p.m. on October 3, 1974, Memphis police officers Leslie Wright and Elton Hymon were dispatched to answer a burglary call next door. Officer Hymon went behind the house as his partner radioed back to the station. Hymon witnessed someone running across the yard. The fleeing suspect, Edward Garner, stopped at a 6-foot-high (1.8 m) chain-link fence. Using his flashlight, Hymon could see Garner's face and hands, and was reasonably sure that Garner was unarmed. The police testified that they believed Garner was 17 or 18 years old; Garner was in fact 15 years old. After Hymon ordered Garner to halt, Garner began to climb the fence. Believing that Garner would certainly flee if he made it over the fence, Hymon shot him. The bullet struck Garner in the back of the head, and he died shortly after an ambulance took him to a nearby hospital. Ten dollars and a purse taken from the burglarized house were found on his person.

Tennessee v. Garner, 471 U.S. 1 (1985)

- Hymon acted according to a Tennessee state statute and official Memphis Police Department policy authorizing deadly force against a fleeing suspect. The statute provided that "if, after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all the necessary means to effect the arrest."

Tennessee v. Garner, 471 U.S. 1 (1985)

- Garner's father then brought suit in the United States District Court for the Western District of Tennessee under the Civil Rights Act of 1871, 42 U.S.C. § 1983, naming the City of Memphis, its mayor, the Memphis Police Department, its director, and Officer Hymon as defendants. The District Court found the statute, and Hymon's actions, to be constitutional. On appeal, the United States Court of Appeals for the Sixth Circuit reversed. The Court of Appeals held that the killing of a fleeing suspect is a "seizure" for the purposes of the Fourth Amendment, and is therefore constitutional only when it is reasonable. The court then found that based on the facts in this case, the Tennessee statute failed to properly limit the use of deadly force by reference to the seriousness of the felony.

Tennessee v. Garner, 471 U.S. 1 (USSC) (1985)

Balancing act between the state's interest in apprehension and the individuals right to life

Use of deadly force, even if authorized by state statute, to seize/apprehend an unarmed person who does not signify an immediate threat, is unconstitutional.

Any use of force is an seizure and must meet the reasonable test of search and seizure.

Qualified Immunity

While law enforcement officers recognize the inherent risks of their occupation, they should be comforted by the description given by the Supreme Court as to the effect of the qualified immunity doctrine on one of those inherent risks—that of being sued civilly. In Harlow v. Fitzgerald, the Court explained that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."4 The plaintiff in Harlow, A. Ernest Fitzgerald, sued, among others, President Richard M. Nixon and one of his aides, Bryce Harlow, alleging that he was dismissed from his employment with the Air Force in violation of his First Amendment and other statutory rights.

The defendants sought immunity from the lawsuit. While ruling on the issue of immunity, the Supreme Court distinguished the president from his aide. First, the Court noted that its "decisions consistently have held that government officials are entitled to some form of immunity from suits for damages. As recognized at common law, public officers require this protection to shield them from undue interference with their duties and from potentially disabling threats of liability." 5 Justice Powell, writing for the Court, continued by recognizing that:

Qualified Immunity

- This shield of immunity is an objective test designed to protect all but "the plainly incompetent or those who knowingly violate the law." officers are not liable for damages "as long as their actions reasonably could have been thought consistent with the rights they are alleged to have violated."11 As protective as the language in these post-Harlow cases would suggest qualified immunity is, qualified immunity is not appropriate if a law enforcement officer violates a clearly established constitutional right.

Qualified Immunity

Claim for qualified immunity, this employs a three-step inquiry:

- First, we determine whether, based upon the applicable law, the facts viewed in the light most favorable to the plaintiff, show that a constitutional violation has occurred.
- Second, we consider whether the violation involved a clearly established constitutional right of which a reasonable person would have known.
- Third, we determine whether the plaintiff has offered sufficient evidence to indicate that what the official allegedly did was objectively unreasonable in light of the clearly established constitutional rights.

City of Canton, Ohio vs. Harris

- Although respondent fell down several times and was incoherent following her arrest by officers of petitioner city's police department, the officers summoned no medical assistance for her. After her release, she was diagnosed as suffering from several emotional ailments requiring hospitalization and subsequent outpatient treatment. Some time later, she filed suit seeking, inter alia, to hold the city liable under 42 U.S.C. § 1983 for its violation of her right, under the Due Process Clause of the Fourteenth Amendment, to receive necessary medical attention while in police custody.

City of Canton, Ohio vs. Harris

- The jury ruled in her favor on this claim upon the basis of evidence indicating that a city regulation gave shift commanders sole discretion to determine whether a detainee required medical care, and suggesting that commanders were not provided with any special training to make a determination as to when to summon such care for an injured detainee. Both the District Court, in rejecting the city's motion for judgment notwithstanding the verdict, and the Court of Appeals, in ruling that there had been no error in submitting the "failure to train" claim to the jury, held that, under Circuit precedent, a municipality is liable for failure to train its police force where the plaintiff proves that the municipality acted recklessly, intentionally, or with gross negligence, and that the lack of training was so reckless or grossly negligent that deprivation of persons' constitutional rights was substantially certain to result.

City of Canton, Ohio vs. Harris

- However, upon finding that certain aspects of the District Court's jury instructions might have led the jury to believe that it could find against the city on a mere respondent superior theory, and that the jury's verdict did not state the basis on which it had ruled for respondent, the Court of Appeals reversed the judgment in her favor and remanded the case for a new trial.

Murder of Deputy Kyle Dinkheller

January 12, 1998

Deputy Kyle Dinkheller

- He joined the Laurens County Sheriff's Office as a jailer in March 1995 and became a certified police officer with the State of Georgia in 1996. He was 22 years old when he was murdered.

Deputy Kyle Dinkheller

Kyle Dinkheller is survived by his wife, Angela, and their children Ashley and Cody, the latter of whom was born eight months after his father's death.

The Murderer

Two years following the murder, on January 28, 2000, the jury convicted Brannan. On January 30, 2000, Brannan was sentenced to death. Nearly fifteen years later, on January 13, 2015, the State of Georgia executed Brannan by lethal injection.

Failure to Train

The Sixth Circuit has recognized two situations in which inadequate training could be found to be the result of deliberate indifference:

1) "failure to provide adequate training in light of foreseeable consequences that could result from the lack of instruction," and

2) failure "to act in response to repeated complaints of constitutional violations by its officers.

The Consensual Encounter

Interaction between a officer and a citizen that is totally voluntary between the two, in which the Officer engages a person or persons in conversation. There is no force or demand by the Officer that an individual remain at the Officer's side. The person may simply go on his way, free from police interference.

This is sometimes called a " walk and talk," which is essentially informal conversation between the Officer and an other person or persons. This activity is in no way a seizure under the Constitution, as there is no government compulsion for the citizen to cease what they are doing and therefore no restraint on the citizen's liberty.

Reasonable Suspicion

The legal basis for a Officer conducting an "Investigative Stop or Detention." This is a seizure under the Constitution and is predicated upon the Officer having specific and articulable facts (which the Officer can explain later in detail) that lead the Officer to believe criminal activity is at hand and that the person who they are now confronting is involved in such criminal activity. This requires more than mere suspicion and must be based upon information possessed by the Officer at the time, including:

o Information based upon the training and experience of the Officer as to the circumstances that led to the contact with the citizen;

o The citizen's reaction (demeanor) to the contact with the Officer

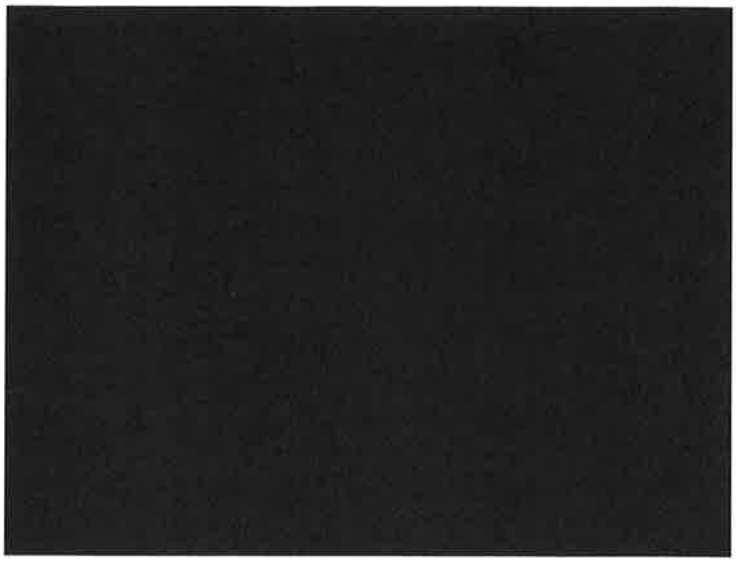
o The citizen's explanation to the Officer as to the conduct at the time, including time of day, the location near a crime scene, or other details corresponding to ongoing criminal activity

Probable Cause

Facts and circumstances within the Officer's knowledge, or are such in which the Officer has been given reasonably trustworthy information, (that are sufficient in themselves at the time) to cause a reasonably cautious and prudent Officer to believe that an offense has been committed and the person being arrested probably committed it (the same standard is used for probable cause to obtain a search warrant).

Probable Cause

Such information must be more than mere suspicion or rumor; however, it does not have to establish the guilt of the person beyond a reasonable doubt. As with a Officer's authority under the Reasonable Suspicion standard, such information may come from the Officer's own knowledge, another Officer, or that derived from a citizen or confidential informant, based upon the Officer's independent corroboration of such information. It is critical that the Officer possess probable cause at the time of or just prior to making an arrest.



Minnesota State Laws

- **609.066**
  - Authorized use of deadly force by a peace officer
- **609.06**
  - Authorized use of force
- **609.666**
  - Negligent storage of firearms
- **629.32**
  - Minimum restraint used when making an arrest
- **629.33**
  - Force used to make an arrest

609.06 AUTHORIZED USE OF FORCE

Subdivision 1.When authorized.

- Except as otherwise provided in subdivision 2, reasonable force may be used upon or toward the person of another without the other's consent when the following circumstances exist or the actor reasonably believes them to exist:
- (1) when used by a public officer or one assisting a public officer under the public officer's direction:
  - **(a) in effecting a lawful arrest; or**
  - **(b) in the execution of legal process; or**
  - **(c) in enforcing an order of the court; or**
  - **(d) in executing any other duty imposed upon the public officer by law;**

609.066 AUTHORIZED USE OF DEADLY FORCE BY PEACE OFFICERS (Ammended 2020, Effective March 1, 2021)

- Subd. 2.**Use of deadly force.**(a) Notwithstanding the provisions of section 609.06 or 609.065, the use of deadly force by a peace officer in the line of duty is justified only ~~when~~ if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary:

(1) to protect the peace officer or another from ~~apparent~~ death or great bodily harm, provided that the threat:

(i) can be articulated with specificity by the law enforcement officer;

(ii) is reasonably likely to occur absent action by the law enforcement officer; and

(iii) must be addressed through the use of deadly force without unreasonable delay;

(2) to effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony ~~involving the use or threatened use of deadly force; or~~ and the officer reasonably believes that the person will cause death or great bodily harm to another person under the threat criteria in clause (1), items (i) to (iii), unless immediately apprehended.

- ~~(3) to effect the arrest or capture, or prevent the escape, of a person whom the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person will cause death or great bodily harm if the person's apprehension is delayed.~~

- (b) A peace officer shall not use deadly force against a person based on the danger the person poses to self if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that the person does not pose a threat of death or great bodily harm to the peace officer or to another under the threat criteria in paragraph (a), clause (1), items (i) to (iii).

Legislative Intent

- Subd. 1a. **Legislative intent.** The legislature hereby finds and declares the following:
- (1) that the authority to use deadly force, conferred on peace officers by this section, is a critical responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law;

Legislative Intent

- (2) as set forth below, it is the intent of the legislature that peace officers use deadly force only when necessary in defense of human life or to prevent great bodily harm. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case;

Legislative Intent

- (3) that the decision by a peace officer to use deadly force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using deadly force;

Legislative Intent

- (4) that peace officers should exercise special care when interacting with individuals with known physical, mental health, developmental, or intellectual disabilities as an individual's disability may affect the individual's ability to understand or comply with commands from peace officers.

609.666 NEGLIGENT STORAGE OF FIREARMS.

Subdivision 1. **Definitions.** For purposes of this section, the following words have the meanings given.

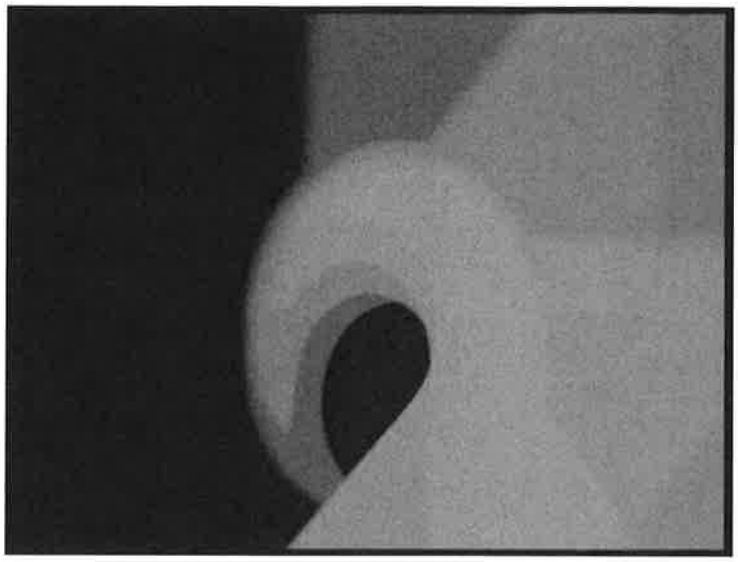
(a) "Firearm" means a device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion or force of combustion.

(b) "Child" means a person under the age of 18 years.

(c) "Loaded" means the firearm has ammunition in the chamber or magazine, if the magazine is in the firearm, unless the firearm is incapable of being fired by a child who is likely to gain access to the firearm.

Subd. 2. **Access to firearms.** A person is guilty of a gross misdemeanor who negligently stores or leaves a loaded firearm in a location where the person knows, or reasonably should know, that a child is likely to gain access, unless reasonable action is taken to secure the firearm against access by the child.

Subd. 3. **Limitations.** Subdivision 2 does not apply to a child's access to firearms that was obtained as a result of an unlawful entry.



Shooting from a moving vehicle

-Members shall not shoot at or from a moving vehicle unless deadly force is authorized.

-Members shall make every effort not to place themselves in a position that would increase the possibility of a vehicle being used as deadly force against themselves or others.

-Firearms shall not be utilized without a high probability of striking the intended target or when there is a high risk to the safety of other persons.

Minnesota State Laws

- **629.32**
  - Minimum restraint used when making an arrest – a peace officer may not use any more restraint than is necessary for arrest or detention.
- **629.33**
  - Force used to make an arrest – when an officer has announced their intention to arrest, if an offender flees or forcibly resists then all necessary and lawful means to make the arrest, except deadly force, unless deadly force is authorized under 609.066

How Much Force to Use

Assuming the officer is acting on a proper occasion, a particular level of force will usually be considered objectively reasonable when:

The officer tried using lesser force and it didn't work; or it appears that lesser force options would be ineffective if attempted; or

Using a lower-level option would expose the officer or others to unreasonable danger.

GENERAL ORDER

Effective: December 11, 2020		Number: 20-10-027 HRU NOT
Subject: FORCE; USE OF		
Reference: Minn. Stat. secs. 609.06–609.066; General Orders 30-005, 30-007, 30-018; Use of Force Report		
Special Instructions: Rescinds General Order 20-10-027 (3/26)		Distribution: A,B,C

I. GUIDING PRINCIPLES

A. Every human life has inherent value (sanctity) and members shall treat people with respect and dignity and without prejudice.

B. Every person has a right to be free from excessive use of force by law enforcement officers acting under the color of law.

C. Troopers shall use deadly force only when necessary in defense of human life or to prevent great bodily harm.

D. Troopers shall use only the objectively reasonable force necessary to effectively bring an incident under control, while protecting the lives of the Trooper and others.

E. Troopers should exercise special care when interacting with individuals with known physical, mental health, developmental, or intellectual disabilities as an individual's disability may affect the ability to understand or comply with commands.

II. DEFINITIONS

A. Approved Weapon
A device or instrument which a Trooper has received permission from the Minnesota State Patrol to carry and use in the discharge of that Trooper's duties, and, for which the Trooper has: (1) obtained training in the technical, mechanical, and physical aspects of the device, and (2) has developed a knowledge and understanding of the law, rules, and regulations regarding the utilization of such weapons.

B. Chemical Agents
Individually issued spray devices containing Oleoresin Capsicum (OC) and chlorobenzylidene malononitrile (CS).

C. De-Escalation
Taking action or communicating verbally or non-verbally during a potential use of force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include, but is not limited to, the use of such techniques as command presence, warnings, verbal persuasion and tactical repositioning.

D. Neck Restraint
Applying physical pressure to the neck or head of another person with intent to incapacitate that person by rendering him or her temporarily unconscious.

E. Contact Weapons
All objects and instruments used to apply force to the person of another by coming into physical contact with that person. Contact weapons include, but are not limited to, the expandable baton, flashlight, and/or riot baton.

F. Deadly Force
All force actually used by a Trooper against another which the Trooper knows, or reasonably should know, creates a substantial risk of causing death or great bodily harm.
The intentional discharge of a firearm in the direction of another person, or at a vehicle (including tires) in which another person is believed to be, constitutes deadly force.

G. Great Bodily Harm
Bodily injury which creates a high probability of death, or which causes serious, permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

H. Non-Deadly Force
All force actually used by a Trooper which does not have the purpose or likelihood of causing death or great bodily harm. This includes use of approved non-lethal chemical and impact munitions used to maintain civil order, prevent property damage, and protect life.

I. Weapon
Any instrument used or designed to be used to apply force to the person of another.

J. Objectively Reasonable
In determining the necessity for force and the appropriate level of force, Troopers shall evaluate each situation in light of the known circumstances, including, but not limited to, the seriousness of the crime, the level of threat or resistance presented, and the danger to the community. Although a trooper has many options, he or she must exercise the application of force in a manner that is reasonable and necessary to arrest or detain a suspect. Many variables affect the level of force one can justify. These situations can be very fluid, dynamic, and unpredictable. A trooper must be ready to utilize force at any level.

III. PROCEDURES

A. De-Escalation
1. A Trooper shall use de-escalation techniques and other alternatives to higher levels of force consistent with their training whenever possible and appropriate before resorting to force and to reduce the need of force.
2. Whenever possible and when such delay will not compromise the safety of another or the officer and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.

B. Use of Non-Deadly Force
1. When de-escalation techniques are deemed not effective or appropriate, it shall be the policy of the Minnesota State Patrol, unless expressly negated elsewhere, to allow Troopers to exercise discretion in the use of agency approved, non-deadly force techniques and approved equipment to the extent permitted by Minn. Stat. §609.06:
   a. In effecting a lawful arrest; or
   b. In the execution of legal process, or
   c. In enforcing an order of the court; or
   d. In executing any other duty imposed on the Trooper by law, including when bringing an unlawful situation he/she is tasked with handling safely and effectively under control
   e. In defense of self or another

1. To protect the peace officer or another from apparent death or great bodily harm, *provided that the threat:*
   a. can be articulated with specificity by the law enforcement officer;
   b. is reasonably likely to occur absent action by the law enforcement officer; and
   c. must be addressed through the use of deadly force without unreasonable delay; or
2. To effect the arrest or capture, or prevent the escape, of person whom the Trooper knows or has reasonable grounds to believe has committed or attempted to commit a felony and the Trooper reasonably believes that the person will cause death or great bodily harm to another person under the *threat criteria in subd. 1 a.-c. (above), unless immediately apprehended.*
3. *Troopers shall not use deadly force against a person based on the danger the person poses to self if an objectively reasonable office would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that the person does not pose a threat of death or great bodily harm to the Trooper or another under the threat criteria in subd. 1a.-c (above.)*

IV. RULES GOVERNING USE OF FORCE AND WEAPONS

A. Use of Force
1. Troopers may announce their intention to use only that type and degree of force that is reasonably necessary under the circumstances. This provision shall not be construed to authorize or endorse the use of discourteous, abusive, or unprofessional language.
2. Troopers shall only use the type and degree of force that is objectively reasonable to bring an incident under control. Use of physical force should be discontinued when resistance ceases or when the incident is under control.
3. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent escape or imminent bodily harm or when noncompliant physically (including passive physical resistance such as refusing to stand, etc.). In these situations, only the amount of force necessary to control the situation shall be used.
2. In determining the degree of force which is reasonable under the circumstances, Troopers shall consider:
   a. The severity of the crime at issue.
   b. Whether the suspect poses an immediate threat to the safety of the Trooper or others, and
   c. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

C. Use of Deadly Force
It shall be the policy of the Minnesota State Patrol, unless expressly negated elsewhere, to allow Troopers to exercise discretion in the use of deadly force to the extent permitted by Minn. Stat. §609.066, subd. 2, which authorizes peace officers acting in the line of duty to use deadly force only when necessary:
1. To protect the peace officer or another from apparent death or great bodily harm,
2. To effect the arrest or capture, or prevent the escape, of person whom the Trooper knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened use of deadly force; or
3. To effect the arrest or capture, or prevent the escape, of person whom the Trooper knows or has reasonable grounds to believe has committed or attempted to commit a felony, if the Trooper reasonably believes that the person will cause death or great bodily harm if the person's apprehension is delayed.

D. Effective March 1, 2021, the use of deadly force standard is revised as follows:
It shall be the policy of the Minnesota State Patrol, unless expressly negated elsewhere, to allow Troopers to exercise discretion in the use of deadly force to the extent permitted by Minn. Stat. §609.066, subd. 2, which authorizes peace officers acting in the line of duty to use deadly force only when necessary:

B. Weapons – General
1. Troopers shall carry and use only Minnesota State Patrol approved weapons, unless circumstances exist which pose an imminent threat to the safety of the Trooper or the public requiring the immediate use of a non-approved weapon to counter such a threat. This provision shall not be construed as authorizing Troopers to use a non-approved weapon where, under the circumstances, it would be feasible to procure approval for use of the particular weapon prior to its use.
2. Troopers must be trained in the proper use of issued weapons prior to use.
3. On-duty members may carry a concealed utility knife (clip may be visible), however, the use of knives as weapons is not authorized except in those situations where deadly force may be used.
4. Troopers shall not modify, alter, or cause to be altered a Minnesota State Patrol approved weapon in his or her possession or control unless permission is granted according to General Order 30-007. The issued expandable baton, riot baton, OC aerosol device, 40 mm launcher, and Taser device are the only nonlethal weapons authorized to be carried in a State Patrol unit and carried by a Trooper.
   a. All issued nonlethal chemical or impact munition equipment shall be carried in the member's patrol unit so that it is readily available.
   b. If a Taser is carried, Troopers must also carry either the baton or the OC aerosol device on their duty belt. Troopers opting not to carry a Taser device must carry the baton on their duty belt.
5. Taser devices may only be carried and utilized in compliance with General Order 30-018.

C. Contact Weapons
1. Contact weapons shall be used only where efforts involving the use of less force have failed, or where it reasonably appears that such methods would be ineffective if attempted. Contact weapons may be used only in the following manner:
   a. to ward off blows or kicks from another person, or
   b. to strike another for the purpose of rendering that person temporarily incapacitated, or
   c. to restrain persons, or
   d. in appropriate crowd control situations, to direct and control the movement of people or persons, or as a barricade.

2. Troopers engaging another person with a contact weapon should avoid striking, if possible, body areas likely to result in serious injuries or death unless deadly force is authorized by this General Order. These areas include the head, neck, throat, armpits, elbows, ribs, groin, and kneecaps.
3. Troopers engaging another person with a contact weapon should attempt to strike, if possible, bodily areas likely to result only in incapacity. These areas include the arms, legs, torso, thighs, and calves.
4. If worn, the issued expandable baton is to be worn on the gun belt in the issued baton carrier.
5. The issued riot baton is to be used only when necessary for crowd control situations and shall be readily available.

D. Chemical Agents
1. The use of chemical agents is considered non-deadly force. Only approved Minnesota State Patrol-issued chemical agents are authorized.
2. Troopers shall exercise due care to ensure that only intended persons are sprayed or otherwise subject to the application of chemical agents and that the chemical agents are applied consistent with training.
3. After the person is taken into custody, and if a chemical agent was utilized to effect the arrest, the Trooper should be aware of and utilize the following procedures:
   a. The areas of the body exposed to chemical agents should be thoroughly flushed with water as soon as feasible.
   b. If the chemical agent has struck the subject's clothing and the subject is to be held in custody, the subject must be permitted to shower and change clothes.
4. Chemical agents shall not be used on any person for the purpose of effecting punishment.
5. Medical attention shall be offered to all persons sprayed with chemical agents as soon as practicable.
6. The OC aerosol device must be in the possession of all uniformed Troopers and may be carried on the person.

E. Firearms
1. Firearms may be readied for use in situations where it is reasonably anticipated that they may be required.
2. The carry and use of firearms is covered in General Orders 30-005 and 30-007.
3. The use of a firearm is deadly force. If feasible, a Trooper should give a verbal warning before using or attempting to use deadly force. Warning shots are not authorized. Any use of deadly force other than authorized above, is unlawful.

F. Nonlethal Munitions
Troopers are only authorized to use other nonlethal chemical and impact munitions in deadly and non-deadly force situations:
1. When the munitions are non-expired and owned by the agency; and
2. After receiving training from the agency within the last three years. The training consists of a written exam and practical proficiency qualification course.

G. The following types of restraints shall not be used unless Minn. Stat. §609.066 authorizes the use of deadly force to protect the peace officer or another from death or great bodily harm and other less than lethal measures were already considered:
1. Neck restraints
2. Securing all of a person's limbs together behind the person's back to render the person immobile.
3. Securing a person in any way that results in transporting the person face down in a vehicle.

V. MEDICAL TREATMENT

After any use of force situation, the subject of the force shall be interviewed and inspected for injuries as soon as feasible. Medical attention must be offered by members consistent with their training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.

VI. DUTY TO INTERCEDE AND REPORT

Any trooper observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, safely intercede to prevent the use of such excessive force. Troopers shall prepare reports for such incidents as required in section VII. Troopers who observe unreasonable force must notify a supervisor as soon as practicable and in all cases must report the observation in writing to the Colonel within 24 hours of the incident.

VII. REPORTING REQUIREMENTS

A. In all instances in which a Trooper uses force, the Trooper shall prepare a TraCS Use of Force Report in a manner consistent with his/her training in addition to all other reports concerning the incident, including a Field Report. All reports shall be submitted to the District/Section Office.
B. Any Trooper(s) who witnesses the use of force shall prepare a Field Report.

VIII. TRAINING

A. All Members shall receive training, at least annually, on the agency's Use of Force policy and related legal updates.
B. In addition, training shall be provided on a regular and periodic basis and designed to:
1. Provide techniques for the use of and reinforce the importance of de-escalation.
2. Provide scenario-based training, including simulating actual shooting situations and conditions, and
3. Enhance Member's discretion/judgment in using non-deadly and deadly force in accordance with this policy.

IX. REVIEW

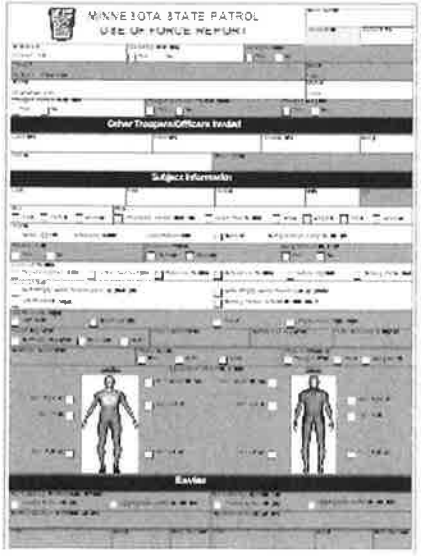
A. District/Section Commander
1. Review, evaluate, and when appropriate, investigate all incidents involving the use of force with all Troopers involved. Indicate on the Use of Force Report whether the Trooper's actions complied with department policy.
2. Submit the Use of Force Tracking Report to Headquarters once the reports are accepted in TraCS and no later than 14 days of the occurrence.

B. Regional Major
1. Review and evaluate Use of Force Reports received for compliance with policy.
2. Ensure a copy of all Use of Force and related reports are sent to the Training and Development Section.
3. Ensure that the BCA is notified of information required to be documented in the National Use-of-Force Report database through the BCA Supplemental Reporting System, including the following:
   - The death of a person due to law enforcement use of force.
   - The serious bodily injury of a person due to law enforcement use of force.
   - The discharge of a firearm by law enforcement at or in the direction of a person that did not otherwise result in death or serious bodily injury.
4. Ensure that the BCA is notified of information required to be documented in the Minnesota Firearms Discharge Report database within 30 days of the firearms discharge through the BCA Supplemental Reporting System , including:
   - When a peace officer discharges a firearm in the course of the duty, pursuant to Minnesota Statutes 626.553, subdivision 2. This does not include discharges for training purposes, nor the killing of an animal that is sick, injured, or dangerous.
   - Firearm discharged in the course of duty or employment.
   - Firearm accidental discharge (e.g. gun cleaning).
   - None of the above.
5. By the 5th of each month, if there are no incidents to report to the BCA that meets the criteria of IX. B. 3 and 4 above, this information must be reported to the BCA in the Supplemental Reporting System as "No incidents to report".

Approved:

SIGNED 12/11/2020

Colonel Matthew Langer, Chief
Minnesota State Patrol

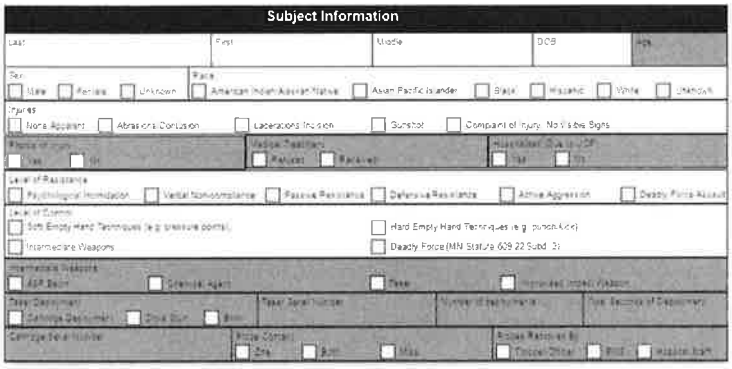

MINNESOTA STATE PATROL
USE OF FORCE REPORT
Other Troopers/Officers Involved
Subject Information
Entries

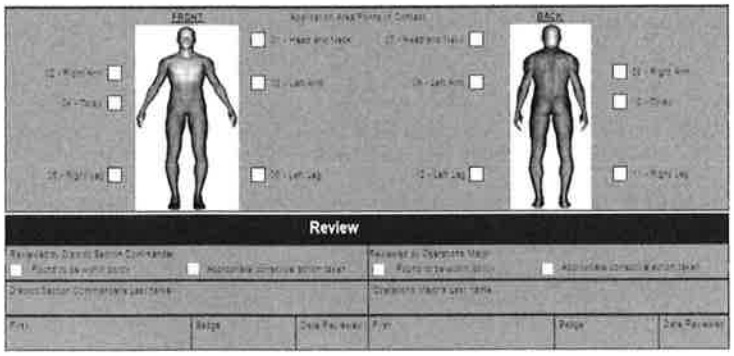
MINNESOTA STATE PATROL
USE OF FORCE REPORT

Case Number:
Incident Date:
Incident Time:
CAD Event:
Assisting Other Agency: Yes No
Supervisor Involved: Yes No
Trooper: WENZEL, JONATHAN
Badge: 164
District: HEADQUARTERS
Station: 2000
Trooper Injured During Incident: Yes No
Trooper Medical Treatment Received: Yes No
Trooper Hospitalized: Yes No

Other Troopers/Officers Involved

Last Name | First Name | Middle Name | Badge
Agency | Other Agency





Report Writing

- Articulable Facts
- Facts vs. Conclusions
- Many reports contain "conclusions" disguised as "facts". "Conclusions" are phrases or words that describe a subject's actions, but lack clear articulation of the subject's behaviors. When articulating force, particular attention should be paid to the specific actions and behaviors of the subject
- I'm going to kick your ass", specific verbal threats or statements, turned body 90 degrees, boxer's/fighting stance, suddenly closed the distance, shoved the officer, weight shifting, clenched fists, raised hands, profuse sweating, clenched mouth, rapidly closed distance, lunged, grabbed, scanning the area, sudden attack, etc.

- Lunch
- EMTC
  - Duty belts (belt keepers)
- Belt set up
- Holster power point
- Blue guns
- 7-1
- Break fall
- Stand to base
- Holster work

EXHIBIT 24

609.066 AUTHORIZED USE OF DEADLY FORCE BY PEACE OFFICERS.

Subdivision 1. **Deadly force defined.** For the purposes of this section, "deadly force" means force which the actor uses with the purpose of causing, or which the actor should reasonably know creates a substantial risk of causing, death or great bodily harm. The intentional discharge of a firearm, other than a firearm loaded with less lethal munitions and used by a peace officer within the scope of official duties, in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force. "Less lethal munitions" means projectiles which are designed to stun, temporarily incapacitate, or cause temporary discomfort to a person. "Peace officer" has the meaning given in section 626.84, subdivision 1.

Subd. 1a. **Legislative intent.** The legislature hereby finds and declares the following:

(1) that the authority to use deadly force, conferred on peace officers by this section, is a critical responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law;

(2) as set forth below, it is the intent of the legislature that peace officers use deadly force only when necessary in defense of human life or to prevent great bodily harm. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case;

(3) that the decision by a peace officer to use deadly force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using deadly force; and

(4) that peace officers should exercise special care when interacting with individuals with known physical, mental health, developmental, or intellectual disabilities as an individual's disability may affect the individual's ability to understand or comply with commands from peace officers.

Subd. 2. **Use of deadly force.** (a) Notwithstanding the provisions of section 609.06 or 609.065, the use of deadly force by a peace officer in the line of duty is justified only if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary:

(1) to protect the peace officer or another from death or great bodily harm, provided that the threat:

(i) can be articulated with specificity;

(ii) is reasonably likely to occur absent action by the law enforcement officer; and

(iii) must be addressed through the use of deadly force without unreasonable delay; or

(2) to effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony and the officer reasonably believes that the person will cause death or great bodily harm to another person under the threat criteria in clause (1), items (i) to (iii), unless immediately apprehended.

(b) A peace officer shall not use deadly force against a person based on the danger the person poses to self if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that the person does not pose a threat of death

or great bodily harm to the peace officer or to another under the threat criteria in paragraph (a), clause (1), items (i) to (iii).

Subd. 3. **No defense.** This section and sections 609.06, 609.065 and 629.33 may not be used as a defense in a civil action brought by an innocent third party.

History: *1978 c 736 s 2; 1986 c 444; 2001 c 127 s 1; 2Sp2020 c 1 s 9,10; 2023 c 52 art 10 s 8*

EXHIBIT 25

GENERAL ORDER

Effective: May 10, 2022		**Number:** 22-20-012 HRLFNDT
Subject:	**MOTOR VEHICLE PURSUIT**	
Reference:	GOs 10-027; 10-054, 20-021, 20-023; Minn. Stat. secs. 169.03; 169.17; 609.02, subd. 8	
Special Instructions:	Rescinds GO 19-20-012	**Distribution:** A,B,C,D, E

I. PURPOSE

The purpose of this General Order is to provide guidance on motor vehicle pursuits.

II. GUIDING PRINCIPLES

A. Members shall keep in mind, and base their decisions on, the State Patrol mission of traffic safety that aims to protect all those who use our roads from injury or death.

B. The decision to pursue or not pursue is critical and must be made quickly, under unpredictable circumstances.

C. The decision to start or engage in a pursuit must be made by weighing the risk to the public, members, and the fleeing driver against any need for immediate apprehension of the fleeing driver and/or other occupants.

D. The decision-making process must be continuously evaluated during the entire duration of the pursuit.

E. There are situations where the risk of personal injury or death associated with a motor vehicle pursuit is too high to justify anything other than discontinuing the pursuit. No member will be disciplined for making a decision to discontinue a pursuit.

F. Members may only make their decisions on pursuits based upon the information reasonably known at the time. Fleeing for an unknown reason does not provide any additional need/importance for the pursuit to continue.

G. While Minnesota law permits emergency vehicles to disregard traffic signs or signals when in pursuit of an actual or suspected violator of the law (Minn. Stat. sec. 169.03), nothing relieves the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of persons using the street, nor does it protect the driver of an authorized emergency vehicle from the consequences of reckless disregard for the safety of others (Minn. Stat. sec. 169.17).

H. Supervisor directives shall be immediately obeyed.

III. DEFINITIONS

A. Motor Vehicle Pursuit

1. An active attempt by a sworn member operating a patrol unit to apprehend a driver of a motor vehicle who,having been given a visual and audible signal by a peace officer directing said driver to bring their vehicle to astop, increases speed, extinguishes motor vehicle headlights or taillights, refuses to stop the vehicle, or uses other means with intent to attempt to elude a peace officer. (Minn. Stat. sec. 609.487)
2. Other instances in which a sworn member activates emergency lights and siren or otherwise clearly gives a signal to stop and the driver complies by coming to a stop in a reasonably short distance are not consideredmotor vehicle pursuits.

B. Discontinue a Pursuit

A member is deemed to have discontinued a pursuit when he/she turns off emergency lights and siren, returns to nonemergency operation, and informs the RCO.

C. Intentional Contact

Controlled contact between the patrol unit and the pursued vehicle at low speeds intended to safely end the pursuit.

D. Pursuit Intervention Technique (PIT)
PIT is a specific type of intentional contact. It is a controlled contact between the patrol unit and the pursued vehicle at speeds prescribed below, which is intended to force the rotation of the pursued vehicle, causing the vehicle to become disabled and safely end the pursuit.

E. Required Initial Information
The minimum amount of information that must be communicated to dispatch as soon as possible upon initiation of a pursuit:
- **T**ravel direction/location
- **R**eason for initial contact (specific violations)
- **I**dentity of fleeing driver, if known
- **P**late number if available, and/or vehicle description
- **S**peed of the fleeing vehicle

F. Evolving Information
Additional information to be conveyed as soon as possible and continuously updated throughout the pursuit:
- Traffic conditions including cross traffic, controlled intersection violations, and presence of pedestrians
- Speed and location of fleeing vehicle, including wrong way travel and maneuvers placing anyone at risk
- Number of occupants, description of occupants.

G. Primary Pursuit Unit
The first patrol unit immediately behind the fleeing driver.

H. Support Units
Any patrol units actively involved in the pursuit other than the primary unit.

I. Other Assisting Units
Units not actively involved in the pursuit itself but assisting by deploying stop sticks, blocking intersections, compelling paths, or otherwise working to minimize risk.

J. Severe and Imminent Threat
The fleeing driver or other person in the fleeing vehicle is believed to have recently caused great bodily harm (as defined in Minn. Stat. sec. 609.02, subd. 8) or death to another person, or it is reasonably likely to occur if immediate action is not taken to apprehend him/her. The pursuit itself does not constitute a severe and imminent threat.

IV. DISCONTINUATION OF PURSUIT

A. Unless a pursuit is based upon a severe and imminent threat, it shall be discontinued when:
1. The fleeing vehicle comes under the surveillance of an air unit;
2. The fleeing vehicle is being monitored by a tracking service using GPS;
3. There is a non-sworn passenger present in the state unit;
4. The identity of the fleeing driver is established to the point where later apprehension may be accomplished;
5. The fleeing driver proceeds the wrong way on any limited access or interstate highway, divided highway or one-way street;
6. It is known or there is reason to know that the fleeing driver is a juvenile;
7. The distance between the pursuing member and fleeing driver is so great that continued pursuit is useless, or when visual contact with the fleeing vehicle is lost for an extended period of time.

B. For pursuits crossing state lines, a felony offense *in addition* to the fleeing offense is required to pursue into Iowa or Wisconsin. Members have no jurisdiction pursuing into Canada and little or no jurisdiction to pursue into Red Lake or Bois Forte Reservations and shall discontinue at those borders. See GOs 20-021 (Peace Officer Powers in Adjacent States or Provinces) and 10-054 (Reservation Land – Law Enforcement Powers.)

V. PURSUIT DECISION-MAKING

A. In the decision to engage in a pursuit, members must weigh the risks associated with the pursuit against any need for immediate apprehension of the fleeing driver and/or other occupants and continuously evaluate the decision to continue the pursuit as risk factors may change.

B. When the risk factors present outweigh any need for immediate apprehension of the fleeing driver and/or other occupants, the pursuit shall be discontinued. Risk factors to be continuously evaluated include, but are not limited to, the following: intersections, speed, duration, likelihood of pedestrians, sight lines, traffic conditions, and weather.

1. In cases with a nonviolent offense (e.g., traffic violations, stolen vehicle or other property crime, drugs, or unknown offense), members shall give strong consideration to quickly discontinuing the pursuit.
2. In the case of a suspected impaired driver, members shall consider whether or not the pursuit is making an already dangerous situation even more dangerous. In cases where the known impaired fleeing driver is creating an obvious threat to public safety, members should consider the use of any available and reasonable pursuit intervention strategies to end the pursuit with safety in mind.
3. In pursuits involving a severe and imminent threat, accepting additional risk may be reasonable given the severity of the crime(s) involved and the danger to public safety should the offender not be apprehended.

VI. PURSUIT INTERVENTION STRATEGIES

Before employing a pursuit intervention strategy to safely end a pursuit, members shall consider: 1) the necessity to continue the pursuit and if so; 2) whether the strategy is practicable given the situation; and 3) whether the strategy is reasonable when considering the risk of injury to all involved. The type of strategy utilized will depend on the circumstances of each pursuit. Members shall employ any strategy consistent withtheir training.

A. Stop-Sticks

i. Members shall always consider personal safety during deployment and use stop-sticks consistent with training. The use of stop-sticks on a vehicle with less than four wheels shall be considered the use of deadly force (GO 10-027 [Use of Force]).

ii. Stop-sticks may be used on a vehicle that is no longer being actively pursued, but is still fleeing or has freshly fled. Only an MSP supervisor may authorize their use in these instances.

iii. Authorization may only be provided after considering the totality of circumstances, including:

i. a determination that further attempts to stop the vehicle will be futile;
ii. reasonable knowledge that the driver has remained the same; and
iii. the degree that the vehicle has been or is under surveillance of a peace officer, GPS, cameras, or aviation.

iv. If a stop-stick deployment under this section is successful, continued trooper involvement in the event can only be authorized by the monitoring supervisor. The MSP supervisor must determine the level of immediate ongoing involvement with the suspect vehicle, while considering other sections of this General Order.

v. The authorizing supervisor must complete a TraCS report articulating the basis for their decision regarding the use of stop sticks and further MSP involvement, or include the same information in the report required for monitoring pursuits.

B. Pursuit Intervention Technique (PIT)

1. Members shall consider using the PIT maneuver at the earliest opportunity in a pursuit, knowing the opportunity might be short-lived.
2. The PIT maneuver may be executed at speeds of 40 mph or less on straight roadways or 25 mph or less in cornering situations. Speeds greater than this may be considered deadly force.
3. The PIT maneuver is not allowed in the following circumstances unless deadly force is authorized:
4. On vehicles with fewer than four wheels;
5. On a vehicle pulling a trailer;
6. On unconventional vehicle types to include, but not limited to, straight trucks, recreational vehicles, off highway vehicles, ATVs, etc.

C. Intentional Contact

1. Intentional contact shall only be used when other intervention strategies have been considered and determined not practicable.

2. Intentional contact shall be considered a use of force (reported as a pursuit), up to and including deadly force, and must be reasonably applied based on the totality of circumstances presented.
   i. Unless deadly force is authorized, intentional contact shall only occur: i) at low speeds; and ii) when there is a reasonable belief that no one will be injured as a result.
3. Intentional contact with any vehicle having fewer than four wheels shall only occur if deadly force is authorized.

D. Channeling/Compelling Path/Boxing In

The use of the state unit or other devices is allowed as a means to direct a fleeing driver in order to safely end a pursuit.

E. Roadblock

The use of a roadblock is allowed, but only when the maneuver can be executed with reasonable safety for all involved, including the member, motoring public, and fleeing driver. In any roadblock, the location and deployment method shall allow the fleeing driver ample opportunity to voluntarily stop.

VII. ASSISTING OTHER AGENCIES

A. Members shall consider the purpose, intent and likelihood of a traffic safety benefit from their individual involvement before joining an allied agency's pursuit.

B. Members shall not become involved in an allied agency's pursuit as a primary or support unit unless a common radio communication talkgroup is utilized and monitored by State Patrol Radio CommunicationsOperators (RCO) or Supervisors (RCS).

C. Members shall only become involved, and remain in, an allied agency's pursuit as a primary or support unit if:
1. The pursuing agency requests it, unless it is clear that an emergency exists which dictates immediate intervention and assistance; **and**
2. The pursuit meets the State Patrol's policy; **and**
3. Required initial information (TRIPS) is communicated to the member and dispatch; evolving informationis continuously communicated; **and**
4. The originating agency remains in the pursuit, unless extenuating circumstances prohibit it (e.g. pursuitsentering Minnesota, originating agency's vehicle becomes disabled, etc.). The originating agency's internal policy or their supervisory decisions are not extenuating circumstances.

VIII. SHOOTING FROM OR AT A MOVING VEHICLE

A. Members shall not shoot from or at a moving vehicle, except when deadly force is authorized pursuant to General Order 10-027 (Use of Force).

B. Members should make every effort not to place themselves in a position that would increase the possibility that the vehicle they are approaching can be used as a deadly weapon against members or other users of the road.

C. Firearms shall not be utilized when the circumstances do not provide a high probability of striking the intended target or when there is substantial risk to the safety of other persons, including risks associated with vehicle crashes.

IX. PURSUIT RESPONSIBILITIES

A. General
1. In order to be engaged in a pursuit, members shall be in a pursuit-rated vehicle and shall use flashing emergency lights and siren.
2. In order to diminish the likelihood of a pursuit developing, members intending to stop a vehicle shall bewithin close proximity to the subject vehicle prior to activating the emergency signal devices.
3. When there is an equipment failure involving emergency lights, siren, radio, brakes, steering, or other essential mechanical equipment, members shall discontinue their involvement in the pursuit unless otherwisedirected by a supervisor.
4. Members are responsible for providing assistance to anyone potentially injured during the course of thepursuit.

B. Primary Pursuit Unit

Upon becoming involved in a pursuit situation, the primary pursuit vehicle shall immediately comply with the following:

1. Immediately notify MSP dispatch that a pursuit is underway and provide Required Initial Information (TRIPS).
2. Provide Evolving Information unless a support unit assumes that responsibility.

C. Support Unit
1. Support units shall announce their involvement when joining the pursuit. The support unit immediately behind the primary unit should assume responsibility for providing Evolving Information.
2. The number of support units involved in the pursuit should be only those that are reasonably needed for the situation.

D. Other Assisting Units
Other assisting units shall announce their intentions and communicate with primary and support units.

E. Radio Communications Operator(RCO)
1. Announce the 10-33 (Emergency Traffic Only) restriction on the district main talkgroup to all members and other law enforcement agencies in the immediate area.
2. Patch the district main talkgroup with an available LTAC talkgroup (or non-ARMER channel if required) andannounce the patch when completed.
3. Quickly notify a sworn supervisor upon the initiation of a pursuit or upon a member's response to assist with an allied agency pursuit, attempting in the following order: 1) any on-duty district supervisor; 2) district on-call supervisor; 3) any on-duty supervisor statewide; 4) on-call Major.
4. Quickly communicate with a sworn supervisor regarding Required Initial information (TRIPS) and any other relevant information so that he/she can effectively manage the pursuit.
5. Check with any on-duty pilot to determine if flight can respond.
6. When a supervisor becomes the primary unit in a pursuit, the RCO must contact a supervisor of an equal or higher rank to monitor the pursuit.
7. Document all incoming information in CAD.
8. Perform all relevant record and motor vehicle checks as expeditiously as possible.
9. Continue to monitor the pursuit until it has ended and then release the 10-33 restriction and/or patch upon approval of a sworn supervisor.
10. Issue a KOPS alert if requested.

F. Pilot/ Air Unit
When a fleeing vehicle comes under the surveillance of a State Patrol air unit, the pilot or other air crew member shall affirmatively communicate to all ground units that flight is overhead so that State Patrol units know to discontinue.

G. Supervisory Responsibility
Upon being notified of the pursuit, the supervisor shall:
1. Verbally acknowledge on the radio (or if monitoring by phone, have dispatch acknowledge) that they are monitoring the pursuit.
2. Ensure that involved member responsibilities are being followed.
3. Obtain the Required Initial and Evolving Information to continuously evaluate the pursuit for compliance with this policy.
4. Direct that the pursuit be discontinued if, in his/her judgment, it is not justified to continue under the guidelines of this policy or for any other reason.

X. PURSUIT FOLLOW-UP ANDREPORTING RESPONSIBILITIES

A. Member(s)
1. Primary and support units involved in a pursuit, or members having used an intervention strategy (even if the pursuit was discontinued), shall complete the Pursuit Report and a Field Report in TraCS. The reports shall be submitted and validated prior to the conclusion of the work shift unless otherwise directed by a supervisor. The report must include all pertinent and detailed information indicating the member's involvement, including all Required Initial and Evolving Information known to the member. Such information should demonstrate that the member continuously evaluated the need to apprehend the driver or occupants given any specific risk factors present during the pursuit.
2. If the fleeing driver and/or other occupants are not apprehended, members shall conduct further investigation with the intent to identify and charge any suspects (i.e., requesting a KOPS alert on the vehicle, contacting the registered owner, etc.). Members should request assistance from the district investigator when needed.

3. Examine Stop-Sticks after use for damage and report to District/Section Commander if repair is necessary.

23-Monitoring Supervisor

Complete a supplemental report in TraCS.

24-District/Section Commander

1. Review the pursuit for compliance with State Patrol policy by a thorough review of all field report(s), pursuit report(s), and in-squad video(s).
2. Ensure that reports substantiate the elements of any crimes charged and that all pertinent information (including Required Initial Information (TRIPS) and Evolving Information) is included in the reports. Ensure a follow-up investigation occurred for any fleeing driver and/or other occupants who were not apprehended.
3. Submit the *Pursuit Tracking Form* to Headquarters once the reports are accepted in TraCS and no later than 14 days of the occurrence.
4. Ensure that a post-pursuit review is completed by a supervisor with the involved members as soon as practicable after the incident.
5. Immediately notify the Regional or On-Call Major of any pursuit which has the likelihood of resulting in a tort claim.
6. Ensure that any unintended tire damage to other vehicles due to Stop-Sticks is addressed as soon as possible using district/section purchasing procedures. Further, when sticks have been damaged due to use, ensure that a deployment report is completed at https://www.stopstick.com/.

25-Majors

1. Review and evaluate State Patrol pursuit involvement for compliance with policies and that the reports include all pertinent information relevant to the incident.
2. Ensure that State Patrol pursuit involvement is reported to the Bureau of Criminal Apprehension within 30 days.

26-Radio Communications Supervisor

Ensure that a post-pursuit review is completed between the communications supervisor and communications operators as soon as practicable after the incident.

XI. TRAINING

A. Training for sworn members may only be provided by those members authorized by the Director of Training to conduct such training.

B. In accordance with POST requirements, all sworn members shall be given initial and periodic updated training inthe department's pursuit policy and safe emergency vehicle driving tactics, including pursuit intervention strategies and decision-making.

Approved:

SIGNED 5/10/2022

Colonel Matthew Langer, Chief
Minnesota State Patrol

EXHIBIT 26

https://mnbca.sharefile.com/share/view/s5f4e656cfec643e69503d04d573a7eb2/fod1c799-db89-48ab-a878-1e4d19679c64

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MINNESOTA DEPARTMENT OF PUBLIC SAFETY

BUREAU OF CRIMINAL APPREHENSION

INVESTIGATIVE INTERVIEW

BCA Case Number:	2023-724	**Person(s) Interviewed:**	JASON HALVORSON (JH)
Date/Time of Interview:	11/1/23 09:01 hours	**Item:**	
Interviewed By:	Attorney JOSHUA LARSON (JL); Attorney MARK OSLER (MO)		
Others Present:	SSA TOM ROTH (TR); SSA MATT OLSON (MO); Attorney TOM PLUNKETT (TP)		
Reviewed By/Date:	SSA ROTH 11/06/2023		

TR: This is in reference to case number 2023-724, it is November 1st, 2023, approximately 9:01 a.m. This is Senior Special Agent ROTH with the BCA, with me is my partner Senior Special Agent OLSON. Uh we are at 1900 County Road I in Shoreview at the State Patrol Training Facility. Um with us is uh State Patrol Sergeant um HALVORSON.

JH: Correct.

TR: Correct uh his attorney uh TOM PLUNKETT um MARK OSLER Deputy County Attorney and JOSHUA LARSON Senior Hennepin County Attorney. Um I will turn it over to you.

JL: Sure, sure. Um good morning, Sergeant HALVORSON uh so you should know back on looks like September 15th you did meet with Special Agent ROTH and MATT uh OLSON here Special Agent OLSON and gave a, an interview, it was about maybe eight or nine minutes long, it was transcribed and then I decided I wanted to ask a few more questions following up from that. I communicated with Mr. PLUNKETT and asked you to agree to this, it's a voluntary interview, TOM asked me for a transcript of that initial interview and I provided it to him via email. Did he, did he give you a chance to read through it?

JH: Yes.

JL: Okay. I, I will only like loosely refer to it but at least I want you to know what brings me in here today. Um but some of the things you told Agent ROTH I wanna note. Um you detailed your 29 year history uh of law enforcement right, 25 years with the State Patrol, four years previous to that with other agencies is that accurate?

JH: Yes.

JL: And in the last 10 years you've been the use of force uh coordinator for the State Patrol?

JH: So there was a lag, I was.

JL: Oh okay.

JH: The uh so so simply um I was the use of force coordinator for the agency for seven years.

JL: Okay.

JH: And then I went to the executive protection detail where I worked under Governor DAYTON and Governor WALZ. And then um I came back in 2020 to the same positon I held for seven years. So ten years total in that position.

JL: Fine. Um now when uh you know obviously we wanna make sure we got the right person in the room when we're talking um when you were kinda going through your duties with Agent ROTH you explained part of the job that you had you know for ten years but with that lag.

JH: Mhm.

JL: Which you reviewed and created lesson plans for training on use of force issues?

JH: Yes.

JL: Made sure they followed post mandated training?

JH: Yes.

JL: Right. You reviewed uh obviously policies that relate to the use of force?

JH: Yes.

JL: And then you ensured that the policies and lessons you taught obviously were consistent with State law, things like that right?

JH: Yes.

JL: I got it. And is that with both the academy and continuing sort of post credit, maintaining your license training?

JH: Yes.

JL: Okay. And based on sort of specific hands on instructor rosters it looks like one of the primary areas of direct instruction that you, you know have been continuing to, to perform is the use of deadly force, is that right?

JH: Correct.

JL: All right. Now the, this is a very basic sort of ten thousand foot question which is I think maybe all ya'll last time assumed it and I just need to understand. So the State Patrol they number their training academies am I correct on that?

JH: For like the 68th and 69th?

JL: Yeah.

JH: Correct.

JL: Okay. And uh a lot of the materials that we did receive had to do with the 63rd academy which occurred it looks like in the Fall of 2021.

JH: Yes.

JL: Oh okay and then um is, how many different training academies are there per year is there, are there two or is there something different or how, how are those labeled I guess?

JH: Um we've been averaging two training academies a year currently.

JL: Okay.

JH: Um sometimes they run concurrently, the last, well the last two, the last academy ran concurrently basically meaning this, we started in February, I'm sorry started in January and then the second academy started in February so we had two academies going on at the same time.

JL: Okay.

JH: We have ran it in the past where we started one academy in the uh winter in January and then we started the next academy at the end of the August so I think for the last four academies we ran it two academies a year.

JL: Okay that that makes uh that makes sense to me. And um there was some discussion about when I'm looking at training materials having to do with the 63rd academy it appears that you know and this is consistent with calendars and, and some of the materials which do list the numbers, the 63rd academy would of been in that sort of late summer to Fall um of 2021 time right?

JH: Yes.

JL: Okay and, and you know Sergeant uh Agent ROTH was asking about that 'cause that's the academy that it looks like um Trooper LONDREGAN was, was in?

JH: Right.

JL: Okay. Now one of the things uh that really brought me in was I'm trying to understand exactly how the State Patrol trains use of force issues during traffic stops. And I've been doing this for two, two reasons, one I really don't wanna waste your, your time at all in another interview on this topic. If, if, if when I ask you certain questions you end up deferring to another trainer um but second I wanna make sure I'm obviously talking to the right trainer 'cause all we wanna know right now is what, what, what happened at that academy, what happens in training, what are the expectations or interpretations of the policies that the State Patrol has. Um so uh when you did talk to Sergeant or pardon me Agent ROTH, I promise I'll remember that, uh you mentioned uh basically there's three areas that you oversee in terms of like direct um training which was in the academy. You laid out the academy's about a 14 week program and you said that you, you oversee sort of that initial use of force section which might be a three day section?

JH: Correct.

JL: Right then you have a Taser week and then toward the end of the uh training, end of the academy it seems like there's another block of use of force training, maybe more of a hands on type training, is that, is that about accurate?

JH: So the first three days it's, it's all hands on training.

JL: Yep.

JH: Uh so the first day we go over um all of our power points which would…

JL: Yep.

JH: …basically mean um anything with general orders, policy, and then we go over state statutes and we also go over constitutional law. Once we cover the PowerPoint practical applications of it and then we start to go into hands on, which is soft empty hand control, hard empty hand control and then in handcuffing and then searches, and ask, and everything like that. And then we have a sec-, another section of training which is Taser week.

JL: Yeah

JH: Taser week is specific because Axon has specific criteria's for the training and then we go into that week of training with Axon which is Tasers and we incorporate use of force, a lot of decision making so up to the last three days we do reality based scenario training.

JL: You bet, you bet.

JH: And then at the very end of the academy we do um other sections of training so kinda like uh refreshers.

JL: Okay that makes, that makes a lot of sense to me. Um and I'm gonna, I may ask you just a little bit more about each of those sections here as we go but you've anticipated what I'm getting at a little bit. But one of the things when you did talk to Special Agent ROTH at the end was you train a vehicle extraction component during the vehicle contact portion of the academy. Do you remember that?

JH: I don't teach vehicle.

JL: Yeah I saw that you weren't an instructor but it seemed like you were, you were familiar with the materials or something else?

JH: So vehicle contacts deals with um traffic stops.

JL: Okay.

JH: Um they're not use of force instructors so I deal with more of the hands on use of force application of extracting on the cars. So it's separate from vehicle contacts if that makes sense. So vehicle contacts has their own um week of block of training.

JL: Yep.

JH: And then during the last couple days of training or last couple weeks of the academy that's one of the sections I teach is vehicle extraction, it's separate from vehicle contacts.

JL: Great is it also within that same sort of the third block you talked about? Like the end of the training use of force specific things or?

JH: Correct we've…

JL: Okay.

JH: …turned it into a section.

JL: Okay great that, that helps, that helps me a lot. Um with regard to the vehicle contact uh like the PowerPoints and their materials, as the use of force instructor um do you oversee or do you vet their materials to make sure they're consistent with State Patrol policy or?

JH: No that's up to the coordinator.

JL: Okay.

JH: Um usually uh they're called EVOC coordinator.

JL: Yep.

JH: Emergency vehicle operations uh coordinator.

JL: Okay yep so I mean uh and TOM and I can tell you we're definitely familiar with uh emergency driving stuff but I just wanted to make sure I understood how separate it was. And this is really simply because when I think of the State Patrol I think of the classic traffic stop on 94 and then what and so I was just trying to figure out how exactly we break that up. So if I ask some questions today that seem to be geared toward uh I should say feel free to defer whether that be to uh um Sergeant THELEN or someone else, right.

TP: JOSH, I wanna.

(Multiple talking at once)

TP: (inaudible) Clear here, you just said made an off handed reference to the classic traffic stop on 94, I mean you're not asking him his opinion on anything specific are you?

JL: Uh I'm only asking the questions that I'm asking one by one here today.

TP: I know you're asking your questions one by one but these are uh not related to any specific incidents, this is related to his training, is that correct?

JL: Um everything I am doing is trying to scrutinize the fact that RICKY COBB was murdered pardon me, RICKY COBB was killed in a traffic stop and part of that, part of that review is to understand what happened and part of understanding that is understanding the training, right TOM? So.

TP: I don't know what's right or wrong but I wanna make sure that you're not asking him for opinions when he's here to talk about what the training the academy provides is, that's what he knows about.

JL: I would only ask to scrutinize how I wanna proceed in this discussion, one question at a time 'cause I think you might be more concerned about my path here than, than I think you should be. And, and I.

TP: I think you're mistaken, what I'm concerned about is you're throwing out specific examples then asking general questions, I wanna just make sure that we're asking about training, is that right or wrong?

JL: Um I think that for the majority and certainly in the next series of questions it will be all about training materials.

TP: Fair enough.

JL: Okay.

TP: Continue.

JL: Um I, when I mentioned uh when we were walking into this area today was although I did ask for the materials about that extraction component, TOM rightfully said it wasn't your place to be able to provide those uh training materials to us so I did ask Special Agent ROTH to obtain them and we did hear back from a person in the agency that we should be getting them today.

TR: Yeah there uh I forget her name I can look it up quick, it's, it's like their data practice uh contact uh she emailed me yesterday and said that those materials should be available today and I'll be able to provide those.

JL: But I certainly didn't wanna reschedule this since we did schedule in advance so um let's see. Um so again I, I did, I did wanna talk a little bit about use of force situations that involve traff-, traffic stops um you know vehicles who flee the scene of a traffic stop, uh do you feel based on the fact that you do teach that extraction component and general use of force that you're, you're kind of in a good position to be you know, know how the State Patrol trains those issues?

JH: Um no. I teach extractions um and extractions are a static drill, anything related to um vehicle contacts or EVOC is gonna have to be deferred to the um EVOC coordinator.

JL: Okay and if you could tell me who you think would be the best person in the position would that be Lieutenant THELEN or would that be another training Sergeant?

JH: That'd be another training Sergeant.

JL: Okay. Let's see here, I thought he would have the old roster here at some point. Okay we'll, we'll address that perhaps later just trying to figure out who would be in the best position to answer those questions, okay. Um let's just talk now about that use of force that three day session. Um the format you kind of laid out but also we got I'm just gonna slide down this was labeled 63rd academy use of force and then this is a course outline, this kind of lays out almost exactly what you were talking about right so they show up, kind of lay out the PowerPoints that uh were addressed, this would be the general orders on obviously use of force, and then going down the state statues, talking about the Supreme Court cases Garner uh Graham, and going down the 4th amendment. And then whoops yep and then these are still PowerPoints on recognizing ques, handcuffing techniques, pressure points, strikes, baton strikes, uh defending against the tag, uh (inaudible) training and then down here is when we finally get to um you know we're done with the classroom and we go onto weapons check, make sure nobody's got any live ammo and then suddenly the practice exercises.

JH: So this lays out here, this section here starts getting into the hands on portions of it.

JL: Yeah.

JH: And because this is, this is all hands on training. Um to do a PowerPoint on handcuffing it's not gonna be very practical.

JL: Yeah.

JH: So all of these are end up into more of a hands on practical portion in the (inaudible).

JL: Okay.

JH: Included (inaudible) into here, this is our level one program which is basically hard empty hand control, soft empty hand control, ground fighting, weapon retention and so forth and then we get into the Taser week and then it breaks it down into actually how we're gonna um start the training.

JL: Okay and then what I showed you there was about three pages in, in an outline format, is that a, a single day or was that possibly multiple days or something else?

JH: That one is um that one's gonna be multiple days.

JL: Okay.

JH: Um because we break it down into sections how we do all of our training so we'll break down our section of training into um stand up skills and we'll work on hand fighting and we'll work on position of advantage, dis-, uh disadvantage and so on. And then from there once we get that down we'll break it, once we feel everybody is grasping those concepts we move into the second portion

because as we progress all of those sections kind of near each other and flow into a technique of level one.

JL: Mhm when does it go from just technically, like or technical takedown, a technical you know a, a grab or a, a ground strike to um some role playing or scenario based training?

JH: That goes into Taser week. Um the first three days we do training, it's all into the mat room, we don't push them into any type of scenario training until we're ready uh until we feel they're ready number one, number two we wanna make sure that we've given them the, the foundation to be able to handle those scenarios.

JL: Yep that makes sense. And then when it gets to, to train, uh to, to Taser week um you mentioned that a lot of that training is sort of Axon dictated as far as the user license would you, would you…

JH: Well.

JL: …agree or?

JH: It is and a lot of that is just the paperwork portions of it and some of the um exposures that we do has to be done specifically according to Axon. We have master Taser instructors within our agency and if they're not done correctly according to Axon's um procedures um they can lose their master Taser um accreditation.

JL: Yeah.

JH: So we just make sure we follow Axon's um uh procedures for that portion but as far as any other training um Axon doesn't dictate policy or nothing like that.

JL: Yep. How much of Taser week is really about uh considering tactics in, in situations whether that be uh you know I'm dealing with some form of resistance and then you post to the cadets, is this a situation in which you take out your firearm, is this a situation when you take out your Taser, is this is a situation where you use verbal warning, is this the situation where you go hands on, things like that. What really or using non-physical de-escalation, things like that?

JH: Probably um I honestly guess probably 60/40, 60 percent is reality based scenario training, 40 percent is static drills.

JL: Right on. And because obviously and um expose my nub here I'm trying to get at you know the situation involving you know sort of traffic stops, things like that. The scenarios that are used uh do you feel like there are, there are, there are scenarios which sort of have their traffic stop situations?

JH: Correct.

JL: Okay. And uh over the years have you um have used the sort of the same scenarios um or are they you know different?

JH: We try to change up our scenarios.

JL: Mhm.

JH: Um a lot of the scenarios that we've changed up are um what we kinda see happening out on the street. Some we stick with because they're just a good drill as far as being able to make decisions but some of the ones that we most also had to include are the duty intervene.

JL: Yeah.

JH: And um some of the other statutory uh legislative requirements of um if a person is not affecting anybody and is suicidal, some of the legislative um inclusions that we've also had to include, also had to add to our scenarios.

JL: Makes a lot of sense. Um then moving to that second block of training which you kinda said is sort of toward the end and when you set out initially for Agent ROTH you said that level, that part of the training the soft empty hands skills, hard empty hand skills, all the necessary principles and applications of techniques to be able to ensure that they're ready for the road, this is sort of the end of the cadet training where this is about as close to real life scenarios as possible, am I understanding that?

JH: Correct.

JL: Correctly? This is sort of like the, the real deal when I think of academy this is, this is it, right. Um and those scenarios, those are also um would you say that those are more like higher level scenarios than what they initially see at the, at the beginning of the training?

JH: Yes.

JL: Yep. And then today you clarified that another component of this block of training is the extraction, right?

JH: Correct.

JL: Okay. Now sprinkle through the training uh I, I know that at the beginning you talk about principles of using objectively reasonable force right? And you also mentioned especially in light of some statuary changes uh you're also teaching principles of de-escalation?

JH: Correct.

JL: Right and um would you agree that one of the policies of de-escalation is in fact you know taking time? Let, and matter of fact I won't, it's not your question, let me, I'm, I'm gonna just make sure I kind of 'cause I wanna understand how this is trained. 'Cause there's a portion of the use of force policy which I have a copy of if you want to see it. It says whenever possible and when such delay will not compromise the safety of the Trooper or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, Trooper shall allow an individual time and opportunity submit, to submit to verbal commands before force is used, does that sound like familiar language?

JH: Yes.

JL: Yep. How is that concept addressed in your training?

JH: Through um most of the time when we're dealing with reality based scenario training, we'll give them a, a situation where um let's say we're dealing with a, one of the scenarios that we have is we have an individual that and Texas DPS had this happen. Had an individual that applied um Purell um Purell um.

HL: Hand disinfectant?

JH: Anti, anti, anti-disinfectant all over their body. Texas had an incident where they deployed Taser and we all know Purell is highly flammable right, well the individual ended up getting severely burned. So one of the scenarios that we run is a de-escalation portion of it where they go into a room, we have a role player with Purell and they smell it, they detect it, they see it, and the person's obviously in a, a state of, of, of uh you know uh distress and it's at that moment where we know that they have the cadet to de-escalate and use their words, stop the person and if they do that successfully we end the scenario.

JL: Yep. Do you find that that's a difficult concept for cadets to?

JH: No.

JL: Oh yeah?

JH: No it's not, I mean when I started training back in the 90's, it probably was a foreign type of an idea.

JL: Mhm.

JH: But a lot of uh a lot of the cadets that we see, a lot of the Troopers coming that we see now, take to the de-escalation a lot easier.

JL: I just think uh if I, if I learned how to do some of these ground strikes and, and some of the other moves and I know that I need to show my academy Sergeant that I know what I'm doing it must be hard that at some point it's just like let me show you how I can take this guy down but you're, you're saying no this is a concept that makes sense to cadets these days and.

JH: Yeah.

JL: They actually know you're being evaluated on situations not only are you using force correctly or but are you judging situations where you know that using force is the exact wrong thing to do?

JH: Correct.

JL: Okay.

JH: Um one of the scenarios we set up, typical scenario we set up it, it's called the um power out and what we have is we have a, we have a, a situation where we have a um role player in a room where there's a power outage and who is walking up to the cadet and he's the owner of the building, no force used, it's just go up there, have a conversation with the individual and the guy says I'm the owner of the building, power went out, the alarm went off, and I was called and that's why I'm here. So a lot of the scenarios we set up there's no force used at all. We set up scenarios where there's an individual that is hard of hearing and when they, they're acting weird according to the shop owner and their back is to the cadet when they enter into the room and the cadet's like sir, sir, sir, well they can't hear so until you go up and make physical contact with him, there's no force used and then they show that they're actually, they have a um hearing disability. So we set up a lot of scenarios in the academy where there's no force used at all, it's just sometimes common sense to a point where they just go into a scenario and they just have to judge it and walk up there and, and um make the appropriate action.

JL: That's a brilliant scenario. Um now uh on deadly force uh there's certainly clear instructions just based on the materials that I see on the policy language of use of deadly force. But how is that policy addressed throughout the use of force training including these later scenarios?

JH: Uh through decision making, a lot of the reality based scenario trainings that we run. Um for example one scenario that we run we have two people who are fighting in a room. Um the one scenario that we run is two people are fighting and then there's a Taser deployment, we get the one suspect under control because it assumes to see that the one suspect is a victim here. And then as soon as the victim rolls over or the role player rolls over the other victim or the other suspect draws a knife out and starts to stab the person who is actually under control with the Taser, so then they have to make that decision quickly that oh there's a deadly force scenario here. And then we also do other different scenarios where we have um individuals that are seemingly um they de-escalate, they walk into a room and the individual has a knife and they met it with the appropriate level of force which is a, a handgun. And then they try to de-escalate and then what we'll have them do is the role player will drop the knife and then start to come after the uh cadet aggressively and then they have to see a transition from the handgun to the Taser and because within our policy then they attack the Trooper actively aggressively without a weapon in their hand and then there's a Taser deployment. Um other scenarios we ran is um there's an individual who has a knife in their hand and is met with a weapon by the Cadet, as soon as the um role player drops the knife they draw a Taser but then they go into like this um they're in a mental crisis and then it goes into de-escalation, talking to them, getting them away from the weapon, finding help for them. So we have such a wide variety changes of that um and then we also run hood drills, hood drills are uh scenarios that we have the Cadet in a room and their backs to the scenario and they have to turn and react to a threat immediately.

JL: Yes.

JH: Those hood drills are quick reactionary you know tense uncertain (inaudible) in situations that happen immediately. And in those situations we have them (inaudible) deadly force or they draw a weapon and um the persons coming at them with a knife or they draw a handgun on the individual or they're shooting a gun and you get that sudden surprise and the turn so that's how we address those use of force situations especially the deadly force situations.

JL: Yeah and those make sense, I believe that in the materials we got from the State Patrol I, you can see um a hood drills reference and the evaluation scores on it, so now I know and understand what they are, that's great.

JH: And that, those, those scenarios are ran for I think three days during the academy during at least three days during the academy when we're running uh the Taser, the Taser week.

JL: Yeah and by that point we're talking about individual evaluations not just classroom instruction so?

JH: Correct.

JL: Individual.

JH: Yes. The individual evaluation start when we have them go through the hood drills, it's kinda like a, like a this is what you could expect.

JL: Yep.

JH: And then we go through the evaluations portions of it.

JL: Makes sense. Okay I know do wanna talk about vehicle extrications. Um in your interview with Sergeant, Agent ROTH um you described them as something that arises in a situation in which a suspect is in vehicle and is not cooperating and exiting the vehicle, is that sort of like the situation in which this could occur?

JH: Correct. We, we run that as a static drill where we use a uh a prop car and um well it's a real car but we use a prop car that's um and then we just run that as a static drill during one of the uh um basic sections of training that we do.

JL: Yep. And I certainly know from just training of your students you wouldn't want a running car but when you talk about a static drill obviously that the, the concern about a vehicle driving off or fear of dragging things like that, those are in those scenarios?

JH: We discuss the, the advantages and disadvantage of, of um the vehicle and what can happen.

JL: Okay. And um do you directly teach that component still today or do you uh just design the curriculum?

JH: Uh we, I teach it and design the curriculum and I did teach it.

JL: Okay. Um and now I think this was addressed in the first um interview but how much training does a Cadet receive on that topic alone?

JH: Vehicle extractions we usually it's about 30 to 40 minutes.

JL: Okay. That's exactly what you told Agent ROTH. And um when you teach it 30 to 40, is this also kinda got that sort of direct instruction component and then a hands on component or is it all just sitting next to the prop car?

JH: No um so that section of training we have it broken up into four different sections, we'll be, we will be doing like um um level one and then we'll be doing that's just our um ground fighting drills.

JL: Okay.

JH: And then we'll be doing work on um handcuffing and then we'll be work, doing work on how the restraints and how they can be properly used and not used and positional fixations, all those different types of scenarios. And then the one section on training is about 30 to 40 minutes so if we have let's say 30 cadets, we'll break those into four different sections. And then they'll come to that section for about 30 to 40 minutes and what we have is the instructors will go through a demonstration and then a discussion and then we'll actually do the actual extrication with the instructors. And then what we'll do then is we'll have cadets go through the extrications, we'll have them also be inside the car to be a role player so that they actually feel what it's like being extracted out of the car, what to expect from the suspect when they're being extracted out of their car, and then we run it with different scenarios as far as we also have them run single extrications and then if your, double extrications basically meaning you have a partner.

JL: Yep.

JH: 'Cause like with outstate Troops, they're alone and it could be 30 to 40 minutes before they get backup so they have to do a single extrication, we teach them how to do that. But if you're in the metro obviously your resources are a little bit closer so we teach them how to do a double extrication where a driver or your partner can come from the passenger's side to try to gain access to the seatbelt. 'Cause that's our biggest obstacle most of the time is the seatbelt.

JL: Yeah.

JH: Because if we're trying to obviously pull somebody out of a vehicle and they have their seatbelt still on, it's not gonna work so the actual um getting that seatbelt undone and getting positive control of them in the vehicle is important.

JL: Okay. When I was a kid I swear the first car I had the seatbelt on the driver's side clicked on the door and when you opened up like you could get it out but I'd say all cars now the seatbelt is on the…

JH: Correct.

JL: …inside right?

JH: Yeah a lot of design flaws with that um with the I think the Ford Tempo and also the Oldsmobile Achieva had that design but the bad design was this, when you opened up the car door you didn't have a, you didn't have the uh the.

JL: Yeah.

JH: The belt on. So when we had vehicle crashes the door would pop open, people would.

JL: Oh.

JH: Get popped out.

JL: I liked it 'cause it always meant I had my seatbelt on 'cause I just had to shut the door and voila.

JH: Well then people just wouldn't put that on either, they just you know take it off and then they're extracted from really little thing would run on it's little rail thing.

JL: Yeah.

JH: And wouldn't even work so.

JL: Ford probe.

JH: Yeah Ford Probe, Ford Tempo, Oldsmobile Achieva I think had that design, it was a horrible design. But we're not here to talk about.

JL: Yeah. Glad I made it through those years. Um when uh when that did get brought up in the last interview I think you know Mr. PLUNKETT just uh asked you that question to make sure that we understood that undoing a seatbelt is something that's trained uh when you're trying to extract someone um when that is trained though is it, is it always just unbuckling the seatbelt or is there ever a situation in which officers can use a cutting device on their utility belt to, to just cut the seatbelt and pull them out?

JH: That's gonna be more for a um crash victim.

JL: Okay.

JH: Um to bring an edged weapon into a scenario like that, it's too dangerous.

JL: Okay.

JH: So if I bring an edged weapon into a scenario where I have maybe a combative sus-, a combative suspect, um the only time we can actually have a knife out realistically in the State Patrol is for a deadly force scenario. Um so that, that's something that we can't actually teach to be able to cut the belt off of somebody if we have a suspect in there that's not cooperating.

JL: Makes perfect sense. Um in your uh prior interview you mentioned that you train on how to keep positive control of the suspect so that we can limit the amount of risk going on to the car.

JH: Correct.

JL: Does that sound right? Could, could you kind of elaborate on what you meant by that?

JH: Reaction beats action kind of a thing. Um so if I can go in and get positive control quickly and get them out and extracted, it's kinda like surprise by force.

JL: Hmm.

JH: So if the decision is made to go in to extract you want reaction um and what I mean by that is you go in and you what we teach is you push the head off to the side and then as we push the head off to the side we're reaching in, this is a single person extraction.

JL: Yeah.

JH: Pushing head off to the side and reaching in and grabbing the seatbelt at the same time. Once I get that seatbelt on I'm grabbing a hand and then I'm pulling that hand out to get their hand away from the um lever and the steering wheel and everything else. So as we're doing that we're trying, that's what I mean by positive control is I'm going in there and trying to get uh positive control of the suspect so I can get them out as quickly as I can.

JL: One of the things that always impresses me about the way these things are trained is because when I ask a question then we find out well here's the ser-, the (inaudible) series of bad things that happen if we trained it any differently so if, if when there's a situation in which a, a vehicle is running and the officers made the decision that it's time to extract that individual, um why wouldn't the first move to be to get the keys as opposed to try to unbuckle the, the seatbelt?

JH: Cars are different so to teach the several different types of vehicles, the old cars we used to drive like that Ford Tempo it was key right?

JL: Mhm.

JH: Um a lot of them are just push buttons now. And each car manufacturer pushes that button somewhere differently so to go in there and try to look for a off switch is taking time away from the extraction. Or if I can go in grab and pull out that'll give me that element of surprise where that reaction beats their action and then get positive control. So that's one of the things that's difficult because if I was to tell you that on Ford Ranger the start button is located two inches to the side to the right to the left and then the next vehicle is a Buick Lasaber.

JL: Mhm.

JH: Or a Toyota or a Honda, they're all located in different locations as to where the manufacturer places it.

JL: And I, I suppose that one part about teaching extractions is like at what point should a Trooper at least think that if it comes to this like let's say the first encounter uh the driver's a little edgy, a little you know little bit uncooperative, um at one point should any sort of planning or, or sort of pregame thought about the possibility of an extraction take place, what, what is trained with regard to that? Like if this comes to this I mean what or is this just like usually this is so split second, this is so split second?

JH: It's an action.

JL: Yeah?

JH: Uh it, it, to be able to, to choreograph an extraction it's tough to do.

JL: Yeah.

JH: There are so many different variables that are present so that's why we just say if you make the decision, the decision is made to extract, you have to do it and there's usually the action and your partner will pick up on that and then if you have two partners that's when they're going in to try to grab the seatbelt.

JL: Yep. Ideally if this were like a uh I don't wanna invoke the word SWAT but a, a preplanned event where you know somebody's been holed up for hours and you have some pregame talk, there's a couple officers present, that might be a time where you can take a minute, try to actually find some internet photos of the make and model of the vehicle uh maybe even actually understand where the key or the ignition is or how to, how to disable that vehicle or make any other planning to make sure at least if you're gonna extract an individual that you can minimize risk to the Trooper whose gonna go in. I mean does that make some sense? You know what I'm saying.

TP: It was a very long um example that he, he supposed to opine that.

JL: Sure.

TP: Why don't you break that out a little bit.

JL: Sure.

TP: To give the man a chance.

JL: Sure. When we're talking about limiting the amount of risk going into the car um I'm, I'm trying to exactly understand the risk, it certainly could be just hand, hand combat with the driver but the risk of actually that vehicle taking off, um is there, is, you know if you had more time would there be other law enforcement techniques that could be used to ensure that the vehicle wouldn't drive off?

TP: Well so like if he, if there's more time.

JL: Yeah.

TP: So not on the roadside but uh more of a um in their office setting? You know, I get the impression you're trying to characterize extractions as something that occur over a week or two when I think that they're very quick.

JL: Okay I'll give you a scenario. You uh two Troopers on the side of the road um have tried their best to verbally encourage a driver to exit. They make a plan that they're going to go up and encounter this individual and extract them from the vehicle. They know that the vehicle is on, as they're making a plan, would there be thoughts or discussions about how that vehicle could be immobilized prior to the extraction?

TP: Are you asking about training or are you asking about his road experience as a Trooper?

JL: Do you, are you, do you feel qualified to answer that question as a trainer and or with your experience?

TP: Well I wanna understand what you're asking him about, I mean it, it's just.

JL: Sure.

TP: Is this a training scenario or are you asking him about something else?

JL: Okay well let's do both. Uh how would you, how would you train a situation like that?

JH: As far as how to immobilize the vehicle?

JL: Yeah.

JH: How would I immobilize the vehicle?

JL: Yeah.

JH: Um.

TP: So you're asking him in scenario training how do you…

JL: Yeah.

TP: …train people to.

JL: If this, if this, if this scenario came up, I, I, I really don't mean it contentiously. One of the things I should make sure you understand I know that if a decis-, you've already said, a decision to extract somebody could happen on a very split second. But we've also talked about minimizing risk,

JH: Mhm.

JL: And so what I'm really trying to get to nub at here is the fact that time is really important here. If we had a lot of time we could do everything from I don't really wanna answer the question but.

TP: So what you're saying is if you have enough time you could have a, some other department come in with a bear cat, maybe get a little aerial support, that sort of thing?

JL: You, you were about to answer the question uh Sergeant.

TP: Well I'm, at this point I'm not sure what the question is.

JL: For example when we look at the vehicle pursuit policy um one of the things that could occur during a vehicle pursuit is put down um stop strips or something to, spikes right, that could flatten tires, that might at least have the ability to immobilize that vehicle so it couldn't drive forward at a high rate of speed, is that correct?

JH: Yes.

JL: Okay is there anything else that a Trooper is equipped with that could stop a vehicle from going forward that they have on board in their vehicle?

JH: Um after thinking you know the only thing that a Trooper could possibly do is to immobilize the vehicle is to put their squad car in front of it.

JL: Okay. And.

JH: And that would and what we call boxing them in.

JL: Mhm.

JH: And if you're talking about a SWAT operation that's something that is operational where you would box the car in front and back.

JL: Yep. In a situation where you know let's say that the driver has a warrant for his arrest or your otherwise the plan is gonna be to arrest. Would it ever and there are multiple Trooper vehicles on the side of the road, would there ever be the tactical decision to box in that vehicle at that time?

JH: No.

JL: And could you just tell me why that is?

JH: To position the vehicle in front of the other car, puts yourself at a tactical disadvantage and the reason why I'm saying that is because um based on the I would probably say that as soon as I move my car up in the front, suspect's gonna drive away.

JL: Yeah. Um I, so there, let's say there's two, there's two Trooper vehicles there just based on your experience, if one of the Trooper's vehicles pulled ahead of the stopped vehicle that might spur the person to drive away?

JH: So you're gonna ask me about the, the, the OIS now? Because that's the exact scenario that you're bringing up correct?

JL: Uh.

JH: And you're trying to bring it up into a training scenario.

JL: Well I'm trying to find out if, if when.

JH: If you're asking me specifically about training I will answer questions specifically about training. I won't answer questions about the OIS.

JL: Okay and that's your personal choice on the instruction of counsel or something else?

TP: Well now are you asking about advice of counsel, I mean that's a, JOSH I think you understand that's a very inappropriate question to ask.

JL: How, how about this. What I was asking is in a situation in which you know that your plan is to arrest an individual, not a hypothetical but this, this has to happen when you're pulling up alongside a veh-, you find out that the driver has an arrest warrant and that the, the, the directive is it's time to arrest that individual. Is there ever um and I asked and if there's multiple Trooper vehicles present why wouldn't boxing in or why is boxing in something that's trained and if not why and I think you've answered that partially.

JH: It's nothing that's trained though.

JL: Okay.

JH: In the academy it's not trained to box in a vehicle for an extraction.

JL: Okay. Now in a situation which a person is authorized to arrest a subject, what degree of force is permitted to effectuate the arrest?

JH: Are you asking.

JL: Cat, categorically, just reasonable force.

TP: What they train?

JL: Yeah.

TP: What do you train?

JL: Yep.

JH: Um well if it's just a simple arrest then it's just you know handcuff. So it's soft empty hand control.

JL: And uh deadly force isn't authorized to effectuate an arrest right? I mean just generally deadly force isn't authorized.

TP: Is the question like shoot him now arrest him later?

JL: Yeah.

TP: Or if you're in the course of an arrest, if the situation changes to the point where the Trooper or the officers in a life-threatening situation?

JL: I, I.

TP: Which one…

JL: TOM I think you're…

TP: …are we talking about?

JL: …anticipating many questions ahead.

TP: I'm not.

JL: But my question is.

TP: I'm trying to figure out the question that we have on the table right now.

JL: How about, I'll ask it in a leading way. Am I correct that deadly force in itself is not authorized simply to effectuate an arrest without any other circumstances present?

JH: No.

JL: Of course not right. Let's say we have a driver who is fleeing from a lawful arrest. What level of force can be used on the driver?

JH: I don't understand the question.

JL: Let's say there's a uh a traffic stop and the driver has indicated through actions that his intent is to flee from the officer whose standing alongside the vehicle, what level of force could be used on that driver at that time, from simply fleeing?

JH: They just drive away we wouldn't be able to use any force.

JL: Which also means deadly force cannot generally be used just for fleeing driver?

JH: No there has to be an action as far as great bodily harm or death that the Trooper or others involved.

JL: Okay. So uh now with regard to extracting uh drivers, under what circumstances is it permitted to do such a thing?

JH: When the officers feel that their life is in great bodily harm or death.

TP: Well now I think JOSH has got these questions flying back and forth too much. I didn't hear this question.

JL: Sure, sure.

TP: So the question was when an extraction is authorized?

JL: Yeah.

TP: Okay. And now you're asking from the training perspective? Correct?

JL: Training and policy.

TP: All right. When is an extraction authorized?

JH: So when is an extraction authorized?

JL: Yeah.

JH: Um when the individual has become uncooperative and is still at the roadside and the decision is a made to extract them from the car and all of the necessary obligations to actually affect the arrest has been met. So they have a, they were gonna be under arrest for DUI, they have a warrant, whatever situation and um um that's when you can actually extract. If they get out of the car before de-escalation, perfect. If we open the car door and we grab the arm and we do soft empty hand control perfect. If it elevates them to the point where we have to do hard empty hand control like uh um um more of a uh straight arm or takedown, something like that, then, it all, it all depends on the actions of the actual suspect, determines the level of force that the officers will use.

JL: Yep. And we kind of touched on this but um what safety concerns are trained um at that point of extraction, what safety concerns should the officer be awareUm the actions of the, uh the actions of the suspect can be from driving away to um punching the person as they enter the car, um to grabbing a weapon that's inside the vehicle.

JL: And weapon retention is, we haven't mentioned that but that's a significant training aspect um in the State Patrol training materials am I correct on that?

JH: For the officers?

JL: Yeah.

JH: Yes.

JL: Yeah. Um are there any see I haven't seen the materials yet I'm not trying to play got you here 'cause I really haven't seen them um are there any rules or guidelines or lessons taught to Troopers about those, about those safety concerns?

JH: Um not in my section um specifically. I do know that um Lieutenant THELEN talks about his experience about being dragged.

JL: Yeah yeah and we'll, I wanna talk about that in a little bit too 'cause I do have the vehicle contact PowerPoint and I see that Lieutenant THELEN's experience is mentioned there, it seems like that's a, that's, he's now here to present it still which is a very good thing but, but also it, it plays a role in that training that's something we'll talk about. Um but are Cadets taught I guess uh rules or guideline about the risks of entering vehicles?

JH: Yes.

JL: Okay and what are, what are those?

JH: Well we just hit on those as far as um if the vehicle is still running, it could be a possibility they drive away, that's what we talk about being an action.

JL: Mhm.

JH: To reaction um we talked about there may be weapons inside the vehicle, um we talk about trying to get positive control of the suspect as quickly as you can to be able to extract them out of the

vehicle. Um we talk about other occupants in the car so there's just different types of variations that we try to incorporate and we talk about the advantages and disadvantages.

JL: Is, is there when you're evaluating an individual Cadet you know um from doing that scenario is there a point at which it's just a, a fail whether they commit their body too far into the vehicle, whether they leave them self too at risk of being dragged or is there any guideline on that to keep both feet square on the vehicle or they have to keep their hips or elbows or shoulders out of the, you know this kind of what I'm looking at, are there kinda rules of thumb that you know this is what Cadets uh learn about that risk of whether it being dragged or something like that.

JH: So um during the um actual scenario training um if we see a Cadet performing something that's incorrect we'll stop the scenario, we'll stop the, the actual action. And then we'll correct them. And then we'll talk about what was wrong, what you did wrong, you know as far as maybe exposing a weapon or going too far into the car, not being able to get ahold of the seatbelt quick enough or having positive control of the bad guy or the suspect quick enough. Um and then we reset and then do it over.

JL: What, what would too far?

JH: Too far would be if I'm you know it's tough to over penetrate inside of a motor vehicle but getting too far into the car would be to the effect where you're you know I guess the fact that where you're, you're almost sitting on top of the person's lap kind of a thing.

TP: Was your goal to, to set for the trainees a specific spot on their shoulder that they shouldn't go past or is the goal of the training to teach them to think about what they're doing?

JH: Um thinking about what they're doing. Um it's well how we, how we combat the over penetration into the vehicle.

TP: Mhm.

JH: Is by when they put their hand on the side of the individual's head.

TP: Mhm.

JH: That usually um limits their ability to be able to over penetrate inside the car, that's why we teach it that way.

TP: So how far you go into the vehicle is somewhat determined by the person that you're trying to extract?

JH: Correct.

JL: And I guess I'm just acting it out, push their face, if, if you're pushing the guy's face to the right, they're also not gonna be able to see the road I suppose so I mean right so at least perhaps they'd be less inclined to drive off and that's when you agree to cross.

JH: Distractionary technique by putting their, because putting their hands up, I'm in their face, they can't look down and see where the shift knob is or something.

JL: Yeah.

JH: So it's distractionary technique and wherever the head goes the body usually follows and then we're trying to get them over to the side to be able to get the seatbelt off. And then once the seatbelts off and then that's when we pull them back over to the other side and then getting that positive control so they don't have access to, the control so.

JL: And, and having worked with the State Patrol for 14 years I know that there's everybody's of different sizes and I suppose if the, if you're training of the goal is to reach into the seatbelt it, it's really hard to give a general rule, you're feet have to stay outside the vehicle or you can't move your shoulder in because we have six foot five huge State Patrol officers and we have some petite folks but no matter what.

JH: And it also depends on the motor vehicle too.

JL: Yep.

JH: If you have a pickup or if you have a car or if you have an SUV or something like that.

JL: Is any part of the training asking the Cadets to take in consideration their own, their own size or their vehicle size, um when it comes to just like assessing their own risk about whether extracting of that suspect is, is a good decision for them on the road at that time?

JH: Yes.

JL: And I just wanna be uh kind of circling back now about extracting someone from a moving car.

JH: Moving car, okay.

JL: Is the, is the decision making surrounding extracting someone from the vehicle affected by whether the vehicle first of all is running or not?

JH: Um no.

JL: Mhm. And if this is a question for Lieutenant THELEN I totally get it but um just because I, you, you have been a Trooper on the road um at what point does a routine traffic stop do you instruct the uh the stopped driver to, to turn off their vehicle?

JH: You don't.

JL: You don't? Never do?

JH: Well do not say never.

JL: Okay.

JH: Um if I know the person's under arrest that may be one of the things I'll ask them to do is shut the car off but routinely on a, on a traffic stop if it's 40 below zero.

JL: Yeah.

JH: I'm not gonna ask them to shut the car off.

JL: Okay. But if it's the summer.

JH: No not on a, not on a routine traffic stop no.

JL: And is there, maybe I'm just trying to understand you know somebody in a position of a defense attorney might say that escalates the stop to an arrest 'cause they can't drive off, I don't know why but is there any policy reason why that isn't done sort of on a, on a regular basis, shut off your, shut off, could you shut off your vehicle sir?

JH: No.

JL: Okay. Um now again I guess I'm leading up to what about situations in which the vehicles actually shifted into drive? So the decision had been made to extract but now you see that the vehicle has been shifted into drive, does that change the decision making process on whether to extract someone from the vehicle?

JH: If the vehicle is shifted into drive and then they try to extract?

JL: Mhm.

JH: Um if the decision was made it depends on is the vehicle in drive and their foots on the brake or did they as soon as they tried to extract they were able to get it into drive but that actions already moving forward so you know that I mean and if they're focused on being able to get positive control they might not of seen the vehicle go into park, into drive too.

JL: Yep. Decision tree we're talking, the vehicles on, we know that it's a risk 'cause the vehicle, all we need to do is shift into drive, we have a situation in which the vehicle has now been shifted into drive, let's, either they know or they don't know it's occurred right, either they sense the vehicle moving forward or they don't yet you know all of those decisions being equal but at least the um the factor of the vehicle being in drive is an increased risk factor, would you agree?

JH: Yes.

JL: And at some point reassessing a situation to extract would be affected by that, is that, would you agree?

JH: Well if the vehicle is sitting in drive yes it would.

JL: When you say okay at a stoplight the vehicle is sitting in drive ‘cause the persons foot is on the brake right?

JH: Correct.

JL: And so we know at that point if we extract.

JH: High risk.

JL: Yep. And if we have any sense that the individual is, is actually actively trying to put their foot on the gas, this would be higher risk, do you agree?

JH: If, if you’re at a stoplight?

JL: Yeah.

JH: Or, yes.

JL: And does your training touch on situations like that?

JH: No.

JL: You had mentioned um the scenarios change over time based on you know cases that occur and things like that um do you think that that is a, a scenario that um would be a good scenario to train?

TP: Are you asking him to speculate how he should train his, change his training in the future Mr. JOSH? Is that?

JL: Sure.

TP: Well you know we’re here, happy to talk about what the training is, we’re happy to talk about his experience but if you’re gonna talk about how the academy should train, they should change I, I don’t think the Sergeant’s in a position to make that decision so it’s not a very fair question.

JL: Uh do you wanna answer it?

JH: No.

JL: Um but uh I guess if, if you know kind of thinking about sort of those scenarios we kinda talked about uh perhaps you don’t recall it an actual specific training module about that uh the answer might be no to my question here. Is there a standard rule of thumb or guideline that Trooper’s learn to evaluate um the decision to extract when the vehicle is in drive or actually going forward?

JH: We wouldn’t extract if the vehicle was, if, if you’re sitting at a stoplight and the vehicle is in drive and the guy just has his foot on the brake, no we wouldn’t extract.

JL: And that would be because it would be too I mean too risky?

JH: Correct.

JL: And I mean the risks uh would compound would you agree it would be a risk to the Trooper, potentially a risk to others on the road, things of that sort?.

JH: Yes.

JL: And uh well I don’t wanna ask you such a obvious question but uh if one is successful in pulling someone out of a vehicle that’s in drive uh the vehicle uh would then go forward right?

JH: Yes.

JL: And do you know just based on your training and experience like how fast does a vehicle drive, if, if it’s just in drive but no one’s hitting the brake does it still, it still goes forward right? Like idle, idle speed right I’m just thinking, I’m sitting at the, that’s why I keep my foot on the brake right.

TP: Flat road, on an uphill.

JH: Yeah you're talking.

TP: On a downhill, in a ditch.

JL: How about McDonald's parking lot? A McDonald's drive thru right you'd keep your foot on the brake right?

JH: If it's parked up against the curb it'd bump against the curb and wouldn't go any further.

JL: Okay that's good. Um Sergeant HALVORSON would you agree that a, a no in an occasional phenomenon uh facing Uh Troopers is when a driver ordered to exit the vehicle refuses to exit the vehicle?

JH: Yes.

JL: Yeah. And we've talked about um extraction as a potential option there but are there other tactical options for Troopers at the moment?

JH: Yes.

JL: Okay and what would those be?

JH: You know if the de-escalation portion doesn't work where you can actually convince them to get out of the vehicle and they're still parked alongside the road, the only real other option is to extract the person from the car.

JL: Yeah I just wanna talk about that de-escalation because it's gotta be a, a really difficult decision. Um because we talked a little bit about that direct policy on de-escalation meaning um the Troopers should uh cons-, uh allow an individual time and opportunity to submit to verbal commands before force is being used. And my question is how is, how is that sort of concept of when would it be appropriate to say enough is enough and determine you've waited long enough in a situation like that?

JH: Well the reasonable amount of time would um be dependent upon the actual actions of the person you're talking to. Um if I'm telling them to get out of the vehicle then I'm getting somewhat you know verbal backtalk.

JL: Mhm.

JH: So to say but they're not cooperating um there comes a time when you know that no matter how much you talk um the decision for the individual not to cooperate had been made by them. And then once that decision is made the other option is well not the only other option but the option to extract has been made, that's when you'll do it.

JL: And, and that comes with experience I assume reading body language or things or something else?

JH: Yes.

JL: And um we can, I mean I've seen a lot of body cam on situations like this, not, not talking about this specific case but there's this moment where asking you know sort of combative back talk or it almost seems like fill a buster of things like that is, is, is the worry that enough is enough meaning I know they're just waiting their time to drive off or is, or is it just I've been here I have other law enforcement duties I wanna get back on the road this is enough?

TP: You outlined multiple scenarios here and you're asking him to speculate on all of them?

JL: Yeah I, well I'm asking to elaborate on that calculus of when enough is enough, you know we have, we have two policies right that we're sort of talking about right or two decision points right?

TP: What, what are the two policies?

JL: One is allowing an individual uh time and opportunity to submit to verbal commands before force is used.

TP: Yep.

JL: And then you know obviously the right to use reasonable force to effectuate an arrest.

TP: So those are the two policies that are at play?

JL: I would assume so I mean, feel free to.

TP: It's your question I just wanna.

JL: Yeah.

TP: Make sure I understand the question.

JL: Yep so that calculation on when enough is enough. When enough time has been allotted. That's, that's what I'm getting at, what exactly are the factors that would cause a Trooper to make the decision to, to extract rather than to continue to wait.

JH: That's gonna be their decision.

JL: During your extraction component um is there any scenario that has the officers weigh that de-escalation concept versus effectuating an arrest?

JH: That'd be more for a um uh vehicle contact portion. I just see it on directly just extracting.

JL: How do it. And Sergeant HALVORSON would you agree that a known an occasional phenomenon facing Troopers is when a vehicle which is stopped and um the officer is at the, the Trooper is at the door at the point of contact um of the, the driver, driving away, you know that it's fleeing a traffic stop, is that a known and occasional phenomenon?

JH: Yes.

JL: And uh as a use of force, force instructor when a, when a driver starts to flee from the side of the road um what's, what's the protocol? And maybe that's an unfair question 'cause we kinda talked about it um and just to clarify you said traffic stop, driver drives away, technically no force is authorized at that point, is that what you said about a half hour ago?

JH: The pursuit would be initiated.

JL: If it's within pursuit policy?

JH: Correct.

TP: Well isn't every time somebody flees a stop uh within the pursuit policy?

JH: No.

TP: No?

JH: There are certain circumstances for the pursuit wouldn't be justified.

TP: Okay.

JL: How about a scenario where um and I have the policy here if we wanna relook at it um the traffic stop has lasted long enough so that the driver is known, identified, on body worn camera, the vehicle is captured on video um you know obviously dispatch is aware of your location um the, the traffic stop is a um the, the arrest let's say is based on a prior incident so it's not an on-going emergency situation, at that situation the pursuit would not be authorized am I correct?

TP: Well are you asking him the Monday morning quarterback a situation, is that what this is about?

JL: No I, so Sergeant HALVORSON um you had, you said there are situations in which a pursuit wouldn't be authorized.

JH: Correct.

JL: And I can ask an open ended question. What sorts of situations would a pursuit not be authorized? I offered one and if you can agree with that scenario that's great, if you had a different answer that's fine.

JH: Um the known suspect, the suspect, the suspect has been identified and known.

JL: So the driver flees off, tactical options at that point would be um obviously notify dispatch if possible try to re-initiate traffic stop but if a pursuit is not authorized.

JH: Yeah the pursuit would probably be initiated, information would be you know um sent to Lieutenant and then at that moment there would be a decision to terminate or to pursue.

JL: And is the decision to terminate or pursuit is that typically is that made by the you said the, the Serg, the Sergeant of Patrol?

JH: Lieutenant.

JL: Lieutenant of Patrol at that time?

JH: Yeah.

JL: Okay.

JH: Whatever district they're in.

JL: Um at a traffic stop where you're speaking to a um you know you're, when you're speaking to a stopped individual, is there an appropriate time to unlock the vehicles, unlock the doors of the vehicle?

JH: No.

JL: No, is there an appropriate time when you wanna actually open, open the door of one of the vehicles?

JH: During the regular traffic stop?

JL: Yeah.

JH: No.

JL: No and is that for tactical reasons or it's just it's unnecessary, de, escalation of the stop or something else?

JH: Yeah it's just unnecessary well if it's just if you're just talking about a simple traffic stop, it's going up there and doing most of your conversation through the driver window. 'Cause it keeps the individual contained in there um and then they don't have a door open in the lane of traffic either.

JL: Okay. Um and if that's the case, if the vehicle, if the driver actually begins to take off um is there an appropriate time to try to open the vehicle doors at that point?

JH: If the vehicles already driving away from you?

JL: Mhm.

JH: No.

JL: And I, I know we kind of touched on this, I asked would it be appropriate to consider trying to extract the person at that point and I understand your prior answer was no.

JH: If the vehicles already moving?

JL: Yeah. Um Sergeant HALVORSON we previously discussed that one cannot use deadly force simply on a fleeing subject, simply for fleeing recall that?

JH: Correct.

JL: I have a question about what could be done with the firearm though at that point, let's say going back to the basic scenario of the Troopers on the side of the road and the individual has begun to, to drive off from the stop leaving you kinda hanging. Um let's say that driver has shifted the vehicle into drive, at that point uh assuming the driver is fleeing from a lawful arrest, would it be appropriate for a Trooper standing next to the car to pull out a firearm and hold it in a ready position?

TP: You asked a Monday morning quarterbacking situation again.

JL: No it's really about uh use of force and show force, the next series of questions I have are simply about having a firearm on your person in a situation like that and that series of decision making that would go from pulling it out of your holster, holding it in the ready position, warning the driver about the potential use of the firearm, pointing it at the driver, and then ultimately obviously the decision to use that firearm. And so you know I know that there are different scenarios which would authorize a Trooper to be able to hold their firearm in the ready position, I'm just wondering about a scenario like this whether that's one that in which would be appropriate to, to remove your firearm and hold it in the ready position.

JH: It's gonna be dependent on what the Trooper sees and feels at the moment.

JL: Okay. If we have a situation in which um there's no observable weapons in the vehicle, the driver's just appears to be simply trying to drive away, at that point would it be appropriate for the Trooper to pull his firearm out and hold it in a ready position?

JH: It, it would seem if he was uh he or his partner were in great bodily harm or death or the threat of.

JL: Okay.

TP: Would you have to make that decision based on your positon here in a comfortable office or would you have to make it from the perspective of a rapidly changing situation on the street?

JH: Uh tense uncertain rapidly unfolding situation on the street.

JL: Sure and the calculus there is whether, whether at the moment that you pulled the firearm um whether you believe that you or your partner would be in risk of great bodily harm or death is that the idea?

JH: Correct.

JL: Okay and is that really the key then to even pulling the firearm out and holding it at the ready position that you have to have that belief?

JH: Yes. Of if there's, you know a potential for a deadly force encounter.

JL: Yes. And it, 'cause I, 'cause I guess you know sometimes uh I have to think about this you know, we know it's going to be a, a felony stop, totally different situation right. A felony stop uh several squad cars are already behind the individual, they may approach the vehicle and at that point have their firearms at a ready position, am I correct?

JH: Yes.

JL: Okay. But that's a, that's a different situation in which we have a, a traffic stop which may or may not be benign but then the guy just drives off, right.

JH: Correct.

JL: Okay. This ends up being kind of a tautology than of these series of decision making. If, if, if the whether to pull the firearm and hold it at the ready position depends on that officer having that belief about either he or his partner has that great risk um that would also be true of actually pointing the firearm at the driver, correct?

JH: Yes.

JL: So no, no reasonable fear of, of great bodily harm or death, can't pull out the firearm, can't point the firearm?

JH: It's gonna be dependent on what they see but if…

JL: Yeah.

JH: …they feel that their life is threatened or somebody else is threatened, then they can go to a ready position with the weapon.

JL: Yep, yep. And I just wanna make sure I got the decision tree though, but if, if that, if they do not have that reasonable fear that their partner or themselves is at risk of great bodily harm or death, can't pull a firearm, can't point the firearm?

JH: Would not be recommended, no.

TP: We've talked about this decision tree JOSH let's go to the tree (inaudible) do you teach a linear decision methodology?

JL: No.

TP: Okay.

JL: You teach deadly force um is there, is it ever appropriate to point a firearm at a fleeing driver to encourage the driver to stop before the authority to use deadly force is present?

JH: If the circumstances are, if they're just driving away no.

JL: Can you threaten a subject with deadly force before deadly force would be authorized?

JH: If there's time.

JL: If there's time.

JH: If there's not time then you don't need to um I guess it would be uh you know present your intentions.

JL: Yeah I mean and maybe it's two little issues right because in the use of force policy obviously it says before you use any force if you have time you should warn the subject.

JH: Correct.

JL: And I assume that's because that's almost like a de-escalation right, hey I might use force on you, see whether they stop you know it's whether they comply at that point, I mean that's kind of like that um just use the word decision tree but you know that's one of the benefits of I don't wanna use this force on you if I don't have to, if I can warn you that I may use it, you may stop and then I don't have to use it right I mean that's kind of the.

JH: Depends on what level of uh I guess um resistance that the persons presenting. If it's just they're just staring off into the distance, they're not being actively aggressive, obviously my use of force is gonna be different than if a person's actually um you know in a position where they're gonna hurt me or kill me. So most of the decisions that I make on the road are gonna be based off the actions of the person that I'm dealing with.

JL: For sure, for sure. But in terms of the, the warning to use force when there's reasonable time, having sort of a um at least a potential of gaining compliance, we have that as one sort of value in verbal warnings. My question is a little bit different and it's about what's, what you train as being authorized under the law which is if a, if a Trooper threatens to use deadly force are there situations in which a Trooper can threaten to use deadly force when they in fact actually at that moment cannot use deadly force?

JH: I'm trying think of a scenario. So what you're asking me if I can clarify, you're asking me if there's a situation where I would have my weapon on somebody and I'm threatening to use deadly force on them even though I'm not authorized to use deadly force? Can you give me scenario where I would do that?

JL: Um an individual.

JH: Meaning.

JL: An individual on an traffic stop begins to flee, you're on the side of the vehicle, you pull your firearm, you point it at them, and you threaten to shoot them prior to actually having a reasonable belief that you or your partner are at risk of great bodily harm or death for the purpose of, of trying to get them to stop the vehicle or to um get out of the vehicle.

JH: That's a, that situation that'd have to be the decision on the Trooper. It's so uncertain and tense, when I, when I was envisioning your question was like this.

JL: Mhm.

JH: I have an individual that um I have a um he's uh ran on foot and um let's say he uh turns around and he puts his hands up and I draw my gun on him to get him, order him down on the ground or whatever.

JL: Mhm.

JH: That would be the situation that I'm envisioning that you're trying to ask me where I have a person that is displaying no um force towards me.

JL: Yep.

JH: Where I would have my weapon on them, that's how I envision your question right now.

JL: Yeah well.

(Multiple talking at once).

JH: I have a person trying to display, displaying no threat to me and who is basically cooperating with everything and listening to what I say but I would have my weapon on them, that's, that's the kind of scenario I, I see you asking me and that's just a scenario that I don't see playing out.

JL: Yep yeah. I, I'll volunteer one. Um chasing a suspect down the alley, he stops, he turns, he has a firearm in his hand pointed down, you pull your firearm.

JH: Yes.

JL: You point it at him say drop the gun or else.

JH: Yes.

JL: That'd be a situation perhaps?

JH: Yes.

JL: But if you see the individual obviously time is a very big issue here, so this off now, the artificial hypothetical but he has the firearm down pointed not at you and it's a situation in which to gain control you may verbally make that threat but at the point when you do not see him pointing the firearm at you or making any assertions that he's gonna use it, you could maybe threaten to use deadly force but not actually shoot the guy?

JH: Yes.

JL: Okay yeah we found that.

JH: That's a better scenario.

JL: Yeah.

JH: Yes.

JL: Based on your experience um you know we talked about not you know if just it's a fleeing driver okay, we're not talking about having at this point any fear of being uh harmed, it's just the guy's driving off. If a Trooper did that if he pointed a gun at a fleeing driver based on your training and experience do you think a reasonable Officer in his position would believe the driver would stop or keep going?

TP: So what's your speculation? You asked him to speculate about uh a scenario.

JL: Based on his, on a training experience.

JH: So you're asking me if I'm on a, a traffic stop?

JL: Mhm.

JH: And I'm on the side, and I'm beside the car and they just take off?

JL: Yep.

JH: And I'm by myself, there's nobody else around and I draw my weapon and I yell at them to stop, would I expect them to stop?

JL: Mhm.

JH: No.

JL: It, would it be foreseeable to expect the exact opposite meaning he would continue to leave?

JH: That was probably his intention was to flee the area so he's gonna keep going in that direction away from me.

JL: Yep and sometimes this is why um well that's obviously my artificial example here but this is why at some points de-escalation can be the most effective when you know pursuing someone or chasing someone might actually cause them to just uh run away or to not comply, actually backing up, giving the individual time or space, may actually help achieve the law enforcement objective more.

JH: Situational dependent.

JL: Yep.

JH: And it's also and the uh the individual that you're dealing with dependent. Um if you're throwing out so many hypotheticals it's just one of those situations where it's each individual situation is all dependent upon the actions of the actual suspect you're dealing with and how they comply to the de-escalation and how they actually respond to the de-escalation. And If I'm not seeing the actual responses that I'm looking for, I have to make the decision quickly of what my next move is gonna be.

JL: Yep makes sense. Um we touched on um Lieutenant THELEN's experience and that's Lieutenant THELEN's experience and, and I don't wanna disrespect that 'cause that was harrowing. Um but how much training or awareness do Troopers have about the risk of being dragged at a traffic stop?

JH: I don't, other than we just cover it for one of the disadvtanges during that static drill.

JL: Okay.

JH: Um other program areas I'm not, I don't, I don't.

JL: Okay.

JH: Other program areas may have more information on that but I don't at my, in my program.

JL: Okay.

TP: And you said other program areas and this name Lieutenant THELEN's been thrown out a few times now, does he specifically teach a section on that?

JH: Um he goes in and speaks during um I believe vehicle contacts.

TP: Vehicle contacts.

JH: Correct.

TP: Okay.

JH: And that would be vehicle contacts is kinda like our traffic stops.

JL: Okay.

JH: Going up there, going through you know introducing yourself, giving the identification and um dealing with different scenarios there. I don't, I don't have any work with vehicle contacts.

JL: Yeah.

JH: So.

JL: Makes it, TROY, TROY MORAL?

JH: MORALL.

JL: MORALL. He'd be, it looks like at least back in 2021 he was the head of the.

JH: Correct.

JL: List on vehicle contacts for every.

JH: Um he's since retired and now it's um ELLISA SCHMIDT who's in charge of the program.

JL: SCHMIDT?

JH: Correct.

JL: Well and he ain't even on these list in 2021, okay. Could you repeat his first name?

JH: TROY?

JL: TROY SCHMIDT?

JH: No I'm sorry TROY MORALL. He would be the uh.

JL: Yeah you said he's retired though.

JH: Correct.

JL: Who's SCHMIDT?

JH: Oh I'm sorry ELLISA, E-L-L-I-S-A.

JL: Okay.

JH: S-C-H-M-I-D-T, so ELLISA SCHMIDT, she's our new.

JL: Okay.

JH: Um EVOC coordinator.

JL: Great. Um and if, and if you don't feel qualified to answer that's totally fine but like the experience that Lieutenant THELEN had is part of the training materials, have you personally received those training materials as a Trooper?

JH: I don't, I'm aware of the situation, I can't remember if I've sat down and, and been through that class.

JL: Okay.

JH: Nor through that section of…

JL: Sure.

JH: …the instruction.

JL: The basic thought I understand here is that um Lieutenant THELEN is a traffic stop, the suspect grabs onto Lieutenant THELEN and drives away.

JH: Correct.

JL: And Lieutenant THELEN became concerned that if the suspect let him go he would fall and could get hurt uh and so then he ends up using deadly force. Is that a basic, do we have a basic understanding of those facts and I don't wanna disrespect Lieutenant THELEN's experience, I just wanna know this.

JH: Yes.

JL: Okay. Is that taught, is that principle taught as a, as an officer safety principle or as a use of force component?

JH: I don't know how they teach that component and how it's presented in the classroom.

JL: Okay.

JH: And so I, I couldn't answer that question.

JL: Okay so that might be one for either Lieutenant THELEN or for TROY MORALL who's retired or ELISSA SCHMIDT.

JH: Correct.

JL: But yeah I just, I didn't know whether that was something that was taught to advise Cadets of the danger of leaning into vehicle and allowing the suspect to do that or whether this was taught as a use of force scenario which would authorize the use of deadly force?

JH: It's not, I don't know.

JL: Okay.

JH: Um just in my section of block it's not taught.

JL: Okay so that, that is not a hypo that is not a, an anecdote, an experience that you bring to the table for Troopers to understand when they'd be authorized to use deadly force.

JH: Not during our section of training, no.

JL: Okay makes sense. Um there's an explicit aspect of the vehicle pursuit uh policy and we can take a look at it but it does have to use the use of force and I, and I do understand I wanna respect times when you say that's vehicle contacts and this is use of force but in the vehicle pursuit policy there's specifically um mention of um the policy of do not shoot at moving vehicles.

JH: Correct.

JL: Correct yeah, yeah okay. Um and do you assist in training that aspect of?

JH: No sir.

JL: No, okay. Does that come up in your use of force component like when you're hitting the policies or even just as the 10,000 foot level?

JH: That would either, that would probably be covered under um firearms.

JL: Okay.

JH: Um at our, that'd be covered under our firearms coordinator.

JL: Okay. I don't have that list right now.

JH: Um.

JL: Who do you think?

JH: Well um there's um uh DAVE JOHNSTON currently is our firearms coordinator.

JL: Mhm. That's sort of sub-rule though about not firing at that or moving vehicles, that certainly could, could come up during use of force training or, I mean I just want, is that anything that's addressed?

JH: When we're doing the extractions portions of it, it's a static portion, we're really teaching on the technique of actually extracting a person from the car. As far as hitting on shooting at a car that's driving away from you.

JL: Yeah.

JH: It's nothing that we actually discuss.

JL: Okay. Is it reasonable for a Trooper to believe that using deadly force against a driver of the moving vehicle would stop the vehicle from endangering others?

TP: That's kind of a Monday morning quarterback questioning yeah.

JH: Yeah I'm, I don't know how to answer that question. I mean you're asking me so if you could ask me the question again.

JL: Sure.

JH: I'm trying just.

JL: Sure. I don't wanna invoke my knowledge of Star Trek but obviously if we phased someone and they immediately stopped right, done, went unconscious immediately. Um versus using a firearm right which although can end someone's life very quickly I assume that part of whether this be

firearms training or use of force training, it uh it does not cause that same immediately immobilization as that right?

JH: Correct we and that's something we just don't train.

JL: Yeah.

JH: Is shooting at moving vehicles.

JL: Yeah.

TP: You don't train phasers either do you?

JH: No sir.

JL: What I wanna know it uh I'll, I'll ask it again, I'm, I'm hoping to sort of help put you in a positon where you could answer this question. Is it reasonable for a Trooper to believe that using deadly force against a driver of a moving vehicle would stop the vehicle from endangering others?

JH: Well you're asking me to, I'm trying, there's so many different circumstances I'm trying to envision here.

JL: Sure.

JH: So if you could.

JL: Sure.

JH: What I'm trying to understand is if I'm outside the car and the vehicle drives away and then I shoot?

JL: Yeah but how about even, even differently. You're on the side of the vehicle and you shoot the driver, is that going to stop the vehicle immediately?

JH: Depends on, is his foot on the gas, is the vehicle in park, are you on a dirt road, are you in a parking lot. I mean so you're, you're asking me several different types of scenarios that.

JL: Sure. The vehicle…

JH: Can play out in a street.

JL: Sure the vehicle remains in drive, you have a fear that the individual's gonna continue to drive off and he's shot. Is that gonna stop the vehicle?

JH: Not immediately no.

JL: No.

JH: Unless his foot goes right down on the brake I mean.

JL: Yeah.

JH: I mean you're, you're asking so many different variables that can happen in that circumstance.

JL: Um well we'll get to that. Um let's see. We've, the next thing I wanted to ask about was that verbal warning. Um.

TP: We've been asking this poor man questions for an hour and a half solid.

JL: Yeah.

TP: Why don't we just take a break?

JL: Sure. I, I'm almost done but we can take a break.

JH: Sure.

TR: I'm gonna stop this recording uh for the time being is uh 10:28 a.m.

(Short pause)

TR: All right it is approximately 10:37 a.m. and we will resume the interview.

JL: Um Sergeant HALVORSON I, I just kinda wanna end talking a little bit about deadly force. Um we've kind of talked about it before but um I wanna get a little bit more exacting on this. In, when you train Troopers on the use of deadly force do you ever define the word necessary?

JH: I think how we term the word necessary is uh objectable reasonableness is how we uh deem that.

JL: Now the reason why I ask is you know if, out of this context when I think of the word necessary I might think of like a situation in which like let's say the use of deadly force presents a valid alternative and there are no other valid alternatives present. Is that fair to say?

JH: It's all deemed on if you're talking about use of force and deadly force specifically.

JL: Mhm.

JH: It's what the actually Trooper feels at the time that it's happening.

JL: Yep.

JH: Um and then that's usually deemed technically reasonable based on the facts and the totality of the circumstances that they were faced with. So if I was to say deadly force was objectively reasonable and was authorized so to say.

JL: Mhm.

JH: It would and be in the um how the Trooper felt at the time and what they were faced with,

JL: Okay and when you go really down to that, that nub of how the Trooper felt at that time I, this is not supposed to be philosophically or this is really just saying that it's you know objectively reasonable might be different from say it's, it's the only recourse you know there are no other alternatives. And so where I'm trying to understand your, the way that necessity is trained would you agree that your, the, the way that you train that word is a little bit different from you have to subjectively feel there are no other alternatives?

TP: So let me understand your question here JOSH. You're saying that uh that their training is wrong because they don't train nec-, necessary the way you define it?

JL: No my, my, my question was how is that word defined in training and how.

TP: And you said.

JL: Is it understood?

TP: He answered that as objective and reasonable correct?

JH: Correct.

TP: So I think that that takes care of it.

JL: And then my next question was it, it, but do you, do you, what I think we're getting at here is that would be different from saying strictly necessary, strictly the only option, the last option and it's the only option available. And that's, is that not how necessity is taught?

TP: Well he's explained how necessity is taught and now you've asked him a question how it's not taught so it's, it's not taught outside the way he explained it I think is the answer to your question,

JL: Do you have a response Sergeant?

JH: No.

JL: I guess I'm trying to understand it uh I, I, I tried to understand it because let me try it with this hypothetical just based on stuff we've talked about. Um you mentioned that it was reasonably foreseeable that if you shoot a driver of a moving vehicle that the vehicle would not stop that it would continue to travel forward. Then you have a situation in which you believe that a driver moving in that vehicle was placing yourself or your partner at risk of great bodily harm or death due to the fear of let's say being dragged. So you're in a situation in which you reasonably fear your partner is at risk of great bodily harm or death but at the same time you know shooting the driver isn't gonna stop the vehicle. In that situation would it be objectively reasonable to shoot the driver?

JH: Based on those totality of the circumstances that if I discharge my weapon and I strike the suspect, there is a good likelihood that the vehicle is not gonna continue farther down the road than if the suspect had not been shot. Meaning that if there a situation where I enacted force and didn't, if I did not enact force there's more potential liability as far as the great risk of great bodily harm or death to my partner, if I didn't act. But because I acted the risks start to diminish.

JL: So in that situation placed in that really difficult situation, I know this is a very difficult hypo um faced with those sorts of shoot, don't shoot sort of situations it might come down to which of these alternatives might minimize the risk to myself or my partner, is that essentially what you're?

JH: It depends on what, what the Trooper is feeling at the time.

JL: Mhm.

JH: You're, the scenarios or the scenarios that you're trying to show me or try to explain to me, there are so many different things that I can't talk about because.

JL: Mhm.

JH: I'm not there, I'm not experiencing.

JL: Mhm.

JH: I'm not seeing what they see, I'm not feeling what they feel, I'm not, I'm not noticing movement, I'm not seeing, it's just tough for me to put myself in that scenario or that situation because I need to experience it, I need to be there and get to feel it. Um I just usually um uh with those scenarios and situations um that you're explaining to me, it's gonna be dependent on how the Trooper sees the totality of the circumstances and feels what's gonna be you know the best outcome for the situate-, you know I just.

JL: And, and I uh absolutely respect your 29 years of experience as a police officer, these guys' experience as a police officer and I'm just pencil pusher obviously but I, I do try to imagine these situations where someone is at risk of great bodily harm or death, the Trooper sees it and then makes that calculation that uh there's nothing I can that's gonna minimize the risk of great bodily harm or death to the other and in fact the reasonable choice is to do nothing. And do you believe like situations like that exist?

JH: To do nothing?

JL: Yeah.

JH: That's not how law enforcement works that they do, just nothing. There's always some action to everything that we do. So whether it be um dependent upon how the, the individual we're dealing with reacts to particular things is how I'm gonna usually move forward with whatever force is gonna be necessary but as far as us to do nothing, that's just not something that we, I mean even if farther down the road there's you know when people get away from us, there's avenues that we usually sometimes take as far as that goes but I'm just saying that we don't just do nothing.

JL: Let me ask another question now. Would you agree that simply seeing someone at grave risk, risk of death or great bodily harm, grave risk, uh just seeing that doesn't necessary mean that a Trooper is authorized to use deadly force?

JH: Seeing it?

JL: Yeah just seeing someone at risk of great bodily harm or death. There has to be something else present right?

JH: They're gonna react to it though.

JL: Yeah.

JH: If there's a risk of great bodily harm or death they're gonna react to it.

JL: Sure.

JH: Meaning that if I know that somebody has a gun to my partner I'm not gonna stand there without drawing my weapon. So if there's a risk of it, I have to respond, I have to do something.

JL: Okay but again uh I'm trying to get a diamond out of this so I know this is frustrating questions but I wanna sort of think of situations in which using deadly force doesn't seem like the reasonable thing, here let me think of three examples here. One of these is not use of force example. Um seeing a person drowning in a frozen lake, very thin ice, grave risk to anybody who steps on the ice to intervene, okay, that's example one here. Okay the classic Minnesota somebody fell in the middle of the ice. Example two uh what you kind of said a man holding another person at gunpoint and threatening to shoot the hostage, okay. Then the third example a man dangling a baby from this is a horrific example, a man dangling a baby from a balcony, okay threatening to drop the baby. In that first example again the ice, the frozen ice example um would you agree that that's like classic situation where the impedes to save and to protect would be present but actually taking any action seems at that point to be unreasonable. It would be a suicide mission to attempt to save this drowning person.

JH: If you want me to talk about some of my experiences as a Trooper, to do nothing sits a hopeless feeling. I had a crash where I had a young lady crash into a frozen pond, I dove into the pond to try to save her life, so when you're asking me the decision to do nothing or do something, I would rather lay down my life than swerve from my path of duty.

JL: Couldn't of said it more (inaudible) sir. Thank you for sharing that. Second example and I don't mean to abruptly shift but.

JH: Yeah.

JL: I'm gonna respect that um a situation in which and this is my hy-, I'm setting up a situation which there is a risk that this man may shoot the hostage, there's a situation where the Trooper may also shoot the hostage, if any action is taken. On its face right and obviously we can elaborate, distance and time, on its face in a situation like that would you agree that that would be too risky to act, too risky to actually use deadly force on that individual?

JH: What other, what other options have you taken?

JL: At the point that okay this would be a situation at the onset of the uh hostage situation, we're talking within the first three seconds of the hostage situation. So not allowing at this point for de-escalation or conversation or any other things, in those three seconds. A situation like that would it be too hasty to use deadly force?

JH: So you're talking within a matter of seconds that individual holds a person hostage with a weapon.

JL: Yep.

JH: And my first decision is to try to shoot the bad guy?

JL: Uh I don't think it would be.

JH: No it wouldn't.

TP: Is it possible to answer these questions uh based on the training that you provide in the academy?

JH: Yeah I mean we don't train the situation to that affect as far as I'm, I walk into a room and I have a person held hostage with a gun to their head.

JL: Yeah.

JH: We don't, that's just something we don't train…

JL: Yeah.

JH: …in the academy so I'm trying to.

JL: When, when, when I provide you know the really great thing about when we talk about de-escalation is de-escalation is now trained across every department that I've seen in Minnesota, it is not a, and it doesn't mean do nothing. It means usually human psychology, human factors to achieve in a law enforcement goal or to minimize risk where using affirmative force or in a case

deadly force would actually have such a low possibility of achieving the success that it's outweighed by simply de-escalation or I guess what I've uh been calling to not use deadly force or do nothing.

TP: JOSH we're well over an hour and a half here, you are asking hypothetical questions and then re-asking the question before he even has a chance to answer it. I wanna, we wanna cooperate when you guys called us up and said we want an interview initially you gave us like 24 hours and we set up an interview for you with two different Troopers, we're doing everything we can to cooperate with you guys but THIS IS OUTRAGEOUS! You've asked him questions that are deeply personal about the drowning situation, we had a very emotional response there, is it basically not captured on tape.

JL: TOM.

TP: At this point you're becoming abusive.

JL: You do this in every interview.

TP: I don't do this in every interview but this is an hour and a, well over an hour and a half and you're asking him to speculate about things that, that never occurred and that he doesn't train.

JL: Sergeant HALVORSON I.

TP: I'm asking to be respectful.

JL: I certainly do not wanna become verbally combative with Mr. PLUNKETT. Uh so that is, that is true. And to the extent that I'm well aware that you have 29 years of experience, when I think of any hypo, I know either they come from your personal experience or other experience of a Trooper, other experience of somewhere across the, the country, so obviously I don't mean any insult by that um by any means and in fact when I think you did get personal I purposely moved on from that. But where I am trying to continue this and probably end this interview is really on that concept of all sworn officers that I've ever encountered certainly have that yearning to protect, to save, to do something. And respecting that de-escalation or to not use deadly force is indeed something that's trained and something that is uh well understood as sometimes the most reasonable option um that's the, that's the nub at what I'm trying to get at. With regard to the third hypothetical that I pose to you is a situation in which uh a man is holding an infant over a balcony and says I will drop this child and there's a situation in which you know you could use deadly force on that individual but yet it wouldn't help that situation, it wouldn't reduce the risk of great bodily harm or death to that victim. In a situation like that would you agree that's a situation in which you foresee someone at risk of great bodily harm or death but it does not authorize the use of deadly force?

TP: And if we change the facts to the, should say that the other officers had set up a safe landing down below so if the child was dropped um it would be safe for sure, would that change your answer?

JH: Yes.

TP: Any slight change of the facts offered in that scenario changes potentially changes the answer, is that fair?

JH: Well absolutely, I mean if you look at most of the use of force that happens, it's linear.

TP: Yeah.

JH: And it's almost mathematical the way you have to evaluate a lot of use of force. And what I mean by linear is that once I have this totality of circumstances and the decisions made by the suspect and the actual Trooper involved that's what I have to make my decisions on. Any other variable or constant in an equation that is over here I can't plug it into my mathematical or my totality because that's not part of it, that's not what the decision was made and that's not what the Troopers felt or that's not the actions of the, of the uh of the suspect, that's not what took place. So when you examine any type of use of force you examine it from the totality of the time that it took place because time is linear and any other situations or what ifs I add to it later on, it changes my outcome because of equations and constants that I know actually took place. So your scenarios that you present there's several different equations that I need to have first and just through training experience that's exactly what's gonna take place. If I'm confronted with something I'm gonna consider my resources, I'm gonna consider my location, I'm gonna consider the um stableness of

the person I'm talking to, I'm gonna consider the age of the actual child to consider where I'm at, where I would put people, where I'm gonna put this, where I'm gonna put this. To actually have me make a decision based off of something that I'm not really faced with right now in front of me, that's not tense uncertain (inaudible) it's easy for me to do because I have those decisions at my readiness to be able to sit back and make them but in that moment I'm gonna examine and try to make a determination of how I'm gonna save that person's life.

JL: Yes. And that's the goal obviously in that situation, you're gonna try to take the most reasonable action or the reasonable action to try to save that person's life.

JH: Correct.

JL: And simply because that person is in harm's way, doesn't necessarily mean that deadly force is the reasonable option.

JH: But it is an option. Every option needs to be examined.

JL: Yeah.

JH: Whether it be de-escalation, if de-escalation doesn't work you have to move on to the next option and the next option, and the next option. Unfortunately sometimes the only option that you seem reasonable are the ones that necessarily you don't wanna take but those are decisions made by individuals at the scene at the time, not sitting here.

JL: Okay. Um as a use of force trainer do you have experience also evaluating the reasonableness of Troopers uh use of force in the field?

JH: Yes.

JL: Yeah and what is that experience?

JH: Um through the academy we do evaluations on decision making um and the um if there are any situations in the agency where a Captain or Major reviews it as a potential use of force violation or a policy violation or they feel that there may be some need for supplemental training.

JL: Mhm.

JH: They'll contact me.

JL: Okay.

JH: And if there's a video to review I'll review the video, I'll make a supplemental review of suggestions as far as what I see and things that could be improved on and or what I can do as far as a uh use of force instructor. And then I'll put an action plan together, I'll present that to the Captain who presents to the Major and then they'll present it to the Trooper and if there's any remedial training that needs to take place, they'll come in, I'll put a remedial you know lesson plan together and then we'll have them go through that remedial plan based on whatever the circumstances that they were in there uh to begin with.

JL: I think we can agree on two things I think. Which is number one any evaluation of an officer's use of force has this subjective component right, I don't know what he was thinking at the time, I, I can't, it's very difficult for me to judge that moment that force was used and then the other which is you're an institution, you're the State Patrol, there are, there are uses of force which must be evaluated and we use the tools that we have available to evaluate whether that's body cam or a squad video, police reports, witness interviews.

JH: Correct.

JL: Things of that nature, right. And you have that experience of having to make that sort of evaluation, knowing the limitations of not having that subjective insight into that specific Trooper but at least using the tools available to you?

JH: Well one of the first things I do is when I bring you in for the evaluation or supplemental training is I have them tell me exactly what was going through their head at the time. So I have an insight of

what they were thinking, what they were doing, and it helps me also maybe sometimes rearrange my lesson plan.

JL: Mhm.

JH: Because of how they were feeling or how they perceived it, or how they saw that. So it isn't just me this is what I see, this is what I'm gonna do.

JL: Yep.

JH: It's bringing them in, sitting them down, saying tell me what happened and we'll review the video together and I'll say what were you thinking here, what were you thinking there, what did you see here, what did you see there. So I'll have them narrate the situation and tell me exactly what they're feeling at the time so that I have an understanding of how they perceiving it. Because I can't do that. I have to have them explain it to me.

JL: How often do you, are you doing that in your current role?

JH: Maybe one a year.

JL: Okay so not too, it isn't like a.

JH: No.

JL: 30 percent of your job is to.

JH: No.

JL: Do remedially.

JH: No.

JL: Work on.

JH: No.

JL: These things, right on. And have you had to uh evaluate and help Troopers uh after the use of deadly force?

JH: No sir.

JL: Okay you haven't, okay. And then uh I'm gonna ask this question, TOM will tell me don't go there and that's, you do know that the County Attorney's always has received the case that involved the death of RICKY COBB and we're trying to understand what happened on the road, we're not asking you 'cause you weren't there. Um but I ask you, are you willing to take a look at a couple videos and let me know your thoughts about that incident today?

JH: I'm only going to testify or talk about the training that was involved that the Troopers were um that the Troopers received in the academy.

JL: And, and why is that?

JH: Um I wasn't there. I haven't had a chance to see the entire videos, I haven't had a chance to review any of the cases or the reports, I haven't had a chance to sit down with the Troopers to see what they were seeing or what they were feeling, I can't make a hindsight 20/20 call on a situation that I don't have all the information on. I can watch a video and I can hindsight it 20/20 but unless I don't see particular things that Trooper may see or feel, I have a hard time actually coming across and giving you any type of a valid um analysis of it.

JL: It, you know and obviously even a prosecutor has limitations that we must also acknowledge, we can't compel anyone to talk to us in terms of a, the officers that were involved in the death of RICKY COBB and I certainly don't mean this question with, with sass but you, you are in a position where you have reviewed body worn camera footage and, and uh squad video to review conduct of officers in the past.

JH: Correct.

JL: Yep. And that is something that you would be able to do knowing the limitations that you haven't had a chance to speak to either of these officers or, or something else right?

JH: Correct.

JL: But even watching video uh would allow you to offer opinions about whether even technical things like that was a good takedown, that was not a good takedown, um even opinions that you've offered today about um whether its appropriate to open a door or point a firearm at a vehicle that's, that's leaving, you would be able to offer opinions about that conduct that you see on video, correct?

TP: What he could do is he could follow the process that he follows, if you want his opinion he'd need to do that. So if you want him to do that we'd be happy to. Well the process it will bring in this Trooper, they'll review the tape together, develop an understanding of, of what, what this guy was seeing, what was happening as it occurred, get a chance to ask questions, was this important, what did you see right here.

JL: Yeah well.

TP: Then he, then he can give you your opinion.

JL: Sure.

JL: I'll say this I can't direct either the Sergeant or you to go do something on our behalf because as is this point obviously the Trooper has declined to give a statement and I don't want you to be an Agent of the State to try to illicit the statement from him.

TP: Yeah.

JL: Is this something you guys do? Let me know otherwise that's it on that.

TP: So we'd be happy to do that though.

JL: Call CHRIS.

TP: CHRIS?

JL: (inaudible).

TP: Oh.

JL: Um that's great. Well um that's at least a prepared question, MARK did you have something.

MO: Yeah I've got a couple that are narrowly on the training itself. You mentioned Sergeant that you train on both the single and double uh vehicle extractions when there's two officers working together?

JH: Yes sir.

MO: What's the role of the second officer on the extraction?

JH: Seatbelt.

MO: So if you had, and would the second officer be entering on the passenger side?

JH: Correct.

MO: And that officer, your training is that that officer is the one who reaches over and releases the seatbelt?

JH: Um so if it's a single extraction then the individual who's um by himself on the, on the driver's side would try to reach in for the seatbelt. If it's a double extraction the, the role of the person on the driver's side is to get positive control and then the second person will reach in and gunder the seatbelt, fly it over, and then usually either push the suspect out or.

MO: Yeah.

JH: Wrap around and try to uh help him.

MO: Yeah.

JH: Get him out of the car.

MO: They'd be in a better position to push rather than pull.

JH: Correct.

MO: Okay thank you. Um the second thing uh I really appreciate your description of the de-escalation and when you were talking about the extractions, I recognized the underlying principle of quick and under, overwhelming force that you wanna be able to overwhelm the person to be able to move them. Which comes in a lot and uh police work and you wanna use quick and overwhelming force. Um once the decision has been made when de-escalation's been tried and the decision has been made to switch to quick and overwhelming force, um is it appropriate uh or part of your training to re-escalate verbally with the subject before attempting the physical extraction?

JH: Um as far as like uh giving them commands just get out of the car?

MO: Yeah but I, I mean that's been tried for a while, I mean let me.

JH: So.

MO: What I heard you describe and, and correct me if I'm wrong about this 'cause I'm wrong about a lot of things, is um you're gonna do de-escalation, you're trained on de-escalation, that's me conversational. Um you said once you make the decision to extract you have to do it.

JH: Correct.

MO: And so is what you train that you de-escalate, you determine that that's not working, and then you move?

JH: Correct.

MO: Okay. Um and then one last thing uh is, for well, first you develop your own presentations for the training?

JH: Correct.

MO: And um this is with you describe that um a lot of times extractions are not really in the course of someone being um you know the target of an arrest or something but it's a crash and you're extracting people from vehicles that have crashed.

JH: Crash is correct.

MO: Okay. Um and is there a tool that's used there, a seatbelt cutter that's shaped like a J that has a, a um you know the blade on the interior of the curve?

JH: It's nothing oh, the agency has a pretty strict policy on not using any equipment that's not issued by the Patrol. Um so.

MO: And I, and that's my question.

JH: Yeah it's.

MO: Is, is.

JH: Nothing that's.

MO: Do Trooper's have a, a seatbelt cutter?

JH: No sir. There's nothing that issued by the Patrol.

MO: Okay. Do people sometimes carry a seatbelt cutter?

JH: Yes. I, I, I don't know anybody specifically but I imagine it may be something that somebody may carry on their belt.

MO: Mhm.

JH: Or um as a tool they have in their car.

MO: Just for use in a crash for example?

JH: Correct.

MO: Ext-, extracting someone that's just pull and it cuts.

JH: I mean the way we train it is we just undo the seatbelt and then we just tuck them drag and pull.

MO: Okay.

JH: Um and then we have to be mindful. Most of the time when we're doing extractions though it's because it's an extent circumstances, cars on fire, something like that.

MO: Yeah.

JH: Most of the time we're getting in the back seat of the car and stabilizing the spinal cords and you know calming them down or trying to control bleeding. If we have a massive bleed, then we gotta get them out of the car and.

MO: Yeah.

JH: Apply tourniquets and stuff like that.

MO: Yeah.

JH: But most of the time we're trying to if it's a crash where we have to stabilize spinal stuff like that.

MO: Yeah. Oh I, I heard MPD talking about a piece of equipment I'm wondering if you're familiar with which is and they were talking about immobilizing a car trying to prevent a car from going away, they had something called a distoyer or something that is a triangle um type mechanism that you put in front of the front wheel to prevent a drive away, have you ever heard of that?

JH: No sir.

MO: Okay. That's all I have, thanks.

TP: Thanks for your time boys.

JL: Yes thanks, thanks for being here, appreciate it.

TR: All right time now is approximately 11:06 a.m. and I will be shutting off the recorder.

END

EXHIBIT 27

https://mnbca.sharefile.com/share/view/s5f4e656cfec643e69503d04d573a7eb2/fod1c799-db89-48ab-a878-1e4d19679c64

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MINNESOTA DEPARTMENT OF PUBLIC SAFETY

BUREAU OF CRIMINAL APPREHENSION

INVESTIGATIVE INTERVIEW

BCA Case Number:	2023-724	**Person(s) Interviewed:**	BRETT SEIDE (BS)
Date/Time of Interview:	12/7/23 09:57 hours	**Item:**	
Interviewed By:	JOSH LARSON (JL); PATRICK LOFTON (PL); MARK OSLER (MO)		
Others Present:	SSA TOM ROTH (TR); Attorney KEVIN DEVORE (KD)		
Reviewed By/Date:	12/13/2023 SSA ROTH		

TR: This is in reference to BCA case number 2023-724, it is December 7th, 2023, at approximately 9:57 a.m. This is Senior Special Agent ROTH with the BCA, we're at the Hennepin County Attorney's Office and I will just turn this over so people can announce who they are in the room.

JL: Sure uh JOSHUA LARSON, Senior Assistant Hennepin County Attorney.

PL: PATRICK LOFTON, Senior Assistant Hennepin County Attorney.

MO: MARK OSLER, Deputy Hennepin County Attorney.

KV: KEVIN DEVORE, Attorney for BRETT SEIDE.

BS: And Trooper BRETT SEIDE.

JL: All right um so uh BRETT I think it was maybe last week uh Mr. DEVORE and I spoke on the phone um he confirmed that you received a subpoena for next Thursday to testify. We discussed just coming in to, to meet as well um I, you're here so I appreciate that. Um in the meantime I kind of just planned out what I wanted to ask you at the Grand Jury and so I'm pretty much just gonna ask you the same, the same questions. Depending on how today goes maybe it'll be less you know next week or maybe there'd be different, I'm not sure but uh, uh today it probably will feel a little bit thorough in terms of really breaking down that critical twenty five minutes that you interacted with Mr. COBB. Um I know you have your report in front of you, I'm probably gonna ask you a little bit about that um but at any point um you know if you need to talk to KEVIN or anything like that, feel free otherwise we'll just get, get going, okay?

BS: Yes sir.

JL: All right so some of this is just pure background information because we didn't, you didn't sit down with the BCA previously so I gotta ask you some just background questions. How old are you?

BS: I'm twenty seven years old sir.

JL: Twenty seven. And where'd you grow up?

BS: I grew up in Blaine.

JL: Blaine. And uh there's a one page document that the State Patrol gave us about your educational background but I just wanna confirm, am I correct that you received your Associate's Degree from North Hennepin County College?

BS: Yes that'd be uh North Hennepin and then finished my skills at Hennepin Technical College.

JL: Okay and where year did you complete that, that program at Hennepin uh Tech?

BS: Um that would be 2021, spring of 2021.

JL: Okay. Now they also included some information about your, your law enforcement career and it did say that you started at the Anoka County Sheriff's Office prior to your completion of the program. Am I correct?

BS: Um I started in August of that year. So it would be 20, it'd be yeah 20, sorry it'd be 2021 August.

JL: Okay.

BS: I started there and worked through the winter until June of 2022.

JL: Okay. So you, you completed your program at Hennepin Tech and then you began working at the Anoka County uh Sheriff's Office.

BS: Yes.

JL: All right. And uh and when you uh came to the Anoka County Sheriff's Office could you discuss your onboarding process, was there an academy, how much training did that involve?

BS: Um so there was, there was like a week of training that would be for getting prepped for going on to the road and then we immediately started into the FTO program there.

JL: All right. And when you began your work for Anoka County did you then start then uh as an actual licensed Deputy?

BS: Yes.

JL: All right. And did you go on the road or were you at the jail or something else?

BS: I was on the road.

JL: Oh okay. And you indicated that you remained for a year uh at Anoka County right?

BS: Yeah it would be just under a year.

JL: Okay so that would.

BS: It'd be August to um June.

JL: August 20 to June of 21?

BS: Yes.

JL: All right and why did you leave?

BS: Or it'd be August of 21 to June of 2022.

JL: Okay.

BS: Or yeah something.

JL: Let, let me tell you're getting a little tripped on 2020, 2021. Here's what the materials say.

BS: Okay.

JL: It says that you worked for Anoka County for a year and then you left that employment.

BS: Correct sir.

JL: In June of 21, then you worked for All Seasons Rental as a renter professional from 21 to summer of 22.

BS: Yes, yes, yes.

JL: Okay so is that?

BS: That's, that's correct.

JL: Okay so that's, that's, that's kinda why I saw this break and that's kinda why I'm asking about this background. So is it possible that you graduated in 2020, you then worked for Anoka County from 2020 to 21, you worked for All Season Rental from 21 to 22. Then, so that would of been last summer you began the academy.

BS: Yes ‘cause I started in July and was uh licensed with the State Patrol in October.

JL: Okay great all right so now I kinda know that.

BS: Yes sir.

JL: About a year with Anoka, then a year with All Seasons Rental, and then.

BS: Correct.

JL: Went uh on boarded with uh the State Patrol.

BS: Correct.

JL: Okay so basic question why did you leave Anoka?

BS: Um there was, there was some stuff at Anoka um the, there was nothing like issue wise too, like too crazy but.

JL: Mhm.

BS: It, it was just, the vibe, um would say the vibe or the, the feel there wasn’t, wasn’t what I was looking for. I always really wanted to be a State Patrol.

JL: Okay.

BS: Uh Trooper.

JL: Great but that year of Anoka that was traffic stops, that’s arresting people, bringing people to jail?

BS: Yes.

JL: Doing all things necessary.

BS: Warrants, yes.

JL: (inaudible).

BS: Warrants.

JL: Okay.

BS: Drug interdiction.

JL: And was that all Patrol?

BS: Yes it was.

JL: All right.

BS: All patrol.

PL: Sorry did you say warrants and drug interdiction?

BS: Drug interdiction, warrants, traffic stops, uh domestics, and calls for service.

JL: Great. And then All Seasons Rental was that essentially like obviously you gotta the bills while you’re looking to…

BS: Correct.

JL: …get to the State Patrol?

BS: Correct.

JL: All right. Um so there wasn’t a decision to leave law enforcement and then come back to law enforcement this was just part of the work trying to get to where you wanted to go?

BS: Yes, yes.

JL: All right. So uh according to the documents that were provided by the State Patrol, am I correct that you started about July 17th then of last year?

BS: Uh yes.

JL: Okay. Now when you started because you were a Deputy at Anoka, did you get to begin right away as a Trooper?

BS: No we have to go through the State Patrol Academy.

JL: Okay so you still had to go…

BS: Up at Camp Ripley.

JL: …okay so you still do all, all of that. Um and so were you in a, were you in an academy with folks that hadn't had that prior law enforcement experience, you were just with…

BS: Um there, there was, it was a mixed bunch um there was some that had prior law enforcement and there was some that are brand new.

JL: Okay.

BS: To law enforcement.

JL: All right. Um and that was all throughout the fall of 2022?

BS: Correct.

JL: Off the top of my head do you recall is that, you know State Patrol seems to number their academies, do you remember the number of your academy?

BS: We were the 65th.

JL: 65th, that's what it looked like to me. And uh obviously you passed all of the requirements of the training uh and then the academy and then it looks like you became a Trooper on October 26th of last year?

BS: Yes sir.

JL: Full, full bird. And when you began as a Trooper uh did you begin right away working out of Golden Valley, that district 2500?

BS: Yes sir.

JL: All right. And you're badge uh 160?

BS: Yes sir.

JL: All right. Now um I uh just have some questions about the training just I'm gonna put this in front of you, this is a single page document that was provided by the State Patrol. Does that look like um an accurate sort of copy of the training materials that you uh the training programs that you had?

BS: Yes.

JL: Yep. So if we go down and, and sort of look there's a bunch listed here in that Fall of uh 2022 and you know it'll say like E-VOC, emergency vehicle operation, whatever and then it'll say academy.

BS: Yes sir.

JL: And so for us to kinda gauge when training occurred if it says academy that's a good guess that that occurred during your academy training and then obviously you completed your academy and then everything else was what you did leading up to the incident with Mr. COBB right?

BS: Yes sir.

JL: So E-VOC on August 20, August 19th, you completed it, firearms training you completed it on October 4th, vehicle contacts and use of force you completed on October 11th.

BS: Yes sir.

JL: Great yep and that all pre-dated and then you became the, the Deputy on October 26th?

BS: Yes Trooper.

JL: All right, great, great, great. Now in addition to all that academy training did you have like an FTO program like you had at Anoka County as well?

BS: Yes sir.

JL: How long does that last?

BS: That is, it's three phases um there's no, there's a couple shifts, I would say that it's not really. You're with a certain FTO, we had, I had three FTO's um and it went from would be October and I believe it ended in January, at the beginning of January.

JL: Okay.

BS: Um and you experience multiple different shifts, day shift, I was day shift and then nights.

JL: Sure. And the program in the State Patrol is it essentially you're doing patrol but you just have a, uh an officer, another experienced officer with you?

BS: Yes.

JL: Okay. So then in about January um you passed that program and is that when you're basically solo in a, in a squad?

BS: Yes, yes.

JL: All right. So that's you know seven months I guess before this incident right. Now I have a few questions about the training received uh at the, at the academy. You'd agree that there's a substantial amount of training on use of force?

BS: Yes.

JL: Right. Now um so this is, these are some very very baseline questions. In a situation in which a person is authorized to arrest someone uh what degree of force is permitted to effectuate that arrest?

BS: Um so the, the level of force it'd be considered on like a continuum.

JL: Mhm.

BS: Um if certain forces or certain situations present itself that force continuum can go up and in, in a various ways.

JL: Yep.

BS: Um it, it's, I would say it's case by case.

JL: Yep.

BS: Um style or.

JL: Sure and that balancing really is about whether it's reasonable right?

BS: Yes.

JL: So I mean what you're authorized to do to arrest somebody is use…

BS: Reasonable.

JL: …reasonable force right.

BS: Yes sir.

JL: Okay yeah that's, that's, that's really where I was looking at. Um is deadly force authorized to effectuate an arrest just blankly?

BS: If, if the case or if the situation dictates that it is, then yes it would be.

JL: Okay. Now let's say we have a driver whose uh fleeing from a lawful arrest um what level of force can be used on that driver?

BS: For a just fleeing?

JL: Yeah.

BS: Um I'm just trying to think so if you're, so you're, I'm in like if I'm in my vehicle…

JL: Yeah.

BS: …or are we talking about this case?

JL: Well we're gonna talk about the case but I'm just talking just.

BS: Okay.

JL: This isn't a gotcha question right.

BS: In.

JL: A guy just drives away from a speeding ticket or…

BS: A pursuit might ensue.

JL: … might ensue.

BS: Um depending on situations or dangers in the area or um our policy dictates certain, certain aspects of when we can pursue and not.

JL: Yep.

BS: So.

JL: Pursuit aside, deadly force, can't just shoot a guy for driving away?

BS: No.

JL: You agree with that, okay. That's, that's ten thousand point question, sorry. Um now have you received training on how to conduct an arrest of a driver who's seated in a vehicle?

BS: Yes.

JL: All right. Now what kind of training do you recall? This is like getting the guy out of the car like what sort of training do you recall with someone.

BS: We, we did spend some time up at the academy um with vehicle extractions.

JL: Mhm.

BS: Um however that vehicle was stationary.

JL: Mhm.

BS: Um to, to mitigate that threat.

JL: Mhm.

BS: Um it's, I, I'm not entirely sure how long it was but it, we did go over several different ways to extract somebody from a vehicle.

JL: Great so I mean best case scenario you ask someone to get out of their car, they get out of their car but there was that training about vehicle extraction about when it doesn't happen?

BS: Yes.

JL: Right. And um would you agree that it, it is a sort of known and occasional phenomenon where this happens right not only with Mr. COBB but previously right?

BS: Yes.

JL: In your experience. Um so what are Troopers trained to do if a driver does not get out of the vehicle as ordered?

BS: Um so for vehicle, for vehicle contacts on something like that if somebody's refusing to get out and we are trying to effect an arrest.

JL: Mhm.

BS: Um we can then and we, we enter that vehicle and extract them um it'd be a, against what, uh I'm trying think how to word this. So if, if they're in the vehicle, they're refusing to get out, we can enter the vehicle to effect that arrest.

JL: Okay. Now before moving into the vehicle let's say you give a lawful order get out of the car. Are there any aspects of, of sort of de-escalation that end up kind of governing the next step?

BS: Yeah we always try to de-escalate, we try to…

JL: Yeah.

BS: …conduct our business peacefully without getting into use of force.

JL: Yeah.

BS: Um however in certain scenarios that does not work.

JL: Yeah sure I mean I just, there's this, there's this principle that uh we'll show, we'll take a look at it here in a second but it's just um it's in the use of force policy it says whenever possible and when such delayed will not compromise the safety of Troopers, this um Trooper shall allow an individual time and an opportunity submit to verbal commands before force is used.

BS: Yes.

JL: You, yeah I mean I don't have to show it to you but does that sound familiar to you?

BS: Yes it does.

JL: Okay good, good, good. So get out of the car, no, there's an intermediate step there where you're gonna give some time…

BS: Yes.

JL: …to comply and then I assume at some point after you believe you have allowed additional time that's when force is…

BS: Correct.

JL: …authorized? All right.

BS: Correct.

JL: I understand that now. Um do you receive any training about how long you have to sort of…

BS: There's…

JL: …coax someone into, to following your order before you can use force?

BS: There's no set time limit it's just what's reasonable.

JL: Okay.

PL: And by force there you mean extraction? Is that right?

BS: Yeah.

JL: Yeah.

BS: Yes.

PL: Not force as in deadly force, just to be clear.

BS: Yes.

PL: 'Cause he was asking about that before.

BS: Yes.

JL: Sure before you can escalate it? Okay. That is um that makes sense to me. But let's now say can I, I just wanted to interrupt that. Um but let's say the time for delay is over and it's, you've made that

decision to extract the individual uh you're saying at that point it's appropriate to enter that vehicle. Are there any other alternatives that you've been trained to, to, to utilize at that point?

BS: Are we talking about this case or RICKY uh?

JL: Gen-…

BS: Mr. COBB's case.

JL: …general. Well I know, we know what, we know what happened in RICKY COBB's, I'm saying uh someone's not getting out of the car.

BS: It, it's all situational based.

JL: Okay.

BS: Um there, there's a, there's a, there's no real easy way to do that without violating policy.

JL: Okay. Um like for example um beyond physically extracting them from the car at that point can you pull your firearm and point it at them and say get out of the car?

BS: It, for, you know again that's a, it, it depends on what's happening prior to that.

JL: Mhm.

BS: If it's a felony level stop or like a pursuit or something like that.

JL: Yeah.

BS: Where a felony crime has been committed, it's not uncommon to sit at your vehicle with your gun pointed at the vehicle and have them come out to you.

JL: Sure that'd be a, a high risk stop right?

BS: Yes.

JL: What about just in a simple like a DUI situation in which you want them to perform um a field sobriety test and they're refusing to get out of the car. At that point would you be able to point your firearm at them and order them out of the vehicle?

BS: Um it's, it's not common practice to do so.

JL: Okay. Um would that be considered a threatening deadly force if you did that?

BS: Yes.

JL: Now I think I understand what you mean by extraction um but I just wanna, you mean removing someone from a vehicle who's not cooperating in exiting right?

BS: Yes.

JL: Right and I wanna talk a little bit about that. Um are there circumstances where uh extracting a person is not permitted?

BS: Um.

JL: Maybe the question needs more, more um.

BS: Yes.

JL: More meat on it. Um you talked about how the training uh took place on a, on a stationary vehicle or it was just parked there.

BS: Correct.

JL: Did you receive training on how to extract someone from a moving vehicle?

BS: No we did not.

JL: Were you told um were you given any direction about whether that would be within policy or without policy to extract someone from a moving vehicle?

BS: It would not necessary a, uh policy thing.

JL: Okay.

BS: It would be much more of a, a moving vehicle poses the threat of um unpredictable outcomes.

JL: Okay. So were you ever told to, to abandon an effort to extract a person from a vehicle that was moving?

BS: No.

JL: Okay. Were you ever told to, to um try something else if the vehicle was in gear?

BS: If, if the vehicle's in gear um try to mitigate, it'd be much more of trying to mitigate that threat.

JL: Okay. But as far as um that particular training you don't recall any, any direction that if the vehicles in motion let it go?

BS: Yeah I, I don't recall any training of that.

JL: Okay. But in, I'm just trying to get the nub of this. Um but you do not recall at any point during that training where they showed you a best practice like how to extract someone from the moving, from a moving car?

BS: There was no training.

JL: Okay.

BS: Because of a vehicle's threat.

JL: All right great. Um in terms of um now it's kind of like what exactly you're supposed to do right I wanna first talk about what I think's called a solo extraction, you're there by yourself, there's no other Troopers present. What exactly are you supposed to do um best practices to remove someone from a vehicle if it's just you taking that effort?

BS: Um well you'd prob-, you would definitely notify other partners that you're, you're trying to extract somebody from a vehicle um and in most cases that you'd want somebody else there, you notify a supervisor.

JL: Okay.

BS: That they're not being compliant and once if, if the, depends on scene safety as well.

JL: Mhm.

BS: It depends what's going on if the, how the person is fleeing, where am I in relation to the vehicle and do I have you know doors open, am I a part, am I wrestling out of the vehicle. Um so there's a lot that it's a big broad um scenario based question I mean.

JL: Mhm.

BS: Different scenarios can dictate different things.

JL: How about this let's say you're going into the vehicle, the driver is sitting there and he's, and he's got his seatbelt on, the vehicle is running, where do your hands go, where does your body go, what's, you're saying you're entering the vehicle, what are you gonna do?

BS: And are they being like non-compliant, am I asking.

JL: They're just refusing to.

BS: Okay I would try to remove that vehicle uh as a weapon so I'd ask for the keys and try to get the keys out of the vehicle and to stabilize that scene um waiting for partners to uh arrive to my, to my scene to help me out.

JL: Sure. But I'm talking entering the vehicle.

BS: Okay.

JL: Where do your hands go? Where do your, what are you doing, are you trying to reach for the keys, are you trying to reach for the seatbelt, are you trying to?

BS: I'm, I'm trying.

JL: That's kinda what I'm trying to understand.

BS: I'm trying to get the seatbelt off.

JL: Okay.

BS: And, and clear the seatbelt and, and gain control of that subject.

JL: Do you remember any training on trying to like do anything with the, with the driver like pushing the driver in any particular way or pushing his head or anything like that?

BS: Nothing about pushing the head, you could do, you can grab an arm to use arm as leverage to pull.

JL: Okay.

BS: Um but we stay away from the head and neck.

JL: And, and something that's kind of obvious is, is entering that vehicle at that point especially if the vehicle is running did you receive training on sort of the known risks of doing that?

BS: Yes.

JL: And what were, what are those risks?

BS: Known risk is that the, if the vehicle then takes off that you have a uh a deadly weapon that you will be now could be subject to in this scenario.

JL: And um with that in mind do you recall any direct training on how far to commit your body into a vehicle during an extraction?

BS: There, there's no um direct like, are you talking about entering that vehicle correct?

JL: Yeah.

BS: There is, there is no direction on how far you need to enter.

JL: Okay so I, you know and we can talk a little bit about the other incident but I, you know it seemed like you, you kept your feet pretty much on their terra firma throughout the incident, I didn't know if that was consistent with training or that's what you were.

BS: Yeah.

JL: Intending to do or that's just how it worked.

BS: Yeah so I mean to effect that arrest or to gain control I would have to have my feet outside of the vehicle.

JL: Okay. That's the leverage right?

BS: Yes.

JL: You're using your feet to yank right?

BS: Yes.

JL: That makes a lot of sense. So that'd be in solo extraction, do you remember receiving additional um training on team extraction in other words two, two Troopers attempting to remove someone?

BS: Yes.

JL: Okay. In terms of uh the, the um tasks of each Trooper could you kind of explain what you recall that job is?

BS: You'd have at least one Trooper that's like designated person that's gonna go hands on, you might have in certain scenarios we trained with somebody that had lethal cover on that vehicle. Um and then we had supporting officers to help with that extraction.

JL: Does it change who would be going into the vehicle to try to unbuckle the subject?

BS: Um not, not necessarily. It would be, it'd be um depending on the scenario of occupants in the vehicle.

JL: Mhm.

BS: Uh we would normally stack up or have a couple on one side and then might have a cover officer on the other side of the vehicle or near the front quarter panel of the vehicle.

JL: Yeah.

BS: Um.

JL: I'll just put it on the nose. We have a little bit of an, of an understanding of how the State Patrol represents how they conduct that team training and that's kinda why I was asking and it's.

BS: Okay.

JL: I am of the understanding that in a team extraction it'd be the, the Trooper on the passenger's side that'd be trying to do the unbuckle, the unbuckling push and the Trooper that'd be on the driver's side essentially sort of distraction and pull. Does that sound?

BS: Yes that, that…

JL: Yeah.

BS: …that is sometimes the uh case like I said every case is a little bit different, every vehicle is different. Um it's the goal is to extract that driver.

JL: Mhm.

BS: From that vehicle.

JL: Yep.

BS: And so.

JL: But as you remember the training it isn't as definitive as what I'm suggesting, it isn't as?

BS: Yes.

JL: It, it wouldn't be.

BS: That's not definitive.

JL: Like in a situation like that where we have two Troopers, you're going in and reaching for the seatbelt, it's not like oh I blew that it was a mistake that's against the training I received, that's not what you're saying today obviously?

BS: No it, if, if the person on passenger side can unbuckle it then they can unbuckle, if, if you can safely do that um you, you can unbuckle it, yeah.

JL: Okay. Um now is the decision making process different if the vehicle is running?

BS: Um like I said if it was, it's pretty well known that we should try to mitigate that vehicle from taking off in that scene as, as best as possible.

JL: And, and, and certainly it sounds like you already said that if, if the vehicle's actually shifted into drive?

BS: Yes that would, that would change.

JL: It'd change. 'Cause it increases the, the risks that you're talking about right?

BS: Correct.

JL: Um and is the act of trying to pull someone out of a vehicle is it, is it still in your opinion authorized at the point that the vehicle is in motion?

BS: Yes depending on cases.

JL: Okay. Depending on, what, what do you think would be at issue?

BS: Um so it, it depends where we're in relation to that vehicle um you know and where, where that, it depends on like when the vehicle starting to take off, where we are in relation to that vehicle.

JL: Mhm.

BS: If we're already on like hands on um so like I said it's, it's a case by case.

JL: Is there a certain point then it'd be sort of unreasonable though to try to pull someone out of a moving vehicle?

BS: It, I mean that question it, it, like I said it's, it depends on what type of case that is um if, if I'm standing way, way back there and we're way away from the vehicle it'd be hard to do so versus time um but it, I would say that if you're trying to effect an arrest and the vehicle is going, is moving uh you're trying to get that person out as fast as they can. So I'm not entirely sure with that question.

JL: Sure well let's um at some point it's taking a person out of a moving vehicle is going to present a more risk than what it's worth, would you, would agree? If the vehicle's going down the road suddenly there'd be a vehicle without a driver in there right?

BS: It's plausible.

JL: Yeah so I mean this is not I really, this is not a gotcha, I think this is just realistically at some point if a person's driving in the vehicle it might be more, far more dangerous to remove them from that vehicle than to keep them in there right?

BS: In, in certain cases it's plausible yeah.

JL: That's the case I'm talking about, when it's.

BS: Yeah.

JL: Proceeding down the interstate 94 situation, right?

KD: You mean like be standing, I think he's getting confused with.

JL: Sure.

KD: The description of the way.

JL: Sure.

KD: You're describing how.

JL: Well.

KD: You're talking about like if he's standing outside of the car?

JL: Let me be more honest about it. Um candid I've always been honest but let me candid. Um because we have an understanding of how the State Patrol represents they conduct their training we understand that it actually would be against training to try to extract someone from a moving vehicle. And so and I appreciate that student and teachers sometimes there's a little bit of different how you understood that.

BS: Yes.

JL: Is possible. You're saying there may be situations in which although the car is moving um it still may be reasonable to pull them out of the vehicle and so I'm trying to understand but at some point we'd acknowledge if the vehicle is going down the road taking the head off the horseman is gonna be very dangerous to the others on the road, perhaps other, other um Troopers is that make sense?

BS: Yes it does.

JL: Okay that's kinda what I'm getting at.

BS: Okay.

JL: And so we at least acknowledge that world that at some point it's gonna be too risky to try an extraction.

BS: Yes.

JL: Okay. That's, that's, that's I think that's kinda the nub of it. And do you recall receiving any training about the concern about being dragged?

BS: Yes it, it's mentioned in vehicle contacts that a vehicle can be used as a deadly weapon. Uh dragging, getting pulled under the vehicle, getting pulled into traffic.

JL: Mhm.

BS: Uh the other risks to, to public safety when, when you're being dragged down the road. Um yes I, it's, it's covered.

JL: Okay so that was a known risk that you know getting into that vehicle in a situation like that could present a risk of being dragged?

BS: Correct.

JL: Okay. Now I kinda wanna move just for a little bit about your mentality about fleeing and vehicle pursuits, okay.

BS: Okay.

JL: Kinda related. Um would you agree that it's at least you know fortunately it doesn't happen every day but it's a known uh phenomenon that um police officers at a typical traffic stop risk the possibility of a driver fleeing from the point of contact?

BS: Yes.

JL: Driving off right. Um in a situation like that when a driver takes off from a traffic stop is the vehicle pursuit policy pertinent to the officer's decision making?

BS: Yes.

JL: Okay great. Now I don't wanna give you many hypos okay we are gonna get to Mr. COBB's situation but um let's say there's a Trooper um you've identified the driver, you know that he's gonna be on your body-worn camera his face, you have his registration, um it's written down, it's captured on body-worn camera, he's wanted on a PC pickup for let's say an OFP violation. If he, if you knew that information under the vehicle pursuit policy do you agree that the vehicle pursuit policy would not authorize a vehicle pursuit?

BS: Correct.

JL: Okay. And um and why is that?

BS: It's because the driver is known.

JL: The driver's known, okay. And that language is pretty clear in the policy right?

BS: Correct.

JL: And so I know the public has a difficulty you know appreciating what you do um thinking you're gonna have to just chase every, every speeding car um down the roadway until the wheels fall off but that's really not the reality of your profession right?

BS: Correct.

JL: That vehicle pursuits are considered pretty well regulated uh part of your job right?

BS: Yes.

JL: There's a long policy on it.

BS: Yes.

JL: As well right, yeah. Um all of that. Um so does that knowledge about the vehicle pursuit policy, does that affect your actions at the point that the driver begins to drive away?

BS: As in, as in if, if, so we're not talking about Mr. COBB's case correct?

JL: No.

BS: If, if they took off and I, we were not in a physical altercation at that point then.

JL: Mhm.

BS: We would have to let that car go.

JL: Okay. And, and obviously at that point you just, you follow up, perhaps that person is guilty of fleeing a police officer and you'd give that information to, to whoever and maybe there's another opportunity to effectuate it a stop or an arrest…

BS: Yes.

JL: …in the future, right. And that's just sort of what we have to accept.

BS: Yes.

JL: Okay. Um let's say the vehicle begins to drive away, you know that you're not going to be able to engage in a vehicle pursuit, would it be appropriate at that time to pull out your firearm and point it at that person and try to order them to stop?

BS: It, it, are they driving away fast or slower?

JL: They're beginning to drive away.

BS: Okay they're beginning to drive away, yes you could, you could, you could pull out your firearm at that point.

JL: Okay. And why is that?

BS: Because they're in, in process of at this point fleeing and it would turn into more of a high risk stop.

JL: It's you said turning into?

BS: A high risk stop.

JL: Okay so I just wanna, I just wanna understand this because initially we talked about not being able to use deadly force to stop someone from fleeing.

BS: Correct.

JL: And pointing a firearm at someone is threatening deadly force?

BS: Correct.

JL: So at the point that the driver begins to drive away.

BS: It, it…

JL: I wanna understand how, how you're seeing that difference.

BS: Yes it depends if, if I'm at the window and, and they attempt to like let's say or if I'm at the window front A, so the A pillar.

JL: Mhm.

BS: If I'm up there and I'm afraid that if they're gonna take off that I might be hit by that vehicle, that's what I'm talking about pulling out my firearm.

JL: Okay.

BS: Um.

PL: Can I jump in with just one question.

JL: Yep.

PL: I mean does it also depend when you say um they're about to flee and, and pulling the firearm, what it is your interacting with them for? If, if we're talking about they're about to flee over a expired license versus a felony level crime?

BS: Yeah. So the.

PL: Can, can you expand on that?

BS: The.

PL: In terms of, in terms of you haven't had a physical interaction, they're just about to flee and Mr. LARSON's hypo here about pulling your gun.

BS: Okay uh the where I would probably or actually where I would pull my firearm is in relation to where I am with that vehicle. People can flee for many of different reasons, they might.

JL: Mhm.

BS: Feel as if that their revoked license or they might have something else in the vehicle weapons, unknown uh why they're gonna actually take off at that point. But if I'm up by the vehicle or near that vehicle and could be threatened with that vehicle I would say it would not be, it would be reasonable to pull my firearm. If now if I'm in my squad car and that vehicle takes off, I would say.

JL: Yep.

BS: It would not be reasonable to pull your firearm.

JL: So that's a little bit different of a question right. You said you could pull your firearm if you felt like you were threatened by the vehicle right.

BS: Correct.

JL: So you're pulling your, your firearm not because of the fleeing but because of the danger presented to you?

BS: Correct.

JL: Okay so that makes sense now. So you'd agree you can't pull your firearm on a vehicle simply because it's fleeing but if you are in imminent danger of being struck or hit that's where you believe you could pull your firearm and…

BS: Yes.

JL: …and try to.

BS: Or another scenario if the vehicle fled and then decided to stop, at that point we would approach with firearms drawn.

JL: Yep and that, that's because the pursuit would then make that second stop a high risk stop?

BS: Correct.

JL: Which is a kind of separate training I'm sure you've received during…

BS: Correct.

JL: …during E-VOC training or whatever. Okay that makes a lot of sense to me. Um but you'd agree pulling that firearm before the danger of deadly force to you would not appropriate?

BS: It, um if it's just like we're, we're talking and then they go to put a flee?

JL: Yep.

BS: Uh if I wasn't at direct risk of that vehicle or the vehicle being used as a weapon then I would say it wouldn't be I don't think the time or the reasonableness would be applicable.

JL: All right. That ends chapter one of this whole conversation, the stuff that doesn't have to do with stopping RICKY COBB, okay, thank you.

BS: Okay.

JL: Thank you. Um by the way I don't really know how long we're gonna talk but if you ever need a break go ahead, I offered mineral water at any point you want, okay. So.

KD: And just so we're clear everything we're doing here today is still covered under the same letter, the immunity letter that you sent me correct?

JL: So the letter doesn't incorporate today but your eyebrows are up I believe that my understanding from my um Mr. OSLER that it would.

KD: Correct?

MO: Yes sir.

KD: Okay.

MO: Yep.

JL: Say, so I'm incorporating today's conversation in that letter orally and I can follow up with that, with a letter.

MO: And just to make clear on the record.

KD: As long as we have it right here.

MO: Yeah what the, I mean the.

JL: Sure.

MO: Core of that is that it, what Trooper SEIDE says today um would not be used directly against him or subsequent action.

JL: Yep, yep. And a letter was sent to Mr. DEVORE last week stating that with regard to the testimony from uh that's anticipated next Thursday it didn't explicitly incorporate today but uh KEVIN asks a reasonable question and we're giving him that reasonable answer so. Cool, all right um. Early morning hours of July 31st of 2022.

BS: Yes.

JL: Uh you'd agree that you wrote a statement about the encounter with Mr. COBB?

BS: Yes.

JL: It's in front of you right now. Uh it reads much like a police report or supplement would you agree?

BS: Yes.

JL: Um and you've had an opportunity to read it?

BS: Yes.

JL: All right. Reasonably I mean. Uh so is it still in your opinion an accurate account of not only the incident but your thoughts during the incident?

BS: Yes.

JL: All right. Um are there any additions and corrections as you read it today that you wanna point out?

BS: Not that I see.

JL: Okay great. Um but I wanna take us back there uh I'm gonna lead a little bit 'cause some of the stuff is so obvious right. You had an 11 a.m. to 7, pardon me 11 p.m. to 7 a.m. shift that day?

BS: It's 9 p.m. to 7.

JL: Okay. Might of wrote 11 to 7 in there but 9 p.m. all right. And about 11:50 in the morning um you were working sort of like on I-94 sort of by Broadway right?

BS: Yes it would be 1:50 and I was state, positioned stationary under Broadway on the it would be the 3rd Street long ramp to go northbound on 94.

JL: Yep okay. And at that point uh a vehicle attracted your attention, it was Mr. COBB's silver Ford Fusion right?

BS: Correct.

JL: And that he was driving with no lights on?

BS: Correct.

JL: Right. Caught beautifully on your squad video actually it's very clear and then you began that to attempt to stop?

BS: Yes.

JL: There was a squad car sitting next to you, was that ERICKSON's squad?

BS: Yes.

JL: All right so at that moment the decision was that you were going to lead uh and conduct a traffic stop right?

BS: Yes.

JL: Um.

KD: So his report does say 9 to 7.

JL: Does it?

KD: Yeah 21:00 to 07:00.

JL: That's great.

KD: Just making sure.

JL: Um you conducted that, does ERICKSON trail you that entire time do you believe when you conducted that traffic stop or did he remain.

BS: He remained in stationary.

JL: All right. Um you eventually stopped Mr. COBB, during the time that you were pursuing him and actually ended up turning your lights on, did he, did you see whether he committed any other sort of traffic violations or anything like that?

BS: I, I was not um as, as we follow these vehicle we, you're entering a license plate, you're waiting for that read back.

JL: Yep.

BS: You're dictating when you're gonna stop, when is it safe place to stop that vehicle.

JL: Yep.

BS: There's a lot going on.

JL: Mhm.

BS: I, I did not observe any other infractions at that point.

JL: Right on. You did get that notice when you ran his license plate, in your report you indicated it was called a uh a critical hit?

BS: Yes.

JL: Critical hit.

BS: So there's so when you run license plates um there's, there's like at the bottom of the screen there's two boxes.

JL: Mhm.

BS: And one of them is a critical like message or hit box uh when you run stolen vehicles uh officer safety alerts, OFP's, warrants, that box will be illuminated.

JL: Mhm.

BS: And a different tone will sound in the vehicle.

JL: Yep. Do you know specifically what the critical hit is, does the computer announce it like orally?

BS: With stolen vehicles it'll say it's a stolen vehicle.

JL: Yep.

BS: Otherwise it will just come up with uh that there's, it's a different tone than a normal when you enter license plate. So there was a different tone and then um our dispatch will ask if we acknowledge that.

JL: Yep. So you, did you now I know you walk up to Mr. COBB at that point, did you wait to figure out what that critical hit was about prior to your first engagement with him or did you engage him first?

BS: I, I engaged him.

JL: Okay. Um at the moment that you initially engaged though does the critical hit affect how you are going to sort of conduct your interactions with the driver?

BS: No.

JL: No, okay. So nothing, you weren't more suspicious or more heightened anxiety or something else?

BS: I would say that I'm, I'm more of aware.

JL: Okay.

BS: If there's something more with this vehicle and um so just a little bit more mentally prepared on that um but I would not say that the interaction was changed by that.

JL: Okay. And obviously we have your body worn camera and have your squad video and we sort of know ultimately what happened but he was alone in the driver's seat right?

BS: Correct.

JL: And uh you asked him for his driver's license and your um and his insurance?

BS: Yes.

JL: Now ultimately he gives you what looks like a, sort of a, an expired DL with papers right.

BS: Correct.

JL: Now later you confirmed he did have a valid driver's license right?

BS: I, I'm not, I, I believe it still was a valid.

JL: Okay but he never did give you that proof of insurance?

BS: No.

JL: Right and he was still trying to find it I guess at the point that you had interaction with him right.

BS: Yeah.

JL: He represented that he had it?

BS: Yes.

JL: Okay. Um now um how did you respond when, how did he respond when you told him that he didn't have his lights on?

BS: Um he, he kinda looked around the vehicle and then uh made mention that he, he must of hit it with his knee.

JL: Mhm. Um anything about that didn't seem credible?

BS: Uh it, it was reasonable I mean the time he was coming out of downtown at that.

JL: Yeah.

BS: At that point it was 2 o'clock in the morning so near bar close um it was you know it wasn't at that point did not know if, if RICKY was the registered owner but it, it's kind of something to pay attention to.

JL: Yeah.

BS: With coming out of downtown, going onto the highway with no lights on. Um besides that he, he you know he seemed pretty coherent with that and like immediately turned his lights on after he said he must of bonked it.

JL: Yeah, yeah. Um now what else did you sort of uh talk to him about like what, what was the, after you figured that out, after he turned his lights on, I know you engaged in some conversation with him, what, what was your goal in having that sort of back and forth with him?

BS: Um at, at face value he seemed pretty agitated um I tried to break down that officer, I wouldn't say officer civilian but that's what it is.

JL: Mhm.

BS: It's you know certain people when they get stopped by law enforcement and to be you know more amped up. I wanted to break down those barriers and talk to him on more of a man to man level.

JL: Mhm.

BS: Um and hopefully de-escalate that situation.

JL: Yeah. Do you feel like he calmed down at that point or was he still?

BS: Yes.

JL: Okay. And um I know you asked him about whether he had any alcohol or drugs in his system and he denied that right?

BS: Correct.

JL: Okay. Um but as far as his, his demeanor there be agitated but sort of cooperative?

BS: Loosely cooperative but agitated.

JL: Yeah all right. Um and during this time uh Trooper GARRETT ERICKSON showed up?

BS: Yes.

JL: Now is he someone you were, you were sort of parked next to each other that day in those seven months you were Trooper, did you work with him quite a bit or was that?

BS: He.

JL: Uh was that someone you were not familiar with?

BS: No I, I, I graduated the academy with him and he, he was, I know him pretty well. And he was working a couple weeks with us on, on nights.

JL: Great. And because you were out with another, with a driver, a stopped vehicle was that common for him to pull up then and function as your backup?

BS: Yes we, we check in on each other um especially when there is that, that hit.

JL: Okay.

BS: Or 'cause he heard, I know that I said I acknowledged the hit over our main and which is our radio main and he had heard that and probably come to assist me and see what's going on.

JL: Yep makes sense. Um but that, as far as like that initially interaction um the plan there was run his DL, see what's going on with the critical hit and at that point you were back in your squad right?

BS: Correct yes I, like I said I, I extended, I, I would say that I had an extended amount of time at that vehicle talking with him.

JL: Yep.

BS: Just because of the agitation and then after I received the, the information to go check I then proceeded back to my squad car.

JL: Yep and that, that, that interaction that you had and, and the radio was pretty, it's pretty clear to me I guess you know, you see the hit, you see the Ramsey County PC pickup.

BS: Yes.

JL: And then you want some double confirmation that they actually want him arrested?

BS: Yes.

JL: And why, why were you concerned about that, has that happened before where there's a PC pickup and they don't actually want them or something else?

BS: I'm not necessarily aware, I like to make sure that if we're gonna go arrest somebody that they, you know if they're actually meant to be arrested.

JL: Mhm.

BS: Uh this was a confirmation and I, I believe that on that PC pickup it says contact Ramsey County Sheriff's Office.

JL: Mhm.

BS: So I notified uh my dispatch that this is the party involved and to contact Ramsey County.

JL: Yep.

BS: And then they advised that they would have um somebody contact me.

JL: That makes sense to me, I think you, you, you said at one point during that exchange 'cause if this becomes a situation in which you have to use force why do that unnecessarily right.

BS: Correct.

JL: You didn't want to use force on Mr. COBB at that point, is that?

BS: Yes.

JL: That'd be fair to say right?

BS: Yes.

JL: Yeah um you're there for quite a while with Trooper ERICKSON before LONDREGAN shows up right?

BS: Yes.

JL: But he does then show up, why, why did he show up as well? Similar reason to ERICKSON or a different?

BS: Yes I would say it's a similar reason, we've been on the uh at this time we're approaching that you know fifteen, twenty minute timeframe window uh it's pretty extended for just a, a normal stop. He showed up, it's not uncommon to have a bunch of Troopers working that area.

JL: Mhm.

BS: He showed up to see if everything was uh okay and what did we need.

JL: Yep and that's when you got confirmation from Ramsey that indeed they wanted him, you step out of your car, and you communicate to the other two Troopers we're gonna conduct an arrest?

BS: Yes.

JL: Okay. Tell me about the decision to, to, to sort of you're gonna go to the driver's side, tell me about the decision um about where the other Troopers are supposed to be at that time when you know you're gonna…

BS: Okay.

JL: …actually arrest him.

BS: I, I advised to them that yes we're gonna make that arrest, I, I said I was gonna make a driver side approach that's because I'd be the arresting officer. Um and then I kinda let them dictate where they're gonna go, I, I, I believe that RYAN took that um passenger's side approach for, for cover and to see more in that vehicle. And ERICKSON followed me on the driver's side just in case anything would happen.

JL: Did you know uh Trooper LONDREGAN for about as long as you knew Trooper ERICKSON uh had you worked with him as much or less or something else?

BS: Um I worked with Troop-, uh so Trooper LONDREGAN is a dogwatch or we call it dogwatch so night shift.

JL: Yep.

BS: Um Trooper and I am on his rotation so I work with him consistently, I know uh GARRETT a little or Trooper ERICKSON a little bit more than I know.

JL: Yep.

BS: Uh Trooper LONDREGAN but we, we all knew each other pretty well from, from uh working with each other.

JL: Yep.

BS: I'd say.

JL: Point a personal uh opinion I, I wonder sometimes if, if Trooper ERICKSON took the, took that cover role instead of LONDREGAN just because he had more interaction with COBB would of been different. There was, was there any reason why LONDREGAN took that role versus ERICKSON or that was just arbitrary?

BS: That, I think is arbitrary.

JL: Okay. Um all right and you knew at the time the approach, you had legal (inaudible) to arrest him?

BS: Yes.

JL: Right. I know it's for an order for protection?

BS: Correct.

JL: Violation, that isn't necessarily a violent crime right?

BS: This one was a felony so.

JL: Yep.

BS: Yes this, this would of been a violent crime.

JL: (inaudible) that's the way it would be characterized as?

BS: Yeah.

JL: 'Cause it's a felony?

BS: Yes.

JL: Okay. And.

PL: Were you aware of how someone gets a felony OFP like what it takes to make a felony OFP violation a felony?

BS: Um it was never clear on this OFP violation why it was a felony.

PL: Just in general.

BS: But dictates that there was some other force or other, there's you know prior, prior convictions, and there was something else that made this to a felony level.

JL: Uh okay so um we're gonna go now to your verbal interaction with Mr. COBB. As, as you approached what'd you say to him?

BS: I, I started out with hey my man just to keep that.

JL: Mhm.

BS: Level of peace and you know calmness um and then I asked him to step out of the vehicle because we had um some, something to talk about.

JL: Yep. And at that time uh obviously he didn't comply right?

BS: No.

JL: Um was he, was he verbal, was he talkative or was he (inaudible).

BS: He was, he was talkative.

JL: All right. Um was his vehicle running?

BS: Um yes his vehicle was running.

JL: Did you know whether his doors were locked or unlocked?

BS: They were locked.

JL: And how did you confirm that?

BS: Um while I was speaking with him I, with my right hand or actually my left hand I was trying the door handle and I was trying to open that door to, to enter that vehicle to, to effect the arrest.

JL: Yep. Um and at one point you asked him to hand the, hand him the car keys?

BS: Yes.

JL: Yeah. Now I have just a general question at a typical traffic stop, I know this was in July so we're not talking about now where it's cold as heck, do you, are you ever trained to tell somebody just shut their vehicle off on a regular traffic stop or they're always permitted to keep their car running or something else?

BS: Again it's a case by case.

JL: Mhm.

BS: Or a case by case scenario. Um if, if you're afraid of that vehicle fleeing, moving.

JL: Mhm.

BS: At all during your stop you can ask for the keys.

JL: Yep, yep, okay. Now um do you recall writing in your report at that stage that you asked for the keys because um it's right there you wanted to remove the vehicle as a possible weapon that could be used to hurt or kill my partners and I, and others on the road if COBB decided to flee.

BS: Yes.

JL: Okay. So this was at that stage of that first you know exchange with Mr. COBB, you had already that concern about the car?

BS: Yes.

JL: Right, okay. Um and you were concerned that the vehicle could be used as a weapon if Mr. COBB drove off?

BS: Yes. Due to his prior agitation and his deflection of the questions it, it appeared that he was not gonna be compliant in getting out of the vehicle.

JL: Mhm.

BS: So to mitigate that threat I asked for him to hand me the keys.

JL: Yep. Mr. COBB asks you why um did you want him to go out of the car, do you remember telling him why?

BS: I explained that there was some stuff with Ramsey County.

JL: Mhm.

BS: Um and then he, he and (inaudible) that there was nothing with Ramsey County.

JL: I'm, I'm always sort of confused about this statute that says when someone is, someone is um under arrest you have to tell them why they're under arrest. But I always kinda wonder at what stage is that requirement made.

BS: Mhm.

JL: Um at the time that he asked do you believe he was entitled to know that uh any more about besides that?

BS: At that time I was more concerned about if I told him that he was under arrest.

JL: Mhm.

BS: That he would take off.

JL: Yep.

BS: And so I was trying to have him peacefully step out of the vehicle and then I would of told him he was under arrest.

JL: Yep.

BS: And he would of been uh placed in handcuffs.

JL: Cuffed and yep that makes sense to me. Um now um but he did then ask you if there was a warrant and you had to tell him no right?

BS: Yes 'cause not, it's not specifically a warrant.

JL: Yeah, yeah. And did he seem confused by that information?

BS: He seemed uh I would say agitated but uh also kept deflecting the questions and I, I would say a little yeah I could say a little confused.

JL: But, but truly the way that you, you know declined to answer those questions the way you talked to him was because you were concerned he was gonna, gonna flee.

BS: Correct.

JL: When that could of hurt you?

BS: Yes.

JL: All right. So you'd agree that there's a second time just after this in your report in which you note that you had a concern about being hurt from the vehicle?

BS: Correct.

JL: Right. Um and uh and let's see now at the time that you interacted with him right so this is prior to, prior before LONDREGAN opens the door, did you see where Mr. COBB's hands were?

BS: He was kinda waving them about um.

JL: Mhm.

BS: He had, he had a toothpick in a hand and he, he just kept waving them around.

JL: Mhm.

BS: And he, he put them down either on his lap or, or on the steering wheel.

JL: Mhm.

BS: But never was really wouldn't say like necessarily hiding them.

JL: Yep but I remember you, you said something in your report about those gestures were kind of a cause of concern 'cause…

BS: Yes.

JL: …he was so animated.

BS: Yes he was very animated.

JL: Right but they never did go like on the shifter at that point right?

BS: Not while I was necessarily conversing with him.

JL: Yep, okay. Um now um do you have um did you have any thoughts at the time about extracting him from the vehicle?

BS: Um is this at the time…

JL: Yep.

BS: …when I kept asking him.

JL: You knew the doors were locked but you were at kind of a situation where like what's next.

BS: Yes.

JL: The doors are locked.

BS: Yes.

JL: What, what's next.

BS: Yes.

JL: Um uh what was Trooper LONDREGAN doing sort of at that time, were you able to see him across the way or was your attention solely on Mr. COBB?

BS: I, I was mostly, I, I knew he was over there but I was focused on Mr. COBB.

JL: Sure. Do you think you uh was the window on that side down?

BS: Yes.

JL: Was Trooper LONDREGAN close enough that he would of been able to hear your interaction?

BS: Yes.

JL: All right. Um did you have any communication with him either verbal or non-verbal about what to do next?

BS: No.

JL: No. Um now we're gonna obviously talk about what happened next but there was no gesture or any communication to you, to signal to LONDREGAN to unlock the doors or, or anything?

BS: No.

JL: Right, okay. And you were still talking to Mr. COBB and Mr. COBB was obviously still talking back trying to plead whatever he wanted to plead to you. Um would you agree you were still, both of you were sort of still trying to reason with each other at that point?

BS: Yes however at this point we were getting past that reasonable.

JL: Mhm.

BS: Uh window.

JL: Okay. And at that moment LONDREGAN unlocks the door right?

BS: Correct.

JL: Did you see him unlock the door or did you just see the dome light and the door open or what did…

BS: Yes.

JL …you actually see?

BS: Yes I saw the, the, the dome light open and the door start to begin to opening.

JL: Okay and did, prior to that did Trooper LONDREGAN ever announce to you that he was gonna open the door?

BS: No.

JL: Okay. Did he ever announce his intent to try to extract Mr. COBB from the vehicle?

BS: No.

JL: Okay. At that time did you know what Trooper LONDREGAN's intent was when he opened the door?

BS: Yes.

JL: Okay what was that?

BS: It was to enter the vehicle and effect this arrest.

JL: Okay. And how did you know that?

BS: Because when the vehicle door opened it, the doors were unlocked.

JL: Yep.

BS: And I could, I can now open my door and we can uh effect that arrest.

JL: Do you, so did you perceive that action as like a signal, I mean there's.

BS: Yes.

JL: You know like team work you know.

BS: Yes.

JL: That's what's gonna happen next.

BS: Yes and in that scenario if he had access to get that door open and I didn't have access.

JL: Mhm.

BS: Um that him allowing me to get into that vehicle is just the team work aspect of us kind of.

JL: Mhm.

BS: Going off each other's actions.

JL: Yep and, and if you hadn't attempted to open the door there were would of sort of been obviously not reading his signal correctly am I right about that?

BS: Correct.

JL: All right. Now but at that point what did Mr. COBB do in response?

BS: When the, when the lights were illuminated in the vehicle um Mr. COBB then put his uh his right hand on the, the gear shifter.

JL: Mhm.

BS: And put the vehicle into drive and the vehicle lurched forward.

JL: Yep. And, and you saw that?

BS: Correct.

JL: Obviously right. Um and did you feel it as well?

BS: I, yes I saw it and felt it.

JL: Yep. And uh you knew the vehicle was then in gear and in motion right?

BS: Yes.

JL: Yep. And um knowing at that point with the vehicle in gear and in motion what did you do?

BS: I, I had my door then was opened and I entered the vehicle to extract uh Mr. COBB from the vehicle.

JL: Okay and how far did you get your body into that vehicle?

BS: I had at least my tor-, my head and my torso was within that vehicle.

JL: Mhm. And your plan indeed as you said was to pull him out of the vehicle?

BS: Correct.

JL: And um and that's what you wrote in your report too that that was your plan?

BS: Yes.

JL: All right. And you also stated in your report that you were trying to keep uh Mr. COBB from fleeing or doing something to hurt me or my partners.

BS: Correct.

JL: And at the time you entered the vehicle um honestly you could of remained outside of the vehicle correct?

BS: Had in, in that scenario the veh-, where I was to that vehicle I was trying to remove him from that vehicle and mitigate that threat of that vehicle being used against us. Because I was at that vehicle door and I was in front of the rear tires.

JL: Sure.

KD: And I'm gonna have you look at something real quick 'cause I think there's a little confusion on one point that you're talking about timing of how things went down so. Um as far as when you open the car door and when the lights came in and when the car went into drive. 'Cause I think I didn't feel right the way that exchanged the way…

JL: Sure and.

KD: …you were asking the questions. I don't want him to.

JL: Yeah we have.

KD: Say something.

JL: We have videos, we have videos too if we need to I just uh.

KD: 'Cause it made it sound like you were saying the lights went on, he's still standing completely out of the car, puts it into drive, then he decides to open the door, I think it all happened at the same time.

BS: Yeah it was, the, the lights, when he shifted we had, I had the door open and we went, we entered the vehicle.

KD: Yeah it was all happening at one time.

BS: It was, it was.

JL: Okay.

BS: A split second.

JL: Okay. COBB waving his hands, LONDREGAN opens the door, COBB shifts it into gear but at that, so, listen I, I appreciate that things kinda happened at the same time.

BS: Mhm.

JL: But what I wanna be clear about and I can pull this video out so I, this is not an argument, this is just like.

BS: Okay.

JL: Understanding you cracked the door.

BS: Mhm.

JL: The vehicle was in motion, you're standing beside the vehicle.

BS: Mhm.

JL: You opened the door wide enough for you to get in after the vehicle was in motion, the vehicle is in motion when you enter the vehicle. Is anything I said not right?

BS: You mean when it lurched, when it…

JL: Yeah when it's in drive.

BS: …lurched.

JL: And it's going forward.

BS: Yes, yes as he shifted I, that door I cracked open it lurched forward and then stopped as we were entering.

JL: Okay.

BS: So it lurched so the lights came on, he shifted as he shifted I watched him shift, I opened the door got cracked open, the vehicle lurched, I entered, and at that point I, I know that RYAN was entering as well.

JL: Okay. So when, so there is this time, vehicle's in drive, the vehicle goes forward, then it, then it comes to a, a stop, was your conclusion that that was because COBB's foot was on the brake?

BS: Um not entire, um I'm not aware, I didn't see um Mr. COBB put his foot on the brake but I assumed that the vehicle stopped or if there was something geography related why that vehicle stopped.

JL: Okay did you know that the vehicle was still in drive?

BS: Yes.

JL: Okay. So in drive, certainly capable of going forward?

BS: Correct.

JL: Okay. And when you say a lurch, I know we're talking about we're talking about a matter of a, a few seconds but when you talk, when you think about Mr. COBB's acceleration especially going forward and answering the next few questions. Um you're saying there was this initial lurch and then there was an acceleration, are you gonna kinda break that up into two parts or how, how do you perceive how he went forward?

BS: It was, it was like the entire thing ended up being pretty fluid but there was a moment where he stopped or the vehicle didn't move any farther forward and we were engaged with, I was engaged.

JL: Mhm.

BS: With grabbing Mr. COBB um so the lights were illuminated, he shifted the vehicle, I had my door cracked, the vehicle lurched, I entered the after that lurch entered the vehicle to effect the arrest and so did RYAN and then the vehicle took off.

JL: Okay. I'm gonna unpack that in a couple different ways. So you, your, from your perception LONDREGAN also entered the vehicle?

BS: Yes or he was, yes he was entering the vehicle.

JL: Okay. Um now um so you attempted to do this because you were gonna pull him out of the vehicle?

BS: Correct.

JL: But you knew the vehicle was in drive?

BS: Correct.

JL: Right. Um if you were successful and you removed Mr. COBB from the vehicle, would you agree that then the vehicle would of continued to move down interstate 94?

BS: Yes it's plausible.

JL: Right, I mean I, I put my car in drive at like a McDonald's.

KD: I mean if you didn't reach over and throw into park.

BS: Yes if, if RYAN would of put it into park it could of stopped.

JL: Yep.

BS: If we, one of us hit the brakes it could of stopped.

JL: Sure.

BS: But our, at that point I'm very concerned about Mr. COBB taking off with us at that close proximity to the vehicle and then if he takes off on that high speed pursuit, that public risk or the public in, in the roadway could also be a threat.

JL: You wouldn't of pursued it though right?

BS: Uh at that point no.

JL: Yeah. So um so this, this, this, this enlies like this is kind of that critical period uh BRETT that I'm, I'm really trying to get at because several times in your report you acknowledged that you knew that the vehicle could be used as a weapon, you were concerned about that, at the.

BS: Correct.

JL: You knew that the vehicle was in drive and you knew that COBB's intent was to flee.

BS: Correct.

JL: And one thing and this is kind of like brass tax and you obviously have the protection, this isn't being used against you in any particular way, we just wanna get to the truth.

BS: Mhm.

JL: I mean do you agree at the time that Mr. COBB put the vehicle into drive you weren't inside the vehicle, the door wasn't open enough for you to get inside the vehicle, COBB could of driven him off and you wouldn't of been harmed.

BS: Uh that's, uh where, where I was standing, where you know in relation to that vehicle I, I could have been hit.

JL: By what part of the car?

BS: By the rear end of the vehicle.

JL: If he would of like fishtailed?

BS: Yes if, if, 'cause I was partially in.

KD: Drove over his foot, right?

JL: Okay and so that's what, that's what, that's what you were?

BS: Yes so we were, I was in such close proximity to that vehicle uh when that car lurched that I felt that I had to remove him from that vehicle to keep that scene safe.

JL: Yep. And just to talk about the art of the possible because I wasn't there, this would of been a very you know anxious situation.

BS: Mhm.

JL: Just as you had time to open the door to get into the vehicle, you would of had time to step one foot back to avoid getting struck?

BS: I, I'd be stepping into the lane of traffic.

JL: Yes, yeah I guess 'cause of the way of that vehicle was parked.

BS: Yes I was, I would be stepping into a lane of traffic.

JL: Mhm yep. Now this is just getting down to brass tax here 'cause had you extracted Mr. COBB from the vehicle you would of been in a physical confrontation with Mr. COBB also in a lane of traffic correct?

BS: Correct.

JL: All right now that um that decision aside do you recall when after entering the vehicle Trooper LONDREGAN yelled out get out of the car now?

BS: Yes.

JL: Okay. Was he directing that statement at you or Mr. COBB?

BS: Mr. COBB.

JL: Okay. So at the time LONDREGAN's actions were aimed at getting COBB out of the vehicle still?

BS: Yes.

JL: Right and at the time um did you begin to feel the vehicle in motion still or was it still in a, stopped?

BS: It, it was a very split second where we were stopped, I heard it was the, there was the, it was almost instantaneous.

JL: Mhm.

BS: The vehicle paused, I had um engaged with um my hand trying to get Mr. COBB out of the vehicle, I heard get out of the car now, the vehicle accelerated at that point.

JL: I thought you were trying to unbuckle the seatbelt?

BS: Yes I was, I was, I was trying to reach over.

JL: (inaudible).

BS: But yes.

JL: So right hand on.

BS: My, my hands were on him.

JL: On him, left hand on the?

BS: Yes.

JL: Seatbelt.

BS: I was reaching across.

JL: All right. Um and uh at that time did you consider exiting the vehicle on your own?

BS: I was, I was gonna exit, exit the vehicle with Mr. COBB.

JL: Yeah.

BS: In custody.

JL: Okay but at any point during that time did you consider that it was too dangerous for you to remain in that vehicle and to just?

BS: It was too fast.

JL: Too fast, okay. Um you still had both of your feet on the ground because you said you needed to use your feet for leverage?

BS: Correct.

JL: Right um you had, would you have had the ability to move your torso out of the vehicle do you believe?

BS: I didn't have enough time.

JL: Didn't have enough time. Um and um was Mr. COBB holding you in any way, holding onto you in any way?

BS: No.

JL: No. Um were you caught up in the vehicle, was any part of your uniform or anything like that snagged on anything?

BS: Uh nothing was snagged.

JL: Okay. Uh at any point um were you uh actually I guess classically dragged from the vehicle?

BS: Yes.

JL: By the vehicle?

BS: Yes. As the vehicle accelerated forward I could feel the vehicle and well at that point when I was engaged with Mr. COBB and the vehicle so the vehicle moving forward with that B pillar and Mr. COBB in the, would be to my right.

JL: Mhm.

BS: Was pulling me down the roadway.

JL: Okay so the, the, the actual um like he was hitting your shoulder like the vehicle was hitting your shoulder?

BS: Yes I could, I could feel myself being pulled by the vehicle.

JL: Okay all right. But it, I just wanna be clear about that. You're standing there, feet on the ground, your torso's leaning into the vehicle, you're attempting to remove Mr. COBB, at the point of acceleration the B pillar of the car was hitting your shoulder and you felt.

BS: Yes, yes. And where I was in relation to Mr. COBB too his actual body the entire vehicle…

JL: Mhm.

BS: …with him as the driver as well, would be pulling me down the vehicle, or the road.

JL: And that's where, with your feet you begin to try to run but then the vehicle just went too fast and you fell?

BS: Correct.

JL: Right, I'm just distinguishing that and again harrowing situation, I'm just distinguishing that from what even happened recently in another jurisdiction where there's either a bad guy is holding on to you or the vehicle is caught on your shirt, some of the, these worst case scenarios.

BS: Mhm.

JL: But it wasn't like that right?

BS: No it was, I could feel the vehicle just it moving forward was pulling me alongside it.

JL: Mhm.

BS: I ran alongside the vehicle as to not fall under that vehicle.

JL: Mhm okay. Now uh we got a little ahead because we talked about the acceleration but right now I wanna talk about hearing the gunshot.

BS: Okay.

JL: Um did you know who fired the gunshot?

BS: I was not sure.

JL: Yep. And, and so at point you did not know it was Trooper LONDREGAN?

BS: Correct.

JL: And um um you didn't see him with a firearm?

BS: I, I saw it when we, after the vehicle lurched and had that pause I saw Trooper LONDREGAN with a gun pointed at uh Mr. COBB.

JL: Mhm. Do you believe he pointed the firearm at Mr. COBB to get him to, to stop?

BS: Correct.

JL: Stop him, now I wanna ask that clear. To prevent him from fleeing, he pulls his firearm out, is that what you understood?

BS: I saw um I saw Trooper LONDREGAN make the or my opinion is that Trooper LONDREGAN pulled his firearm out and point it at Mr. COBB because we were in process of making that arrest and the vehicle could be used as a weapon.

JL: Mhm.

BS: Not in necessarily that he was fleeing but the fact is we were now in danger for that.

JL: Yeah. Um the, the difference if he's got the firearm out, he pulls it out at the same time you're, you're entering the vehicle and I just wanted to kind of understand exactly if, if the way you perceived it is that you were in peril and then he pulls the firearm out or he has the firearm out already before you've sort of committed yourself to the vehicle.

BS: Um from, from looking from where I was and when I was entering the vehicle I didn't notice that firearm until we were both in the vehicle. So my I would say my assumption or my belief was that he had that fire, firearm out for that peril.

JL: Okay.

BS: Of 'cause of the danger.

JL: Yeah and I, I guess one of the reasons I'm trying to understand is 'cause what he says is get out of the car, he doesn't say stop the car right.

BS: Yeah.

JL: So I'm trying to understand exactly what he was thinking.

BS: Yes.

JL: And we can talk later about whether he told you what he was thinking but that's kind of where I was getting at.

BS: My belief is that he yelled get out of the car to remove him from the vehicle to get the vehicle away from or to take that weapon away from Mr. COBB.

JL: To take the vehicle?

BS: Yes.

JL: Okay, okay. Um now according to report after the gunshot right you continued to try to and maintain your balance as COBB accelerated with the hopes of apprehending him right?

BS: Yes and as, as to not fall and, and get ran over by the vehicle.

JL: Yeah and that, that's.

BS: It's just to keep balance.

JL: I know we're talking about like probably a second of time.

BS: Mhm.

JL: But I'm trying to understand if after the gunshot you continued to remain in the vehicle intentionally because you were trying to apprehend him or whether at that point you were involuntarily dragged as…

BS: I was involuntary dragged at that point.

JL: Okay.

BS: Um there, I didn't have any way to disengage, the vehicle was moving forward, I could feel myself going forward so I could try to keep balance to go alongside it.

JL: Okay. Um and you did, you did try, you moved your feet fast but just couldn't keep up 'cause he started accelerating uh lost your footing and then fell?

BS: Yes.

JL: Um did Mr. COBB try to swerve or anything like that?

BS: I, I, at that split second it didn't feel like he was swerving.

JL: Mhm.

BS: I, all I remember is trying to keep my balance along, I could feel the vehicle pulling me, the speed became too fast, I lost my footing, I hit the ground, I saw a ground and I saw a sky, and then we, I stood up, and I could see the vehicle continuing down the roadway.

JL: And, and I know what happened was dangerous and risky to you but at the time he drives away, do you have any reason to believe his intent was anything other than to flee?

BS: At, at, at that point I, I was not sure what his intent was.

JL: Okay. Now um after he drove away you guys ran back as you said, got in your squads, drove and then obviously you had to, to pin your vehicle up like you know to, to.

BS: Correct.

JL: His vehicle was, had already crashed and was kind of sliding along the median, you had to bring your squad car pin it up and then tried to.

BS: Yes. At that so after the vehicle left it, it continued on the shoulder, we, we ran after it a little bit um and then realized we weren't gonna catch it, we ran back to the squad.

JL: Mhm.

BS: A shots fired call was issued over uh the radio main um and then a Trooper asked to if we could now pursue that vehicle and pursuit was granted by our Lieutenant at that point.

JL: Did you know Mr. COBB was shot at that point?

BS: I was unaware of, of, if the rounds hit anything or not.

JL: Yep. Um when, when gunfire is in a vehicle and you're in the vehicle is that, is that extremely loud, is it distracting or…

BS: Yes.

JL: … I can tell you the audio that we have of the, it's like the audio recording kind of weird because it doesn't sound very loud on the audio recording but I'm assuming it's disorienting in itself.

BS: Yes uh innately 94 is extremely loud.

JL: Mhm.

BS: From every traffic stop there's, it's uh four lane uh interstate, there's cars zooming by at 60, 60 to 80 miles an hour uh there's semis so the, the volume level up there is already high. Um the vehicle taking off and being wrapped up is very high and then the gunshot itself was, was very loud so.

JL: Mhm.

BS: It was a chaotic scene.

JL: Yeah. Um so at the point that you actually engaged with him at the actual place where his vehicle came to stop, that's when you found out that he was shot?

BS: I, I wasn't aware if he shot, he was slumped over.

JL: Mhm.

BS: And didn't appear to be conscious at that point.

JL: Okay. Then you all extracted him from the vehicle and tried life-saving measures?

BS: Correct.

JL: Is that right. Um and at, at some point did you conclude that it was a gunshot?

BS: Yes as, as I extracted uh as I extracted him from the vehicle, we laid him out on his back so he was facing um up and we began looking for trauma, trauma assessment um taking his clothes off, trying to figure out where he was hit and if we could perform any life-saving measures.

JL: Okay. Did LONDREGAN tell you he shot him?

BS: No.

JL: Okay. Um now in your report there's a sort of a summary section, that was the part that seems a little bit different from a typical report as I see, I think it might be on the, on the final page, page. Um you, you tried to note that several potential dangers that uh existed based on your training and experience, or training and education experience, do you see that section?

BS: Yes.

JL: And you list those dangers and uh I'll just uh take up a couple. Um that COBB was in physical control of a running car and then he could quickly put it into drive and speed way, right, we've talked about that.

BS: Correct.

JL: That the vehicle could be used as a weapon and that Mr. COBB shifted the vehicle into drive and you knew he was attempting to flee right?

BS: Correct.

JL: That's all true. And then you write I had all this in mind when Trooper LONDREGAN opened the passenger door and the lights inside of the car turned on, I decided to open the driver's side door to assist with COBB's apprehension and enter the vehicle, COBB put the car in drive and the car lurched forward, it was clear to me at this time that COBB was not willing to voluntarily exit the vehicle right?

BS: Um the, the, the, the vehicle was lurched, you know as we.

JL: Mhm yeah.

BS: Already explained prior to that um.

JL: Yeah.

BS: But yes the, the lights illuminated, the door was open, the vehicle lurched, paused for a second, then we entered, tried to.

JL: Yep.

BS: Effect the arrest.

JL: Okay 'cause you know I'm not a police officer okay that is obvious from my questions and I, I do defer to your experience on that but uh knowing all of those dangers and those risks about Mr. COBB's intent to flee um um I, I still need to understand um would it have been possible for you to have just let him drive off?

BS: Uh it, it'd be a very dangerous situation.

JL: Dangerous to the others on the road or to you or…

BS: Yeah.

JL: …something else, okay.

BS: Us and to the general public.

JL: Okay. Um and let's see here. I have um let's see here, at the point, okay (inaudible). I appreciate that. At the point when Mr. COBB was trying to flee you suspected only of that order of protection violation, fully identified, if he would of been able to drive away cleanly I can't remember, I don't think I asked you, I asked you a hypothetical but on this particular case under the State Patrol policy you would of been prohibited from pursuing?

BS: Yes if we were not in that vehicle or um at direct immediate threat from that vehicle taking off, then yes we would of, we would of had to follow policy and not pursue.

JL: Okay. And you know before when we were talking generally I was asking you if you ever received training about whether to not or to try to extract someone from, from a moving vehicle or a vehicle in gear, sort of indicated you didn't receive any direct training about that however you don't remember being explicitly told to not do that and then when we talked about Mr. COBB's case uh I understand that from your perspective he had it in drive, lurched forward but there was this period of time in which the vehicle had stopped right, it paused right?

BS: Yes.

JL: Vehicle in gear you summarized that Mr. COBB had his foot on the brake is that?

BS: Yes.

JL: Okay. And is that avenue, is that opportunity that moment when you believed that extraction was something that you could?

BS: Yes and, and that was, that was the so that was all within a, a.

JL: Mhm.

BS: Split second decision of trying to remove him from the vehicle and that so it lurched, it was hands on within a split second after that vehicle like lurched.

JL: Yep.

BS: Um and that was the attempt to extract him from that vehicle.

JL: So and I asked a series of questions before we started talking about Mr. COBB's uh situation about your training on extraction because I, I truly was led to believe that when there's two individuals, two Troopers trying to extract someone it wouldn't of been you leaning over to try to unbuckle him, it would of been LONDREGAN and you're, you're telling me that, that's, that was not as clear, you don't believe that that's exactly how you were trained on that policy, is that correct?

BS: Yes I mean if, if the vehicle was stationary, the scene was safe, and, and in scenarios that that could be a possible avenue.

JL: Mhm.

BS: That he could unbuckle the seatbelt uh seatbelt and then and extract him, however with the, the, the timing of this and how fast that, that initial lurch and movement was, that it wouldn't, I don't think it would of been appli-, applicable in this case.

JL: Is it possible that LONDREGAN began to extract um Mr. COBB as I said and then when Mr. COBB shifts it into drive that LONDREGAN abandoned getting into the vehicle because of that?

BS: Um I'm kind of unclear.

JL: Like that, like Trooper LONDREGAN opens the door.

KD: You're asking him a hypothetical?

JL: Yeah I'm just asking.

KD: We don't know.

JL: If it's possible.

KD: We don't know what he did.

BS: No I have no idea.

JL: Okay.

BS: I have no idea. I, like I said from my perspective and um I, at a vehicle, I had all my focus was on Mr. COBB at that time and I had a vehicle I was not entirely sure of what RYAN was doing.

JL: Yeah.

BS: Or Mr. LONDREGAN was doing until we were inside that vehicle.

JL: All right.

KD: Can we have a moment? Can we take a break for a second?

JL: Yeah absolutely. I, I almost done but yes.

KD: But I just wanna talk to you guys for a second.

JL: Sure.

KD: I'll meet you out there.

TR: Let me, let me shut this, uh time is approximately 11:16 a.m. and it'll be a pause in the recording here.

(Short pause)

TR: All right it is approximately 11:29 a.m. and we will be resuming the interview.

JL: Um you do now know that it was LONDREGAN who shot Mr. COBB right?

BS: Yes after the, after.

JL: Yep.

BS: Everything was settled.

JL: So at the time that you heard the gunshot wounds you were essentially sort of behind, sort of behind and on top of Mr. COBB?

BS: Yes I would of been in front of Mr. COBB.

JL: Would you agree that Trooper LONDREGAN could of shot you?

BS: Um from looking at where I was positioned in the vehicle and I was in front of Mr. COBB and I saw RYAN uh Trooper LONDREGAN's gun pointed at Mr. COBB, I was not in direct line of fire.

JL: Are you aware that one of the bullets which struck Mr. COBB exited his buttocks and lodged in the car seat?

BS: I am not aware of that.

JL: Um would you agree that uh given your position though there was at least a risk given the vehicle was in, in motion that you too could of been shot?

BS: It, it was possible but if, if Trooper LONDREGAN did not um use force to, to stop this threat um the outcome would of been worse.

JL: Well let's talk about that. Um you'd agree that by shooting Mr. COBB, Trooper LONDREGAN didn't actually stop the vehicle from going forward right?

BS: How, correct however the vehicle at this time could of accelerated at a much higher speed, it could, there could of been, he could of swerved, there was much, there's a plethora of um outcomes that could of changed if Trooper LONDREGAN did not use force to try to stop this threat.

JL: So based on something we talked about before, this does get a little crossy sorry KEVIN. Um your understanding is that Mr. COBB was trying to, to get away right to drive away?

BS: I.

JL: Or then you didn't know exactly what.

BS: Okay I, I was unclear of what Mr. COBB was trying to do at that time.

JL: Okay.

BS: Um I, I do know that Trooper LONDREGAN saved, saved my life in, in using force.

JL: Sure. Did shooting Mr. COBB prevent you from being uh knocked down um or in a sense dragged from the vehicle?

BS: It did not.

JL: It didn't? So if it didn't stop him from driving away and it didn't stop you from getting, getting dragged how did shooting Mr. COBB save your life?

BS: Because at that time Mr. COBB could of accelerated faster, he could of swerved, he could of dragged me out into traffic, he could of crashed into another vehicle. The, while we were trying to effect this arrest and I was in the vehicle.

JL: Do you know how fast the vehicle went after um he was shot?

BS: I, I'm not certain.

JL: Okay did you get a, did you get an eye, did you get a visual on, on his, on the vehicle as you were or was that when you were running back and was getting to your squad?

BS: I, after we got dragged and um would like after we got disconnected from the vehicle we looked at the vehicle and it was not traveling at extreme highway speeds or in like a fleeing manner, it was, it was kind of coasting.

JL: Okay.

BS: Close to (inaudible).

JL: And, and then it collided into the median?

BS: It, it coasted, 'cause we were on the right shoulder.

JL: Mhm.

BS: And then it crossed out into traffic and it hit the left median.

JL: Yep.

BS: And came to a rest.

JL: So one thing that was and we kind of touched on this a little bit about the concerns about conducting any traffic stop or doing anything with a driver on the side of the road is, is obviously being struck by other drivers on, on the, on the highway. Um it's clear from the video that Mr.

COBB's vehicle was right here along the median um do you recall where Trooper ERICKSON parked his vehicle?

BS: Behind us, I'm not sure.

JL: Behind us, was it more into the lane or was it.

BS: I.

JL: Over here, something else?

BS: I, I can't attest to what he, where he parked, I have no idea actually.

JL: Okay so doing anything on this side of the road sort of presented that same risk?

BS: Oh are you talking about the stop or where he came to rest?

JL: No I'm talking about the traffic stop, yes.

BS: Uh yes Trooper ERICKSON was vehicle was behind me.

JL: Like if your squad was like this or was it a little bit further over into that lane of traffic?

BS: It was not in a lane of traffic.

JL: Okay. And based on your recollection would ERICKSON have just also parked directly behind you or would he have nudged over closer to give you some cover or something else?

BS: Nope from recollection he was right directly behind me.

JL: Directly behind you as well, okay. And is that consistent with um the way you've been trained to conduct sort of a multiple squad traffic stop?

BS: Yes.

JL: Okay.

BS: At that point.

JL: There was a moment, I don't know if you remember this, it isn't in your report but there was a moment in the time when you were back in your squad and you were just talking to Trooper ERICKSON, this is before the incident, where you actually suggested um maybe we should put some stop strips down in front of COBB's vehicle and then you sort of declined to do that, do you remember thinking that?

BS: Yes, yes I did.

JL: Is that something that's trained?

BS: It would not of been trained.

JL: Okay.

BS: And it, it actually is against policy.

JL: Yep. So that's kinda why that was, that was rejected?

BS: Yes.

JL: Yep okay that makes, that made sense. We, all of us are trying to think of what things could of been done to prevent RICKY COBB from deciding that fleeing was a better idea than just cooperating and I just remember you thinking that at the time going that may have made a difference, I'm not sure. So okay that's all the questions that I have for you but I think my colleagues might have some questions as well.

BS: Okay thank you.

MO: Yeah MARK OSLER and, and I just got a few questions and they don't have to do with your interaction with RICKY COBB.

BS: Yes sir.

MO: Um first you talked about having been trained vehicle extractions at the academy. Was your trainer on that Sergeant HALVORSON?

BS: Yes.

MO: All right. Um and when you were describing uh and again I'm asking generally not about the specific incident but when you were talking about the incident you talked about the second person providing cover, what do you mean by that term?

BS: Cover um so it, it's not like a number one's gonna do this, it's, you kind of flow in that scenario. Uh a cover officer in this like scenario would be if a dangerous threat like if they have a weapon or if something else happens that we have somebody that can at least be in a, applicable range to deploy uh deploy other measures or their firearm and to protect us at that time.

MO: Okay and, and again not talking about that specific incident but for example if someone emerged from the car with a gun.

BS: Yes.

MO: All right.

BS: Yes and or if they had a gun or a different weapon um within that vehicle.

MO: Okay. One thing that I noticed in the video is Trooper ERICKSON as he's at the rear of the vehicle, he keeps his hand on the trunk, is that something you're trained to do?

BS: I, I can't attest to.

MO: Do you know like why a Trooper would do that in that situation?

BS: Put his hand on the trunk?

MO: Yeah.

BS: Um I'm not sure.

MO: Okay. Um and then finally and this goes a little bit to what Mr. LARSON was asking about a minute ago, um when the techniques and tools that you have to prevent someone from driving away, I think two have been discussed, taking the keys away.

BS: Yes.

MO: And I guess three if you include extracting the, the driver.

BS: Mhm.

MO: And also the, the stop strips. Um what other tools or techniques can you have to prevent someone from driving away?

BS: Um another a tool would be so in like a pursuit setting you could um you could box in so you could put another vehicle in front of, of the, would be fleeing vehicle. Um so you have, you have the strips um removal, and then you could also box that vehicle in with another car.

MO: Okay.

BS: So if, if a different squad could of boxed that vehicle in.

MO: So you'd need more than, than one car?

BS: Yes.

MO: Okay. That's all I have thank you.

BS: Thank you.

PL: And this is PATRICK LOFTON from the recording um kinda like uh Mr. OSLER asked you about your trainers, do you recall a vehicle contact trainer being Sergeant MORELL?

BS: Yes.

PL: Okay. And a use of deadly force trainer um uh Sergeant WENZEL?

BS: Yes.

PL: Is it WENZEL or WINZEL?

BS: It's WENZEL.

PL: WENZEL, thank you. Um at one point during Mr. LARSON's questioning and I know we jumped around in the timeline so.

BS: Yes.

PL: It's confusing, I'm talking about that time kind of where you've had some interaction with Mr. COBB you've gone back to your squad, you're talking um I believe with ERICKSON a bit, I believe you guys have a little back of forth about um he's not being, something, I'm paraphrasing, he's not being rude but he's clearly agitated or something like that. Um you said to Mr. LARSON we were getting past that reasonable window.

BS: Correct.

PL: Um when Mr. LARSON was asking about de-escalation.

BS: Correct.

PL: And so can you just expand on that, what did you mean, why is it past the reasonable window, say more on that?

BS: Okay. Um so the, the whole de-escalation prior to confirming that OFP was just to you know keep him calm, we didn't, it wasn't confirmed that that was him yet, um so that was just talking back and forth. After the decision was made to uh make that arrest we, I approached and I peacefully asked multiple times uh for him to exit the vehicle. And he continually deflected the questions or said something completely different, then I changed up my pattern to ask for the vehicle's keys to not keep being repetitive. Uh that was also deflected so it got to the point where I had, I didn't really have much more versus standing there and continuing to bicker back and forth um until that decision was made.

PL: You can only stand on the side of the road and argue for so long.

BS: Yes.

PL: Um this question and I know what uh Mr. LARSON's talking about in the training materials with uh double teaming an extraction. Um so your at least, your recollection and understanding of your training is that's fluid in case by case, it's not passenger side does this and driver's side does that?

BS: Yes it, it, it's much, to be something of very structure where somebody has to do certain thing won't be applicable in every scenario so.

PL: I mean I guess just maybe this is obvious or maybe it's not but let's see, I wanna know what you have to say about it. Does a passenger have to go further into the car, a passenger side officer have to go further into the car to?

BS: Yes.

PL: Interact with the driver?

BS: Yes.

PL: Um this um might of been beaten to death but I, I wanna be clear and the reason I ask the question this way is because we've gone through all these training materials, the PowerPoints, well I shouldn't say we've gone through all the training, we've gone through the documents, obviously we've never done the.

BS: Yeah.

PL: The actual stuff but looking at the PowerPoints you start to notice within different subject matter like vehicle contacts, use of force, they'll emphasize certain things and there'll be lots of catch phrases like one of them is there's no such thing as a routine stop, things like that.

BS: Mhm.

PL: Do you remember anything when it comes to extractions about there being a golden rule, a rule of thumb and, and this word lurch has been debated but once you know a car is moving are you supposed to do this and say.

BS: Uh.

PL: Get out of the way?

BS: When we did, like I said when we did vehicle extractions it was, it was one hundred percent a, a stagnate vehicle, the vehicle was no longer moving.

PL: Mhm.

BS: Um it, it's officer safety is gonna be paramount and that's a, that would be considered that a golden rule um officer safety and public safety. Um but I, I don't recall necessarily okay if it takes off, then stop, we didn't, we didn't have a scenario that entailed that and it was a scenario for a vehicle extractions was the vehicle stopped, let's get everybody out.

PL: Um sometimes we ask questions that may or may not be admissible in a grand jury or a trial and stuff like that.

BS: Mhm.

PL: And it's because we're trying to get a feel for things so I don't want you to be like alarmed by these questions when we ask you what was so and so thinking or whatever. Do you think that if um Sergeant MORREL or Sergeant HALVORSON like, like let's say you were doing like a debrief like after a football game or you watch a football game.

BS: Mhm.

PL: And he like saw you trying to go despite the lurch, despite whatever you wanna call that movement, that they'd be like uh BRETT you shouldn't of done that, at that point you should of backed away and gotten away from the car. Do you…

BS: This is like one hundred percent speculation um.

PL: Uh huh. I mean and I know that, that's why.

BS: Yes.

PL: I prefaced with that.

BS: And uh um I, I wouldn't say that he would, he would say that that was wrong, we're, we're still trying to make this effect this arrest of this person and extract this person from this vehicle.

PL: Um you said that LONDREGAN saved your life and you know Mr. LARSON followed up on that. Uh you can't deny though that shot was very close to you?

BS: Correct.

PL: Just tell me how did it make you feel like afterwards once you realized he shot that close to you?

BS: I, well as I was being dragged by the vehicle I heard that shot, I heard at least a shot, I was, I, I wasn't scared of the shot, I was scared of Mr. COBB.

PL: Mhm.

BS: Uh dragging me out into traffic or running me over. I, um I realized the shot was fired but that didn't, that was not my fear, I was not worried about my partner shooting me.

PL: Was there…

BS: I trust my partner.

PL: Okay. Was there ever a, after thought of like WTF dude like I was so close?

BS: I, it never, it never crossed my mind um and in that scenario, I mean after reviewing the, the cameras months later I was like that was close but I, no point was I afraid that RYAN was gonna shoot me.

PL: Um what about um in general um and I know this is probably an uncomfortable question or maybe it's not, I don't know, I shouldn't assume. Have you talked to RYAN since this happened?

BS: Nothing about the case.

PL: Okay.

BS: Uh everything was just personal life.

PL: How are you doing and stuff?

BS: Yes and just, yeah.

PL: Did you all make it point not to talk about the case?

BS: Yes.

PL: Okay.

BS: Very, very apparent.

PL: That's all I have.

JL: Awesome uh yeah um I'm gonna thank you but we can probably shut this uh recording off now.

TR: All right time now approximately 11:43 a.m. and that will be end of this interview.

END

EXHIBIT 28

GENERAL ORDER

Effective: July 31, 2023		Number: 23-10-027 HRLFNDT
Subject: **FORCE; USE OF**		
Reference: General Orders 30-005, 30-007, 30-018; Use of Force Report		
Special Instructions: Rescinds General Order 20-10-027		Distribution: A,B,C

I. PURPOSE

The purpose of this policy is to provide troopers with guidelines for the use of force and deadly force in accordance with the following Minnesota Statute sections: 609.06 (Authorized Use of Force); 609.065 (Justifiable Taking of Life); 609.066 (Authorized Use of Force by Peace Officers); 626.8452 (Deadly Force and Firearms Use; Policies and Instruction Required); 626.8475 (Duty to Intercede and Report).

II. GUIDING PRINCIPLES

A. The use of force is only authorized when it is objectively reasonable and for a lawful purpose.
B. The decision by troopers to use force or deadly force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when troopers may be forced to make quick judgments about using such force.
C. Every human life has inherent value (sanctity) and members shall treat people with respect and dignity and without prejudice.
D. Every person has a right to be free from excessive use of force by law enforcement officers acting under the color of law.
E. Troopers shall use deadly force only when necessary in defense of human life or to prevent great bodily harm.
F. Troopers should exercise special care when interacting with individuals with known physical, mental health, developmental, or intellectual disabilities as an individual's disability may affect the ability to understand or comply with commands.
G. Troopers who use excessive or unauthorized force are subject to discipline, possible criminal prosecution, and/or civil liability.

III. DEFINITIONS

A. **Levels of Resistance** are the amounts of force used by a subject to resist compliance with the lawful order or action of a trooper. These actions may include:
   1. Non-Verbal and Verbal Non-Compliance
      When a subject expresses his/her intentions not to comply with a trooper's directive through verbal and non-verbal means. Troopers may encounter statements ranging from pleading to physical threats. Such statements may also include physical gestures, stances, and subconscious mannerisms.
   2. Passive Resistance
      When a subject does not cooperate with a trooper's commands but does not take action to prevent being taken into custody. For example, a demonstrator who lies down on a roadway and must be carried away.
   3. Active Resistance (defensive resistance)
      When a subject makes physically evasive movements to interfere with a trooper's attempt to control that subject; including bracing, tensing, pulling away, actual or attempted flight, or pushing.
   4. Active Aggression
      Actions by a subject that are aggressive in nature with intent to injure or instill fear of injury or death to the member or another.
   5. Deadly Force Assault
      Any action which would cause a reasonable officer to believe it will result in death or great bodily harm to the member or another.

B. **Levels of Control** are the amounts of force used by troopers to gain control over a subject and include the following:

1. Verbal Commands
   The use of advice, persuasion, warnings, and or clear directions prior to resorting to actual physical force. In an arrest situation, troopers shall, when reasonably feasible, give the arrestee simple directions with which the arrestee is encouraged to comply. Verbal commands are the most desirable method of dealing with an arrest situation.
2. Soft Hand Control
   The use of physical strength and skill in defensive tactics to control arrestees who are reluctant to be taken into custody and offer some degree of physical resistance. Such techniques are not impact oriented and include pain compliance pressure points, takedowns, joint locks, and simply grabbing a subject. Touching or escort holds may be appropriate for use against levels of passive physical resistance.
3. Hard Hand Control (hard empty hand)
   Impact oriented techniques that include knee strikes, elbow strikes, punches, and kicks. Control strikes are used to subdue a subject and may include strikes to pressure points such as: the common peroneal (side of the leg), radial nerve (top of the forearm), or brachial plexus origin (side of neck).
   - Defensive strikes are used by troopers to protect themselves from attack and may include strikes to other areas of the body, including the abdomen or head. Techniques in this category include stunning or striking actions delivered to a subject's body with the hand, fist, forearm, legs, or feet. In extreme cases of self-defense, the trooper may need to strike more fragile areas of the body where the potential for injury is greater.
4. Contact Weapons
   All objects and instruments used by troopers to apply force which includes striking another or defending a trooper or another from an active aggressive person. Contact weapons include, but are not limited to, MSP issued equipment such as the expandable baton, flashlight, and riot baton.
5. Deadly Force
   All force actually used by trooper(s) against another which the trooper(s) know or reasonably should know, creates a substantial risk of causing death or great bodily harm. The intentional discharge of a firearm in the direction of another person, or at a vehicle (including tires) in which another person is believed to be, constitutes deadly force. The use of a chokehold, as defined in this policy, constitutes deadly force.

C. **Exigent Circumstances**
Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.

D. **Bodily Harm** means physical pain or injury.

E. **Chokehold**
A method by which a person applies sufficient pressure to a person to make breathing difficult or impossible and includes but is not limited to any pressure to the neck, throat, or windpipe that may prevent or hinder breathing, or reduce intake of air. Chokehold also means applying pressure to a person's neck on either side of the windpipe, but not to the windpipe itself, to stop the flow of blood to the brain via the carotid arteries. Chokehold includes any type of neck restraint. Such actions are considered deadly force.

F. **Approved Weapon**
A device or instrument which troopers are authorized from the Minnesota State Patrol to carry and use in the discharge of their duties, and, for which the troopers have (1) obtained training in the technical, mechanical, and physical aspects of the device; and (2) has developed a knowledge and understanding of the law, rules, and regulations regarding the utilization of such weapons.

G. **OC Aerosol** is the Oleoresin Capsicum (OC) spray device classified as an inflammatory agent.

H. **Chemical Agents**
Devices containing Oleoresin Capsicum (OC) classified as an inflammatory agent and/or Chlorobenzylidene Malononitrile (CS) classified as an irritant agent.

I. **Distraction Device**
A device that produces a loud sound and/or light distraction, which creates a temporary physiological and/or psychological disorientation of an individual.

J. **Impact Munition** is a less lethal munition which functions by striking the intended target.

K. **De-Escalation**
Taking action or communicating verbally or non-verbally during a potential use of force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include, but is not limited to, the use of such techniques as command presence, warnings, verbal persuasion and tactical repositioning.

L. **Great Bodily Harm**
Bodily injury which creates a high probability of death, or which causes serious, permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

M. **Less-Lethal Force**
All force actually used by troopers which does not have the purpose or likelihood of causing death or great bodily harm. This includes use of approved chemical agent, OC aerosol, impact munitions and distraction devices used to maintain civil order, prevent property damage, and protect life.

N. **Weapon** is any instrument used or designed to be used to apply force to the person of another.

O. **Objectively Reasonable**
In determining the necessity for force and the appropriate level of force, troopers shall evaluate each situation in light of the known circumstances, including, but not limited to, the seriousness of the crime, the level of threat or resistance presented, and the danger to the community. Although troopers have many options, he or she must exercise the application of force in a manner that is reasonable and necessary to arrest or detain a suspect. Many variables affect the level of force one can justify. These situations can be very fluid, dynamic, and unpredictable. Troopers must be ready to utilize force at any level.

IV. PROCEDURES

A. De-Escalation
1. Troopers shall use de-escalation techniques and other alternatives to higher levels of force consistent with their training whenever reasonably possible and appropriate before resorting to force. The goal of de-escalation is to reduce and/or eliminate the need for force.
2. Whenever possible and when such delay will not compromise the safety of the trooper(s) or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, troopers shall allow an individual time and opportunity to submit to verbal commands before force is used.

B. Use of Non-Deadly Force
1. When de-escalation techniques are deemed not effective or appropriate, it shall be the policy of the Minnesota State Patrol, unless expressly negated elsewhere, to allow troopers to exercise discretion in the use of agency-approved, non-deadly force techniques and approved equipment to the extent permitted by Minn. Stat. §609.06:
   a. In effecting a lawful arrest; or
   b. In the execution of legal process; or
   c. In enforcing an order of the court; or
   d. In executing any other duty imposed on the trooper by law, including when bringing an unlawful situation he/she is tasked with handling safely and effectively under control
   e. In defense of self or another
2. In determining the degree of non-deadly force which is reasonable under the circumstances, troopers shall consider:
   a. The severity of the crime at issue;
   b. Whether the suspect poses an immediate threat to the safety of trooper(s) or others; and
   c. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

C. Use of Deadly Force

It shall be the policy of the Minnesota State Patrol, unless expressly negated elsewhere, to allow troopers to exercise discretion in the use of deadly force to the extent permitted by Minn. Stat. §609.066, subd. 2, which authorizes peace officers acting in the line of duty to use deadly force only if an objectively reasonably officer would believe, based on the totality of circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary:

1. To protect the peace officer or another from death or great bodily harm, provided that the threat:
   a. can be articulated with specificity;
   b. is reasonably likely to occur absent action by the law enforcement officer; and
   c. must be addressed through the use of deadly force without unreasonable delay; or
2. To effect the arrest or capture, or prevent the escape, of a person whom the trooper knows or has reasonable grounds to believe has committed or attempted to commit a felony and the trooper reasonably believes that the person will cause death or great bodily harm to another person under the threat criteria in IV.C.(1)a.-c. (above), unless immediately apprehended.
3. Where reasonably feasible, troopers shall identify themselves as a law enforcement officer and warn of his or her intent to use deadly force.
4. In cases where deadly force is authorized, less-than-lethal measures must be considered first by troopers.

CI. RULES GOVERNING USE OF FORCE AND WEAPONS

A. Use of Force
   1. Troopers should, when practicable, announce their intention to use only that type and degree of force that is reasonably necessary under the circumstances. This provision shall not be construed to authorize or endorse the use of discourteous, abusive, or unprofessional language.
   2. Troopers shall only use the type and degree of force that is objectively reasonable to bring an incident under control. Use of physical force should be discontinued when resistance ceases or when the incident is under control.
   3. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent escape or imminent bodily harm or when noncompliant physically (including passive physical resistance such as refusing to stand, etc.). In these situations, only the amount of force necessary to control the situation shall be used.

B. Weapons – General
   1. Troopers shall carry and use only Minnesota State Patrol approved weapons, unless circumstances exist which pose an imminent threat to the safety of the trooper(s) or the public requiring the immediate use of an improvised weapon to counter such a threat. This provision shall not be construed as authorizing troopers to use a non-approved weapon where, under the circumstances, it would be reasonably feasible to procure approval for use of the particular weapon prior to its use.
   2. Troopers must be trained in the proper use of issued weapons prior to use.
   3. On-duty members may carry a concealed utility knife (clip may be visible); however, the use of knives as weapons is not authorized except in those situations where deadly force may be used.
   4. Troopers shall not modify, alter, or cause to be altered a Minnesota State Patrol approved weapon in his or her possession or control unless permission is granted according to General Order 30-007.The issued expandable baton, riot baton, OC aerosol device, 40 mm launcher, and Taser device are the only less lethal weapons authorized to be carried in a State Patrol unit and carried by troopers.
      a. All issued less lethal chemical or impact munition equipment shall be carried in the member's patrol unit so that it is readily available.
      b. If a Taser is carried, troopers must also carry either the baton or the OC aerosol device on their duty belt. Troopers exempted from carrying a Taser device must carry the baton on their duty belt.
   5. Taser devices may only be carried and utilized in compliance with General Order 30-018.

C. Weapons – Contact Weapons
   1. Contact weapons shall be used only where hard and soft empty hand control options have failed to bring the subject/situation under control or where it reasonably appears that such methods would be ineffective if attempted. Contact weapons may be used only in the following manner:

a. to defend trooper(s) from an actively aggressive suspect; or
b. to strike an actively aggressive suspect for the purpose of rendering that person temporarily incapacitated in order to bring the situation under control; or
c. to restrain persons; or

2. In appropriate crowd control situations the MSP-issued riot baton can be utilized to direct and control the movement of people or persons, or as a barricade. Troopers engaging another person with a contact weapon should attempt to strike, if possible, bodily areas likely to result only in incapacity. These areas include the arms, legs, torso, thighs, and calves.
3. If worn, the issued expandable baton is to be worn on the gun belt in the issued baton carrier.
4. The issued riot baton is to be used only when necessary for crowd control situations and shall be readily available along with other mobile field force equipment when responding to crowd control situations.
5. Intentionally striking the head or neck with any contact weapon is only justified in the use of deadly force.

D. Less Lethal Devices

1. OC Aerosol use is considered less-lethal force. Only approved Minnesota State Patrol-issued OC aerosol are authorized.
   a. Hand-held OC Aerosol
      i. Troopers shall exercise due care to ensure, as much as practicable, that only intended persons are sprayed or otherwise subject to the application of chemical agents and that the chemical agents are applied consistent with training. When feasible and tactically appropriate a verbal warning and/or dispersal order should be issued prior to the use.
      ii. The OC aerosol device (MK2) must be in the possession of all uniformed troopers and may be carried on the person.
   b. High volume OC delivery system, such as MK9, are designed for and may be used in civil disturbances against individuals and/or groups of individuals engaged in unlawful acts or endangering public safety and security.
2. Chemical Agents, Distraction Devices, Impact Munitions or the use of any combination thereof is considered less-lethal force. Only approved Minnesota State Patrol issued devices are authorized.
   a. Troopers are only authorized to use these devices after receiving agency training within the last three years. The training consists of a written exam and practical proficiency qualification.
   b. Devices must be non-expired and agency issued.
   c. Troopers are authorized to deploy the devices in accordance with their training and manufacture specifications.
   d. When reasonably feasible and tactically appropriate, a verbal warning and/or dispersal order should be issued prior to the use.
   e. In the event force is needed to move and/or disperse an assembly/crowd, troopers shall use the minimum amount of force reasonable determined as necessary to accomplish this goal.
   f. Absent exigent circumstances, a supervisor must authorize less lethal force for purpose of moving and/or dispersing a crowd and they must be used in a manner consistent with this provision.
   g. An on-scene supervisor must authorize the deployment of impact munitions and these munitions must only be used against a specific individual engaging in conduct that poses an immediate threat to loss of life or bodily injury to themselves, officers or the general public; OR is creating an imminent risk to the lives safety of others through the destruction or property.
   h. Except in exigent circumstances, impact munitions may never be fired indiscriminately into a crowd or group of person even if some members of the crowd or group are disruptive.
   i. Troopers shall never intentionally aim or purposefully discharge impact munitions at a person's neck or head area/ armpits/spine/kidneys/groin unless deadly force is justified.
3. Any individual taken into custody who was exposed to OC Aerosol, Chemical Agents, Distraction Devices, Impact Munitions or any combination thereof the trooper should be aware of and utilize the following procedures:
   a. A person exposed to chemical agents and/or OC aerosol should be moved to the recovery position as soon as possible after being handcuffed and restrained and the areas affected thoroughly flushed with water as soon as practicable.

b. If the chemical agent and/or OC aerosol has struck the subject's clothing and the subject is to be held in custody, the subject must be permitted to shower and change clothes.
c. Medical attention should be offered to those in custody who have been exposed to less lethal devices.

4. Less-lethal devices shall not be used on any person for the purpose of punishment.
5. A Taser may never be used to move/disperse a crowd.

E. Firearms

1. Firearms may be readied for use in situations where it is reasonably anticipated that they may be required.
2. The carry and use of firearms is covered in General Orders 30-005 and 30-007.
3. The use of a firearm is deadly force. If reasonably feasible and tactically appropriate, troopers should give a verbal warning before using or attempting to use deadly force. Warning shots are not authorized. Any use of deadly force other than authorized above, is unlawful.

F. Restraints

The following types of restraints shall not be used unless use of deadly force is authorized and other less than lethal measures were already considered:

1. Chokeholds (Neck restraints)
2. Securing all of a person's limbs together behind the person's back to render the person immobile.
3. Securing a person in any way that results in transporting the person face down in a vehicle.

G MEDICAL TREATMENT

After any use of force situation, the subject of the force shall be asked about and inspected for injuries as soon as practicable. Medical attention must be offered by members consistent with their training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility. If a person is offered and then refuses treatment, this refusal should be documented whenever possible.

VII. DUTY TO INTERCEDE AND REPORT

A. Any trooper(s) observing another peace officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, safely intercede to prevent the use of such excessive force.
B. Troopers shall prepare reports for such incidents as required in section VIII. Troopers who observe unreasonable force must notify a supervisor as soon as practicable and in all cases must report the observation in writing to the Chief within 24 hours of the incident.
C. Retaliation against any member who intervenes against excessive use of force, reports misconduct, or cooperates in an internal investigation is prohibited.

VIII. REPORTING REQUIREMENTS

A. In all instances in which a trooper(s) uses force, the trooper(s) shall prepare a TraCS Use of Force Report in a manner consistent with his/her training in addition to all other reports concerning the incident, including a Field Report. All reports shall be validated and submitted for review and approval.
B. Any trooper(s) who witnesses the use of force shall prepare a Field Report.

IX. TRAINING

A. Required members shall receive training, at least annually, on the agency's Use of Force policy and related legal updates.
B. In addition, training shall be provided on a regular and periodic basis and designed to:
   1. Provide techniques for the use of and reinforce the importance of de-escalation.
   2. Provide scenario-based training, including simulating actual shooting situations and conditions; and
   3. Enhance Member's discretion/judgment in using non-deadly and deadly force in accordance with this policy.
C. The Chief, or designee, will maintain records of the agency's compliance with use of force training requirements.

X. REVIEW

A. District/Section Commander
   1. Review, evaluate, and when appropriate, investigate all incidents involving the use of force with all troopers involved. Indicate on the Use of Force Report whether the trooper's actions complied with department policy.

2. Submit the Use of Force Tracking Report to Headquarters once the reports are accepted in TraCS and no later than 14 days of the occurrence. Exemptions to the 14-day requirement must be approved by the Regional Major.

B. Regional Major

1. Review and evaluate Use of Force Reports in TraCS for compliance with policy.
2. The Training and Development Section shall review approved Use of Force Reports in TraCS.
3. Ensure that the BCA is notified of information required to be documented in the National Use-of-Force Report database through the BCA Supplemental Reporting System, including the following:
   - The death of a person due to law enforcement use of force;
   - The serious bodily injury of a person due to law enforcement use of force;
   - The discharge of a firearm by law enforcement at or in the direction of a person that did not otherwise result in death or serious bodily injury.
4. Ensure that the BCA is notified through the BCA Supplemental Reporting System within 30 days of the firearms discharge of information required to be documented in the Minnesota Firearms Discharge Report database, including:
   - When a peace officer discharges a firearm in the course of the duty, pursuant to Minnesota Statutes 626.553, subdivision 2. This does not include discharges for training purposes, nor the killing of an animal that is sick, injured, or dangerous;
   - Firearm accidental discharge (e.g. gun cleaning)
5. By the 5th of each month, if there are no incidents to report to the BCA that meets the criteria of X. B. 3 and 4 above, this information must be reported to the BCA in the Supplemental Reporting System as "No incidents to report."

Approved:

SIGNED 7/31/2023

Colonel Matthew Langer, Chief
Minnesota State Patrol

EXHIBIT 29

Karima Maloney
713 221 2382
kmaloney@Steptoe.com

717 Texas Avenue
Suite 2800
Houston, Texas 77002-2761

Steptoe

May 23, 2024

Peter B. Wold
Wold Law
331 2nd Avenue South
Suite 705
Minneapolis, MN 55401
Tel.: (612) 341-2525
pwold@wold-law.com

Re: ***State of Minnesota v. Londregan*, 27-CR-24-1844**

Dear Mr. Wold:

The Hennepin County Attorney's Office hereby invites your client, Ryan Londregan, to provide a written proffer, in the form of responses to written questions (attached hereto as **Exhibit A**) in connection with the above-referenced matter under the following terms and conditions:

1. Your client will respond truthfully and completely to the 31 written questions provided to you on May 23, 2024.
2. Except as otherwise provided in paragraphs 3, 4 and 5 herein, in the above-referenced case and any other case that may be brought against your client by this office, the Hennepin County Attorney's Office will not offer in evidence in any case-in-chief any statements made by your client in response to the 31 questions.
3. Notwithstanding paragraph 2 herein, the Hennepin County Attorney's Office may use information derived, directly or indirectly, from your client for the purpose of pursuing leads to other evidence relating to the above-referenced matter.
4. The Hennepin County Attorney's Office reserves the right to use any statements or information provided by your client in cross examination should your client testify at trial inconsistently with his responses to the 31 questions and/or in any prosecution for false statements, obstruction of justice or perjury.
5. Your client's complete truthfulness and candor are expressed material conditions to the undertakings of the government set forth in this letter. Therefore, if the government should ever conclude that your client knowingly withheld material information from the government or otherwise was not being completely truthful and candid, the Hennepin County Attorney's Office may use against your client for any purpose, including sentencing, any statements made in response to the 31 questions. If the Hennepin County Attorney's Office so concludes, it will notify you before making any use of such statements.

6. This Agreement is limited to the statements made by your client in response to the 31 questions and submitted to the prosecution team no later than **5:00 pm CT** on **Wednesday May 29, 2024,** and does not apply to any statements made by your client at any other time, whether oral, written or recorded.

7. No understandings, promises, agreements and/or conditions have been entered into with respect to provision of your client's written responses to the 31 questions or with respect to any future disposition of the charges pending against your client other than those expressly set forth in this letter.

8. The provisions of any subsequent agreement between the parties herein will supersede the provisions of this proffer agreement to the extent they are in conflict.

Very truly yours,

Karima Maloney
Special Prosecutor
Assistant County Attorney

I, Ryan Patrick Londregan, have read the proffer agreement contained in this letter and have carefully reviewed it with my attorney. I understand it, and I voluntarily, knowingly and willingly agree to it without force, threat or coercion. No other promises or inducements have been made to me other than those contained or referenced in this letter. I am satisfied with the representation of my attorney in this matter.

Dated:

_____ _____

Ryan Patrick Londregan

I am Ryan Patrick Londregan's attorney. I have carefully reviewed every part of this letter with him. To my knowledge, his decision to enter into this proffer agreement is informed and voluntary.

Dated:

_____ _____

Peter B. Wold
Attorney for Ryan Patrick Londregan

Exhibit A

1. Before July 31, 2023, had Trooper Londregan ever participated in a vehicle extraction of any kind?

2. Had Trooper Londregan ever participated in a two-person extraction before?

3. Was there a plan to extract Mr. Cobb? If so, what was the plan?

4. Did Trooper Londregan discuss contingency plans with the other troopers in case Cobb resisted? If he did not, why not?

5. Did Trooper Londregan discuss with the other troopers the possibility of consulting a supervisor? Why not?

6. What if any discussion did Trooper Londregan have with the other troopers before attempting to extract Mr. Cobb?

7. If no such discussion was held, why did Trooper Londregan not discuss an extraction plan with the other troopers?

8. Did Trooper Londregan consider using stop sticks on Mr. Cobb's vehicle? If so, why didn't he use them? If he did not consider using stop sticks, why not?

9. Did Trooper Londregan consider using one of the patrol vehicles to block Mr. Cobb's vehicle before approaching Mr. Cobb's car?

10. Who began the extraction attempt?

11. What efforts did Trooper Londregan make to de-escalate the encounter with Mr. Cobb before opening the passenger door of Mr. Cobb's vehicle?

12. Why didn't Trooper Londregan request Mr. Cobb to turn off his vehicle?

13. Why did Trooper Londregan unlock the passenger side door?

14. Did Trooper Londregan know before unlocking the passenger side door that doing so would unlock the driver's side door?

15. Why did Trooper Londregan enter the vehicle?

16. What was Trooper Londregan's role in the extraction? Was this discussed or understood by the other troopers?

17. Did Trooper Londregan consider taking the keys out of the car? If not, why not? If so, what actions did Trooper Londregan take to that end?

18. Did Trooper Londregan believe that surprising Mr. Cobb by opening the passenger door would de-escalate the situation or produce compliance? If so, what was the basis for that belief?

19. Did Trooper Londregan consider allowing Mr. Cobb to leave the scene, given that they knew his identity? What would have been the consequences of allowing Mr. Cobb to leave the scene?

20. Why did Trooper Londregan draw his weapon?

21. Why did Trooper Londregan go back into Mr. Cobb's vehicle after it had already moved forward once?

22. Did Trooper Londregan allow Mr. Cobb the opportunity to comply with his order to "get out of the car now"? If not, why not?

23. What specific action(s) did Trooper Londregan observe Mr. Cobb take to place Trooper Londregan in fear of his own death or serious bodily injury?

24. Aside from Cobb setting the car in motion, did Trooper Londregan believe that Cobb for any other reason constituted a risk of causing serious bodily injury or death to any other person?

25. Did Trooper Londregan believe that a mortally wounded Cobb at the wheel of a car in motion reduced the risk of serious bodily injury or death to other persons?

26. Did Trooper Londregan believe that shooting Mr. Cobb would prevent Mr. Cobb's vehicle from driving away?

27. Did Trooper Londregan receive training that shooting a driver prevents their vehicle's continued motion? If so, who provided this training?

28. Did Trooper Londregan receive training that shooting a driver does not prevent their vehicle's continued motion? If so, who provided this training?

29. Before shooting Mr. Cobb, was Trooper Londregan aware that shooting the driver of a vehicle typically does not stop the vehicle's continued motion?

30. Minnesota State Trooper policy prohibits shooting into or from a moving vehicle during a vehicle pursuit, was Trooper Londregan aware of that policy on July 31, 2023?

31. Does Trooper Londregan have any revisions to the proffer of his testimony made by his attorney on his behalf during the April 29, 2024 omnibus hearing? If so, provide Trooper Londregan's revisions.

EXHIBIT 30

https://mnbca.sharefile.com/share/view/s5f4e656cfec643e69503d04d573a7eb2/fod1c799-db89-48ab-a878-1e4d19679c64

From home page: Documents - > 2023-724 MSP UDF-Cobb Redacted PDF. Pages 1275-1290

MINNESOTA DEPARTMENT OF PUBLIC SAFETY

BUREAU OF CRIMINAL APPREHENSION

INVESTIGATIVE INTERVIEW

BCA Case Number:	2023-724	**Person(s) Interviewed:**	JONATHAN WENZEL (JW)
Date/Time of Interview:	12/12/23 14:32 hours	**Item:**	
Interviewed By:	Attorney PATRICK LOFTON (PL)		
Others Present:	SSA TOM ROTH (TR); JOSHUA LARSON (JL); Attorney TOM PLUNKETT (TP)		
Reviewed By/Date:	01/08/2024 ASAIC ROTH		

TR: This is in reference to BCA case number 2023-724, it is December 12th, 2023, approximately 2:32 p.m. Uh this is Senior Special Agent ROTH with the BCA, we are at the Hennepin County Attorney's Office and I will uh have people announce who they are.

PL: This is PATRICK LOFTON, Senior Assistant Hennepin County Attorney.

JW: This is uh Lieutenant JOHN WENZEL, State Patrol.

TP: TOM PLUNKETT.

JL: JOSHUA LARSON, Senior Assistant Hennepin County Attorney.

PL: All right uh thank you it's Sergeant WENZEL is that right?

JW: Lieutenant WENZEL.

PL: Lieutenant WENZEL.

JW: Yep.

PL: Sorry about that.

JW: No that's, that's fine.

PL: Thank you for coming to speak with us um today. Uh you're a licensed peace officer in the state of Minnesota?

JW: Correct.

PL: For how long?

JW: I've been licensed since 2014 I believe.

PL: Since 2014. Has your entire career as a peace officer been with the Minnesota State Patrol?

JW: Negative. I was uh Osakis Police Department for a short period of time.

PL: How do you spell that?

JW: It's weird to spell out loud, O-S-K, sorry write.

PL: Write it.

JW: It on something. They're a little strange name. O-S-A-K-I-S, sorry.

PL: And.

JW: I haven't been there in a while.

PL: What kind of assignment did you have there?

JW: Uh I was just patrol for very short amount of time.

PL: And approximately how long is a very short?

JW: Um so it's a little strange because I started there in the I believe it was summer of 2014 and started with the process of the State Patrol shortly thereafter.

PL: Okay.

JW: And so began working with the State Patrol and, and my exit with Osakis Police Department was after I graduated the academy.

PL: So pretty soon here you will of been with the State Patrol for about ten years?

JW: Correct.

PL: What's your educational background?

JW: Uh I went to Alex Tech uh for my two year degree.

PL: All right. And then after that there's an onboarding and training process for becoming a State Trooper?

JW: Correct or academy.

PL: And that's mostly what we're gonna be talking about today we'll go through some specifics, some generalities but in a general sense what is the process after you get that degree um for them becoming a full-fledged uh State Trooper?

JW: So for the State Patrol um obviously there's the application process, the background, the psych process, and then the academy.

PL: Okay.

JW: Which uh I believe when I went through it was eighteen weeks, it, it is varied in length depending on the different academy.

PL: And you um were a use of force instructor for the 2021 class is that right?

JW: That is not correct. I was a firearms instructor.

PL: Firearms instructor.

JW: Correct.

PL: Okay so those two kind of concepts and things overlap a good bit is that right?

JW: There, there's some uh commonalities I would say.

PL: Okay well let me just cut to something then real quick before we make sure we're not wasting any time or that I'm not misunderstanding something.

JW: Okay.

PL: Do you go over some of these items right here and I'm showing you for the record um a use of force uh PowerPoint where it says um JASON HALVORSON and JONATHAN WENZEL um and we have this as the 63rd um academy use of force PowerPoint.

JW: Do you mind if I look at it?

PL: Yeah, yeah absolutely.

JW: So um I taught this along with Sergeant HALVORSON, Sergeant HALVORSON's the use of force coordinator.

PL: Okay.

JW: I was more so assisting him with this.

PL: So in terms.

JW: So I'm not a use, I'm not the, the use of force instructor.

PL: Fair enough. So is it fair to say that in terms of like legal concepts like 609.066 uh Graham all of that, that's gonna be more HALVORSON's?

JW: Uh so.

PL: Area or do you talk, touch on that as well?

JW: We both covered portions of it so.

PL: Okay.

JW: More so you know the firearms aspect of, of the use of force.

PL: Perfect.

JW: Not like.

PL: So if I go through this with you and ask you about some particular things just let me know which ones you're familiar with and which ones you train on and to the extent that you can answer what would of been taught to that academy. While um and before we do that I've got the 63rd academy Glock lesson plan here.

JW: Yes.

PL: Okay. And that's got just your name up at the top, Sergeant WENZEL so this is before you were promoted?

JW: Correct.

PL: I take it. Um and then it's got all these objectives that I kinda wanted to go over although I forgot to print the next page um I can pull that up on my computer as well. Is it fair to say that these objectives are a mixture of sort of hands on tactics and legal concepts?

JW: Mind if I look at it?

PL: Yeah, yeah, yeah.

JW: Sorry.

PL: And I'll put up the other page that shows the rest of the objectives, sorry I just printed that before we came.

TP: You got a couple copies of this?

PL: Sure.

TP: Great.

PL: I'm showing you the entire word document here on my computer if you wanna look at it.

JW: And what was your question again?

PL: Yeah so I mean just kind of looking at this lesson plan.

JW: Yes.

PL: Um and here's the other page that I accidentally didn't print that goes to item number 24.

JW: (inaudible).

PL: Right so like first one is classroom instruction and understanding critical incident and trauma blah blah blah, number three is the MSP policy, number four is statutes review which includes 066 and our other big ones. Um and then Glock models, so I mean just kinda looking at this it looks like a mixture of hands on also sort of legal concepts.

JW: And in looking at this um for when we get into Glock training or when we got and sorry it's been a few years. When we were going through Glock training those portions like the 609.066 and all that.

PL: Mhm.

JW: That would be referring to this.

PL: The PowerPoint?

JW: In reference to the use of force discussion through the PowerPoint correct.

PL: So the, the teaching of the um uh Troopers in the academy uh on the legal concepts regarding use of force primarily comes from these PowerPoints that we're looking at here?

JW: Correct this one here yes.

PL: Perfect.

JW: Yep.

PL: Okay.

JW: Through Sergeant HALVORSON.

PL: So we'll go through some of those specifics here in a second but before we get to that um when I said you were the use of force instructor in 2021 you said no but firearms, what, and what other years were you firearms instructor?

JW: So I, I've been a firearms instructor since 2016.

PL: Okay.

JW: I've been the, I was the firearms coordinator um 2019 to the end of 2022.

PL: How does one become a firearms instructor for the State Patrol?

JW: Uh there's a, a forty hour course it was, it's been put on through the years um PETE SOLIS was the main uh instructor through (inaudible) shootings systems I do believe when I went through. Um and then there's other courses like the FLETC, federal law enforcement training center um red dot instructor, active shooter, different ones…

PL: Right.

JW: …that kinda are put together.

PL: So it's not like the State Patrol just says hey you're good with guns let's have you do this, you've gotta go get a whole bunch of other training?

JW: Correct and you have to pass and, and it's yeah.

PL: Is there a level above that to then become the firearms coordinator?

JW: Uh that requires interview, it requires um submitting resume, evaluations, and um.

PL: Application process?

JW: It's a selective process.

PL: Selective process.

JW: Correct.

PL: Sounds good. All right. Um so we talked about how um the use of force kind of aspects of this uh itinerary or uh lesson plan here would come through these PowerPoints and I don't wanna put words in your mouth, you tell me. Is it kind of you and HALVORSON standing up there um instructing and you're going back and forth and he might say something and you might say something, how does it look?

JW: Correct. As with any training um it's hard to teach by yourself.

PL: Sure.

JW: So if anything's um one person's teaching the other can add to, to it or, or, or help that person along.

PL: Perfect.

JW: So.

PL: And then do you know off hand whether that was the academy that uh Trooper RYAN LONDREGAN was in?

JW: You said this is from the 63rd?

PL: 63rd.

JW: Academy and that from all records is the academy that Trooper LONDREGAN attended correct?

PL: Yes.

JW: That then I would have to say yes.

PL: You don't have to, you don't dispute it is the?

JW: I don't dispute it, if he was registered to and there's been a lot of academies.

PL: Right and a lot of Troopers.

JW: Correct.

PL: Yep okay good deal. All right so I'm looking now at this um portion of the, the items that we received and here I'll just show the whole thing just so we're not, it starts off with this um use of force set of PowerPoints.

JW: Okay.

PL: This says geo2110027 does that refer to a general order?

JW: If it starts with geo it would um I'm just gonna say I haven't seen this PowerPoint so this must be strictly Sergeant HALVORSON on these ones.

PL: Okay all right let's make a record of that then. So we're looking at uh what was provided to us as the 63rd uh academy use of force PowerPoint referencing the first um PowerPoints in there that say use of force with the general order on the front, you haven't seen this so you're presuming that Mr., that Sergeant uh HALVORSON is in charge of…

JW: Correct I have not seen this.

PL: …all of this. Okay. And I've just gone, gone through page five of that finishing that PowerPoint. And then now I'm on another one that talks about neuro anatomy and all this stuff.

JW: Also Sergeant HALVORSON.

PL: Yep so you don't talk about all the like trauma brain limbic system.

JW: No sir.

PL: Okay. So going through all of that and then now onto what we were looking at earlier, use of force it says HALVORSON and WENZEL at the top, this is the one that you guys kinda teach um together?

JW: Correct.

PL: Good that's very helpful thank you. Um give me and anyone else whose never been to one of these an idea um are they going in and out of the classroom and out to the training grounds or is it like you kinda dump all the classroom on them and then you go practice it out in the training grounds back and forth?

JW: I can't speak for the other programs um but there typically is a classroom beginning, obviously it, it varies but um for firearms programs it was start in the classroom for a bit, here's your training, put it into practical use, more classroom, kind of, kind of a mixture. Um people learn, seem to learn better that way.

PL: Yeah. All right um the PowerPoint speaks for itself um and all of that so I'm not gonna ask you about everything uh that was, that is in here but kinda starting first with this um use of force here starting to talk about fourth amendment and Graham vs. Connor um we go here to these aren't numbered unfortunately but sort of near the end of the discussion of Graham vs. Connor it gives

three factors there that come from that case. The severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, whether the suspect is actively resisting arrest or attempting to evade arrest by flight. Can you kind of describe for us as a trainer and from what you recall you know with what you say with what HALVORSON says do you guys kind of say here's the law it speaks for itself this is what you have to keep in the back of your mind, do you try to supplement that with um your own practical experience, how do you talk about these items to those Troopers?

JW: I can't recall exactly so I don't wanna speculate on what was said.

PL: Sure.

JW: But usually it's going based off the PowerPoint.

PL: Right.

JW: Um so I can't, I can't really say what was added.

PL: And is it fair to say that really that PowerPoint you know we're gonna talk about the 066 and all that, oh my gosh I'm gonna break my computer. Uh um you go over Graham, you go over Garner, you go over some specific cases I wanna talk about as well. But is it really kind of all leading up to the general order from the State Patrol that and I'm looking at what will likely be grand jury exhibit 17 um general order 20-10027, is it fair to say that I mean this kind of ends up being the final word on the use of force and when it's authorized?

JW: Um well I, I think we make sure they have a good background with everything.

PL: Mhm.

JW: And then um we do make sure that the, that the policy is covered.

PL: Right.

JW: Extensively and that, that there's no excuse that they haven't read it or understand it.

PL: And in really what's contained within that policy is the law that this is all kinda building up to right?

JW: It does reference a lot of it.

PL: Okay. Um are you is it you or Serg-, is he still a Sergeant, HALVORSON?

JW: He is Sergeant HALVORSON.

PL: Is it you or Sergeant HALVORSON um that goes over these specific cases, Paradise California, Eden Prairie shooting, shooting of WALTER SCOTT.

JW: Uh I can't recall which one of us specifically. I, I know that they get played and then uh discussed or, or the outcome is explained.

PL: Okay. Do you remember the specifics of any of these cases…

JW: Um.

PL: …as we look at them here?

JW: I believe so.

PL: Okay.

JW: I'm trying to, I'm going off of memory but um different um uses of deadly force I believe from these two.

PL: And we're not trying to trick you up on…

JW: Nope.

PL: …if you get like something wrong about Paradise California or Eden Prairie but can you tell us from your memory generally what those cases are and what sort of principles they're trying to convey?

JW: I believe this case was a um vehicle that was in pursuit (inaudible) you know obviously I could be wrong um person came out of the vehicle and was uh shot I do believe um and then recur to the outcome female passenger was ejected and deceased male driver shot through his spine and paralyzed. And then Eden Prairie shooting if I recall this is with a motorcycle and the officer in this particular case.

PL: Didn't mean to fire his gun?

JW: Uh had an accidental discharge.

PL: Yeah I think.

JW: From what I recall.

PL: I remember that case when it happened. Um and so what sort of reasoning of presenting those, what do you kinda try to convey there?

JW: So, so the reasoning would be to relate to training to make sure they understand different examples of when deadly force would not have been authorized.

PL: So all of these are ones where it was not authorized?

JW: From my recollection of these two that was correct.

PL: Okay. So and I'm familiar with Eden Prairie but can you give us a general rundown of that again?

JW: So from my recollection and, and I haven't seen it in a number of years um I believe it was a slow to stop individual, person exits on a felony stop, is giving commands, you hear a gunshot and I believe he was shot in the arm. Uh and then he went up and uh conducting medical care on that individual so.

PL: And, and it was your understanding that the officer did not mean to shoot him?

JW: It appears so in the video.

PL: I think he says something to the effect of oh crap or something like that.

JW: Something to that effect.

PL: And then do you remember what the principle sort of being illustrated in the, the Paradise California was?

JW: I believe that one um I can't remember if it was sympathetic um I don't believe so but I think he um was afraid and fired on an individual that popped out of the vehicle.

PL: All right. And it was kind of a, I guess illustrating reacting too quickly without assessing the situation?

JW: And it illustrated that uh he re-holstered immediately and that just a bad tactical situation too.

PL: Okay. Do you recall the shooting of WALTER SCOTT?

JW: Um best of my recollection um that's an individual that attempted to take an officer's Taser if I can recall um Taser was taken I believe it was dropped and the officer fired many times um striking and killing WALTER SCOTT. And was found um sentenced Officer SLAGER to twenty years in prison per the outcome on that paperwork.

PL: So just the notion that although.

JW: An unjustified use of deadly force.

PL: Okay. All right and then um you kinda go over Garner the same way you go over Graham?

JW: Correct.

PL: You can't shoot somebody fleeing from a felony just because it's a felony there has to be fear of great bodily harm or death or something to that effect? Am I right?

JW: Yes, yes, uh just everything per Tennessee v. Garner.

PL: Okay. Um now after Garner but before we get to the 609.066 which is the statute um and do you recall that this was right around the time that was being amended?

JW: I know there was multiple amendments in between different academies.

PL: Yep.

JW: So I, I'm not sure which one landed where but I.

PL: Right.

JW: Know there was different amendments.

PL: And I mean I think the final one is, is basically the same as the March 21 except that it changed the officer must articulate or whatever.

JW: With specificity.

PL: So we're not gonna haggle over the words um but between the um Garner and 066 you talk about Deputy KYLE DINKHELLER.

JW: Correct.

PL: Okay can you tell us about that one?

JW: So the, the murder of Deputy DINKHELLER, KYLE DINKHELLER was a traffic stop um from this video here where he stopped an individual who appeared to be under mental distress of some sort um non-compliant, was very acting strangely um jumping up and down waving his hands, yelling at the officer, officer started radioing for backup I do believe out of my memory, person retreats to their vehicle, starts loading a rifle, officer keeps saying repeatedly that broken record um put down the gun, put down the gun, put down the gun, says it many many times I don't remember if it says exactly how much. Uh the suspect gets the rifle loaded turns and murders Deputy DINKHELLER so.

PL: Illustrating essentially?

JW: Illustrating that um the need to act illustrating the need to um break free of a um um I believe I forget what it's called but when you're a broken record basically when you keep giving the same command with no response.

PL: All right. Eventually commands aren't enough is that fair to say?

JW: I'd say correct in different situations.

PL: Right whatever situation being you know it's own case.

JW: Correct.

PL: Um thank you that's very helpful. Okay and um you talk about reasonable suspicions, standard probable cause things like that. And then we get to 609.066 and I see here in this PowerPoint you've got the amended language to show them how it was being changed in early 2021.

JW: Correct because some of our police officers already and had learned it, well most of them had learned it in different ways since it had been changed.

PL: Right okay. Um and then we talked about what will likely be grand jury exhibit number 17, it's a yellow document general order 2010027, I wanna ask you about a couple of things um in there. First of all let me ask you this, if you remember.

JW: Yes.

PL: In the course of that uh quite long academy is this document like put up on a screen and you talk about it or this kind of a thing where it's like you need to hand, you hand this out, you gotta study it, you just gotta know it, tell us what you remember?

JW: Uh so both um they have access to it at all times with PowerDMS, our program that we use our um policies and general orders and also during this training it is put up and Sergeant HALVORSON goes through it line by line.

PL: Line by line?

JW: Correct.

PL: Um I wanna take you to page two of this and looking at um so I guess it would be three which is definitions and then B levels of um control, five deadly force. Um and can you just uh read that out for us?

JW: So number five deadly force on page two. All force actually used by Trooper or Troopers against another which the Troopers' know or reasonably should know creates a substantial risk of causing death or great bodily harm. The intentional discharge of a firearm in the direction of another person or at a vehicle including tires in which another person is believed to be constitutes deadly force. The use of a chokehold as defined by this policy constitutes deadly force.

PL: Um and I wanna be clear I, right now I'm not asking about the specifics of this case if I, if I am at any point I'll try to make that clear, if you have any question as to whether I am asking about the specifics of this case feel free to ask me. Uh I'm focusing on training at this point. Um right there it says uh at a vehicle, is it too open ended of a question let me ask it this way. Is it too open ended of a question to ask you what do you train as far as the possibilities of shooting at a vehicle or at a moving vehicle?

JW: I would say that's a very open ended question in the end.

PL: And, and why is it just open ended to ask it that way?

JW: Uh I, I believe there's so many different scenarios that could be possible and, and information that would be needed to, to really answer the question of that.

PL: Would you say that it would necessarily be improper for this Trooper to shoot at a vehicle?

JW: Uh no um I would say it would be situational and uh per out policy it would require deadly force to be authorized.

PL: Right. So uh any time you're shooting at a vehicle it would be deadly force?

JW: Per our policy.

PL: Per your policy, uh and that's what I'm asking about.

JW: Yes.

PL: Um and so you could foresee situations as both the trainer and an experienced peace officer where it could be reasonable to shoot at a vehicle right?

JW: Correct.

PL: And what I'm leading up to here is we're not that I've seen and, and that you've trained, you're not aware let me just ask sorry about you.

JW: Mhm.

PL: As far as your training and you're aware there's no point where you tell them you absolutely never can shoot at a car?

JW: Correct I do, I never say that.

PL: Okay and you probably never would say that, is that fair to say?

JW: Uh yes 'cause all situations are different.

PL: Okay. I wanna take your attention now um to page three um is it okay if I remove your post it note.

JL: Yeah.

PL: Yeah uh page three we're now it's still under section three defining objectively reasonable and uh there we've got the definition of objectively reasonable can you read the last sentence of that definition?

JW: Okay. So page three objectively reasonable the last sentence um the last sentence says Troopers must be ready to utilize force at any level. That, that last sentence correct?

PL: Uh yeah and I'm sorry I should of said the last two sentences.

JW: Okay.

PL: But I did want that read as well.

JW: Uh I'll read them both.

PL: Yep.

JW: These situations can be very fluid, dynamic, and unpredictable. Troopers must be ready to utilize force at any level.

PL: And does that kind of go back a little bit to that murder, murder of Deputy DINKHELLER thing at some point you know commands have been exhausted?

JW: Correct that situation was very fluid, dynamic, and, and unpredictable rapidly evolving.

PL: Um now I wanna take you to the top of page four of this where we really kind of at least in my mind get into the meat of the policy and it's the top of page four and it's section c and I just wanna make sure I'm getting the heading correct, this is under section four procedures letter c and it says use of deadly force um and can you just read the top there of that?

JW: The top paragraph?

PL: Yeah, yeah, yeah.

JW: Okay. So use of deadly force it shall be the policy of the Minnesota State Patrol unless expressed then they get it elsewhere to allow to Troopers to exercise discretion in the use of deadly force to the extent permitted by Minnesota Statute 609.066 subdivision 2, which authorizes peace officers acting in the line of duty to use deadly force only if an objectively reasonable officer would believe based upon the totality of the circumstances known to the officer at the time and without the benefit of hindsight that such force is necessary.

PL: And then it goes on to list four subdivisions after that word necessary is that right?

JW: Uh correct.

PL: And is it your understanding that this part of the policy except for that introductory sentence where it says policy of the State Patrol mirrors the law exactly 609.066 subdivision 2?

JW: Uh looking at it's hard to tell if it mirrors exactly I know it, it is based off of that.

PL: Right.

JW: Appears to.

PL: If it doesn't mirror it exactly it's designed to be.

JW: Correct.

PL: Almost the exact same thing, is that fair to say?

JW: That would be my understanding.

PL: Okay. Um okay there were a couple of other yeah these I, I had more have a question about um what is uh section, what is CI?

JL: I know it should be five.

PL: Would that be six?

JL: CI.

PL: Yeah no that's five then? So it's section five?

JL: That's what it looked like to me.

PL: Yeah.

JL: When I looked at myself, it's on page six.

PL: Yes.

JL: Is that, yeah.

PL: Well um anyway top of page um six, firearms may be readied for use in situations where it's reasonably anticipated that they may be required.

JW: Correct.

PL: Tell us what you teach about that and what that refers to?

JW: So um when we refer to that it's, it's kinda as it's written. Um so if you anticipate that your firearm may be required, you feel that there's a threat or feel you, you need that firearm readied, you, you may ready it.

PL: Uh from what you teach is the readying of a firearm itself deadly force?

JW: Negative.

PL: Okay. Clear negative to you?

JW: Correct.

PL: Okay.

JL: Just ask that a different way um when can a Trooper pull a firearm and hold it in the ready position?

TP: You know you can't speculate on any of these questions, if you don't know the exact answer, you shouldn't answer it.

JW: Yeah I would just have to refer to the policy but many different situations, I would, again I would be speculating.

JL: Yeah you defer, I, these are just words right but um you initially said that if the, if the officer perceived a threat is it, is it, is it when the officer perceives a threat or is a lower threshold or something else?

JW: I would have to be in the perception of the officer so again I wouldn't wanna speculate exactly per scenarios.

PL: And all I really wanna get at is that you teach and your policy allows for uh you may ready a firearm where it's reasonably anticipated it may be required.

JW: Correct.

PL: Um and it, they aren't taught that pulling the firearm in and of itself is deadly force?

JW: Correct.

PL: Okay. Um kind of piggy backing off of that you then talk, um not you the policy then talks about uh carrying and use of firearms covered in general orders 30-005 and 30-007 and then number three says what, when the use of um or just read number three for us there.

JW: Number three page six letter E firearms. The use of firearm is deadly force, if reasonably feasible and tactically appropriate Troopers should give a verbal warning before using or attempting to use deadly force. Warning shots are not authorized, any use of deadly force other than authorized above is unlawful.

PL: Okay. Um that's all the looking at documents I wanna do right now.

JW: Okay.

PL: Um the rest is gonna be kind of uh based on your memory. Um what if any of your instruction that you do with Sergeant HALVORSON in this area talks about the dangers of Troopers being dragged or their partners being dragged?

JW: I don't cover anything with that.

PL: Would that all be vehicle contacts area?

JW: It would be more so related to them I, I would expect but I don't teach their program so I don't wanna say that they do or don't.

PL: Okay that's fair enough.

JW: But it's not the firearms program.

PL: You don't talk about partners being dragged or people being dragged?

JW: Negative.

PL: Okay. Um uh let's see here. JOSH do you have specifics on this case that you wanna ask about here?

JL: Um so Lieutenant um we've kinda talked a little bit about use of force and firearms, would you consider your training to be more of the technical like how the gun works or how you use it?

JW: Correct.

JL: But you, you know just because obviously um use of deadly uh a firearm is use of a deadly weapon, that's kinda what you're teamed up.

JW: Correct.

JL: Um things and, and one of the reasons why we wanted you to come in is just to make sure we understand the domains.

JW: Mhm.

JL: And so even if we ask certain questions and you defer to Sergeant HALVORSON on that, that helps us understand exactly because if we ask Sergeant HALVORSON let's say on Thursday and we ask him a question it would be um we just don't want a situation where we have the wrong Trooper there so if we bring you both in and we ask you the same question then we'll at least understand that. And I know that I asked a question just now about when it's appropriate to, to ready your firearm and I know it's without, without a set of facts you know you kinda just rely on the letter of that statute. But I have one other question and I, and I do hope that you can even if it's a general answer I was hoping you could answer this question and that is when can a Trooper point a firearm at a driver of a vehicle?

TP: Seems like it's covered in the policy isn't it?

JW: I, I would agree, I would lean towards the, the policy. Um and then my training doesn't really relate to specifically that, it's more so like you said the technical aspects of the, the use of the firearm and the, the proficiency.

JL: Sure I'm, I'm just gonna push back on it a minute. I know we talked about readying the firearm.

JW: Mhm.

JL: Which I understand is you're not pointing it at anybody but you believe that it may become a deadly force situation so you take it out of your holster and you hold it, point it down. Is that what you mean by readying the, the firearm?

JW: It could be ready in a number of ways.

JL: Like?

JW: Could be this.

JL: Okay.

TP: You know what I think we're kinda getting into uh this vigorous cross examination approach so we're gonna just uh call it a day. Um what time....

PL: Well we're not cross.

TP: …do you want us here on Thursday?

PL: We're not cross examining him.

TP: On Thursday at 8 or 9 is?

PL: Uh 9 is fine.

TP: Okay.

PL: Can, TOM can, can we just try it again? Okay we're not trying to cross, we're not trying to trick him.

TP: We, we've got some water under the bridge here that's uh you know clouding the situation and I'm not gonna have another abusive interview of a Trooper.

PL: Yeah okay. Well can I try a question and you see if it's abusive?

TP: Sure see how it goes.

PL: Um one reason I think uh Lieutenant that you keep referring to the policy is there's, there's never gonna be a hard and fast rule on when force is gonna become necessary, when a Trooper might have to use their gun, is that right?

JW: Situations are rapidly evolving, tense and uncertain.

PL: And I'm not asking you to opine on what Trooper LONDREGAN here did, what Trooper SEIDE did, what any of them did. But it, what we can gather from what you've gone over with the training here is is not necessarily improper to shoot to stop a dragging.

JW: Are you asking me the question sir

PL: Yes.

JW: Um I don't wanna speculate exactly on that situation.

PL: We're not asking you about.

JW: But if deadly force is authorized.

PL: If, okay let me ask you this. Um does, does the risk of someone being dragged by a motorist present the, the risk of great bodily harm or death?

JW: Correct.

PL: And Troopers may use force to prevent great bodily harm or death?

JW: Correct.

PL: If that were a situation that called for a Trooper to fire at or near a vehicle um and therefore wouldn't necessarily be unlawful, there is nothing in the training that says you can't do that?

JW: Per your question and the use of deadly force is authorized then yes.

PL: Okay. Um may me and Mr. LARSON confer for one second?

TR: It is.

PL: And Agent.

TR: I'm gonna stop this here for a second. It is uh approximately 3:07 p.m. and that will be a pause in this interview.

(Pause)

TR: It is approximately 3:10 p.m. and this will be resuming of the interview.

PL: Uh and um Mr. LARSON uh Agent ROTH and I just stepped out and chatted for a minute and we're back now. Um we'll try just sort of one last round of questions here and Mr. PLUNKETT and, and Lieutenant WENZEL if you don't wanna answer of course you don't have to. Um do you feel that your training uh makes it clear to Troopers that uh deadly force cannot be used or threatened even solely to stop someone from fleeing?

JW: Let me a sec, I have to try to make sure I fully…

PL: Yeah.

JW: …understand.

PL: There are long questions I get it.

JW: So you're saying uh is our training clear to Troopers that you cannot shoot at a vehicle solely for fleeing?

PL: And.

JW: Without deadly force.

PL: Correct yep.

JW: I would say our training per and our policy um explains pretty explicitly um when you could fire on a vehicle that deadly force would need to be authorized.

PL: And fleeing alone isn't gonna satisfy that?

JW: Correct.

PL: At least most of the time?

JW: Without anything additional, without any other portions to that particular scenario, fleeing in itself is not in that case.

PL: Um but obviously if there were a case where in conjunction with fleeing another set of scenarios or facts presented the fear of great bodily harm to another, deadly force could be authorized?

JW: Correct. There could be a number of scenarios to that.

PL: One more particular question um and this kind of goes to what Mr. LARSON was asking, that, that threat of deadly force versus firing the, the pulling the gun um to stop someone to flee. Is that also to broad of a scenario to contemplate or would you say that training is clear you could never pull a gun on a motorist to say stop trying to drive away?

TP: Okay I apologize the question just got too long for me.

PL: Yeah that's fine.

TP: Uh so I.

PL: I'll, I'll.

TP: Instead of me trying to receive.

PL: I'll rephrase it.

TP: I'm sorry.

PL: Would you say that your training teaches Troopers that you could never pull a gun on a motorist, not fire, pull to prevent, just tell the motorist to stop fleeing?

JW: You're asking if our training is clear that you could never pull a firearm…

PL: Yes.

JW: …on a motorist?

PL: If, if it's clear either way.

JW: To stop them from fleeing? Um I would have to say per our policy you can draw your hand gun whenever you see it may be feasible and um with very dynamic situations like fleeing um you may need your handgun out.

PL: And would that in your mind be covered by that highlighted portion that we discussed in section um I can't read what the section is but that.

TP: Is it this one?

PL: It's part E that says firearms may be readied for use in situations where it's reasonably anticipated that they may be required.

JW: I should be able to find it, E you said.

PL: That's okay.

JW: You're more familiar with this one it sounds like.

JL: It's on page six.

JW: Okay and, and I apologize while we were looking I forgot your question.

PL: That's okay. Um so I'll start back over with the question sort of with this part of the policy in mind.

JW: Mhm.

PL: Would you say that you're training on tactics and or policy um uh makes it clear to Troopers that they could never pull a firearm to prevent someone from fleeing um.

TP: Never pull?

PL: Yeah.

TP: Okay.

PL: Point.

JW: Read, ready the firearm, okay.

PL: Well okay let's do ready and then let's do point.

JW: Okay.

TP: That's separate so right now we're doing ready.

PL: Readied.

JW: Ready.

TP: And tell us what that means to you to ready?

JW: So to me readying the firearm is having it uh physically presented and ready.

TP: Okay.

JW: So and which would be covered be the policy.

PL: Yep and then the second part of the question. Would you say your training or policy um would teach Troopers that they necessarily could never under any circumstances point a gun at a motorist in order to command them to stop fleeing?

JW: Um answering that question uh again there's a lot of different scenarios you could speculate on um with that. But readying and pointing are very similar or if I ready a handgun like this I could be pointing it at the suspect as I'm giving commands. But that handgun is still readied.

PL: Let me ask it sort of flip it. Could you imagine scenarios where um pointing a gun at a motorist who is about to flee could be reasonable? Could you imagine a scenario?

JW: Could I imagine a scenario…

PL: Yeah.

JW: …uh correct.

PL: You could? Um in your decade of experience as a State Trooper could you give us a possible example and you know not like a crazy hypothetical like he's about to run over a parade of children but a possible scenario where that could be a thing someone might do?

JW: So a possible scenario where a firearm may be pointed at motorist?

PL: And then commanding.

JW: Commanding them to exit the vehicle or?

PL: Yeah.

JW: Commanding them to stop driving.

PL: Fleeing.

JW: Stop driving.

PL: Whatever.

JW: Um I'd say um many scenarios could, that could apply to but um you're readying that handgun and you're ordering them while readying, while having the handgun readied. And so say that, that vehicles pointed at you I, I don't wanna speculate on all, all possible scenarios but more if that person maybe is a threat.

PL: Right.

JW: So.

PL: But either way just to be clear um it's not like there's a classroom portion or a training that you're aware of or a training ground portion of the academy where you say never in your career shall you ever point your firearm at a motorist who is about to flee?

JW: Um I don't wanna say anything to that just because um that's not really what I teach.

PL: Okay.

JW: So this, this line of questioning more so is, is either use of force or e-voc, where they run scenarios um where is um sorry I forgot.

JL: JOSHUA LARSON.

JW: JOSHUA um where JOSHUA is kind of mines more of the t, tech, the technical aspect of the firearm where they run the scenarios and involve vehicle contacts.

PL: Great.

JW: So.

PL: Thank you. Well we really appreciate you coming down, this shed a lot of light on stuff um and thank you very much.

JW: Thank you gentleman.

TP: Great seeing you guys.

PL: You as well.

TR: It is approximately 3:17 p.m. and that will be the end of this interview.

END

EXHIBIT 31

In re Death of Ricky Cobb **BCA Case #2023-724**

October 13, 2023, Video Conference with Jeff Noble

Present: Jeff Noble, expert witness; Mary Moriarty, Hennepin County Attorney; Mark Osler and Sarah Davis, Deputy County Attorneys; Dominick Mathews, Managing County Attorney, Patrick Lofton and Joshua Larson, Senior Assistant Hennepin County Attorneys; Laura Vang, Case Management Assistant.

Meeting Notes:

- Mr. Noble agreed to meet with the above-listed HCAO staff to check in on his progress in reviewing the investigative material related to the death of Ricky Cobb and to discuss preliminary impressions and questions.
- Mr. Noble acknowledged that he did not yet have opinions formalized in writing, but he was willing to discuss the case preliminarily. He acknowledged that two primary issues for his review are:
    - Whether Trooper Londregan's use of deadly force was reasonable at the moment it was used.
    - Whether Trooper Londregan and Trooper Seide's actions prior to the shooting were reckless such that they created an unreasonable danger which resulted in Trooper Londregan using deadly force.
- Regarding the reasonableness of Trooper Londregan's actions, Mr. Noble acknowledged that the review is complicated by Trooper Londregan's refusal to provide a statement. When officers do not provide statements, we do not know their actual reasoning. Specifically, here, we do not know whether Trooper Londregan fired at Mr. Cobb because he feared for his safety or Seide's safety or simply because he did not want Mr. Cobb to flee.
- Mr. Noble offered that, if Trooper Londregan shot Mr. Cobb simply to prevent him from fleeing, he would deem the use of deadly force to be unreasonable. However, Mr. Noble stated that his opinion would change if Trooper Londregan shot Mr. Cobb because he feared for Trooper Seide's safety. Mr. Noble stated that, given Trooper Seide's position in the vehicle at the time of the shooting; the likelihood that Trooper Londregan perceived that Mr. Cobb was attempting to drive away; and the likelihood that Trooper Londregan perceived that Mr. Cobb's vehicle was in motion, a reasonable officer in Trooper Londregan's position would have perceived that Trooper Seide was in danger of death or great bodily harm, specifically from being dragged by the vehicle as it continued to accelerate.
- Mr. Noble listened to concerns about using deadly force at that moment, specifically after Mr. Cobb's vehicle traveled forward, and concerns about whether it was reasonable to believe that using deadly force would incapacitate the immediate threat of Trooper Seide being dragged. It was noted that, despite two fatal gunshot wounds, Mr. Cobb still drove away, knocking down the troopers. Mr. Noble listened to additional concerns that there may have been other reasonable alternatives to deadly force at the moment Trooper Seide shot Mr. Cobb. Two alternatives were posited: (1) Doing nothing and waiting for the situation to play out without shooting Mr. Cobb or (2) verbally encouraging Trooper Seide to remove himself from Mr. Cobb's vehicle. Mr. Noble was asked whether, given these potential alternatives (i.e. doing nothing or focusing on encouraging Seide to exit the car), the use of deadly force was "necessary" at the time it was used, as the term "necessary" is used in Minn. Stat. 609.066. Mr. Noble acknowledged that the word "necessary" is complicated and tricky, and it is unclear what state legislatures mean when they include it in their use-of-deadly-force statutes. Mr. Noble stated that he could not offer an opinion on what "necessary" means under Minnesota Statute.
- Mr. Noble noted that, generally, when viewed from the perspective of modern police practices and training, the concept of "reasonably perceiving a threat of death or great bodily harm" and the concept of "reasonably believing deadly force is necessary to respond to the threat" are intertwined. Mr. Noble also noted that the necessity of using deadly force frequently is difficult to evaluate in cases because, if deadly force is used in a rapidly-evolving situation, no one can know what would have occurred in its absence.
- Regarding this case, Mr. Noble acknowledged that Trooper Londregan likely believed that, by shooting Mr. Cobb, it would have incapacitated Mr. Cobb and prevented Mr. Cobb's vehicle from dragging Trooper Seide. Ultimately, Trooper Londregan did not incapacitate Mr. Cobb, and Mr. Cobb drove away, knocking

down Trooper Seide in the process. However, it is impossible to know what would have happened if Trooper Londregan had not shot Mr. Cobb. The key to the analysis is to determine whether, at the moment force was used, a reasonable officer in Trooper Londregan's position would believe that he needed to act without delay and whether the level of force authorized would include deadly force. Mr. Noble refrained from offering an ultimate opinion during the meeting on whether a reasonable officer would have believed that deadly force was necessary to prevent death or great bodily harm when Trooper Londregan shot Mr. Cobb.

- Mr. Noble listened to concerns about the risks inherit in Trooper Londregan's decision to shoot Mr. Cobb, including the risk that he could have shot Trooper Seide or another vehicle or person on the roadway or the risk that the vehicle still could proceed down the internet but without anyone controlling it. Mr. Noble offered that Trooper Londregan's decision to shoot so close to his partner was "not the best decision," but, since he did not injure Trooper Seide, that is "not an important issue in the case." Regarding the notion of Trooper Londregan shooting so close to his partner, Mr. Noble stated, "You could say 'He *shouldn't* shoot because Seide is so far in the car,' but you could also say, 'He *should* shoot because Seide is so far in the car.'"
- Mr. Noble noted that the *Graham* standard for evaluating an officer's use of force requires us to grant some deference to Trooper Londregan's decision-making, though it is often unclear to identify how much deference to give. Mr. Noble offered that he did not view this case to involve Trooper Londregan making a "split-second" decision, but Trooper Londregan did act in a quickly evolving situation.
- Mr. Noble clarified a distinction between mere "risks" and actual "threats." Deadly force cannot be used in response to a "risk" of great bodily harm or death. Instead, such force can be used only in response to actual threats. Mr. Noble opined that, in this case, a reasonable officer in Trooper Londregan's position would have viewed the threat to Trooper Seide to be real. Mr. Noble stated, "The danger was not hypothetical."
- Mr. Noble also addressed the troopers' actions prior to the shooting and whether the troopers arguably created the danger which resulted in Trooper Londregan using deadly force. The group viewed several slow-motion videos of the incident and discussed the specific factual sequence of events. Mr. Noble observed that Mr. Cobb's vehicle was moving forward before the troopers entered his vehicle and acknowledged that, if Trooper Seide never entered Mr. Cobb's vehicle, Trooper Longregan would not have been placed in the situation which prompted his use of deadly force.
- Mr. Noble asked whether the prosecutors could obtain additional training materials or information on how the troopers were trained on extricating people from vehicles, esp. vehicles which are running and moving.
- Mr. Noble volunteered that he was prepared to opine that Trooper Seide should not have reached into the vehicle. Mr. Noble also offered that, if the plan was pull Mr. Cobb out of his moving car, that was a "bad idea." However, Mr. Noble noted that, even if Trooper Seide's decision to enter Mr. Cobb's vehicle was unreasonable, this determination does not necessarily make Trooper Londregan's use of deadly force unreasonable. Mr. Noble acknowledged that, even if Trooper Seide should not have entered Mr. Cobb's vehicle (because he created the danger to himself), Trooper Londregan still was authorized to reasonably respond to the danger to Trooper Seide.
- Mr. Noble requested more time to review the case and consider issues raised in the meeting. Mr. Larson offered to check in with Mr. Noble in the next week to discuss a timeline going forward.

EXHIBIT 32

Noble
Consulting and Expert Witness Services, LLC

October 12, 2023

Joshua Larson
Senior Assistant Hennepin County Attorney
Hennepin County Attorney
C-2000 Government Center
300 South Sixth Street
Minneapolis, MN 55487

Re: In the Matter of Ricky Cobb, II

Dear Mr. Larson:

At your request, I have reviewed materials relating to the December 5, 2022, Minnesota State Patrol (MSP) trooper involved shooting death of Ricky Cobb (see Attachment A for list of materials reviewed). After reviewing the materials, I am of the opinion, based on the totality of the circumstances, that the use of deadly force by Trooper Londregan could have been objectively reasonable and consistent with generally accepted police practices; however, without Trooper Londregan's statement I am unable to determine his state of mind at the moment that he used deadly force.

Incident

On July 31, 2023, at about 1:51 AM, Trooper Seide of the Minnesota State Patrol made a car stop on Ricky Cobb for driving a motor vehicle without having rear lights illuminated during the hours of darkness. Trooper Seide said as he made the stop, he saw a KOPS "critical hit" alert on his in-car computer regarding the vehicle. Trooper Seide spoke with Mr. Cobb and obtained his driver's license and Mr. Cobb said he may have inadvertently bumped the light switch with his knee causing his taillights to not be illuminated.

Trooper Seide returned to his vehicle to run an inquiry on Mr. Cobb's driver's license due to the "critical hit" and Troopers Erickson and Lundregan arrived as a backups. Trooper Seide said he spoke with a Ramsey County sergeant by cell phone who told him that Mr. Cobb had a felony want[1] for violating a family protection order and asked that he arrest Mr. Cobb. Trooper Seide advised his fellow officers of his intent to arrest Mr. Cobb.

[1] Ramsey County did not have a warrant for the arrest of Mr. Cobb, rather they requested Cobb be arrested on probable cause.

Trooper Seide approached Mr. Cobb's vehicle on the driver's side, Trooper Erickson took a position behind Trooper Seide and Trooper Lundregan approached the front passenger side of Mr. Cobb's vehicle. Trooper Seide asked Mr. Cobb to exit the vehicle but Mr. Cobb became argumentative and refused to exit the vehicle. Trooper Seide asked Mr. Cobb to hand him the car keys several times but Mr. Cobb did not comply. Trooper Londregan opened the front passenger door of the vehicle, and he unlocked the doors allowing Trooper Seide to open the driver's door.

Mr. Cobb pulled his car forward a few feet and both Trooper Seide and Londregan leaned into the vehicle. Trooper Seide tried to remove Mr. Cobb's seatbelt but within 1-2 seconds, Mr. Cobb accelerated and began to drive away. As he accelerated, Trooper Londregan fired one round at Mr. Cobb. Both Trooper Seide and Trooper Londregan were knocked to the ground due to the car accelerating.[2]

Mr. Cobb drove for about one-quarter of a mile before stopping his vehicle and succumbing to his wounds. Mr. Cobb died as a result of the shooting.

Standard of Review/Police Training

Police officers are trained about the U.S. Supreme Court's landmark decisions in *Graham v. Connor* and *Tennessee v. Garner.* Those decisions held that to determine whether the force used to affect a particular seizure is reasonable, one must balance the nature and quality of the intrusion on the individual's rights against the countervailing government interests at stake. This balancing test is achieved by the application of what the Court labeled the objective reasonableness test. The factors to be considered included in *Graham* and *Garner*: 1.) The severity of the crime, 2.) Whether the suspect poses an immediate threat to the safety of the officers or others, and 3.) Whether the suspect is actively resisting or attempting to evade arrest by flight.

Whether one's actions were objectively reasonable cannot be considered in a vacuum but must be considered in relation to the totality of the circumstances. The standard for evaluating a use of force reflects deference to the fact that peace officers are often forced to make split-second judgments in tense circumstances concerning the amount of force required. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. Police officers are trained and prepared to assess dangerous situations and respond accordingly. Police officers are trained that for their force to be appropriate the level and manner of force must be proportional to the level of resistance and threat with which they are confronted. Proportionality is best understood as a range of permissible conduct based on the totality of the circumstances, rather than a set of specific, sequential, predefined force tactics arbitrarily paired to specified types or levels of

[2] See, Trooper Londregan's squad video at 05:00. Also, Officer Seide squad video and the trooper's body worn camera videos.

resistance or threat.

Whether or not the suspect poses an immediate threat to the safety of the officer or others is the most important of the *Graham* and *Garner* factors. There must be objective factors to justify an immediate threat, as a simple statement by an officer that he fears for his safety or the safety of others is insufficient. There is no requirement that a police officer wait until a suspect shoots to confirm that a serious threat of harm exists, but merely a subjective fear or a hunch will not justify the use of force by police. To determine if there was an immediate threat that would justify the use of deadly force, one must consider whether a reasonable police officer Trooper Londregan's position, knowing only the information know at the time by Trooper Londreagn would believe Mr. Cobb posed an immediate threat of death or serious bodily injury to Trooper Londregan or others.

The relevant portion of the Minnesota State Police policy regarding the use of deadly force states, "It shall be the policy of the Minnesota State Patrol, unless expressly negated elsewhere, to allow troopers to exercise discretion in the use of deadly force to the extent permitted by Minn. Stat. §609.066, subd. 2, which authorizes peace officers acting in the line of duty to use deadly force only if an objectively reasonably officer would believe, based on the totality of circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary: 1. To protect the peace officer or another from death or great bodily harm, provided that the threat: a. can be articulated with specificity; b. is reasonably likely to occur absent action by the law enforcement officer; and c. must be addressed through the use of deadly force without unreasonable delay."[3]

In the State of Minnesota, police officers are permitted to use deadly force "only if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary: (1) to protect the peace officer or another from death or great bodily harm, provided that the threat: (i) can be articulated with specificity by the law enforcement officer; (ii) is reasonably likely to occur absent action by the law enforcement officer; and (iii) must be addressed through the use of deadly force without unreasonable delay."[4] Additionally, the Legislature found "the decision by a peace officer to use deadly force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using deadly force."[5]

[3] MSP policy section 23-10-027, IV, C.
[4] Minn. Stat. 609.066 Subd. 2. (a) – Authorized Use of Deadly Force by Peace Officers. *Also see*, Academy Use of Force power point (item 152.1).
[5] Minn. Stat. 609.066 Subd. 1a – Legislative intent.

Opinions

1.) *A Reasonable Police Officer in Trooper Londregan's Position **May** Have Believed that Trooper Seide at was Imminent Threat of Death or Serious Bodily Injury at the Moment that Trooper Londregan Used Deadly Force, but Without Trooper Londregan's Statement I am Unable to Determine Whether Trooper Londregan's Use of Deadly Force was Consistent with Generally Accepted Police Practices*

Here, the troopers were attempting to extricate Mr. Cobb from his vehicle to make a lawful arrest after Mr. Cobb refused to comply with the troopers' lawful commands. Trooper Seide said Trooper Londregan reached inside the vehicle and unlocked the doors. Trooper Seide said he saw Trooper Londregan open the front passenger door and he opened the driver's door. Mr. Cobb then reached for the gear shifter and put the vehicle, which was running, into drive. Trooper Seide said the vehicle lurched forward as he was opening the driver's side door, and he entered the vehicle with his head and upper torso trying to physically remove Mr. Cobb.

Trooper Seide said he heard Trooper Londregan yell at Mr. Cobb to "Get out of the car now," and he could feel the vehicle accelerate forward. As the vehicle accelerated, Trooper Seide said he felt he was getting pulled with the vehicle while his upper torso was inside the car and his legs and feet were outside. Trooper Seide said he heard at least one gunshot and as the vehicle increased speed, he tried run alongside so as not to fall and get run over but lost his footing and fell to the ground.[6] Trooper Seide said he did not know who fired the gunshot[7] and said that if Mr. Cobb had fled before they entered the vehicle, their department policy would not have allowed him to engage in a vehicle pursuit based on the probable cause want of Mr. Cobb.[8]

Trooper Erickson said as soon as Trooper Seide opened the driver's door, he saw the vehicle begin to move forward. The vehicle stopped for a short period of time then began to accelerate. The second time the vehicle began to accelerate, it appeared to be at a much higher rate of speed. Trooper Erickson said he believed that Mr. Cobb was attempting to drive the vehicle away from the scene. Trooper Erickson said he saw Trooper Seide being pulled by the vehicle as it was driving away, and he was unsure if Trooper Seide was holding onto Mr. Cobb or if he somehow stuck inside the vehicle. Trooper Erickson said he was concerned that Trooper Seide was in an extremely vulnerable position because he was leaning inside the vehicle. Trooper Erickson said he heard what he believed to be three gunshots and then saw Trooper Seide fall out of the vehicle onto the roadway from the driver's side and Trooper Londregan fall out of the vehicle on the passenger side.[9]

[6] Seide written statement.
[7] Seide Interview at 31.
[8] Seide Interview at 34.
[9] Erickson written statement.

Trooper Londregan did not submit a written statement, nor did he participate in an interview regarding the incident.

The video evidence, that included the troopers' body worn cameras and in-car videos, provided both audio and video from the incident. The videos show that Mr. Cobb moved his vehicle forward a few feet as Troopers Seide and Lundregan opened the vehicle's doors. About two seconds later, Mr. Cobb stopped his vehicle and Trooper Seide leaned inside and tried to remove Mr. Cobb's seatbelt by reaching over Mr. Cobb. Within five seconds of the time that Trooper Seide opened the driver's door, Mr. Cobb again accelerated his vehicle and Trooper Londregan fired one round at Mr. Cobb. As Mr. Cobb drove forward, both Trooper Seide and Trooper Londregan fell to the ground.

While Trooper Seide used poor judgment in his attempt to extricate Mr. Cobb from the vehicle, especially after Mr. Cobb drove the vehicle forward a few feet before Trooper Seide leaned into the vehicle, that decision was made by Trooper Seide – not Trooper Londregan. Trooper Londregan was forced to react in less than three seconds from the time that Trooper Seide leaned into the vehicle until the time he used deadly force. Police officers who make critical decisions in dangerous situations should be provided some deference even if there is a plausible claim that the situation could have been handled differently or better.

A reasonable police officer in these circumstances could believe that Trooper Seide was at imminent threat of death or serious bodily injury as he was leaning inside the vehicle as Mr. Cobb began to accelerate. However, without Officer Londregan's statement regarding his reason for using deadly force, I cannot determine if the force was consistent with generally accepted police practices or if a reasonable officer would believe that the use of deadly force reasonably appeared necessary consistent with Minnesota state law.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Jeff Noble

JEFF NOBLE

EXHIBIT 33

PLEASE NOTE:

Grand jury materials are protected from public disclosure under Minnesota Rule of Criminal Procedure 18.07.

On June 28, 2024, the Hennepin County Attorney's Office (HCAO) asked the court for permission to disclose the grand jury transcript to the public.

On July 19, 2024, the court denied that request. For that reason, the HCAO is not allowed to release the grand jury transcript to the public and cannot include transcript excerpts in the exhibit included here.

EXHIBIT 34

PLEASE NOTE:

Grand jury materials are protected from public disclosure under Minnesota Rule of Criminal Procedure 18.07.

On June 28, 2024, the Hennepin County Attorney's Office (HCAO) asked the court for permission to disclose the grand jury transcript to the public.

On July 19, 2024, the court denied that request. For that reason, the HCAO is not allowed to release the grand jury transcript to the public and cannot include transcript excerpts in the exhibit included here.

EXHIBIT 35

PLEASE NOTE:

Grand jury materials are protected from public disclosure under Minnesota Rule of Criminal Procedure 18.07.

On June 28, 2024, the Hennepin County Attorney's Office (HCAO) asked the court for permission to disclose the grand jury transcript to the public.

On July 19, 2024, the court denied that request. For that reason, the HCAO is not allowed to release the grand jury transcript to the public and cannot include transcript excerpts in the exhibit included here.

EXHIBIT 36

PLEASE NOTE:

Grand jury materials are protected from public disclosure under Minnesota Rule of Criminal Procedure 18.07.

On June 28, 2024, the Hennepin County Attorney's Office (HCAO) asked the court for permission to disclose the grand jury transcript to the public.

On July 19, 2024, the court denied that request. For that reason, the HCAO is not allowed to release the grand jury transcript to the public and cannot include transcript excerpts in the exhibit included here.

EXHIBIT 37

609.19 MURDER IN THE SECOND DEGREE.

Subdivision 1. **Intentional murder; drive-by shootings.** Whoever does either of the following is guilty of murder in the second degree and may be sentenced to imprisonment for not more than 40 years:

(1) causes the death of a human being with intent to effect the death of that person or another, but without premeditation; or

(2) causes the death of a human being while committing or attempting to commit a drive-by shooting in violation of section 609.66, subdivision 1e, under circumstances other than those described in section 609.185, paragraph (a), clause (3).

Subd. 2. **Unintentional murders.** Whoever does either of the following is guilty of unintentional murder in the second degree and may be sentenced to imprisonment for not more than 40 years:

(1) causes the death of a human being, without intent to effect the death of any person, while committing or attempting to commit a felony offense other than criminal sexual conduct in the first or second degree with force or violence or a drive-by shooting; or

(2) causes the death of a human being without intent to effect the death of any person, while intentionally inflicting or attempting to inflict bodily harm upon the victim, when the perpetrator is restrained under an order for protection and the victim is a person designated to receive protection under the order. As used in this clause, "order for protection" includes an order for protection issued under chapter 518B; a harassment restraining order issued under section 609.748; a court order setting conditions of pretrial release or conditions of a criminal sentence or juvenile court disposition; a restraining order issued in a marriage dissolution action; and any order issued by a court of another state or of the United States that is similar to any of these orders.

History: *1963 c 753 art 1 s 609.19; 1981 c 227 s 10; 1992 c 571 art 4 s 6; 1995 c 226 art 2 s 16; 1996 c 408 art 4 s 8; 1998 c 367 art 2 s 8; 2015 c 21 art 1 s 99*

EXHIBIT 38

609.222 ASSAULT IN THE SECOND DEGREE.

Subdivision 1. **Dangerous weapon.** Whoever assaults another with a dangerous weapon may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than $14,000, or both.

Subd. 2. **Dangerous weapon; substantial bodily harm.** Whoever assaults another with a dangerous weapon and inflicts substantial bodily harm may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $20,000, or both.

History: *1979 c 258 s 5; 1984 c 628 art 3 s 11; 1985 c 53 s 1; 1989 c 290 art 6 s 9; 1992 c 571 art 4 s 7*

EXHIBIT 39

609.221 ASSAULT IN THE FIRST DEGREE.

Subdivision 1. **Great bodily harm.** Whoever assaults another and inflicts great bodily harm may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than $30,000, or both.

Subd. 2. **Use of deadly force against peace officer, prosecuting attorney, judge, or correctional employee.** Whoever assaults a peace officer, prosecuting attorney, judge, or correctional employee by using or attempting to use deadly force against the officer, attorney, judge, or employee while the person is engaged in the performance of a duty imposed by law, policy, or rule may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than $30,000, or both.

Subd. 3. **Great bodily harm; peace officer, prosecuting attorney, judge, or correctional employee.** Whoever assaults a peace officer, prosecuting attorney, judge, or correctional employee and inflicts great bodily harm on the officer, attorney, judge, or employee while the person is engaged in the performance of a duty imposed by law, policy, or rule may be sentenced to imprisonment for not more than 25 years or to payment of a fine of not more than $35,000, or both.

Subd. 4. **Use of dangerous weapon or deadly force resulting in great bodily harm against peace officer, prosecuting attorney, judge, or correctional employee.** Whoever assaults and inflicts great bodily harm upon a peace officer, prosecuting attorney, judge, or correctional employee with a dangerous weapon or by using or attempting to use deadly force against the officer, attorney, judge, or employee while the person is engaged in the performance of a duty imposed by law, policy, or rule may be sentenced to imprisonment for not more than 30 years or to payment of a fine of not more than $40,000, or both.

Subd. 5. **Mandatory sentences for assaults against a peace officer, prosecuting attorney, judge, or correctional employee.** (a) A person convicted of assaulting a peace officer, prosecuting attorney, judge, or correctional employee shall be committed to the custody of the commissioner of corrections for not less than:

(1) ten years, nor more than 20 years, for a violation of subdivision 2;

(2) 15 years, nor more than 25 years, for a violation of subdivision 3; or

(3) 25 years, nor more than 30 years, for a violation of subdivision 4.

(b) A defendant convicted and sentenced as required by this subdivision is not eligible for probation, parole, discharge, work release, or supervised release, until that person has served the full term of imprisonment as provided by law, notwithstanding the provisions of sections 241.26, 242.19, 243.05, 244.04, 609.12, and 609.135. Notwithstanding section 609.135, the court may not stay the imposition or execution of this sentence.

Subd. 6. **Definitions.** As used in this section:

(1) "correctional employee" means an employee of a public or private prison, jail, or workhouse;

(2) "deadly force" has the meaning given in section 609.066, subdivision 1;

(3) "peace officer" has the meaning given in section 626.84, subdivision 1;

(4) "prosecuting attorney" means an attorney, with criminal prosecution or civil responsibilities, who is the attorney general, a political subdivision's elected or appointed county or city attorney, or a deputy, assistant, or special assistant of any of these; and

(5) "judge" means a judge or justice of any court of this state that is established by the Minnesota Constitution.

History: *1979 c 258 s 4; 1984 c 628 art 3 s 11; 1989 c 290 art 6 s 8; 1997 c 239 art 3 s 10; 2014 c 302 s 2; 1Sp2021 c 11 art 2 s 31*

EXHIBIT 40

609.205 MANSLAUGHTER IN THE SECOND DEGREE.

A person who causes the death of another by any of the following means is guilty of manslaughter in the second degree and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $20,000, or both:

(1) by the person's culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death or great bodily harm to another; or

(2) by shooting another with a firearm or other dangerous weapon as a result of negligently believing the other to be a deer or other animal; or

(3) by setting a spring gun, pit fall, deadfall, snare, or other like dangerous weapon or device; or

(4) by negligently or intentionally permitting any animal, known by the person to have vicious propensities or to have caused great or substantial bodily harm in the past, to run uncontrolled off the owner's premises, or negligently failing to keep it properly confined; or

(5) by committing or attempting to commit a violation of section 609.378 (neglect or endangerment of a child), and murder in the first, second, or third degree is not committed thereby.

If proven by a preponderance of the evidence, it shall be an affirmative defense to criminal liability under clause (4) that the victim provoked the animal to cause the victim's death.

History: *1963 c 753 art 1 s 609.205; 1984 c 628 art 3 s 11; 1985 c 294 s 6; 1986 c 444; 1989 c 290 art 6 s 5; 1995 c 244 s 14*

EXHIBIT 41

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Court File No. 27-CR-24-1844

State of Minnesota,

Plaintiff,

Vs.

Ryan Patrick Londregan,

SARGEANT JASON HALVORSON'S DECLARATION PURSUANT TO MINN. STAT. § 358.116

Defendant.

DECLARATION PURSUANT TO Minn. Stat. § 358.116

1. My name is Sargeant Jason Halvorson;
2. I have a total of 29 years of experience as a licensed peace officer in the State of Minnesota;
3. I have been employed by the Minnesota State Patrol for 25 years;
4. I was employed by two other Minnesota Law Enforcement agencies for a total of 4 years prior to joining the Minnesota State Patrol;
5. I am currently a Sargeant, and serve as use-of-force coordinator for the Minnesota State Patrol Training and Development Section;
6. My duties include, but are not limited to review and creation of lesson plans for the agency that follow post mandated training. I also review the creation of policies that relate to use-of-force and ensure that our policies/lesson plans and any type of training we teach at the academy comply with those mandates;
7. I also assure the training and recurrent training of our current Troopers following the same mandates;
8. I have served as the use-of-force training coordinator for a total of10 years;
9. I was the use-of-force coordinator for the 63rd and 65th training academies which were attended by Troopers Seide and Londregan;
10. The training academy is 14 weeks long and is broken down into blocks of training. My section is the use-of-force section. The use-of-force section consists of three days of use-of-force training, a week of Taser training and towards the end of the academy I coordinate another block of training where we revisit past lessons and include more use-of-force training. The later use-of-force section incorporates soft empty hand skills, hard empty hand skills, all necessary principles and applications

of the techniques taught to include evaluation and ensure that all cadets are ready for the road when they graduate from our academy;

11. Our academy training is scenario based;

12. I recall Troopers Seide and Londregan's names from their participation in the academy and do not recall any deficits, concerns or need for remedial training for either Trooper;

13. The academy use-of-force training includes vehicle extractions for both a single trooper and trooper with a trained partner to assist;

14. The academy training requires cadets to know and be able to apply all Minnesota State Patrol General Orders;

15. The academy trains cadets how to make lawful decisions on use-of-force and to know how the courts determine how much force is acceptable. Our training includes verbal de-escalation and the value or sanctity of human life in every encounter;

16. Our academy trains cadets that de-escalation may include, but is not limited to, the use of such techniques as command presence, warnings, verbal persuasion and tactical repositioning;

17. Our academy trains cadets that the use of deadly force by a peace officer in the line of duty is justified only if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary;

18. The complaint in this matter relies in part on an interview attended by the BCA and with "Trainer A";

19. I am the person referred to as "Trainer A" in the complaint;

20. The interview referenced in the complaint was conducted by Mr. Joshua Larson, Sr. Assistant County Attorney and Mr. Mark Osler, Deputy County Attorney and was attended by two BCA agents;

21. The complaint states:

> BCA agents attended an interview with the State Patrol's lead use-of-force trainer, Trainer A, who provided use-of-force training to the Defendant and Trooper A. Trainer A was asked whether a reasonable officer would believe that pointing a gun at a fleeing driver and yelling at the driver to stop would cause the driver to stop. Trainer A said, "No." Trainer A was asked, "Would it be foreseeable to expect the exact opposite, meaning [the driver] would continue to leave?" Trainer A responded, "That was probably his intention was to flee the area, so he's gonna keep going in that direction away from me.";

22. The author of this statement has lied by omission;

23. My review of the interview transcript reveals that this the question was posed to me as a hypothetical involving myself performing a single trooper stop, and therefore is not applicable to the facts of the Londregan case. Further, the hypothetical examined de-escalation rather than flight;

24. The truth in this matter is that I went on to explain that choice of actions in this context are "situationally dependent.";

25. I also explained to Mssrs. Larson and Osler that in addition to being "situationally dependent" would include being individual dependent;

26. My exact words were:

> And it's also and the uh the individual that you're dealing with dependent. Um if you're throwing out so many hypotheticals it's just one of those situations where it's each individual situation is all dependent upon the actions of the actual suspect you're dealing with and how they comply to the de-escalation and how they actually respond to the de-escalation. And If I'm not seeing the actual responses that I'm looking for, I have to make the decision quickly of what my next move is gonna be;

27. The author of the complaint (signed by Mr. Osler) has cherry-picked one sentence from a 37-page interview transcript and excluded critical facts and context thereby purposefully misleading the reader of the complaint;

28. This specific hypothetical, and many of the hypothetical question posed, were in no way related to the factual events surrounding Trooper Londregan's situation or use-of-force training;

29. By way of example, Joshua Larson, Sr. Assistant County Attorney, offered the following hypothetical:

> With regard to the third hypothetical that I pose to you is a situation in which uh a man is holding an infant over a balcony and says I will drop this child and there's a situation in which you know you could use deadly force on that individual but yet it wouldn't help that situation, it wouldn't reduce the risk of great bodily harm or death to that victim. In a situation like that would you agree that's a situation in which you foresee someone at risk of great bodily harm or death but it does not authorize the use of deadly force?

30. I have experience reviewing use-of-force situations for compliance with Minnesota State Patrol Policies/General Order, State and Federal Statutes and existing case law;

31. I did not perform a complete use-of-force review of Trooper Londregan's officer involved shooting. In my interview by Mssrs. Larson and Osler, I did offer to perform a complete use-of-force review which was not accepted. A complete use-off-force review requires meeting with Trooper Londregan to understand his thought process and I understand that the District Court issued an order preventing Trooper Londregan from speaking with witnesses about his case;

32. I have reviewed the criminal complaint against Trooper Londregan, my voluntary interview with the BCA, my voluntary interview with Mssrs. Larson and Osler - which was attended by the BCA, my testimony to the grand jury in Trooper Londregan's case, publicly available video of Trooper Londregan's officer involved shooting the State Patrol General Orders, and applicable training materials in preparation of this declaration;

33. I did not rely on the Minnesota State Patrol vehicle pursuit policy, as this was not a vehicle pursuit;

34. Trooper Londregan acted in accordance with his training;

35. Trooper Londregan did not violate the use-of-force General Orders including, but not limited to the use-of-force policy found at § 10-027.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: March 19, 2024

SSG Jason Halvorson
Ramsey County, Minnesota

EXHIBIT 42

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

Court File No. 27-CR-24-1844

State of Minnesota,

Plaintiff,

vs.

Ryan Patrick Londregan,

Defendant.

DECLARATION PURSUANT TO MINN. STAT. § 358.116 OF LT JONATHAN WENZEL

DECLARATION PURSUANT TO Minn. Stat. § 358.116

1. My name is Lt. Jonathan Wenzel;
2. I have been a licensed peace officer in the State of Minnesota since September 3rd, 2014;
3. I have been employed by the Minnesota State Patrol since 2015 and worked for the Osakis Police Department before that;
4. I am currently a Lieutenant for the State Patrol and served as a firearms instructor and firearms coordinator for the Minnesota State Patrol Academy in addition to other duties;
5. I have completed the 40-hour Minnesota State Patrol Firearms Instructor Course and subsequent courses put on by certain firearm manufacturers and training groups;
6. As a firearms coordinator, I worked to ensure that cadets and troopers were proficient in the handling and operation of firearms and that trainees met the requirements established by POST for firearm training and evaluation;
7. In 2021, I was the firearms coordinator during the 63rd Academy of the Minnesota State Patrol, which was attended by Trooper Ryan Londregan;
8. I am not a use-of-force instructor, but have received the use-of-force training required for POST certification as a licensed peace officer in the State of Minnesota and additional training as a member of the Minnesota State Patrol;
9. In my training and experience as a member of the Minnesota State Patrol, a trooper being drug by a suspect vehicle is a situation that could cause death or great bodily harm to the trooper who is being drug;

10. The use of deadly force by a licensed peace officer is only justified where an objectively reasonable officer believes, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary to protect the peace officer or another from death or great bodily harm. Provided that the threat can be articulated with specificity, is reasonably likely to occur absent action by the law enforcement officer, and must be addressed through the use of deadly force without unreasonable delay;

11. I have reviewed the publicly available videos of Trooper Lonregan's critical incident;

12. It appears that Trooper Londregan acted in accordance with his training;

13. I cannot see where Trooper Londregan violated the Minnesota State Patrol use-of-force General Orders.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: March 24, 2024

LT Jonathan Wenzel
Lyon County, Minnesota

EXHIBIT 43

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Hennepin County, MN

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Court File No. 27-CR-24-1844

State of Minnesota,

Plaintiff,

Vs.

TROY MORRELL'S DECLARATION PURSUANT TO MINN. STAT. § 358.116

Ryan Patrick Londregan,

Defendant.

DECLARATION PURSUANT TO Minn. Stat. § 358.116

1. My name is Troy Morrell;
2. I retired from the Minnesota State Patrol after approximately 25 years of service and have been a licensed peace officer in the State of Minnesota since April 4, 1994;
3. At the time of my retirement, I was a technical sergeant and worked as the Emergency Vehicle Operations/Vehicle Contacts Coordinator for the State Patrol overseeing training of cadet's and all Troopers for emergency and non-emergency vehicle operations from February 1, 2019 through September 1, 2023. I also served as a driving instructor for 10 years for the Minnesota State Patrol prior to becoming the coordinator;
4. I was the EVOC/vehicle contacts coordinator during the Minnesota State Patrol's 63rd training academy, which was attended by Trooper Londregan;
5. Our academy trains cadets that the use of deadly force by a peace officer in the line of duty is justified only if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary to protect the peace officer or another from death or great bodily harm. Provided that the threat can be articulated with specificity, is reasonably likely

to occur absent action by the law enforcement officer and must be addressed through the use of deadly force without unreasonable delay;

6. I did not rely on the Minnesota State Patrol vehicle pursuit policy, as this was not a vehicle pursuit;

7. I have reviewed video recordings from involved Troopers that are publicly available;

8. The Minnesota State Patrol General Orders state, and I trained cadets, that "Members shall not shoot from or at a moving vehicle, except when deadly force is authorized pursuant to General Order 10-027." Specifically, I trained:

    a. Members shall not shoot at or from a moving vehicle unless deadly force is authorized.

    b. Members shall make every effort not to place 'themselves in a position that would increase the possibility of a vehicle being used as deadly force against themselves or others.

    c. Firearms shall not be utilized without a high probability of striking the intended target or when there is a high risk to the safety of other persons.

9. While the above is true, the Londregan critical incident did not violate any of these general orders;

10. Trooper Londregan acted in accordance with his training; and

11. Trooper Londregan did not violate the Minnesota State Patrol Pursuit Policy or General Orders including, but not limited to the use-of-force policy found at § 10-027.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: April 1, 2024

TROY MORRELL
Sherburne County, Minnesota

EXHIBIT 44

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Court File No. 27-CR-24-1844

State of Minnesota,

Plaintiff,

vs.

Major Christopher Erickson's Declaration Pursuant to Minn. Stat. §358.116

Ryan Patrick Londregan,

Defendant.

DECLARATION PURSUANT TO MINN. STAT. §358.116

Law Enforcement Experience and Educational Experience:

1. My name is Christopher Erickson. I am a licensed police officer currently employed as a Major with the Minnesota State Patrol (hereinafter MSP). I was promoted to the rank of Major in April of 2020.

2. I have been employed with the MSP since 1999 and held a variety of assignments within the agency including:

    a. East Metro Night Shift Patrol Trooper (1999-2010),
    b. East Metro Field Lieutenant (2010-2015),
    c. East Metro Patrol District Captain (2015-2020),
    d. Major (2020-present).

3. My current responsibilities include oversight of the following sections: Duluth Patrol District, Brainerd Patrol District, Detroit Lakes Patrol District, Virginia Patrol District, Thief River Falls Patrol District, the agency wide Training and Development Section, and the State Patrol Aviation Section. Additionally, I work with other command staff members to develop policies and procedures, review pursuit/use of force incidents, and serve as the state-wide on-call major as scheduled.

4. Prior to joining MSP, I was employed as a licensed police officer for the City of Eagan from 1992 through 1999. While employed as a police officer in Eagan, I was a SWAT team member from 1994-1999 and a narcotics investigator from 1998-1999.

5. Before becoming a licensed police officer, I served as both a civilian Dakota County Park Ranger and Eagan Police Explorer from 1987 until I was hired by the City of Eagan in 1992.

6. In total I have over 36 years of both sworn and non-sworn law enforcement experience.

7. My educational background includes an Associate in Science – Law Enforcement from Inver Hills Community College (1991), Bachelor of Science – Law Enforcement from Metropolitan State University (2015), and Master of Arts – Public Safety Leadership from St. Thomas University (2017).

8. I have attended numerous professional trainings throughout my career, received numerous awards and commendations, and instructed numerous disciplines within MSP including Emergency Vehicle Operations (EVOC), Standardized Field Sobriety Testing and Drug Recognition Evaluations. For approximately 12 years, I was the co-lead DWI Instructor at the State Patrol Academy.

9. I have attached a copy of my resume hereto as Exhibit A.

Relevant Experience Related to Use of Force and Pursuit Policies of MSP:

10. As an employee of the MSP, I am generally required to be informed of and comply with all written policies and directives of the MSP.

11. As a member of MSP command staff, I have extensive experience drafting, reviewing, interpreting, and enforcing MSP policy.

12. In the fall of 2018, while assigned as a Captain in the East Metro District, I was tasked by command staff to lead agency-wide discussions at every centralized in-service training regarding police pursuits, proper direction for the agency relevant to pursuits and other pertinent tactical considerations. Using feedback from those discussions, I was assigned to two different working groups: 1) Pursuit Policy Development; and 2) Pursuit Training Work Group. As a result of these efforts, MSP introduced and implemented a significantly redesigned pursuit policy that was adopted as MSP General Order 19-20-012 (since amended).

13. In 2020, I was tasked with oversight and assisted with development of adapting MSP policy and training to meet new mandated use of force and deadly force standards. I, along with others, worked with a nationally recognized Use of Force Expert, as well as worked with other command staff members, our agency attorney, risk management attorney and trainers to develop policy and curriculum to address the new mandates under the police reform bill that addressed the sanctity of life, duty to report, and duty to intervene among other considerations.

14. My duties as both a Captain and Major specifically include use of force and pursuit policy reviews. These responsibilities require me to be very familiar with all aspects of applicable MSP policies.

15. MSP requires every use of force incident and pursuit to go through a two-step policy review process to determine whether the incidents were within or outside of MSP policy and to determine whether corrective action or discipline is necessary.

16. MSP utilizes two forms to conduct these reviews. I have attached example copies of these forms as Exhibits B and C.

17. The use of force and pursuit policy reviews generally require both a captain and major to review the incident details including a detailed review of all information including body worn camera footage, motor vehicle recording data (i.e. squad video), written narrative reports and any other relevant evidence related to the incident. These are referred to as first and second level reviews.

18. I have conducted several hundred first and second level use of force and/or pursuit policy reviews since my promotion to Captain in 2015.

19. In 2018, MSP changed to a new reporting system called TraCS. As a result, I am currently unable to access statistical data from 2015 through 2017 (data prior to the implementation of the new system). During that time, however, I estimate that I completed approximately 200-300 First Level Reviews of pursuits and approximately, 100-150 use of force incidents.

20. Between 2018 and 2020, as a Captain, I conducted First Level Reviews of 177 pursuits and 99 use of force incidents.

21. Since my promotion to Major, I have conducted at least 314 Second Level Reviews of pursuits and at least 182 Use of Force incidents.

22. In critical incidents, MSP does not conduct Level 1 and Level 2 policy reviews until after potential criminal charges have either been declined or criminal charges have concluded. Accordingly, the actions of Ryan Londregan have not officially been reviewed by MSP Command Staff.

23. The opinions contained in this affidavit are my own opinions based upon my training and experience, familiarity of MSP policy and police tactical response.

Opinion as to MSP Pursuit Policy as Applied to Ryan Londregan:

24. On January 24, the Hennepin County Attorney held a press conference to announce her decision to prosecute Trooper Londregan. During her press conference, the County attorney stated: "They are not allowed to shoot at a car that is driving away. They are not allowed to shoot someone to prevent a car from driving away. They're only allowed to

use deadly force if it will prevent great bodily harm or death to their partner or somebody else…The training they received, very extensive training by the State Patrol was that shooting someone was not likely to stop the person to stop the person from driving. So, shooting someone was not an appropriate or necessary use of deadly force in this situation."

25. From her statement, it appears that the Hennepin County Attorney is relying on certain provisions of MSP General Order 22-20-012 or the MSP Motor Vehicle Pursuit Policy. Attached here as Exhibit D.

26. In my opinion, this policy would not be applicable to the situation Troopers Seide and Londregan were confronted with on July 31, 2023.

27. In order for the Motor Vehicle Pursuit police to apply, the circumstances would need to fall into the definition of "Motor Vehicle Pursuit" contained in Section III (A)(1). That section specifically defines a motor vehicle pursuit as "An active attempt by a sworn member **operating a patrol unit** to apprehend the driver of a motor vehicle…"

28. Because neither Trooper Seide nor Trooper Londregan were **operating a patrol unit** at the time of the incident, the MSP Motor Vehicle Pursuit policy would not be implicated, nor would a pursuit policy review be required by command staff.

29. Accordingly, for this primary reason, it is my opinion that the circumstances of this mater do not fall within the MSP Motor Vehicle Pursuit Policy. However, due to the public comments made by the Hennepin County Attorney relevant to this policy and MSP training, I will further address my opinion as to why these comments are misplaced and incorrect.

30. The provision of this policy that the Hennepin County Attorney is seemingly and publicly relying upon, is found in Section VIII (Shooting From Or At A Moving Vehicle). In its entirety, Section VIII (A) of the policy states: "Members shall not shoot from or at a moving vehicle, **except when deadly force is authorized pursuant to General Order 10-027 (Use of Force).**

31. The purpose of this clause of the policy is a recognition that the use of deadly force is analyzed under an entirely different standard than a motor vehicle pursuit. Even if the Motor Vehicle Pursuit Policy were to apply, and deadly force was used in contravention of MSP policy, the propriety of the use of force is analyzed under the *Graham v. Connor* standard, Minnesota Statutes §§609.06, 609.065 and 609.066 and MSP General Order 10-027. Accordingly, and as discussed below, the proper policy analysis for this incident falls under General Order 10-027 regarding the Authorized Use of Force and Authorized Use of Deadly Force.

32. Notwithstanding, the intended purpose of Section VIII (A) of the pursuit policy, is, for example, to discourage Troopers from shooting out tires of a suspect vehicle fleeing the scene of a traffic stop or shooting at or from a motor vehicle while in active pursuit of a

suspect vehicle. These actions can place the public at greater risk (ricochets or directly hitting persons or property) and are widely considered by law enforcement to be ineffective methods of stopping a fleeing motor vehicle.

33. Due to the Hennepin County Attorney's public comments, it appears necessary to address the remaining clauses of Section VIII. Section VIII(B) of the policy states, "Members should make every effort not to place themselves in a position that would increase the possibility that the vehicle they are approaching can be used as a deadly weapon against members or other users of the road."

34. The actions of Troopers Seide and Londregan do not fall into consideration of this provision of the policy.

35. The intent of Section VIII(B) is to discourage troopers from purposefully placing themselves in a situation that might later require deadly force as a means of justifying the use of deadly force. For example, it would be a policy violation for a trooper to purposefully run in front of a car, with their gun drawn, as the individual began to drive off/flee, shoot at the driver in an attempt to stop the car only to later justify the use of lethal force due to the car advancing toward them.

36. State Troopers are required by law and duty to enforce the laws of the state. Extraction of non-compliant and resisting drivers/suspects from a motor vehicle is a common occurrence. Pursuant to MSP General Order 03-10-058 (Standards for Full Duty Status of State Patrol Troopers, attached here as Exhibit E), Minnesota State Troopers **must be physically capable of "Us(ing) force to remove resisting subject(s) from vehicle, squad or cell.**" (See General Order 03-10-058, Section H(15)).

37. Here, neither Trooper Seide nor Trooper Londregan placed themselves in a position envisioned by this policy. Rather, after verifying that Mr. Cobb was wanted by Ramsey County, Troopers Seide and Londregan repeatedly attempted to have Mr. Cobb voluntarily exit the vehicle. Due to Mr. Cobb's verbal and physical non-compliance, Troopers Seide and Londregan were fully justified in their attempt to physically extract Mr. Cobb from the vehicle.

38. Finally, Section VIII (C) states, "Firearms shall not be utilized when the circumstances do not provide a high probability of striking the intended target or when there is a substantial risk to the safety of other persons, including risks associated with vehicle crashes."

39. In this incident, it is my opinion that Trooper Londregan's actions complied with this provision of the policy. Trooper Londregan had a high probability of striking Mr. Cobb despite the danger it presented to Trooper Seide. Further, as will be discussed below, the use of a firearm afforded the Troopers the opportunity to prevent greater injury to themselves from being dragged into on-coming traffic, as well as to other vehicles in the area by potentially being able to redirect the vehicle away from traffic.

40. I believe the Hennepin County Attorney misunderstands MSP training on this point specifically. Her comment that, "very extensive training by the State Patrol was that shooting someone was not likely to stop the person to stop the person from driving" is simply wrong.

41. The MSP discusses, and the vast majority of Troopers are aware of, certain past incidents to illustrate and highlight the significant dangers presented by being dragged by a motor vehicle and using a firearm to slow or stop the vehicle. Specifically:

    a. Incident 07601334 wherein a Trooper was dragged by a motor vehicle and shot the driver causing the vehicle to safely come to rest. The involved Trooper was found to be within policy, cleared and subsequently awarded the Medal of Valor.

    b. Incident 11406877 wherein the involved Trooper was dragged by a vehicle, shot the driver of the vehicle again causing the vehicle to slow and come to rest just prior to striking a guardrail. Again, the Trooper was found to be within policy.

    c. Contrasted by Incident 18203125 wherein the involved Trooper was physically unable to retrieve his firearm and was thrown from the moving vehicle resulting in traumatic brain injuries.

42. The risk of being dragged by a motor vehicle that can accelerate very rapidly to highway and higher speeds, can and does create situations where the Trooper is permitted to use their firearm to stop the driver.

43. For the reasons state above, in my opinion, MSP General Order 22-20-012 is not applicable to the incident involving Mr. Cobb on July 31, 2023 as this incident was not a motor vehicle pursuit as defined by policy. Notwithstanding, should the policy be deemed applicable, it is my further opinion that Trooper Londregan acted within this MSP Policy.

Opinion as to the MSP Use of Force Policy as Applied to Trooper Ryan Londregan

44. As indicated above, the proper analysis of Trooper Londregan's Use of Force on July 31, 2023 falls under MSP General Order 21-10-027 – Force; Use Of – which sets forth the MSP guidelines for the general use of force as well as the use of deadly force. The policy in its entirety is attached hereto as Exhibit F.

45. MSP General Order 21-10-027 was amended and adopted on December 20, 2021 following the statutory amendments to Minnesota Statutes §609.06, §609.065 and §609.066.

46. As mentioned above, I was tasked with oversight and assisted with development of adapting MSP policy and training to meet new mandated use of force and deadly force standards. I along with the Training and Development Section worked with a nationally recognized use of force expert, as well as worked with other command staff members,

our agency attorney, risk management attorney and trainers to develop policy and curriculum to address the new legislative mandates under the police reform bill.

47. The applicable standard nationally, in Minnesota, as wells as is incorporated within MSP Policy is the *Graham v. Connor* standard established by the United States Supreme Court. *See Exhibit F at Page 3 (Use of Deadly Force Defined).* Generally, Troopers are authorized to use deadly force if an objectively reasonable officer would believe, based upon the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary to protect the Trooper or another from death or great bodily harm. Consistent with Minnesota Statute §609.066, subd. 2 the Trooper must be able to articulate the threat with specificity, the threat is reasonably likely to occur absent action by the Trooper, and the threat must be addressed through the use of deadly force without unreasonable delay.

48. This standard is specifically articulated in MSP General Order 21-10-027, Section II (Guiding Principles), within the definitions contained in the policy and throughout the policy.

49. The MSP training is extensive but cannot be described as exhaustive. Therefore, the agency trains cadets as well as incumbent Troopers in simulated high stress scenarios. Often, those scenarios involve de-escalation, pursuits, use of force, and deadly force situations. Because it is not exhaustive, we remind members that we cannot duplicate every scenario they may encounter. Troopers must therefore rely on policy, state statute, as well as individual judgement to make critical and often split-seconds decisions.

50. I have reviewed the body worn cameras and motor vehicle recordings (dash cameras) of the interaction between MSP Troopers and Mr. Cobb. I am extremely familiar with MSP policies and training. I have over 36 years of both sworn and non-sworn law enforcement experience. The past 24 years I have been employed by the MSP and held many positions within the agency. It is based upon all these factors, that I have formed my opinion as to the Use of Deadly Force by Trooper Ryan Londregan on July 31, 2023. It is my opinion that Trooper Londregan was justified in his use of deadly force and acted within MSP Policy.

51. The incident began with a traffic stop of Mr. Cobb on Highway 94. On the dash camera of Trooper Seide, Mr. Cobb's vehicle can be seen passing the location Trooper Seide was positioned. On the video, it can be clearly seen that the taillights of Mr. Cobb's vehicle were not illuminated. The initial stop of Mr. Cobb's vehicle was clearly based upon a violation of state statute and based upon a reasonable and articulable suspicion of a traffic violation.

52. Mr. Cobb stopped his vehicle in response to Trooper Seide's emergency lights being activated. Prior to the vehicle stopping, Trooper Seide was informed via computer of an alert that the involved vehicle could present a more significant issue to officers who encounter it. Trooper Seide was aware of this information and a reasonable officer would approach this traffic stop with greater caution as a result.

53. During the initial encounter, Mr. Cobb was generally compliant and provided his driver's license to Trooper Seide. During the conversation, Mr. Cobb appeared to be frustrated or agitated. Trooper Seide demonstrated both de-escalation techniques (active listening and offers of understanding) as well as investigative techniques (asking questions about where he was going, had he been drinking) throughout this encounter.

54. Trooper Seide returned to his vehicle, reviewed the computer aided dispatch (CAD) and learned that Mr. Cobb had a KOPS (Keeping Our People Safe) alert from Ramsey County. Although Trooper Seide would have been justified in detaining and/or arresting Mr. Cobb at that point, Trooper Seide contacted Ramsey County to verify the KOPS alert was still active and that Ramsey County was still requesting that Mr. Cobb be arrested in response to an investigation in their county. Trooper Seide learned that the KOPS alert was in connection with a felony level violation of an order for protection. Trooper Seide went above-and beyond the expectations of a Trooper by taking these efforts to verify information prior to potential use of force situation occurred.

55. Trooper Garrett Erickson arrived on scene and, at the request of Trooper Seide, spoke with Mr. Cobb to keep Mr. Cobb calm as Trooper Seide connected with Ramsey County officers. Trooper Londregan also arrived while Trooper Erickson was speaking with Mr. Cobb.

56. It is clear from the incident videos that Trooper Londregan had also read the KOPS alert. In the video at approximately 2:11:45 a brief conversation between Troopers Seide and Londregan occurs wherein they discuss Mr. Cobb's OFP KOPS alert and his "sketchy" and "amped" behavior.

57. Following Trooper Erickson's interaction with Mr. Cobb, the Troopers had a brief discussion and determined that Mr. Cobb would be arrested. Based upon all available information at the time, the decision to arrest Mr. Cobb was clearly lawful.

58. In general, when a driver is asked to step out of the vehicle, the driver's reaction cannot be predicted. Efforts to arrest an individual present a uniquely dangerous moment for law enforcement officers. It is not uncommon for individuals to resist law enforcement efforts to arrest both verbally and physically. Unique to State Troopers, whose primary job it is to conduct highway traffic stops, the risk of a driver fleeing in a motor vehicle is also an ever present. Such efforts of drivers to flee, places the Troopers as well as the public in greater danger.

59. MSP Policy dictates that Troopers "shall use de-escalation techniques and other alternatives to higher levels of force consistent with their training whenever reasonably possible and appropriate before resorting to force." (MSP General Order 21-10-027, Section IV(2)).

60. Troopers Seide and Londregan approached Mr. Cobb's vehicle. Trooper Seide approached from the driver's side and Trooper Londregan approached from the passenger

side. This is a common law enforcement tactic when the possibility of a forcible driver extraction exists.

61. Trooper Seide spoke with Mr. Cobb and asked him repeatedly to exit the vehicle. During this encounter, Trooper Seide demonstrated the clear application of de-escalation techniques. He did not yell at Mr. Cobb. He offered to explain what was happening *after* he stepped out of the car. He did not swear or using insulting language toward Mr. Cobb. Trooper Seide can be heard asking for the keys to the vehicle. Trooper Seide informed Mr. Cobb that he was giving him a lawful order. Mr. Cobb became increasingly agitated and was non-compliant with lawful commands. Mr. Cobb was evasive and deflective in his responses.

62. Watching the BWC of Trooper Londregan, it is clear that the possibility of non-lethal force via a vehicle extraction was going to occur. He can be seen checking the door to determine if it was locked, can be seen reaching into the vehicle to unlock the car, and ultimately opened the door. It should be noted that the passenger window was down and the conversation can be heard by Trooper Londregan as demonstrated by the audio captured on his body worn camera.

63. Instantaneously as Trooper Londregan opened the passenger door, Mr. Cobb can be seen putting the vehicle into gear and the car lurches forward and abruptly stops. This is also apparent from Trooper Londregan's squad camera – the vehicle brake lights illuminate. Trooper Seide is seen attempting to extract Mr. Cobb by leaning into the vehicle to unbuckle his seat belt while Trooper Londregan can be seen leaning into the vehicle with his side arm drawn, aimed toward Mr. Cobb and is yelling commands to "Get out of the car now."

64. For a second time, Mr. Cobb began to accelerate his vehicle and both Troopers, who then were both partially within the interior of the vehicle, began to be dragged by the forward motion of the vehicle.

65. Trooper Londregan fired two shots striking Mr. Cobb.

66. Both Troopers were forcefully thrown from the vehicle and landed on the ground. Trooper Seide was thrown into a lane of traffic and Trooper Londregan was thrown into the shoulder of the highway.

67. To illustrate the amount of force they hit the ground with, Trooper Londregan's body work camera was dislodged from its mount. Patrol Troopers are required by policy to wear a BWC "wing-clipped" mount as opposed to a magnetic mount worn by most law enforcement officers. The wing-clipped BWC mount secures the camera to the person of the Trooper and takes considerably greater force to dislodge than the magnetic mount.

68. All three Troopers immediately ran towards Mr. Cobb's vehicle as it accelerated into the traffic lanes. As Mr. Cobb's vehicle continued to drive away, all three Troopers ran back to their squads to catch up to the vehicle. Troopers found the vehicle had come to rest

against the Jersey Barrier adjacent to the westbound left lane. Troopers participated in life-saving efforts.

69. The authority to use deadly force is analyzed under MSP policy in the same manner as the state statutes. Troopers are authorized to use deadly force if an objectively reasonable officer would believe, based upon the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary to protect the Trooper or another from death or great bodily harm.

70. In my opinion, the following circumstances rendered Trooper Londregan's use of deadly force justified:

    a. The traffic stop was conducted on a major urban interstate. Available videos demonstrate that traffic was flowing continuously and at speeds consistent with freeway speeds.

    b. The stop was conducted in an area near downtown, around the bar closing hours in an area with higher likelihood of intoxicated drivers and in an area where drivers often exceed the posted speed limits.

    c. Prior to the initial interaction with Mr. Cobb, Troopers were aware of a KOPS Alert from computer aided dispatch (CAD) that would place a reasonable officer at a heightened state of alert.

    d. Mr. Cobb was upset and agitated during the initial encounter. The Troopers discussed his behavior and attempted to peacefully resolve the situation.

    e. Troopers learned and verified that Mr. Cobb was wanted in connection with a felony level violation of an Order for Protection.

    f. When Troopers re-engaged Mr. Cobb, he remained verbally and aggressively non-compliant and deflective with Troopers' lawful orders to exit the vehicle.

    g. After de-escalation efforts failed, Troopers were justified in elevating their use of force to conduct a forceable vehicle extraction.

    h. As Trooper Londregan unlocked and opened the passenger door, Mr. Cobb placed the vehicle into gear and the vehicle suddenly and abruptly lurched forward. At this moment, both Trooper Seide and Londregan's upper torsos were mostly within the interior compartment of Mr. Cobb's vehicle leaving their lower extremities unstable and exposed to external risk. This action would cause a reasonable police officer in Trooper Londregan's position to fear great bodily injury or death to himself or his partner.

    i. Almost immediately, the car began to accelerate a second time. A motor vehicle can accelerate to highway speeds within a matter of a few seconds. Any number

of scenarios exist that would cause a reasonable police officer to fear great bodily injury or death.

j. Either or both Trooper(s) could have been thrown into on-coming traffic that was relatively heavy and moving at least at highway speeds.

k. Either or both Trooper(s) could have been pulled under the vehicle and run over as Mr. Cobb's vehicle accelerated away.

l. Either or both Trooper(s) could have been struck by an on-coming vehicle.

m. Mr. Cobb could have directed his vehicle, with the Troopers partially inside, toward cement barriers or towards other traffic thereby causing serious risk of death or great bodily injury to the Troopers.

n. This was unquestionably a rapidly evolving set of circumstances. The entire incident from the moment Trooper Londregan opens the passenger door until he discharged his weapon was approximately 5 seconds (roughly 2:17:00 to 2:17:05).

71. It is my opinion that Trooper Londregan's use of deadly force was authorized by MSP Policy and State Statute. A reasonable officer, in the same situation, based upon the totality of the circumstances described above, without the benefit of hindsight, considering the rapidly evolving set of circumstances would have been in fear of great bodily injury or death and would therefore be justified in the use of deadly force.

I DECLARE UNDER THE PENALTY OF PERJURY THAT EVERYTHING I HAVE STATED IN THIS DOCUMENT IS TRUE AND CORRECT.

DATED: 4/23/24

Major Christopher Erickson

MAJOR CHRIS ERICKSON

445 Minnesota Street #130
Saint Paul, MN 55101
651-343-6007 (cell)
christopher.erickson@state.mn.us

FORMAL EDUCATION

2015-2017	Master of Arts Degree – Public Safety Leadership University of Saint Thomas – Saint Paul, Minnesota
2014-2015	Bachelor of Science Degree – Law Enforcement Metropolitan State University – Saint Paul, Minnesota
1989-1991	Associate in Science – Law Enforcement Inver Hills Community College – Inver Grove Heights, MN

EMPLOYMENT HISTORY

Minnesota State Patrol

2020 – Present Major

Responsible for critical decisions and oversight of several agency sections including five patrol operations districts, the State Patrol Flight Section and the Training and Development Section. Serves as statewide on-call Major as scheduled. Aids in policy development, strategic planning and training development. Reviews use of force/deadly force incidents and pursuit incidents for policy compliance or lack of policy compliance and discipline considerations.

2015 – 2020 Captain

Responsible for collaboration, oversight and supervision as a District Commander of the Minnesota State Patrol's East Metropolitan District. Directly work with lieutenants to support personnel and ensure that the State Patrol's missions are fulfilled. This position is tasked with overseeing approximately eighty personnel, including supervisors, troopers, and administrative assistants.

2010-2015 Field Lieutenant

Responsible for supervising troopers in the field on the overnight shift. Directly worked with troopers to ensure that patrol functions were carried out professionally and were meeting the State Patrol's Mission. Assisted field

troopers with difficult tasks and decisions. Directed and oversaw critical incidents and major events. Delivered performance feedback and evaluations. Extra duties included Executive Protection details and serving as a co-lead DWI Instructor at State Patrol Academy since from 2002-2014.

1999-2010 State Trooper

Assigned as a road patrol trooper in the Eastern Metropolitan State Patrol District. Exclusively was assigned to the overnight shift. Duties included patrolling the metro freeway system as well as Minnesota Trunk Highways in the district's outlying areas. The focus of duties was to remove impaired drivers from Minnesota Roadways. Other duties included traffic law enforcement, response and investigation to crashes, and assisting allied agencies with police matters.

Hibbing Technical College

2005-2011 Part-time Instructor

Responsible for instructing students in DWI Enforcement. Instructed at Hibbing Technical College as well as other institutions under the Hibbing Technical College umbrella.

Fond Du Lac Tribal College

2006-2011 Part-time Instructor

Responsible for instructing students attending Law Enforcement Skills Training in DWI Enforcement.

Eagan Police Department

1998-1999 Detective – Narcotics Investigation

Duties included the investigation of the transportation, possession, distribution and sale of illegal controlled substances. Drafted and executed search warrants, served in undercover operations, conducted surveillance, and assisted and supported allied agencies as needed.

1992-1998 *Police Officer – Patrol Division*

Duties included responding to calls for service, enforcing Minnesota traffic statutes and criminal codes. Further duties included patrolling the suburban city and assisting and supporting partners as needed.

PROFESSIONAL TRAINING

2018 International Association of Chiefs of Police - Leadership in Police Organizations (LPO) Instructor School

2014 Minnesota State Patrol – Peer Counselor Training

2010	International Association of Chiefs of Police – Leadership in Police Organizations Training (LPO)
2010	United States Secret Service – Motorcade Operations Course
2010	State of Minnesota – Supervisor Development Core Training
2002	National Highway Traffic Safety & International Association of Chiefs of Police – Standardized Field Sobriety Instructor School
2002	National Highway Traffic Safety & International Association of Chiefs of Police – Drug Recognition Expert Instructor School
1997	Drug Recognition Expert School
1994	Los Angeles Police Department - Los Angeles Police Department S.W.A.T. School
1994	National Highway Traffic Safety & International Association of Chiefs of Police - Advanced Standardized Field Sobriety Testing

AWARDS AND COMMENDATIONS

2019	Letter of Commendation – From Colonel Langer regarding my efforts related to EVOC and MSP Pursuit Policy and Training
2019	Letter of Commendation – From Major Huettl regarding my curriculum design and instruction for the State Patrol's New Supervisor Training
2018	Exceptional Service Award – Awarded for leading State Patrol Initiatives related to Super Bowl LII.
2018	Letter of Commendation - From Colonel Langer regarding my planning, organizing and oversight of State Patrol Operations for Super Bowl LII.
2018	Letter of Commendation – From Minnesota Chiefs of Police Association regarding my participation in planning and organizing the ETI Conference
2016	Letter of Commendation – From Colonel Langer regarding my planning, organizing, and oversight during the Congressional Medal of Honor Convention.
2015	Letter of Commendation – Related to preparation and facilitation of an operations plan for demonstrations in Saint Paul, which had planned to take over the freeway system.
2010	State Patrol Exceptional Service Award – Awarded for continuously going above and beyond for the agency, citizens, and partners
2003	State Patrol Eagle Squadron Award – Top DWI Enforcer
2002	State Patrol Eagle Squadron Award – Top DWI Enforcer
2001	State Patrol Eagle Squadron Award – Top DWI Enforcer
1997	Eagan Police Department Exceptional Service Award – Related to efforts in DWI enforcement.

MINNESOTA STATE PATROL

TROOPER'S REPORT OF MOTOR VEHICLE PURSUIT

			Case Number: 22334456	
CAD Event: P170720754	Trooper Completing Report: TEST, TROOPER		Badge: 66666	Pursuit Date
Originating Police Agency: MINNESOTA STATE PATROL		Time Initiated	Time Concluded	Total Miles
District: ROCHESTER			Station: 2150	
Reason for Pursuit				
Other Reason for Pursuit		Was Identity of Fleeing Driver Known?		Force Form Required?
Pursuit Discontinued or Concluded Due to		How was Violator Stopped		
Pursuit Termination Technique	Intervention Technique(s) Used or Attempted			
Damage During Termination?	What was damaged during termination?			
Unintentional Crash?	Unintentional Crash Involved		Crash Severity	
State Patrol Supervisor Was	Other			
Other Descriptive/Clarifying Information (weather, road conditions, traffic conditions, squad conditions)				

TROOPERS INVOLVED

Trooper's Last name: TEST	First: TROOPER	Badge: 66666	Role in Pursuit
Crash-Related Injury Severity			

INDIVIDUALS INVOLVED

Role of Individual: VIOLATOR		Identity Known?	
Last	First	Middle	
Crash-Related Injury Severity	Sex	DOB	Age

OTHER LAW ENFORCEMENT AGENCIES INVOLVED

Other Agencies Involved	Other Agencies Involved (not in list)

REVIEW

Reviewed by District/Section Commander ☐ Found to be within policy ☐ Appropriate corrective action taken			Reviewed by Operations Major ☐ Found to be within policy ☐ Appropriate corrective action taken		
District/Section Commander's Last name			Operations Major's Last name		
First	Badge	Date Reviewed	First	Badge	Date Reviewed

Written By: TEST, TROOPER Badge: 66666

EXHIBIT

B

MINNESOTA STATE PATROL
USE OF FORCE REPORT

Case Number	
22334455	
Incident Date	Incident Time

CAD Event	Assisting Other Agency	Juvenile Involved
P170720754	☐ Yes ☐ No	☐ Yes ☐ No ☐ Unknown

Trooper	Badge
TEST, TROOPER	66666
District	**Station**
ROCHESTER	2150

Trooper Injured During Incident	Trooper Medical Treatment Received	Trooper Hospitalized
☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No

Subject Information

Last	First	Middle	DOB	Age

Sex: ☐ Male ☐ Female ☐ Unknown

Race: ☐ American Indian/Alaskan Native ☐ Asian Pacific Islander ☐ Black ☐ Hispanic ☐ White ☐ Unknown

Injuries: ☐ None Apparent ☐ Complaint of Injury; No Visible Signs ☐ Abrasions/Contusion ☐ Lacerations/Incision ☐ Gunshot

Photos of Injury	Medical Treatment	Hospitalized (Due to UOF)
☐ Yes ☐ No	☐ Refused ☐ Received	☐ Yes ☐ No

Level of Resistance: ☐ Non-Verbal and Verbal Non-compliance ☐ Passive Resistance ☐ Active Resistance ☐ Active Aggression ☐ Deadly Force Assault

Level of Control: ☐ Verbal Commands ☐ Soft Hand Control (e.g. pressure points) ☐ Hard Hand Control (e.g. punch/kick) ☐ Contact Weapons ☐ Deadly Force (MN Statute 609.22 Subd. 2)

Devices Used: ☐ ASP Baton ☐ Riot Baton ☐ Chemical Agent ☐ Distraction Device ☐ Firearm ☐ Impact Munition ☐ Improvised Impact Weapon ☐ Taser

Taser Deployment	Taser Serial Number	Number of deployments.	Total Seconds of Deployment
☐ Cartridge Deployment ☐ Drive Stun ☐ Both			

Cartridge Serial Number	Probe Contact	Probes Removed By
	☐ One ☐ Both ☐ Miss	☐ Trooper/Officer ☐ EMS ☐ Hospital Staff ☐ Other

Application Area/Points of Contact

FRONT

01 - Head and Neck ☐
02 - Right Arm ☐
03 - Left Arm ☐
04 - Torso ☐
05 - Right Leg ☐
06 - Left Leg ☐

BACK

07 - Head and Neck ☐
08 - Right Arm ☐
09 - Left Arm ☐
10 - Torso ☐
11 - Right Leg ☐
12 - Left Leg ☐

Review

Reviewed by District/Section Commander			Reviewed by Operations Major		
☐ Found to be within policy ☐ Appropriate corrective action taken			☐ Found to be within policy ☐ Appropriate corrective action taken		
District/Section Commander's Last name			Operations Major's Last name		
First	Badge	Date Reviewed	First	Badge	Date Reviewed

Written By: TEST, TROOPER Badge: 66666

EXHIBIT

GENERAL ORDER

	Effective:	May 10, 2022	**Number:** 22-20-012 HRLFNDT
	Subject:	**MOTOR VEHICLE PURSUIT**	
	Reference:	GOs 10-027; 10-054, 20-021, 20-023; Minn. Stat. secs. 169.03; 169.17; 609.02, subd. 8	
	Special Instructions:	Rescinds GO 19-20-012	**Distribution:** A,B,C,D, E

I. PURPOSE

The purpose of this General Order is to provide guidance on motor vehicle pursuits.

II. GUIDING PRINCIPLES

A. Members shall keep in mind, and base their decisions on, the State Patrol mission of traffic safety that aims to protect all those who use our roads from injury or death.

B. The decision to pursue or not pursue is critical and must be made quickly, under unpredictable circumstances.

C. The decision to start or engage in a pursuit must be made by weighing the risk to the public, members, and the fleeing driver against any need for immediate apprehension of the fleeing driver and/or other occupants.

D. The decision-making process must be continuously evaluated during the entire duration of the pursuit.

E. There are situations where the risk of personal injury or death associated with a motor vehicle pursuit is too high to justify anything other than discontinuing the pursuit. No member will be disciplined for making a decision to discontinue a pursuit.

F. Members may only make their decisions on pursuits based upon the information reasonably known at the time. Fleeing for an unknown reason does not provide any additional need/importance for the pursuit to continue.

G. While Minnesota law permits emergency vehicles to disregard traffic signs or signals when in pursuit of an actual or suspected violator of the law (Minn. Stat. sec. 169.03), nothing relieves the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of persons using the street, nor does it protect the driver of an authorized emergency vehicle from the consequences of reckless disregard for the safety of others (Minn. Stat. sec. 169.17).

H. Supervisor directives shall be immediately obeyed.

III. DEFINITIONS

A. Motor Vehicle Pursuit

1. An active attempt by a sworn member operating a patrol unit to apprehend a driver of a motor vehicle who,having been given a visual and audible signal by a peace officer directing said driver to bring their vehicle to astop, increases speed, extinguishes motor vehicle headlights or taillights, refuses to stop the vehicle, or uses other means with intent to attempt to elude a peace officer. (Minn. Stat. sec. 609.487)
2. Other instances in which a sworn member activates emergency lights and siren or otherwise clearly gives a signal to stop and the driver complies by coming to a stop in a reasonably short distance are not consideredmotor vehicle pursuits.

B. Discontinue a Pursuit

A member is deemed to have discontinued a pursuit when he/she turns off emergency lights and siren, returns to nonemergency operation, and informs the RCO.

C. Intentional Contact

Controlled contact between the patrol unit and the pursued vehicle at low speeds intended to safely end the pursuit.

EXHIBIT

D

D. Pursuit Intervention Technique (PIT)
PIT is a specific type of intentional contact. It is a controlled contact between the patrol unit and the pursued vehicle at speeds prescribed below, which is intended to force the rotation of the pursued vehicle, causing the vehicle to become disabled and safely end the pursuit.

E. Required Initial Information
The minimum amount of information that must be communicated to dispatch as soon as possible upon initiation of a pursuit:
- Travel direction/location
- Reason for initial contact (specific violations)
- Identity of fleeing driver, if known
- Plate number if available, and/or vehicle description
- Speed of the fleeing vehicle

F. Evolving Information
Additional information to be conveyed as soon as possible and continuously updated throughout the pursuit:
- Traffic conditions including cross traffic, controlled intersection violations, and presence of pedestrians
- Speed and location of fleeing vehicle, including wrong way travel and maneuvers placing anyone at risk
- Number of occupants, description of occupants.

G. Primary Pursuit Unit
The first patrol unit immediately behind the fleeing driver.

H. Support Units
Any patrol units actively involved in the pursuit other than the primary unit.

I. Other Assisting Units
Units not actively involved in the pursuit itself but assisting by deploying stop sticks, blocking intersections, compelling paths, or otherwise working to minimize risk.

J. Severe and Imminent Threat
The fleeing driver or other person in the fleeing vehicle is believed to have recently caused great bodily harm (as defined in Minn. Stat. sec. 609.02, subd. 8) or death to another person, or it is reasonably likely to occur if immediate action is not taken to apprehend him/her. The pursuit itself does not constitute a severe and imminent threat.

IV. DISCONTINUATION OF PURSUIT

A. Unless a pursuit is based upon a severe and imminent threat, it shall be discontinued when:
1. The fleeing vehicle comes under the surveillance of an air unit;
2. The fleeing vehicle is being monitored by a tracking service using GPS;
3. There is a non-sworn passenger present in the state unit;
4. The identity of the fleeing driver is established to the point where later apprehension may be accomplished;
5. The fleeing driver proceeds the wrong way on any limited access or interstate highway, divided highway or one-way street;
6. It is known or there is reason to know that the fleeing driver is a juvenile;
7. The distance between the pursuing member and fleeing driver is so great that continued pursuit is useless, or when visual contact with the fleeing vehicle is lost for an extended period of time.

B. For pursuits crossing state lines, a felony offense *in addition* to the fleeing offense is required to pursue into Iowa or Wisconsin. Members have no jurisdiction pursuing into Canada and little or no jurisdiction to pursue into Red Lake or Bois Forte Reservations and shall discontinue at those borders. See GOs 20-021 (Peace Officer Powers in Adjacent States or Provinces) and 10-054 (Reservation Land – Law Enforcement Powers.)

V. PURSUIT DECISION-MAKING

A. In the decision to engage in a pursuit, members must weigh the risks associated with the pursuit against any need for immediate apprehension of the fleeing driver and/or other occupants and continuously evaluate the decision to continue the pursuit as risk factors may change.

B. When the risk factors present outweigh any need for immediate apprehension of the fleeing driver and/or other occupants, the pursuit shall be discontinued. Risk factors to be continuously evaluated include, but are not limited to, the following: intersections, speed, duration, likelihood of pedestrians, sight lines, traffic conditions, and weather.

1. In cases with a nonviolent offense (e.g., traffic violations, stolen vehicle or other property crime, drugs, or unknown offense), members shall give strong consideration to quickly discontinuing the pursuit.
2. In the case of a suspected impaired driver, members shall consider whether or not the pursuit is making an already dangerous situation even more dangerous. In cases where the known impaired fleeing driver is creating an obvious threat to public safety, members should consider the use of any available and reasonable pursuit intervention strategies to end the pursuit with safety in mind.
3. In pursuits involving a severe and imminent threat, accepting additional risk may be reasonable given the severity of the crime(s) involved and the danger to public safety should the offender not be apprehended.

VI. PURSUIT INTERVENTION STRATEGIES

Before employing a pursuit intervention strategy to safely end a pursuit, members shall consider: 1) the necessity to continue the pursuit and if so; 2) whether the strategy is practicable given the situation; and 3) whether the strategy is reasonable when considering the risk of injury to all involved. The type of strategy utilized will depend on the circumstances of each pursuit. Members shall employ any strategy consistent withtheir training.

A. Stop-Sticks

i. Members shall always consider personal safety during deployment and use stop-sticks consistent with training. The use of stop-sticks on a vehicle with less than four wheels shall be considered the use of deadly force (GO 10-027 [Use of Force]).

ii. Stop-sticks may be used on a vehicle that is no longer being actively pursued, but is still fleeing or has freshly fled. Only an MSP supervisor may authorize their use in these instances.

iii. Authorization may only be provided after considering the totality of circumstances, including:
   i. a determination that further attempts to stop the vehicle will be futile;
   ii. reasonable knowledge that the driver has remained the same; and
   iii. the degree that the vehicle has been or is under surveillance of a peace officer, GPS, cameras, or aviation.

iv. If a stop-stick deployment under this section is successful, continued trooper involvement in the event can only be authorized by the monitoring supervisor. The MSP supervisor must determine the level of immediate ongoing involvement with the suspect vehicle, while considering other sections of this General Order.

v. The authorizing supervisor must complete a TraCS report articulating the basis for their decision regarding the use of stop sticks and further MSP involvement, or include the same information in the report required for monitoring pursuits.

B. Pursuit Intervention Technique (PIT)

1. Members shall consider using the PIT maneuver at the earliest opportunity in a pursuit, knowing the opportunity might be short-lived.
2. The PIT maneuver may be executed at speeds of 40 mph or less on straight roadways or 25 mph or less in cornering situations. Speeds greater than this may be considered deadly force.
3. The PIT maneuver is not allowed in the following circumstances unless deadly force is authorized:
4. On vehicles with fewer than four wheels;
5. On a vehicle pulling a trailer;
6. On unconventional vehicle types to include, but not limited to, straight trucks, recreational vehicles, off highway vehicles, ATVs, etc.

C. Intentional Contact

1. Intentional contact shall only be used when other intervention strategies have been considered and determined not practicable.

2. Intentional contact shall be considered a use of force (reported as a pursuit), up to and including deadly force, and must be reasonably applied based on the totality of circumstances presented.
   i. Unless deadly force is authorized, intentional contact shall only occur: i) at low speeds; and ii) when there is a reasonable belief that no one will be injured as a result.
3. Intentional contact with any vehicle having fewer than four wheels shall only occur if deadly force is authorized.

D. Channeling/Compelling Path/Boxing In

The use of the state unit or other devices is allowed as a means to direct a fleeing driver in order to safely end a pursuit.

E. Roadblock

The use of a roadblock is allowed, but only when the maneuver can be executed with reasonable safety for all involved, including the member, motoring public, and fleeing driver. In any roadblock, the location and deployment method shall allow the fleeing driver ample opportunity to voluntarily stop.

VII. ASSISTING OTHER AGENCIES

A. Members shall consider the purpose, intent and likelihood of a traffic safety benefit from their individual involvement before joining an allied agency's pursuit.

B. Members shall not become involved in an allied agency's pursuit as a primary or support unit unless a common radio communication talkgroup is utilized and monitored by State Patrol Radio CommunicationsOperators (RCO) or Supervisors (RCS).

C. Members shall only become involved, and remain in, an allied agency's pursuit as a primary or support unit if:
   1. The pursuing agency requests it, unless it is clear that an emergency exists which dictates immediate intervention and assistance; **and**
   2. The pursuit meets the State Patrol's policy; **and**
   3. Required initial information (TRIPS) is communicated to the member and dispatch; evolving informationis continuously communicated; **and**
   4. The originating agency remains in the pursuit, unless extenuating circumstances prohibit it (e.g. pursuitsentering Minnesota, originating agency's vehicle becomes disabled, etc.). The originating agency's internal policy or their supervisory decisions are not extenuating circumstances.

VIII. SHOOTING FROM OR AT A MOVING VEHICLE

A. Members shall not shoot from or at a moving vehicle, except when deadly force is authorized pursuant to General Order 10-027 (Use of Force).

B. Members should make every effort not to place themselves in a position that would increase the possibility that the vehicle they are approaching can be used as a deadly weapon against members or other users of the road.

C. Firearms shall not be utilized when the circumstances do not provide a high probability of striking the intended target or when there is substantial risk to the safety of other persons, including risks associated with vehicle crashes.

IX. PURSUIT RESPONSIBILITIES

A. General
   1. In order to be engaged in a pursuit, members shall be in a pursuit-rated vehicle and shall use flashing emergency lights and siren.
   2. In order to diminish the likelihood of a pursuit developing, members intending to stop a vehicle shall bewithin close proximity to the subject vehicle prior to activating the emergency signal devices.
   3. When there is an equipment failure involving emergency lights, siren, radio, brakes, steering, or other essential mechanical equipment, members shall discontinue their involvement in the pursuit unless otherwisedirected by a supervisor.
   4. Members are responsible for providing assistance to anyone potentially injured during the course of thepursuit.

B. Primary Pursuit Unit

Upon becoming involved in a pursuit situation, the primary pursuit vehicle shall immediately comply with the following:

1. Immediately notify MSP dispatch that a pursuit is underway and provide Required Initial Information (TRIPS).
2. Provide Evolving Information unless a support unit assumes that responsibility.

C. Support Unit
1. Support units shall announce their involvement when joining the pursuit. The support unit immediately behind the primary unit should assume responsibility for providing Evolving Information.
2. The number of support units involved in the pursuit should be only those that are reasonably needed for the situation.

D. Other Assisting Units
Other assisting units shall announce their intentions and communicate with primary and support units.

E. Radio Communications Operator(RCO)
1. Announce the 10-33 (Emergency Traffic Only) restriction on the district main talkgroup to all members and other law enforcement agencies in the immediate area.
2. Patch the district main talkgroup with an available LTAC talkgroup (or non-ARMER channel if required) andannounce the patch when completed.
3. Quickly notify a sworn supervisor upon the initiation of a pursuit or upon a member's response to assist with an allied agency pursuit, attempting in the following order: 1) any on-duty district supervisor; 2) district on-call supervisor; 3) any on-duty supervisor statewide; 4) on-call Major.
4. Quickly communicate with a sworn supervisor regarding Required Initial information (TRIPS) and any other relevant information so that he/she can effectively manage the pursuit.
5. Check with any on-duty pilot to determine if flight can respond.
6. When a supervisor becomes the primary unit in a pursuit, the RCO must contact a supervisor of an equal or higher rank to monitor the pursuit.
7. Document all incoming information in CAD.
8. Perform all relevant record and motor vehicle checks as expeditiously as possible.
9. Continue to monitor the pursuit until it has ended and then release the 10-33 restriction and/or patch upon approval of a sworn supervisor.
10. Issue a KOPS alert if requested.

F. Pilot/ Air Unit
When a fleeing vehicle comes under the surveillance of a State Patrol air unit, the pilot or other air crew member shall affirmatively communicate to all ground units that flight is overhead so that State Patrol units know to discontinue.

G. Supervisory Responsibility
Upon being notified of the pursuit, the supervisor shall:
1. Verbally acknowledge on the radio (or if monitoring by phone, have dispatch acknowledge) that they are monitoring the pursuit.
2. Ensure that involved member responsibilities are being followed.
3. Obtain the Required Initial and Evolving Information to continuously evaluate the pursuit for compliance with this policy.
4. Direct that the pursuit be discontinued if, in his/her judgment, it is not justified to continue under the guidelines of this policy or for any other reason.

X. PURSUIT FOLLOW-UP ANDREPORTING RESPONSIBILITIES

A. Member(s)
1. Primary and support units involved in a pursuit, or members having used an intervention strategy (even if the pursuit was discontinued), shall complete the Pursuit Report and a Field Report in TraCS. The reports shall be submitted and validated prior to the conclusion of the work shift unless otherwise directed by a supervisor. The report must include all pertinent and detailed information indicating the member's involvement, including all Required Initial and Evolving Information known to the member. Such information should demonstrate that the member continuously evaluated the need to apprehend the driver or occupants given any specific risk factors present during the pursuit.
2. If the fleeing driver and/or other occupants are not apprehended, members shall conduct further investigation with the intent to identify and charge any suspects (i.e., requesting a KOPS alert on the vehicle, contacting the registered owner, etc.). Members should request assistance from the district investigator when needed.

3. Examine Stop-Sticks after use for damage and report to District/Section Commander if repair is necessary.

B. Monitoring Supervisor
Complete a supplemental report in TraCS.

C. District/Section Commander
1. Review the pursuit for compliance with State Patrol policy by a thorough review of all field report(s), pursuit report(s), and in-squad video(s).
2. Ensure that reports substantiate the elements of any crimes charged and that all pertinent information (including Required Initial Information (TRIPS) and Evolving Information) is included in the reports. Ensure a follow-up investigation occurred for any fleeing driver and/or other occupants who were not apprehended.
3. Submit the *Pursuit Tracking Form* to Headquarters once the reports are accepted in TraCS and no later than 14 days of the occurrence.
4. Ensure that a post-pursuit review is completed by a supervisor with the involved members as soon as practicable after the incident.
5. Immediately notify the Regional or On-Call Major of any pursuit which has the likelihood of resulting in a tort claim.
6. Ensure that any unintended tire damage to other vehicles due to Stop-Sticks is addressed as soon as possible using district/section purchasing procedures. Further, when sticks have been damaged due to use, ensure that a deployment report is completed at https://www.stopstick.com/.

D. Majors
1. Review and evaluate State Patrol pursuit involvement for compliance with policies and that the reports include all pertinent information relevant to the incident.
2. Ensure that State Patrol pursuit involvement is reported to the Bureau of Criminal Apprehension within 30 days.

E. Radio Communications Supervisor
Ensure that a post-pursuit review is completed between the communications supervisor and communications operator as soon as practicable after the incident.

XI. TRAINING

A. Training for sworn members may only be provided by those members authorized by the Director of Training to conduct such training.

B. In accordance with POST requirements, all sworn members shall be given initial and periodic updated training inthe department's pursuit policy and safe emergency vehicle driving tactics, including pursuit intervention strategies and decision-making.

Approved:

SIGNED 5/10/2022

Colonel Matthew Langer, Chief
Minnesota State Patrol

GENERAL ORDER

Effective: May 1, 2003		**Number:** 03-10-058
Subject:	**STANDARDS FOR FULL DUTY STATUS OF STATE PATROL TROOPERS**	
Reference:	The Essential Functions of a MN State Trooper; State Patrol Trooper Physical Task Areas; Functions Performed by State Troopers Requiring Physical Ability; Physical Activities Documentation: Occupational Group: State Patrol Trooper; MN State Patrol Trooper; Essential Job Functions; MSPTA Contract	
Special Instructions:		**Distribution:** A,B,C

I. PURPOSE

To provide a guide outlining the standards for full duty status of a Minnesota State Patrol Trooper.

II. POLICY

State Patrol members must meet certain physical requirements to safely perform their job duties.

III. PHYSICAL REQUIREMENTS

A MN State Trooper must have the ability to be physically active for long periods each day, including, but not limited to, driving, standing, walking, running, jumping, crawling, stooping, kneeling, crouching and getting in and out of a vehicle several times each day. A Trooper must also be able to stand on a hard surface for prolonged periods of time (i.e. over four (4) hours.) If a trooper is required to direct traffic, it may be necessary to stand on hard surfaces for indefinite periods of time.

The following is a list of physical requirements associated with performing the job tasks of a Minnesota State Trooper:

A. Strength:
   1. Lift wheel out of trunk and onto lug bolts.
   2. Lift and carry fire extinguisher.
   3. Without assistance lift, carry, drag or pull an injured, invalid or unconscious person.
   4. Without assistance, lift and lower to the ground or stretcher, an injured, invalid or unconscious person.
   5. With assistance of another officer, carry an injured, invalid or unconscious person up or down an embankment or flight of stairs.
   6. Without assistance, drag or roll objects weighing 150 lbs. (i.e., roadway obstructions, dead animals, tree limbs.)
   7. Carry emergency equipment.
   8. Place and remove traffic control devices (i.e., barricades, signs, barrels, cones.)
   9. Possess the finger strength to pull the trigger of the department-issued semi-automatic pistol 12 consecutive times.

B. Physically Subdue/Restrain:
   1. Subdue/disarm a resisting person.
   2. Restrain and control resisting person.
   3. Defend self and others against physical attack.
   4. Defend self against person attempting to disarm trooper.
   5. Apply defensive tactics to uncooperative suspects.

C. Run/Climb:
   1. Run to chase fleeing suspect on foot over rough terrain (i.e., snow banks, ditches, fences.)
   2. Climb and traverse freeway and chain link fences, guardrails, embankments and drainage ditches.
   3. Climb into and on top of passenger vehicles and commercial vehicles.

D. Push:
   1. Push stalled automobile.
   2. Push through doors.
   3. Push your way through a large group of people.

E. Agility/Coordination/Reaction Time:
   1. Enter and exit patrol vehicle multiple times during shift.
   2. Ability to run (i.e., pursue a fleeing subject, respond to emergency scenes.)
   3. Demonstrate Standardized Field Sobriety Tests (SFSTs).
   4. Rapidly duck, dive, bend and stoop to avoid vehicles and thrown objects.

F. Flexibility:
   1. Perform CPR.
   2. Get in and out of car repeatedly.
   3. Stoop to inspect vehicles.
   4. Crawl on back under vehicles.

G. Balance/Equilibrium: Walk or run on slippery surfaces (i.e., rain, snow, ice.)

H. Apprehend, Control, Search:
   1. Physically break up and separate combatants in a fight.
   2. Subdue resisting subject after foot pursuit.
   3. Wrestle with a person offering physical resistance to make an arrest.
   4. Force resisting subject to the ground by means of tackling, wrestling, throwing or tripping.
   5. Immobilize subject against wall or patrol car.
   6. Apply holds (wrist lock, hammer-lock, etc.) to resisting subject to maintain control.
   7. Strike subject with fist, arm or elbow.
   8. Strike subject with foot or knee.
   9. Pry subject's hands or arms away from your throat or other areas of the body (break restraining or choke holds upon the officer.)
   10. Strike subject with baton.
   11. Use force to retain control of weapons (including firearms, batons, long guns.)
   12. Apply handcuffs to standing, resisting subject.
   13. Hold resisting subject on ground and apply handcuffs.
   14. Assist handcuffed subject to their feet after a prone handcuffing technique.
   15. Use force to remove resisting subject from vehicle, squad car and cell.
   16. Protect assigned dignitaries during executive protection services (i.e., body guard details.)
   17. Crawl into confined spaces of wrecked vehicles to locate victims and perform first-aid.

IV. MENTAL REQUIREMENTS

The trooper must possess sufficient mental capacity to perform all of the duties and requirements set forth in the trooper's job description.

V. MEDICAL REQUIREMENT

The District/Section Commander or injured member, when the member is in a limited or off-duty status, shall provide a copy of this general order to the treating physician for review and consideration to determine when the member can return to full-duty status.

Approved: **Signed 05/01/2003** **Colonel Anne L. Beers, Chief** **Minnesota State Patrol**	**I have read and understand this General Order.** **Signature**

GENERAL ORDER

Effective: March 1, 2021		Number: 21-10-027 HRLFNDT
Subject:	**FORCE; USE OF**	
Reference:	General Orders 30-005, 30-007, 30-018; Use of Force Report	
Special Instructions:	Rescinds General Order 20-10-027	Distribution: A,B,C

I. PURPOSE

The purpose of this policy is to provide troopers with guidelines for the use of force and deadly force in accordance with the following Minnesota Statute sections: 609.06 (Authorized Use of Force); 609.065 (Justifiable Taking of Life); 609.066 (Authorized Use of Force by Peace Officers); 626.8452 (Deadly Force and Firearms Use; Policies and Instruction Required); 626.8475 (Duty to Intercede and Report).

II. GUIDING PRINCIPLES

A. The use of force is only authorized when it is objectively reasonable and for a lawful purpose.

B. The decision by troopers to use force or deadly force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when troopers may be forced to make quick judgments about using such force.

C. Every human life has inherent value (sanctity) and members shall treat people with respect and dignity and without prejudice.

D. Every person has a right to be free from excessive use of force by law enforcement officers acting under the color of law.

E. Troopers shall use deadly force only when necessary in defense of human life or to prevent great bodily harm.

F. Troopers should exercise special care when interacting with individuals with known physical, mental health, developmental, or intellectual disabilities as an individual's disability may affect the ability to understand or comply with commands.

G. Troopers who use excessive or unauthorized force are subject to discipline, possible criminal prosecution, and/or civil liability.

III. DEFINITIONS

A. **Levels of Resistance** are the amounts of force used by a subject to resist compliance with the lawful order or action of a trooper. These actions may include:

1. Non-Verbal and Verbal Non-Compliance
   When a subject expresses his/her intentions not to comply with a trooper's directive through verbal and non-verbal means. Troopers may encounter statements ranging from pleading to physical threats. Such statements may also include physical gestures, stances, and subconscious mannerisms.
2. Passive Resistance
   When a subject does not cooperate with a trooper's commands but does not take action to prevent being taken into custody. For example, a demonstrator who lies down on a roadway and must be carried away.
3. Active Resistance (defensive resistance)
   When a subject makes physically evasive movements to interfere with a trooper's attempt to control that subject; including bracing, tensing, pulling away, actual or attempted flight, or pushing.
4. Active Aggression
   Actions by a subject that are aggressive in nature with intent to injure or instill fear of injury or death to the member or another.
5. Deadly Force Assault
   Any action which would cause a reasonable officer to believe it will result in death or great bodily harm to the member or another.

EXHIBIT F

B. **Levels of Control** are the amounts of force used by troopers to gain control over a subject and include the following:

1. Verbal Commands
   The use of advice, persuasion, warnings, and or clear directions prior to resorting to actual physical force. In an arrest situation, troopers shall, when reasonably feasible, give the arrestee simple directions with which the arrestee is encouraged to comply. Verbal commands are the most desirable method of dealing with an arrest situation.
2. Soft Hand Control
   The use of physical strength and skill in defensive tactics to control arrestees who are reluctant to be taken into custody and offer some degree of physical resistance. Such techniques are not impact oriented and include pain compliance pressure points, takedowns, joint locks, and simply grabbing a subject. Touching or escort holds may be appropriate for use against levels of passive physical resistance.
3. Hard Hand Control (hard empty hand)
   Impact oriented techniques that include knee strikes, elbow strikes, punches, and kicks. Control strikes are used to subdue a subject and may include strikes to pressure points such as: the common peroneal (side of the leg), radial nerve (top of the forearm), or brachial plexus origin (side of neck).
   - Defensive strikes are used by troopers to protect themselves from attack and may include strikes to other areas of the body, including the abdomen or head. Techniques in this category include stunning or striking actions delivered to a subject's body with the hand, fist, forearm, legs, or feet. In extreme cases of self-defense, the trooper may need to strike more fragile areas of the body where the potential for injury is greater.
4. Contact Weapons
   All objects and instruments used by troopers to apply force which includes striking another or defending a trooper or another from an active aggressive person. Contact weapons include, but are not limited to, MSP issued equipment such as the expandable baton, flashlight, and riot baton.
5. Deadly Force
   All force actually used by trooper(s) against another which the trooper(s) know or reasonably should know, creates a substantial risk of causing death or great bodily harm. The intentional discharge of a firearm in the direction of another person, or at a vehicle (including tires) in which another person is believed to be, constitutes deadly force. The use of a chokehold, as defined in this policy, constitutes deadly force.

C. **Exigent Circumstances**
Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.

D. **Bodily Harm** means physical pain or injury.

E. **Chokehold**
A method by which a person applies sufficient pressure to a person to make breathing difficult or impossible and includes but is not limited to any pressure to the neck, throat, or windpipe that may prevent or hinder breathing, or reduce intake of air. Chokehold also means applying pressure to a person's neck on either side of the windpipe, but not to the windpipe itself, to stop the flow of blood to the brain via the carotid arteries. Chokehold includes any type of neck restraint. Such actions are considered deadly force.

F. **Approved Weapon**
A device or instrument which troopers are authorized from the Minnesota State Patrol to carry and use in the discharge of their duties, and, for which the troopers have (1) obtained training in the technical, mechanical, and physical aspects of the device; and (2) has developed a knowledge and understanding of the law, rules, and regulations regarding the utilization of such weapons.

G. **OC Aerosol** is the Oleoresin Capsicum (OC) spray device classified as an inflammatory agent.

H. **Chemical Agents**
Devices containing Oleoresin Capsicum (OC) classified as an inflammatory agent and/or Chlorobenzylidene Malononitrile (CS) classified as an irritant agent.

I. **Distraction Device**
A device that produces a loud sound and/or light distraction, which creates a temporary physiological and/or psychological disorientation of an individual.

J. **Impact Munition** is a less lethal munition which functions by striking the intended target.

K. **De-Escalation**
Taking action or communicating verbally or non-verbally during a potential use of force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include, but is not limited to, the use of such techniques as command presence, warnings, verbal persuasion and tactical repositioning.

L. **Great Bodily Harm**
Bodily injury which creates a high probability of death, or which causes serious, permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

M. **Less-Lethal Force**
All force actually used by troopers which does not have the purpose or likelihood of causing death or great bodily harm. This includes use of approved chemical agent, OC aerosol, impact munitions and distraction devices used to maintain civil order, prevent property damage, and protect life.

N. **Weapon** is any instrument used or designed to be used to apply force to the person of another.

O. **Objectively Reasonable**
In determining the necessity for force and the appropriate level of force, troopers shall evaluate each situation in light of the known circumstances, including, but not limited to, the seriousness of the crime, the level of threat or resistance presented, and the danger to the community. Although troopers have many options, he or she must exercise the application of force in a manner that is reasonable and necessary to arrest or detain a suspect. Many variables affect the level of force one can justify. These situations can be very fluid, dynamic, and unpredictable. Troopers must be ready to utilize force at any level.

IV. PROCEDURES

A. De-Escalation
1. Troopers shall use de-escalation techniques and other alternatives to higher levels of force consistent with their training whenever reasonably possible and appropriate before resorting to force. The goal of de-escalation is to reduce and/or eliminate the need for force.
2. Whenever possible and when such delay will not compromise the safety of the trooper(s) or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, troopers shall allow an individual time and opportunity to submit to verbal commands before force is used.

B. Use of Non-Deadly Force
1. When de-escalation techniques are deemed not effective or appropriate, it shall be the policy of the Minnesota State Patrol, unless expressly negated elsewhere, to allow troopers to exercise discretion in the use of agency-approved, non-deadly force techniques and approved equipment to the extent permitted by Minn. Stat. §609.06:
   a. In effecting a lawful arrest; or
   b. In the execution of legal process; or
   c. In enforcing an order of the court; or
   d. In executing any other duty imposed on the trooper by law, including when bringing an unlawful situation he/she is tasked with handling safely and effectively under control
   e. In defense of self or another
2. In determining the degree of non-deadly force which is reasonable under the circumstances, troopers shall consider:
   a. The severity of the crime at issue;
   b. Whether the suspect poses an immediate threat to the safety of trooper(s) or others; and
   c. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

C. Use of Deadly Force

It shall be the policy of the Minnesota State Patrol, unless expressly negated elsewhere, to allow troopers to exercise discretion in the use of deadly force to the extent permitted by Minn. Stat. §609.066, subd. 2, which authorizes peace officers acting in the line of duty to use deadly force only if an objectively reasonably officer would believe, based on the totality of circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary:

1. To protect the peace officer or another from death or great bodily harm, provided that the threat:
   a. can be articulated with specificity by the law enforcement officer;
   b. is reasonably likely to occur absent action by the law enforcement officer; and
   c. must be addressed through the use of deadly force without unreasonable delay; or
2. To effect the arrest or capture, or prevent the escape, of a person whom the trooper knows or has reasonable grounds to believe has committed or attempted to commit a felony and the trooper reasonably believes that the person will cause death or great bodily harm to another person under the threat criteria in IV.C.(1)a.-c. (above), unless immediately apprehended.
3. Where reasonably feasible, troopers shall identify themselves as a law enforcement officer and warn of his or her intent to use deadly force.
4. In cases where deadly force is authorized, less-than-lethal measures must be considered first by troopers.

V. RULES GOVERNING USE OF FORCE AND WEAPONS

A. Use of Force

1. Troopers should, when practicable, announce their intention to use only that type and degree of force that is reasonably necessary under the circumstances. This provision shall not be construed to authorize or endorse the use of discourteous, abusive, or unprofessional language.
2. Troopers shall only use the type and degree of force that is objectively reasonable to bring an incident under control. Use of physical force should be discontinued when resistance ceases or when the incident is under control.
3. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent escape or imminent bodily harm or when noncompliant physically (including passive physical resistance such as refusing to stand, etc.). In these situations, only the amount of force necessary to control the situation shall be used.

B. Weapons – General

1. Troopers shall carry and use only Minnesota State Patrol approved weapons, unless circumstances exist which pose an imminent threat to the safety of the trooper(s) or the public requiring the immediate use of an improvised weapon to counter such a threat. This provision shall not be construed as authorizing troopers to use a non-approved weapon where, under the circumstances, it would be reasonably feasible to procure approval for use of the particular weapon prior to its use.
2. Troopers must be trained in the proper use of issued weapons prior to use.
3. On-duty members may carry a concealed utility knife (clip may be visible); however, the use of knives as weapons is not authorized except in those situations where deadly force may be used.
4. Troopers shall not modify, alter, or cause to be altered a Minnesota State Patrol approved weapon in his or her possession or control unless permission is granted according to General Order 30-007.The issued expandable baton, riot baton, OC aerosol device, 40 mm launcher, and Taser device are the only less lethal weapons authorized to be carried in a State Patrol unit and carried by troopers.
   a. All issued less lethal chemical or impact munition equipment shall be carried in the member's patrol unit so that it is readily available.
   b. If a Taser is carried, troopers must also carry either the baton or the OC aerosol device on their duty belt. Troopers exempted from carrying a Taser device must carry the baton on their duty belt.
5. Taser devices may only be carried and utilized in compliance with General Order30-018.

C. Weapons – Contact Weapons

1. Contact weapons shall be used only where hard and soft empty hand control options have failed to bring the subject/situation under control or where it reasonably appears that such methods would be ineffective if attempted. Contact weapons may be used only in the following manner:

a. to defend trooper(s) from an actively aggressive suspect; or
b. to strike an actively aggressive suspect for the purpose of rendering that person temporarily incapacitated in order to bring the situation under control; or
c. to restrain persons; or
d. in appropriate crowd control situations the MSP-issued riot baton can be utilized to direct and control the movement of people or persons, or as a barricade.

2. Troopers engaging another person with a contact weapon should attempt to strike, if possible, bodily areas likely to result only in incapacity. These areas include the arms, legs, torso, thighs, and calves.
3. If worn, the issued expandable baton is to be worn on the gun belt in the issued baton carrier.
4. The issued riot baton is to be used only when necessary for crowd control situations and shall be readily available along with other mobile field force equipment when responding to crowd control situations.
5. Intentionally striking the head or neck with any contact weapon is only justified in the use of deadly force.

D. Less Lethal Devices

1. OC Aerosol use is considered less-lethal force. Only approved Minnesota State Patrol-issued OC aerosol are authorized.
   a. Hand-held OC Aerosol
      i. Troopers shall exercise due care to ensure, as much as practicable, that only intended persons are sprayed or otherwise subject to the application of chemical agents and that the chemical agents are applied consistent with training. When feasible and tactically appropriate a verbal warning and/or dispersal order should be issued prior to the use.
      ii. The OC aerosol device (MK2) must be in the possession of all uniformed troopers and may be carried on the person.
   b. High volume OC delivery system, such as MK9, are designed for and may be used in civil disturbances against individuals and/or groups of individuals engaged in unlawful acts or endangering public safety and security.
2. Chemical Agents, Distraction Devices, Impact Munitions or the use of any combination thereof is considered less-lethal force. Only approved Minnesota State Patrol issued devices are authorized.
   a. Troopers are only authorized to use these devices after receiving agency training within the last three years. The training consists of a written exam and practical proficiency qualification.
   b. Devices must be non-expired and agency issued.
   c. Troopers are authorized to deploy the devices in accordance with their training and manufacture specifications.
   d. When reasonably feasible and tactically appropriate, a verbal warning and/or dispersal order should be issued prior to the use.
3. Any individual taken into custody who was exposed to OC Aerosol, Chemical Agents, Distraction Devices, Impact Munitions or any combination thereof the trooper should be aware of and utilize the following procedures:
   a. The areas of the body exposed to chemical agents and/or OC aerosol should be thoroughly flushed with water as soon as practicable.
   b. If the chemical agent and/or OC aerosol has struck the subject's clothing and the subject is to be held in custody, the subject must be permitted to shower and change clothes.
   c. Medical attention should be offered to those in custody who have been exposed to less lethal devices.
3. Less-lethal devices shall not be used on any person for the purpose of punishment.

E. Firearms

1. Firearms may be readied for use in situations where it is reasonably anticipated that they may be required.
2. The carry and use of firearms is covered in General Orders 30-005 and 30-007.
3. The use of a firearm is deadly force. If reasonably feasible and tactically appropriate, troopers should give a verbal warning before using or attempting to use deadly force. Warning shots are not authorized. Any use of deadly force other than authorized above, is unlawful.

F. Restraints

The following types of restraints shall not be used unless use of deadly force is authorized and other less than lethal measures were already considered:

1. Chokeholds (Neck restraints)
2. Securing all of a person's limbs together behind the person's back to render the person immobile.
3. Securing a person in any way that results in transporting the person face down in a vehicle.

VI. MEDICAL TREATMENT

After any use of force situation, the subject of the force shall be asked about and inspected for injuries as soon as practicable. Medical attention must be offered by members consistent with their training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility. If a person is offered and then refuses treatment, this refusal should be documented whenever possible.

VII. DUTY TO INTERCEDE AND REPORT

A. Any trooper(s) observing another peace officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, safely intercede to prevent the use of such excessive force.

B. Troopers shall prepare reports for such incidents as required in section VIII. Troopers who observe unreasonable force must notify a supervisor as soon as practicable and in all cases must report the observation in writing to the Chief within 24 hours of the incident.

C. Retaliation against any member who intervenes against excessive use of force, reports misconduct, or cooperates in an internal investigation is prohibited.

VIII. REPORTING REQUIREMENTS

A. In all instances in which a trooper(s) uses force, the trooper(s) shall prepare a TraCS Use of Force Report in a manner consistent with his/her training in addition to all other reports concerning the incident, including a Field Report. All reports shall be validated and submitted for review and approval.

B. Any trooper(s) who witnesses the use of force shall prepare a Field Report.

IX. TRAINING

A. Required members shall receive training, at least annually, on the agency's Use of Force policy and related legal updates.

B. In addition, training shall be provided on a regular and periodic basis and designed to:

1. Provide techniques for the use of and reinforce the importance of de-escalation.
2. Provide scenario-based training, including simulating actual shooting situations and conditions; and
3. Enhance Member's discretion/judgment in using non-deadly and deadly force in accordance with this policy.

C. The Chief, or designee, will maintain records of the agency's compliance with use of force training requirements.

X. REVIEW

A. District/Section Commander

1. Review, evaluate, and when appropriate, investigate all incidents involving the use of force with all troopers involved. Indicate on the Use of Force Report whether the trooper's actions complied with department policy.
2. Submit the Use of Force Tracking Report to Headquarters once the reports are accepted in TraCS and no later than 14 days of the occurrence. Exemptions to the 14-day requirement must be approved by the Regional Major.

B. Regional Major

1. Review and evaluate Use of Force Reports in TraCS for compliance with policy.
2. The Training and Development Section shall review approved Use of Force Reports in TraCS.
3. Ensure that the BCA is notified of information required to be documented in the National Use-of-Force Report database through the BCA Supplemental Reporting System, including the following:

- The death of a person due to law enforcement use of force;
- The serious bodily injury of a person due to law enforcement use of force;
- The discharge of a firearm by law enforcement at or in the direction of a person that did not otherwise result in death or serious bodily injury.

4. Ensure that the BCA is notified through the BCA Supplemental Reporting System within 30 days of the firearms discharge of information required to be documented in the Minnesota Firearms Discharge Report database, including:
   - When a peace officer discharges a firearm in the course of the duty, pursuant to Minnesota Statutes 626.553, subdivision 2. This does not include discharges for training purposes, nor the killing of an animal that is sick, injured, or dangerous;
   - Firearm accidental discharge (e.g. gun cleaning)
5. By the 5th of each month, if there are no incidents to report to the BCA that meets the criteria of X. B. 3 and 4 above, this information must be reported to the BCA in the Supplemental Reporting System as "No incidents to report."

Approved:

SIGNED 3/1/2021

Colonel Matthew Langer, Chief
Minnesota State Patrol

EXHIBIT 45

April 24, 2024

Mr. Chris Madel, Partner
Madel PA
800 Hennepin Avenue
Suite 700
Minneapolis, Minnesota 55403

Preliminary Opinions
State of Minnesota, Plaintiff,
v
RYAN PATRICK LONDREGAN, Defendant.
Court File No. 27-CR-24-1844.

Dear Mr. Madel,

Thank you for retaining me to analyze and render opinions regarding the July 31, 2023, Officer-Involved Shooting incident involving Minnesota State Patrol Trooper Ryan Patrick Londregan, No. 532, and Mr. Ricky Thomas Cobb II in the area of Interstate 94 near Dowling Avenue, Minneapolis, Minnesota 55412. I have studied reports, Body-Worn Camera Videos, photographs, Grand Jury of the State of Minnesota for the County of Hennepin, Minnesota State Patrol documents and other material (as listed under Materials Reviewed) provided to me thus far regarding this case. Please be advised that if additional documents related to this matter are provided, it may be necessary to write a supplemental report to refine or express additional opinions.

Scott A. DeFoe
Principal
On-Scene Consulting, LLC

Materials Reviewed:

1. All documents produced by Hennepin County Attorney's Office including Grand Jury materials.

2. Declaration by Minnesota State Patrol Sargeant Jason Halvorson.

3. Declaration by retired Minnesota State Patrol Sargeant Troy Morrell.

4. Declaration by Minnesota State Patrol Lieutenant Jonathan Wenzel.

5. Materials received by Minnesota State Patrol in response to Defendant's Subpoena.

6. Materials received from Jeffrey Noble in response to Defendant's Subpoena.

7. Materials received from Bureau of Criminal Apprehension, (BCA) in response to Defendant's Subpoena.

8. Materials received from Hennepin County Attorney's Office in response to Defendant's Subpoena to Jeffrey Noble.

9. Video Time Chart.

10. TROOO1365.

11. Materials received from Hennepin County Attorney's Office in response to Court's Order regarding Hennepin County Attorney's Office's external communication with the media.

Summary

The following statement summaries represent documents/statements that were used in part during my review but are in no way meant to be exhaustive. The documents listed in the Materials Reviewed Section of this report represent the full library of documents reviewed thus far and used as a basis for my opinions.

The below information is derived from Minnesota Bureau of Criminal Apprehension, Initial Report 2023-724, Report Date 8/2/2023:

"On 07/31/2023, Minnesota State Patrol Lieutenant JOHN FRITZ contacted the BCA regarding a fatal Use of Deadly Force, (UDF) incident that occurred in the area of Interstate 94 and 42nd Avenue N. in Minneapolis, MN, involving a Minnesota State Trooper."

"Special Agent In Charge, (SAIC) MIKE PHILL advised Senior Special Agent, (SSA) ROTH of the incident. SSA ROTH learned that Minnesota State Trooper BRETT SEIDE had conducted a lawful traffic stop of a vehicle on Interstate 94 near Dowling Avenue. Trooper SEIDE identified the driver of the vehicle as RICKY THOMAS COBB II."

"SSA ROTH learned that COBB II confirmed felony pick up and hold for an Order for Protection, (OFP), violation from the Ramsey County Sheriff's Department."

"Trooper SEIDE, Trooper RYAN LONDREGAN and Trooper GARRETT ERICKSON approached the vehicle in order to place COBB II under arrest."

"While attempting to remove COBB II from the vehicle, COBB II began to drive forward while Trooper SEIDE and Trooper LONDREGAN were partially inside the vehicle. Trooper LONDREGAN fired his department issued firearm."

"SSA ROTH was informed that COBB II continued to drive forward after the shooting, with Troopers SEIDE and LONDREGAN falling out of the vehicle."

"COBB II's vehicle continued to drive forward for approximately 1/8-1/4 mile before sideswiping the center barrier and coming to a stop near Interstate 94 and 42nd Avenue."

"Troopers re-approached the vehicle and observed apparent gunshot injuries to COBB II's body."

"Trooper SEIDE, LONDREGAN and ERICKSON performed life saving measures until Minneapolis Fire and North Memorial Health Hospital ambulance arrived on-scene."

"SSA ROTH learned that COBB II was not transported to a medical facility and was declared deceased on-scene."

The below information is derived from Minnesota State Patrol Trooper Brett Seide, No. 160:

SUMMARY:

"In sum, I stopped Cobb's car for not having his lights on at dark. When I ran his license plate and license, I got a hit that he wanted for questioning on a felony Order for Protection violation out of Ramsey County. I confirmed with Ramsey County that they wanted him detained and brought in for questioning. At this point, I was legally authorized to arrest Cobb, which is what I attempted to do."

"I made numerous requests of Cobb in a peaceful and non-threatening manner to get him to exit his vehicle. I did not tell him specifically that I was planning to arrest him because he was already visibly agitated and argumentative, and I did not want to elevate this situation to a dangerous or hostile level. While standing at the driver's door repeatedly requesting Cobb to exit his car and to shut off his car, I was aware of several potential dangers that existed based on my training, education, and experience, including:"

- *"That Cobb was still in physical control of a running car that he could quickly put into drive and speed-away putting law enforcement and others on the roadway at serious risk.*
- *That Cobb may use his car as a weapon against me and my partners.*
- *That Cobb may have a gun or other weapon in his car that could be used against me and my partners.*
- *That Cobb had at least one prior violent crime on his record suggesting that he may have a history of being violent.*
- *That were standing on the side of a major interstate highway with traffic passing at a high rate of speed that could hit one of us if a physical altercation were to take place with Cobb.*

- *That Cobb was non-compliant to my peaceful requests and was showing a growing level of resistance and hostility which could quickly have escalated to violent and intentional behavior.*
- *When Cobb shifted the vehicle into drive, I knew he was attempting to flee.*
- *While being pulled by the vehicle as it was accelerating, Trooper Londregan and I were at risk of great bodily harm or death."*

"I had all this in mind when Trooper Londregan opened the passenger door and the lights inside the car turned on. I decided to open the driver's door to assist with Cobb's apprehension and entered the vehicle. Cobb put the car in drive and lurched forward. It was clear to me at this time Cobb was not willing to voluntarily exit the vehicle. Trooper Londregan gave Cobb a strong verbal command to get out of the car. As I got closer and more entangled with Cobb, he began to accelerate, and I felt my body being pulled forward against my will along with the forward momentum of the car. I immediately felt like I was in danger of being hurt or killed by falling underneath the car or being hit by an oncoming car if Cobb was able to continue to accelerate in his attempt to flee. Trooper Londregan was in a better position than I was to use necessary force to get Cobb to stop the threat against myself and Trooper Londregan. It was reasonable to believe that Cobb was going to speed away with no regard for the safety of the public, myself, or Trooper Londregan."

"Cobb's conduct was terrifying, dangerous, and lethal force was needed before he could kill me and Tropper Londregan. Cobb posed an enormous threat to public safety."

Opinions:

Note: None of my opinions are intended to usurp the province of the jury and are not stated as ultimate issues. I hold the opinions below a reasonable degree of professional certainty. The basis and reasons for my opinions are premised upon my education, training and experience in law enforcement, my knowledge of law enforcement standards, analysis and study; my familiarity with generally accepted police practices and the professional and academic literature in the field; my review of relevant actions, policies and procedures; and my understanding of the facts of this case based on my review of the comprehensive materials listed on Page 2 of this report. My opinions and testimony regarding police procedure are relevant topics concerning issues of which lay jurors are unaware or frequently have misconceptions. My testimony on these topics is relevant and would assist a jury in understanding the evidence presented to them.

Opinion Number 1

It is my opinion based on my review of the facts, testimony, and videos, on July 31, 2023, Minnesota State Patrol Trooper Brett Seide, No. 160, Garrett Erickson, No. 345, and Ryan Londregan, No. 532, had Reasonable Suspicion based on the totality of the circumstances to conduct an Investigative Vehicle Stop/High-Risk Vehicle Pullover of the silver 2012 Ford Fusion, Minnesota Registration Number DBF402, driven by Mr. Ricky Thomas Cobb II.

In addition, Trooper Brett Seide observed Mr. Ricky Thomas Cobb II operating his silver 2012 Ford Fusion, Minnesota Registration Number DBF402 in the early morning hours of July 31, 2023, without vehicle lights in violation of Minnesota Statute 169.48: Vehicle Lights, Subdivision 1: Lights to be Displayed, (a). Every vehicle upon a highway within this State, (1): At any time from sunset to sunrise.

In addition, Trooper Brett Seide conducted an inquiry of the silver 2012 Ford Fusion, Minnesota Registration Number DBF402, and the driver Mr. Ricky Thomas Cobb II which revealed that Mr. Ricky Thomas Cobb II, Date of Birth: May 5, 1999, was wanted by the Ramsey County Sheriff's Office for Felony OFP Violation, "If located, hold subject and contact Ramsey County Sheriff's Office." In addition, the Information alert noted, "The Court finds by a preponderance of the evidence that the Respondent poses an imminent risk of causing another person substantial bodily harm and pursuant to Minnesota Statute 518B.01 6(I): Local Law Enforcement Agency shall take immediate possession of all firearms in the Respondent's (Ricky Thomas Cobb II), possession.

In addition, it is my opinion based on my review of the facts, testimony, and videos, on July 31, 2023, Minnesota State Patrol Trooper Brett Seide, No. 160, Garrett Erickson, No. 345, and Ryan Londregan, No. 532, had Probable Cause to arrest Mr. Ricky Cobb II and transport him to the Ramsey County Sheriff's Office for the Felony OFP Violation.

Reasonable suspicion is when a law enforcement officer has enough facts and circumstances present to make it reasonable to suspect that criminal activity is occurring, and the person detained is connected to that activity. Reasonable suspicion may be based on observation, personal training and experience, or other information from eyewitnesses, victims, or other officers, (totality of the circumstances).

Some factors contribute to establishing reasonable suspicion are:

- Actions.
- Driving Behavior.

- Time of Day.
- Location of the Vehicle Stop.
- Police Officer and experience.

Once the Law Enforcement Officer has detained the driver, Reasonable Suspicion of driving under the influence may develop into Probable Cause to Arrest as a result of questioning the driver, closer observation and administering Field Sobriety Tests.

Examples of deviations from normal driving that a Law Enforcement Officer may observe include but are not limited to:

I. Movement:
- Weaving
- Swerving
- Drifting
- Turning with wide radius
- Turning abruptly or illegally
- Striking or almost striking an object or another vehicle
- Driving into opposing or crossing traffic.

II. Speed:
- Low speed
- Stopping, (without cause) in a traffic lane
- Accelerating and decelerating rapidly
- Stopping inappropriately
- Braking erratically.

III. Position:
- Straddling center or lane marker
- Driving on other designated roadway, (e.g., shoulder)
- Tires on center lane marker
- Following too closely.

IV. Driver Action:
- Appearing to be impaired
- ***Driving with headlights off***.
- Slowly responding to traffic signals

- Signaling is inconsistent with driving actions.

Probable Cause: Is where known facts and circumstances, of a reasonably trustworthy nature, are sufficient to justify a person of reasonable caution or prudence in the belief that the person to be arrested has committed, is committing, or is about to commit a crime. It must be emphasized, however, that probable cause must be based upon concrete facts. Mere suspicion, rumor, or anonymous information without supporting facts will not suffice to establish probable cause.

In addition, I base my opinion on my twenty-eight years of law enforcement experience where I have been involved in thousands of vehicle pursuits and vehicle pullovers (Traffic Enforcement/Investigative/High-Risk Pullovers), as Primary Officer, Secondary Officer, and a Supervisor. In addition, I have received and provided training on Vehicle Pullovers, Vehicle Tactics and Containment. In addition, I have conducted over (50) Vehicle Pursuit Investigations during my last 14 years as a Supervisor with the Los Angeles Police Department. In addition, as a Los Angeles Police Department Sergeant II+1 at Metropolitan Division K9 Platoon, I responded to hundreds of Vehicle Pursuits throughout all geographical patrol divisions to assist with containment, perimeter tactics and ultimately K9 searches. In addition, I was a certified and court qualified Drug Recognition Expert, (DRE), during my tenure with the Los Angeles Police Department. In addition, I base my opinion on my twenty-eight-year law enforcement career where I have made thousands of arrests.

Lastly, I base my opinion on my twenty-eight- year law enforcement career where, as a Supervisor, I have investigated over 100 Use of Force Incidents as well as being personally involved in the use of lethal and less than lethal force incidents.

Opinion Number 2

It is my opinion based on my review of the facts, testimony and videos, on July 31, 2023, Minnesota State Patrol Trooper Brett Seide, No. 160, Garrett Erickson, No. 345, and Ryan Londregan, No. 532, based on the totality of the circumstances made a prudent tactical and reasonably objective decision to conduct an Investigative Vehicle Pullover/High-Risk Vehicle Pullover of the silver 2012 Ford Fusion, Minnesota Registration Number DBF402, driven by Mr. Ricky Thomas Cobb II.

Conducting a vehicle pullover can be one of the most dangerous duties a Law Enforcement Officer can perform. Violent acts that have taken place during a vehicle pullover are among the leading causes of officer injuries and death.

As a general rule, risk assessment refers to the level of anticipated risk involved with any vehicle pullover based on the Law Enforcement Officer's perception of danger due to a suspect's conduct, or advance knowledge. This knowledge may come from sources such as, but not limited to:

- The Law Enforcement Officer's personal observations.
- Information from Dispatch.
- Information obtained by running the vehicle's license plate.
- Number of occupants in the vehicle.
- Availability of assistance/back-up units, or
- Other means the Law Enforcement Officer may reasonably rely upon, e.g., training and experience, other observations, modus operandi, and criminal information bulletins.

Investigative Vehicle Pullovers:

- An expectation that the pullover involves less risk than a "high-risk" pullover, but more than a traffic enforcement pullover.
- Reason to believe that one or more of the vehicle's occupants has engaged, or is about to engage, in criminal activity.
- An expectation that the pullover would involve an investigation that might lead to a custodial arrest for a violation of the Vehicle Code, the Penal Code or other statute.

High-Risk Vehicle Pullovers are conducted in any situation where patrol officers perceive a greater level of risk. Such perceptions may be based on the officer's observations, information received through communications with dispatch, other officers, or other reliable means.

High-risk pullovers are generally made when patrol officers have:

- Reason to believe that one or more of the occupants of the target vehicle may:
    1. Be armed.
    2. Represent a serious threat to the officer(s).
    3. Has committed a felony.

In addition, it is my opinion based on my review of the facts, testimony, and videos Minnesota State Patrol Trooper Brett Seide, No. 160, Garrett Erickson, No. 345, and Ryan Londregan, No. 532, utilized the following safety precautions when they conducted

an Investigative Vehicle Stop/High-Risk Vehicle Pullover of the silver 2012 Ford Fusion, Minnesota Registration Number DBF402, driven by Mr. Ricky Thomas Cobb II.

I. Utilize appropriate resources/equipment:

- Request sufficient personnel and equipment to perform any necessary action safely and effectively to achieve a psychological advantage over the vehicle's occupant.
- Use marked patrol vehicles to affect the vehicle pullover.

II. Rely on basic training and known tactics:

- Use available cover and concealment.
- Maintain visual contact with vehicle occupant at all times.
- Always maintain a position of advantage.

III. Maintain personal control and professional attitude:

- Do not rush.
- Guard against being impatient.
- Wait for requested backup/assistance to arrive before acting.

In addition, it is my opinion based on my review of the facts, testimony, and videos Minnesota State Patrol Trooper Brett Seide, No. 160, Garrett Erickson, No. 345, and Ryan Londregan, No. 532, properly designated Trooper Brett Seide as the Contact Officer and Troopers Garrett Erickson and Ryan Londregan as the Cover Officers prior to approaching the silver 2012 Ford Fusion, Minnesota Registration Number DBF402, driven by Mr. Ricky Thomas Cobb II.

The roles and responsibilities of each Police Officer involved in a High-Risk Vehicle Pullover must be clear. The **Contact Officer**:

- Conducts the business of the pullover.
- Directs the driver and occupant(s) of the target vehicle.
- Taks necessary actions related to the investigation, (e.g., obtaining identification, searching suspects, etc.).

It is the general responsibility of any Cover Officers called to assist the primary officer at the scene of a high-risk vehicle pullover to:

- Protect the primary officer who is conducting the business of the pullover.
- Place their own patrol vehicles in a proper position to avoid silhouetting other officers with the vehicle's headlights or other lighting equipment.
- Take and maintain proper positions of cover and concealment.

- Maintain their firearms at the ready.
- Maintain visual contact with the vehicle occupant(s) at all times.

In addition, I base my opinion on my twenty-eight years of law enforcement experience where I have been involved in thousands of vehicle pursuits and vehicle pullovers (Traffic Enforcement/Investigative/High-Risk Pullovers), as Primary Officer, Secondary Officer, and a Supervisor. In addition, I have received and provided training on Vehicle Pullovers, Vehicle Tactics and Containment. In addition, I have conducted over (50) Vehicle Pursuit Investigations during my last 14 years as a Supervisor with the Los Angeles Police Department. In addition, as a Los Angeles Police Department Sergeant II+1 at Metropolitan Division K9 Platoon, I responded to hundreds of Vehicle Pursuits throughout all geographical patrol divisions to assist with containment, perimeter tactics and ultimately K9 searches. In addition, I was a certified and court qualified Drug Recognition Expert, (DRE), during my tenure with the Los Angeles Police Department.

Lastly, I base my opinion on my twenty-eight- year law enforcement career where, as a Supervisor, I have investigated over 100 Use of Force Incidents as well as being personally involved in the use of lethal and less than lethal force incidents.

Opinion Number 3

It is my opinion based on my review of the facts, testimony, and videos, on July 31, 2023, Minnesota State Patrol Trooper Brett Seide, No. 160, Garrett Erickson, No. 345, and Ryan Londregan, No. 532, used proper de-escalation and defusing techniques and tactics during the Investigative Vehicle Pullover/High-Risk Vehicle Pullover of the silver 2012 Ford Fusion, Minnesota Registration Number DBF402, driven by Mr. Ricky Thomas Cobb II.

In addition, Trooper Brett Seide respectfully requested that Mr. Ricky Thomas Cobb II surrender the keys to his silver 2012 Ford Fusion, Minnesota Registration Number DBF402, numerous times and was met with negative results.

Defusing is a process of reducing the potential for violence and bringing emotional level to a manageable level to restore order. The primary objective is to calm the person so that a conversation can take place and the use of force can be avoided.

De-escalation tactics and techniques seek to minimize the likelihood of the need to use force, or minimize force used during an incident, to increase the probability of voluntary compliance.

Effective communication may enable a peace officer to gain cooperation and voluntary compliance in stressful situations.

The vast majority of law enforcement responsibilities involve effective communication. Communication involves both command presence and words resulting in improved safety. Effective communication:

- Provides skills that reduce the likelihood of physical confrontation.
- Can result in a reduction of injuries.
- Renders more effective public service and improves community relations.
- Decreases public complaints and internal affairs investigations.
- Decreases civil liability.
- Lessens personal and professional stress.

In addition, it is my opinion based on my review of the facts, testimony and videos, Mr. Ricky Thomas Cobb II intentionally drove his silver 2012 Ford Fusion, Minnesota Registration Number DBF402, several feet while Trooper Brett Seide was leaning in the driver's compartment and attempting to unfasten Mr. Ricky Thomas Cobb's seatbelt.

In addition, Minnesota State Patrol Trooper Brett Seide, No. 160, Garrett Erickson, No. 345, and Ryan Londregan, No. 532, complied with Minnesota State Patrol General Order, Number 21-10-027, Use of Force, 12/20/2021:

V. Procedures:

A. De-Escalation:
1. Troopers shall use de-escalation techniques and other alternatives to higher levels of force consistent with their training whenever reasonably possible and appropriate before resorting to force. The goal of de-escalation is to reduce and/or eliminate the need for force.

2. Whenever possible and when such delay will not compromise the safety of the trooper(s) or another will not result in the destruction of evidence, escape of a suspect, or commission of a crime, troopers shall allow an individual time and opportunity to submit to verbal commands before force is used.
In addition, I base my opinion on the following facts and testimony:

- At 24:40 video time of Trooper Garrett Erickson's Body-Worn Camera, (BWC), Trooper Seide can be heard saying "This is now a lawful order."

In addition, I base my opinion on my twenty-eight years of law enforcement experience where I responded to thousands of calls for service and have effectively utilized defusing techniques, de-escalation techniques, verbal strategies, and active listening skills to reduce the potential for violence and bring the emotional level of the incident to a manageable level.

Lastly, I base my opinion on my twenty-eight- year law enforcement career where, as a Supervisor, I have investigated over 100 Use of Force Incidents as well as being personally involved in the use of lethal and less than lethal force incidents.

Opinion Number 4

It is my opinion based on my review of the facts, videos and testimony, Minnesota State Patrol policies, and based on the totality of the circumstances, Minnesota State Patrol Trooper Ryan Londregan, No. 532, used appropriate, necessary and reasonable lethal force when he fired 2 rounds from his Glock Model 17, Gen 5, 9mm, Semi-Automatic Pistol, at Mr. Ricky Thomas Cobb II to stop him from dragging Trooper Brett Seide or causing Trooper Brett Seide to be ejected from the vehicle where Trooper Brett Seide could have been struck and killed by the silver 2012 Ford Fusion, Minnesota Registration Number DBF402, driven by Mr. Ricky Thomas Cobb II, or by oncoming traffic.

In addition, it is my opinion, this was a dynamic and urgent situation where Trooper Brett Seide was faced with an immediate threat of physical harm or death.

Circumstances and Considerations to the Use of Deadly Force:

I. Threat to Life? **Yes**,

II. Imminent Threat/Imminent Danger, (means a significant threat that Law Enforcement Officers reasonably believe will result in death or serious bodily to themselves or to other persons)? **Yes**,

III. Type of Weapon, (Can it cause serious bodily injury or death)? **Yes**. 2012 Ford Fusion, Minnesota Registration Number DBF402, weighs approximately 3285-3803 pounds not to include the weight of Mr. Ricky Thomas Cobb II or his belongings or contents.

In addition, it is my opinion, the use of less lethal force in this matter by Trooper Ryan Londregan would have been ineffective and would have placed Trooper Brett Seide in an immediate threat of physical harm or death.

In addition, based on this unplanned event that was rapid, tense, uncertain, and occurred without an advanced warning, Trooper Ryan Londregan had to immediately respond to an imminent threat. It was not feasible for Trooper Ryan Londregan to provide a verbal warning to Mr. Ricky Thomas Cobb II prior to the use of lethal force in this situation.

In addition, it is my opinion, based on my review of the facts and testimony in this matter, that there was a Sufficiency of Fear to justify the use of deadly force by Trooper Ryan Londregan.

There are three elements needed to establish sufficiency of fear:

- The circumstances must be sufficient to excite the fears of a reasonable person in like circumstances.
- The person must not act under the influence of fear alone. There has to be some circumstances or overt act apart from the Law Enforcement Officer's fear.
- The decision to use deadly force must be made to save one's self or another from great bodily injury or death.

In addition, it is my opinion, Trooper Ryan Londregan demonstrated proper situational awareness and controlled fire by evaluating his background and not injuring or killing Trooper Brett Seide.

In addition, Minnesota State Patrol Trooper Brett Seide, No. 160, Garrett Erickson, No. 345, and Ryan Londregan, No. 532, complied with Minnesota State Patrol General Order, Number 21-10-027, Use of Force, 12/20/2021:

11-Use of Deadly Force: It shall be the policy of the Minnesota State Patrol, unless expressly negated elsewhere, to allow troopers to exercise discretion in the use of deadly force to the extent that it is permitted by Minnesota Statute 609.066, subd. 2, which authorizes peace officers acting in the line of duty to use deadly force only if an objectively reasonable officer would believe, based on the totality of circumstances known to the officer at the time and without the benefit of hindsight that such force is necessary:

1. To protect the peace officer or another from death or great bodily harm, provided that the threat:
a. Can be articulated with specificity.
b. Is reasonably likely to occur absent action by the law enforcement officer; and

c. must be addressed through the use of deadly force without unreasonable delay.

In addition, it is my opinion based on my twenty-eight-year law enforcement career where I was assigned as a tactics and firearms instructor as well as being involved in three Officer-Involved Shooting incidents, a Law Enforcement Officer is usually not able to see and react to changes in the subject at whom he or she is shooting. This is not determined by whether that change is an increase or a decrease in the threat presented to the officer by the subject. The focus of the officer's attention-internal or external, specific, or general, near or far, and left or right-will determine the officer's ability to perceive and react to changes in the threat and also the length of time it takes for the officer to perceive and then react to that change.

The delay in noticing any change in the nature of the threat and having the officer change his or her behavior in response to that threat could theoretically take the average officer 1-1.5 seconds in a dynamic, "real-world," life-threatening encounter if the officer did not expect the threat would cease, which I believe occurred based on Trooper Ryan Londregan's actions and reasonable response based on the totality of the circumstances.

In addition, It is my opinion based on my review of the facts, videos and testimony, Minnesota State Patrol Trooper Ryan Londregan, No. 532, complied with Minnesota Statutes 2023, 609.066, AUTHORIZED USE OF DEADLY FORCE BY PEACE OFFICERS:

Subd 2. Use of Deadly Force. (a). Notwithstanding the provisions of Section 609.06 or 609.065, the use of deadly force by a peace officer in the line of duty is justified only if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary:

(1). To protect the peace officer or another from death or great bodily harm, provided that the threat:
(i). Can be articulated with specificity,

(ii). Is reasonably likely to occur absent action by the law enforcement officer; and

(iii). Must be addressed through the use of deadly force without unreasonable delay.

In addition, I base my opinion on the following facts and testimony:

- According to Trooper Garrett Erickson, "I observed Trooper Seide being pulled by the vehicle as it was driving away. Due to the fact that Trooper Seide was inside of the vehicle, I was concerned that Trooper Seide was in an extremely vulnerable position. I feared for Trooper Seide's life because he could fall out and be run over or that Trooper Seide would be trapped in the vehicle for an unknown amount of time traveling down the freeway. I could hear what I believed to be three gunshots from inside of the vehicle," (Statement by Trooper Garrett Erickson).
- I agree with Mr. Jeff Noble who was retained by the Hennepin County Attorney's Office Retained Expert who stated, "*Trooper Londregan was forced to react in less than three seconds from the time that Trooper Seide leaned into the vehicle until the time that he uses deadly force. Police Officers who make critical decisions in dangerous situations should be provided some deference even if there is a plausible claim that the situation could have been handled differently or better. A reasonable police officer in these circumstances could believe that Trooper Seide was at imminent threat of death or serious bodily injury as he was leaning inside, he vehicle as Mr. Cobb began to accelerate*," (Report by Jeff Noble addressed to Mr. Joshua Larson, Senior Assistant Hennepin County Attorney, 10/12/2023).
- I agree with Minnesota State Patrol Lieutenant Troy Morrell that the Londregan critical incident did not violate any General Orders and that Trooper Londregan acted in accordance with his training and Trooper Londregan did not violate the Minnesota State Patrol Pursuit Policy or the use of force policy, (Declaration of Troy Morrell, 4/1/2024).
- I agree with Minnesota State Patrol Lieutenant Jonathan Wenzel that after reviewing publicly available videos of the Trooper Londregan's critical incident, he believes that Trooper Londregan acted in accordance with his training and Lieutenant Wenzel cannot see where Trooper Londregan violated the Minnesota State Patrol use-of force General Orders, (Declaration of Lieutenant Jonathan Wenzel, 3/24/2024).
- I agree with Minnesota State Patrol Sargeant Jason Halvorson that Trooper Londregan acted in accordance with his training. In addition, I agree that Trooper Londregan did not violate the use-of-force General Orders including, but not limited to the use of force policy found at 10-027, (Declaration of Sargeant Jason Halvorson, 3/19/24).

Lastly, I base my opinion on my twenty-eight- year law enforcement career where, as a Supervisor, I have investigated over 100 Use of Force Incidents as well as being personally involved in the use of lethal and less than lethal force incidents.

Opinion Number 5

It is my opinion based on my review of the facts, testimony, and videos, on July 31, 2023, Minnesota State Patrol Trooper Brett Seide, No. 160, Garrett Erickson, No. 345, and Ryan Londregan, No. 532, recognized that Mr. Ricky Thomas Cobb II was in medical distress, having a difficulty breathing and immediately initiated life-saving measures until the arrival of Emergency Medical Services.

If the victim is unable to speak or is not responsive, then appropriate steps should be taken to assess the victim's:

- Airway
- Breathing
- Circulation

I. The responding Police Officer should determine if the victim is breathing:

If the victim is not breathing with a pulse:

- Begin rescue breathing.

If the victim is not breathing with no pulse:

- Begin CPR.

If the victim is breathing:

- Complete primary assessment.

If the victim has a pulse, is breathing, but unconscious:

- Check for indications of life-threatening conditions, (e.g., major bleeding, shock, etc.).
- Place the victim in a recovery position (on the side with the head supported by the lower forearm), if appropriate to aid breathing and allow fluids or vomit to drain from the mouth.

In addition, Minnesota State Patrol Trooper Brett Seide, No. 160, Garrett Erickson, No. 345, and Ryan Londregan, No. 532, complied with Minnesota State Patrol General Order, Number 21-10-027, Use of Force, 12/20/2021:

VI. MEDICAL TREAMENT:

After any use of force situation, the subject of the force shall be asked about and inspected for injuries as soon as practicable. Medical attention must be offered by members consistent with their training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.

Opinion Number 6

It is my opinion based on my review of the facts, testimony, Minnesota State Patrol Training documents, Minnesota State Patrol Trooper Brett Seide, No. 160, Garrett Erickson, No. 345, and Ryan Londregan, No. 532, were properly trained in the following areas: Reasonable Suspicion, Probable Cause, Laws of Arrest, Lethal Force, High-Risk Felony Pullovers, Investigative Pullovers, Working as a Team, Use of Available Cover and Concealment, Contact and Cover Officers, Verbal Strategies, Defusing and De-Escalation Techniques, and Less Lethal Force Options.

In addition, Trooper Ryan Londregan, No. 532, was awarded Outstanding Rookie for 2022.

Lastly, I base my opinion on my twenty-eight- year law enforcement career whereas a Supervisor, I have investigated over 100 Use of Force Incidents as well as being personally involved in the use of lethal and less than lethal force incidents.

My Qualifications for Reviewing this Case:

My opinions are based on my education, training, and experience. Upon my graduation in June 1988 from Northeastern University in Boston with a Bachelor's Degree in Criminal Justice, I was hired as Criminal Investigator/Special Agent, GS-1811. Upon completion of Criminal Investigator/Basic Agent School at the Federal Law Enforcement Training Center (FLETC), 6-Month academy, I was assigned to the Organized Crime Drug Task Force where I functioned as an agent and undercover operative. The investigations focused on targeting criminal organizations that were involved in large scale drug smuggling and money laundering operations.

I was assigned to the Office of the Special Agent In-Charge, in San Francisco from August 1988 until I joined the Los Angeles Police Department in November of 1989. While in the academy, I was selected by the staff to be my Recruit Class Leader. Upon my graduation from the LAPD Academy, I was assigned to 77th Division. In addition to

being assigned to 77th Division, I was assigned to Northeast Division (Patrol), Northeast Division (Special Projects Unit-SPU), Northeast Division C.R.A.S.H (Gang Detail). I was selected to be transferred to Operations Central Bureau C.R.A.S.H., where I was assigned to a plain clothes detail targeting specific gangs throughout Operations Central Bureau.

I was selected to be a Police Officer III at Wilshire Area Vice where I functioned as an undercover operative targeting prostitution, gambling, bookmaking, and other Vice related offenses. While working Wilshire Vice, I was ambushed and received two gunshot wounds. I received the Purple Heart in 2010. Upon return from my injuries, I attended mandated Field Training Officer School and was assigned as a Field Training Officer (FTO) at Wilshire Division. I trained recruits upon their graduation from the Los Angeles Police Academy in tactics, use of force, report writing, vehicle stops, calls for service, court testimony, emergency procedures, pursuit policy, accident investigations, perimeters, Department policies and procedures, and effective communication skills. While assigned as a Field Training Officer, I was involved in an In-Policy Lethal Use of Force incident.

I was promoted to the rank of Detective and attended the LAPD Detective School. Upon completion of LAPD Detective School, I was assigned to Wilshire Area Narcotics, Field Enforcement Section, where I functioned in an undercover capacity.

I was promoted to the rank of Sergeant I and assigned to Hollenbeck Division. Prior to my assignment, I attended the mandated LAPD Supervisor School. In conjunction with LAPD Supervisor School, I was selected to attend the West Point Leadership Academy Supervisor Training. The training focused on team building, leadership, and decision making. While assigned to Hollenbeck Division, I conducted roll call training on a daily basis on numerous subject matters to include Use of Force Options (Non-Lethal and Lethal), Tactics, Calls for Service, Calls for Service involving the Mentally Ill, Vehicle Pursuit Policy, LAPD Policies and Procedures, Use of Force Policy, Updated Legal Bulletins, Training Directives, and other Standardized Roll Call Training. I directly supervised Police Officers and provided supervisory oversight during calls for service, tactical situations, perimeter tactics, containment and control issues and use of force incidents. I conducted audits, personnel investigations, Standard Based Assessments (Ratings/Evaluations), Use of Force Investigations, Administrative Projects, and prepared commendations for Police Officer's field performance. While assigned to Hollenbeck Division, I was selected as the Officer-In-Charge of Hollenbeck Division's Special Enforcement Group, (SEG). I directly supervised (14) Police Officers and Detectives

assigned to the Unit. SEG worked in conjunction with Hollenbeck Detectives and specifically targeted career criminals in Hollenbeck Division. I provided ongoing mandated Department Training as well tactical, firearms, less than lethal force, lethal force and search warrant tactics training to Police Officers and Detectives. SEG prepared and served numerous search warrants. I provided search warrant tactical briefing and de-briefing of each warrant at the conclusion of the of the search warrant service. I completed audits, administrative projects, Use of Force Investigations, personnel complaints, and other administrative duties as deemed necessary by the Area Commanding Officer.

During this time, I was assigned to Internal Affairs Division (IAD), Headquarters Section. I investigated personnel complaints that exceeded the scope for a geographical Division. At the conclusion of my assignment to IAD, I was selected to Management Services Division, Special Projects, Office of the Chief of Police. I completed numerous in-depth staff projects for review by the Chief of Police. In addition, I conducted research and edited the 2000 LAPD Department Manual.

Also, during this time, I earned my Master's Degree in Public Administration from California State University, Long Beach.

I was selected as a Sergeant II at 77th Division Vice. I directly supervised (10) undercover Vice Officers and four uniformed Police Officers. I provided all facets of training to the Police Officers assigned to Vice to include Use of Force Policy, Legal Updates, Department Directives, Training Bulletins, Standardized Roll Call Training, Tactics Training, Undercover Operations Training, Surveillance Training, and any other training deemed necessary by the Area Commanding Officer. I conducted audits, personnel investigations, administrative projects, Use of Force Investigations, and special projects.

During this time, I was selected by the Chief of Police to be loaned to the Rampart Corruption Task Force. I conducted Use of Force audits and Internal Affairs Audits on Specialized Units in Central Bureau and South Bureau.

In 2000, I was selected to Metropolitan Division K9 Platoon as a Sergeant II+1. I directly supervised (16) K9 Handlers. Metropolitan Division K9 conducted K9 searches for the entire Department covering all Patrol Divisions and Specialized Units. I provided all facets of training to the K9 Officers to include K9 Operations, tactics, search warrant services, Mobile Field Force Options, Less than Lethal Force Options, Lethal Force

Options, Department Directives, Training Bulletins, and other training dictated by the Officer-in-Charge and Commanding Officer. In addition, I taught K9 Operations at LAPD In-Service Training, Watch Commander School, Sergeant School, Field Training Officer (FTO) School and Detective School. While assigned to K9, I investigated and completed K9 contacts (bite investigations), personnel complaints, and Use of Force Investigations. In addition, I directed and was directly involved in Use of Force incidents. I received the LAPD Medal of Valor and LAPD Police Star for two lethal use of force incidents while assigned to K9.

In 2005, I was selected as a Sergeant II+1 in Special Weapons and Tactics (SWAT). I directly supervised (60) SWAT Officers. I conducted and facilitated all facets of SWAT training to include Weapons Training (.45 caliber, MP-5, M-4, Benelli Shotgun, Remington 870 Bean Bag Shotgun, .40mm, 37mm, X-26 Taser) on a monthly basis. In addition, I facilitated and conducted training in the following training Cadres: Breacher (Explosive), Crisis Negotiation-Mental Health, MEU, SMART, Suicide Prevention, Counter-Terrorism Cadre, Climbing, Hostage Rescue, Sniper Training, Air Support Training (Fast Rope, Aerial Platform Shooting). I directly supervised SWAT missions and High-Risk Search Warrant Services to include all facets (preparation, briefing, deployment, de-briefing). I was the Supervisor-in-Charge of the Crisis Negotiation Team, (CNT). I provided on-going Crisis Negotiation Training, mental health training, Tactical de-briefs of SWAT incidents, 40-hour POST Certified CNT School, and suicide prevention training. I worked in conjunction with the mental health community to provide and facilitate training with LAPD SMART, LAPD Mental Evaluation Unit (MEU), Behavioral Science Services Section (BSS), and Didi Hirsch Suicide Prevention Training. In addition, I assisted the West Point Military Academy with the development of their crisis negotiation curriculum.

During this time, I was selected as the LAPD SWAT representative to respond to Mumbai India with LAPD Counterterrorism and Las Vegas Metropolitan Division Police Department Counterterrorism following the terrorist attack in November 2008. I taught use of force, tactics, and SWAT deployment to 250 Mumbai Special Tactical Police Officers. Upon my return, I assisted with the development of Multi-Assault, Counter-Terrorism Action Capabilities, (MACTAC).

In June 2010, I retired from the Los Angeles Police Department with over 20 years of service to pursue an opportunity in the private sector. I held supervisory positions for the last 14 years of my career. During my tenure with the LAPD, I received over 100 Commendations including: The Medal of Valor, Purple Heart, and the Police Star.

From June 2010 through April 2013, I was the Vice President of Security Operations at Caruso Affiliated in Los Angeles, CA. My responsibilities included identifying and conducting Risk and Vulnerability Assessments for all Caruso Affiliated Developments, projected developments/investments, and residences. I utilized strategic-level analysis from the intelligence community, law enforcement and the private sector. I identified and monitored potential or actual incidents among critical infrastructure domains and all personal and professional interests of Caruso Affiliated. I mitigated expected threats. I utilized preplanned, coordinated actions in response to infrastructure warnings or incidents. I responded to hostilities. I identified and eliminated the cause, or source, of an infrastructure event by the utilization of emergency response measures to include on-site security personnel, local law enforcement, medical and fire rescue, and relevant investigative agencies. I conducted all facets of security training for the company and employees. I formulated Business Continuity and CEO Succession Plans for the company and all affiliated business interests. I conducted ongoing audits and internal investigations.

From June 2013 to June 2014, I was hired as a Deputy Sheriff at the Riverside Sheriff's Department where I conducted all facets of patrol service to include calls for service, self-initiated field activity, arrests, citations, and court testimony. In addition, during my tenure with the Riverside County Sheriff's Department, I was assigned to Robert Presley Detention Center (RPDC). I processed and monitored inmate population from initial intake, housing, court, transportation, and release. I conducted searches of inmate population as well as the facility on an ongoing basis. I utilized my experience as a gang officer, Detective and Sergeant with LAPD to conduct interviews and interrogations of prisoners regarding a myriad of investigations. I provided information to Gang Detail. I functioned as a mentor to newly appointed Deputy Sheriffs as well as Supervisors. I attended and certified in RSO Supplemental Jail Operations Core Course prior to deployment at RPDC. I attended on-going training to include Use of Force (Lethal and Non-Lethal), Crisis Negotiation Training, Active Listening Skills Training, Report Writing, Response and Deployment to Critical Incidents and Proper Protocols and Procedures when responding to a medical incident or suicide.

From June 2014 to March 2016, I was the Director of Security at Universal Protection Service where I supervised 84 Security Professionals at the City National Plaza. I conducted and facilitated all Bureau of Security and Investigative Services (BSIS) training to Security Professionals. I ensured all Security Professionals were compliant with BSIS security training and licensing. I conducted the following training to Security

Professionals and Tenants on an ongoing basis: Fire Life Safety, Evacuation Drills, Active Shooter, Workplace Violence, Security Procedures and Protocols, Responding to Incidents Involving the Mentally Ill, Hazardous Materials and Internal Theft. I conducted ongoing Risk and Vulnerability Assessments of the City National Plaza to include security staffing and deployment, Closed Circuit Television (CCTV), Crime Prevention through Environmental Design (CPTED) and protocols to respond and mitigate threats. I developed Security and Fire Life Safety Manuals for Security Professionals and Tenants. I coordinated all security efforts to ensure safety at Special Events. I conducted internal investigations and worked in conjunction with the Los Angeles Police Department (LAPD) and the Los Angeles Fire Department (LAFD) on an ongoing basis.

From March 2016 to September 2017, I was the Director of Security at L&R Group of Companies. I conducted Risk and Vulnerability (RAV) Assessments for all L&R Group of Companies developments and projected developments throughout the United States. I conducted and/or facilitated all Bureau of Security and Investigative Services (BSIS) training to Security Professionals. I ensured all Security Professionals were compliant with BSIS security training and licensing. I conducted the following training to Security Professionals and Tenants on an ongoing basis: Fire Life Safety, Evacuation Drills, Active Shooter, Workplace Violence, Security Procedures and Protocols, Responding to Incidents Involving the Mentally Ill, Hazardous Materials and Internal Theft. I conducted ongoing Risk and Vulnerability Assessments to include security staffing and deployment, Closed Circuit Television (CCTV), Crime Prevention through Environmental Design (CPTED), and protocols to respond and mitigate threats. I developed Security and Fire Life Safety Manuals for Security Professionals and Tenants. I coordinated all security efforts to ensure safety at Special Events. I conducted internal investigations and worked in conjunction with the Los Angeles Police Department (LAPD) and the Los Angeles Fire Department (LAFD) on an ongoing basis as well as respective law enforcement agencies throughout the United States on security matters.

In 2020, I received my Master of Legal Studies from Pepperdine Caruso School of Law. Attached are my curriculum vitae, listing of testimony and fee schedule.

I signed this declaration pursuant to Minnesota Statute Section 358.116. I declare under penalty of perjury that everything I stated in this document is true and correct. I signed this declaration on April 24, 2024, in Orange County, California.

Scott A. DeFoe

Curriculum Vitae

Scott A. DeFoe

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Cell: 714-655-4280
sdefoe313@msn.com

Executive Profile

Expert Witness / Consultant Specialties Include:

Police Procedures / Tactics	Use of Force (Lethal and Less Lethal)
SWAT	K9
Narcotics	Jail Operations
Informants	Police Corruption / Internal Investigation
Vehicle Pursuits	Vice
Surveillance-Marine	Evidence Analysis & Preservation
Security	Premise Liability / Forseeability

Awards and Commendations

Purple Heart (LAPD),
Medal of Valor (LAPD)
Police Star (LAPD) and over 100 Los Angeles Police Department and citizen commendations.

Professional Experience

Consultant / Expert Witness
April 2013 to Present
On-Scene Consulting Group, LLC. - Los Angeles, CA

Provide comprehensive service which includes in-depth analysis and investigations with detailed reporting of all findings. Testified as an Expert Witness in pre-trial depositions and in various courts throughout the United States.

Director of Security
March 2016 to September 2017
L&R Group of Companies - Los Angeles, CA

Identified and conducted Risk and Vulnerability Assessments for all L&R Group of Companies developments, and projected developments throughout the United States. Conducted all facets of security training to ensure compliance with the Bureau of Security and Investigative Services (BSIS). Ensured compliance with appropriate safety and sustainability regulations for all of the developments in coordination with Human Resources, Legal, and law enforcement to ensure the safety and security of protection of our staff, executives, tenants, and guests.

- Utilized strategic-level analysis from the intelligence community, law enforcement and the private sector. Ensured a coordinated ability to identify and monitor potential or actual incidents among critical infrastructure domains.
- Mitigated expected threats. Utilized preplanned coordinated actions in response to infrastructure warnings or incidents.
- Conducted internal investigations and audits.
- Directed the day-to-day management of site security operations for major sites through subordinates to ensure timely delivery of required services and appropriate response to incidents.
- Designed and implemented appropriate security, measures for existing and projected developments.
- Coordinated all security efforts with current practices and procedures.
- Researched and deployed appropriate technology solutions, innovative security management techniques, and other procedures to ensure physical safety of employees, tenants and guests.

Director of Security
June 2014 to March 2016
Universal Protection Service - Los Angeles, CA

Directed supervision of 84 Security Professionals at the City National Plaza. Conducted and or facilitated all Bureau of Security Investigative Services (BSIS) training to Security Professionals. Ensured all Security Professionals were compliant with BSIS security training and licensing. Conducted the following training to Security Professionals and Tenants on an ongoing basis.

- Trained others on Fire Life Safety, Evacuation Drills, Active Shooter, Workplace Violence, Security Procedures and Protocols, Responding to Incidents Involving the Mentally Ill, Hazardous Materials and Internal Theft.
- Conducted ongoing risk and vulnerability assessments of the City National Plaza to include security staffing and deployment, closed circuit television (CCTV), Crime Prevention through Environmental Design (CPTED), and protocols to respond and mitigate threats.
- Developed Security and Fire Life Safety Manuals for Security Professionals and Tenants.
- Coordinated all security efforts to ensure safety at special events. Conducted internal investigations and worked in conjunction with the Los Angeles Police Department (LAPD), Los Angeles Fire Department (LAFD) on an ongoing basis.

Riverside County Sheriff's Department - **Deputy Sheriff (Lateral)** - June 2013 to June 2014
April 2014 to June 2014

Assigned to Jurupa Valley Station Field Deputy Training Program. Conducted all facets of patrol service to include: calls for service, self-initiated field activity, arrests, citations, booking of evidence, and court testimony.

June 2013 to April 2014

Assigned to Robert Presley Detention Center (RPDC). Processed and monitored inmate population from initial intake, housing, court, transportation and release. Conducted searches of inmate population as well as the facility on an ongoing basis. Utilized experience as a Gang Officer, Detective and Sergeant with LAPD to conduct interviews and interrogations of prisoners regarding a myriad of investigations.

- Provided information to gang detail.
- Functioned as a mentor to newly appointed Deputy Sheriffs as well as Supervisors.
- Attended and certified in RSO Supplemental Jail Operations Core Course and Title XV training prior to deployment at RPDC. Received on-going training to include: Use of Force (Lethal and Non-Lethal), Crisis Negotiation Training, Active Listening Skills Training, Report Writing, Response and Deployment to Critical Incidents, and Proper Protocols and Procedures when responding to a medical incident or suicide.

Vice President of Security Operations
June 2010 to April 2013
Caruso Affiliated - Los Angeles, CA

Identified and conducted risk and vulnerability assessments for all Caruso Affiliated Developments, projected developments/investments, and residences. Utilized strategic-level analysis from the intelligence community, law enforcement and the private sector. Ensured a coordinated ability to identify and monitor potential or actual incidents among critical infrastructure domains and all personal and professional interests of Caruso Affiliated. Mitigated expected threats. Utilized preplanned, coordinated actions in response to infrastructure warnings or incidents.

- Responded to hostilities and identified and eliminated the cause, or source, of an infrastructure event by the utilization of emergency response measures to include: on-site security personnel, local law enforcement, medical and fire rescue and relevant investigative agencies.
- Conducted all facets of security training for the company and employees.
- Formulated Business Continuity and CEO Succession Plans for the company and all affiliated business interests. Conducted ongoing audits and internal investigations.

Level I Reserve Police Officer
June 2010 to March 2016
Los Angeles Police Department - Los Angeles, California

Initially assigned to Counter Terrorism from June 2010 through April 2012. Completed staff projects for the Deputy Chief.

Assigned to the Wilshire Division from April 2012 through March 2016. Assisted with tactical and shooting training days as an Adjunct Instructor. Assigned to patrol functions including: responding to calls for service, conducting follow-up investigations, conducting self-initiated law enforcement activities including arrests, booking of arrestees, completing reports and booking of evidence.

- Worked in conjunction with citizens and local businesses in developing crime fighting strategies.
- Provided active shooter training to local businesses.
- Worked in conjunction with Wilshire Detectives and Wilshire Crime Analysis Detail (CAD) to reduce crime.

Sergeant II+1 Special Weapons and Tactics (SWAT) Supervisor
August 2005 to June 2010
Los Angeles Police Department - Los Angeles, California

Supervised the response and tactical intervention during barricaded subject incidents. Supervised the coordination and facilitation of high risk warrant services. Supervised the Crisis Negotiation Team (CNT) during barricaded and suicidal subject incidents. Developed SWAT's Counter-Terrorism and Training Cadre to include the preparation and submission of federal and state grants for the acquisition of equipment.

- Performed and facilitated all aspects of tactical and crisis negotiation training to federal, state and local law enforcement agencies.
- Responded and trained Mumbai local and state police officers following the 2008 terrorist attack in Mumbai, India.
- Assisted with the development of multi-assault counter-terrorism action capabilities training.
- Completed audits, employee performance reviews, investigative reports and internal investigations.
- Conducted use of force investigations on SWAT incidents and submitted reports to the Officer-in-Charge for his review and approval.
- Testified in court and at administrative hearings.

Sergeant II+1 Metropolitan Division K9 Platoon
April 2000 to September 2005
Los Angeles Police Department - Los Angeles, California

Supervised and facilitated all facets of K9 training. Ensured that all K9 deployments conformed to the K9 deployment criteria, through training of personnel and supervision of K9 searches. Functioned as a member on a K9 Search Team when necessary. Provided on-scene command during critical incidents at Command Posts.

- Completed use of force investigations and K9 contacts. Submitted all reports to Officer-in-Charge for his review and approval.
- Completed all requisite administrative reports to include audits.
- Testified in court, and at administrative hearings. Wrote 2002 LAPD Metropolitan Division K9 Platoon Manual.

Sergeant II-77th Division Vice, Officer-in-Charge
February 1999 to March 2000
Los Angeles Police Department - Los Angeles, California

Supervised investigations involving pimping, pandering, prostitution, bookmaking, gaming, gambling and other vice related activities. Conducted audits and administrative reports. Prepared and served search warrants for the above-mentioned crimes. Supervised twelve undercover officers and six uniformed officers on a daily basis. Worked in conjunction with other Department entities on sensitive investigations.

- Completed rating reports for subordinates assigned to the Unit.
- Conducted use of force investigations, audits, personnel complaints and other administrative tasks.
- Submitted all reports to the Officer-in-Charge for his review and approval.
- Testified in court and at administrative hearings.

Management Services Division Supervisor-Sergeant
November 1997 to March 1999
Los Angeles Police Department - Los Angeles, California

Conducted research projects, directives and correspondence at the direction of the Chief of Police. Reviewed staff work by subordinates. Conducted follow-up investigations as required to ensure that policies and procedures were adhered to by all organizational units within the Department. Conducted large scale audits and investigations.

- Served a six-month loan on the Rampart Corruption Task Force investigating and auditing use of force reports.
- Served a six-month loan at Internal Affairs Division, Headquarters Section. Investigated personnel complaints beyond the scope of geographical patrol divisions.
- Staff writer for the 2000 Los Angeles Police Department Manual.

Hollenbeck Division Special Enforcement Group Officer-in-Charge
November 1996 to November 1997
Los Angeles Police Department - Los Angeles, California

Provided supervisory oversight of eighteen police officers and detectives during gang investigations, crime suppression and the service of search warrants. Provided all aspects of tactical training to the group. Completed audits, employee ratings and administrative duties.

- Monitored and reviewed gang and narcotic investigations to ensure compliance with Department policy. Conducted use of force investigations.
- Submitted all investigative and administrative reports to the Commanding Officer for his review and approval. Testified in court and at administrative hearings.

Detective, Wilshire Division
March 1995 to November 1996
Los Angeles Police Department - Los Angeles, California

Assigned to various areas including: Robbery, Burglary, Auto Theft, Major Assault Crimes (Assaults with Domestic Violence), Homicide and the West Bureau Narcotics Group Field Enforcement Section. Conducted preliminary investigations and follow-up investigations. Interviewed victims and witnesses of crimes and interrogated individuals suspected of committing crimes. Conducted surveillances.

- Filed criminal investigations with the Los Angeles City Attorney's Office and the Los Angeles District Attorney's Office.
- Worked in conjunction with other law enforcement agencies and entities within the Los Angeles Police Department.
- Wrote and served search warrants. Booked evidence related to investigations.
- Trained local businesses and community groups in the areas of safety and security.

Police Officer
November 1989 to March 1995
Los Angeles Police Department - Los Angeles, California

Functioned in numerous roles as a Police Officer I, II, and III to include: Patrol, Field Training Officer (FTO), Detective Trainee, Vice, Special Enforcement Group, Divisional CRASH (gangs) and Operation Central Bureau CRASH (gangs).

- Selected to Specialized Units based on high performance and ability to work well in small cohesive units throughout the Department.
- Testified in court on a multitude of matters. Certified in court as a narcotic, gang, and vice expert.

Special Agent-Organized Crime Drug Task Force (OCDETF)
June 1988 to October 1989

Department of Treasury, United States Customs Service - San Francisco, California. Special Agent assigned to a multi-agency narcotics task force. Investigated major suppliers of narcotics and dangerous drugs who were engaged in illegal activities on an organized and commercial basis in an undercover capacity.

- Prepared and served search warrants. Worked in conjunction with the Assistant United States Attorney in San Francisco. Testified in Federal Court and at Asset Forfeiture Hearings.

United States Army Reserve
June 1983 to June 1989
Honorable Discharge as E-4. Military Occupational Skill (MOS)-72E-Combat Infantry Communications

Training (Received and Provided Training):
Weapons Training/Qualification on Monthly Basis-M-4, MP-5, Benelli Shotgun, Kimber/.45/1911, Remington 870 Shotgun, Glock, Force Option Simulator (Quarterly). Quarterly mandatory weapons certification from November 1989 to June 2010.

Additional Training/Certification(s): (11/1989-06/2010)

Supervisor Training:
Incident Command System 100-800
Sexual Harassment Training for Supervisors
Career Development for Supervisors
Standards Based Assessments for Supervisors
Supervisors Consent Decree Training
Vehicle Pursuit Policy Supervisor Training
Watch Commander School Retaliation Training
RMIS TEAMS II (Non-Categorical Use of Force Supervisor Training)
Ethics in Law Enforcement
Career Survival Workshops
Problem Oriented Policing and the SARA Model
Cultural Diversity Tools for Tolerance
Instructor Development Course (IDC)
Officer Involved Shootings Administrative Investigations Training
Prop 115-Hearsay Evidence Training
Managing Workplace Conflict CLETS-NCIC
Racial Profiling
West Point Leadership School for Supervisors
Basic Supervisor School

HAZMAT Training:
Advanced Chemical and Biological Integrated Response, LAFD Hazardous Materials Technical Specialist (A-D)-Certified HAZMAT Technician, Technical Emergency Response Training, Law Enforcement Protective Measures.

Crisis Negotiations/Mental Health Training:
Hostage Negotiations - Advanced, Behavioral Sciences Services Section
Officer-Involved Shooting/Barricaded Subject Services Debriefs
Crisis Negotiation Training and Curriculum Development for West Point Military Academy
Didi Hirsch Suicide Prevention Training (Volunteered and Supervised on an ongoing basis)
Mood Disorders/Post Traumatic Stress Disorder Training, Communicating with People with Disabilities
Mental Health Introduction MEU-SMART Orientation
Mental Illness Update
Drug Recognition Expert Training and Certification
Under the Influence-11550 Health and Safety Code Training
Institute for the Prevention of In-Custody Deaths Training on Recognizing Agonal & Other Breathing Problems (2015). Attended and facilitated LAPD CNT 40-Hour Course
Attended FBI Basic Crisis Negotiation Course

Tactical Training:
Crowd Management Control, Search and Arrest Warrant Tactics
Less than Lethal Use of Force Training and Certification TASER MX-26, X-26 Train the Trainer (Trainer/Instructor Certification)
Excited Delirium & Agitated Chaotic Events, Train the Trainer.
End of Pursuit Tactics Overview
Communication-Keeping Your Edge
Crowd Management and Control
Immediate Action Rapid Deployment
Arrest and Control Trainer Certification
Los Angeles County Sheriff's Department Explosive Breaching Course
Mobile Field Force Supervisor Train the Trainer
Officer Survival-Shooting
Personal Protective Equipment (PPE)
Pursuit Intervention Techniques for Supervisors
Baton/Impact Weapon
Advanced Canine Supervisor Course
Basic Metro School
Collapsible Baton
Officer Safety Field Tactics
Mobile Field Force Training
Narcotics/Tactical Entry Update
Field Training Officer Update
Standard Emergency Management System (SEMS)
CPR-First Aid Recertification
Basic Arrest and Control Techniques
Driver Awareness Training
Range Safety Officer and Supervisor Training
Interrogation Techniques
VICE School
37mm Baton Round Training
Civil Unrest Response Training
Hobble Training
Advanced Field Officer Course, Oleoresin Capsicum (OC) Gas Training
Search Warrant Counter Measures
Riverside Sheriff's Department Jail Operations Course to include Title XV

Detective Training:

Basic Detective School
Juvenile Procedures School
Association of Threat Assessments Professionals (ATAP) Training
Workplace Investigative Training
LAPD Narcotics School
POST Investigative and Interrogation Course
POST Cognitive & Statement Analysis Training Course
Special Investigative Section Surveillance Training

California Peace Officer Standards and Training (P.O.S.T.) Commission: Basic, Intermediate, Advanced and Supervisory Certificates.

Outside Training:

Dale Carnegie 12-week Public Speaking School
Americans for Effective Law Enforcement (AELE) Certified Litigation Expert Courses
Use of Force By The Numbers: 4, 8, 14 (Institute for the Prevention of In-Custody Deaths-IPICD)
California Specialized Training Unit Hazardous Materials First Responder Operations Weapons of Mass Destruction Law Enforcement Field Support Course
Louisiana State University Screening of Persons by Observational Techniques (SPOT)
Subconscious Communication for Detecting Danger by International Academy for Linguistics and Kinesics
Department of Homeland Security WMD Radiological/Nuclear Course of Hazardous Materials Technicians
UNLV WMD Radiological/Nuclear Awareness Train The Trainer Course, FEMA Advanced Chemical and Biological Integrated Response Course Mobile Training Event
FEMA WMD Law Enforcement Threat
Hazard Recognition, and Emergency Actions Training
CSTI Technician/Specialist 1A-D, DHS WMD Tactical Commander Management and Planning
Licensed California Private Investigator (License No. 29151)
Certified California Criminal Defense Investigator.

Associations

California Association of Licensed Investigators
Peace Officers Association of Los Angeles County (POALAC)
Americans for Effective Law Enforcement (AELE)
California Crime Prevention Officers Association
International Association in Crime Prevention Partners
California Peace Officers Association

Education

Master of Legal Studies, 2020
Pepperdine Law School - Malibu, California, United States

Master of Arts: **Public Administration**, 1998
California State University - Long Beach, California, United States

Bachelor of Science: **Criminal Justice**, 1988
Northeastern University - Boston, Massachusetts, United States

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RECORD OF TRIAL TESTIMONY & DEPOSITIONS

1. Deposition: April 15, 2010, Dorman, et al. vs. State of California (CHP) Cause No. INC058224, Superior Court of California, County of San Bernadino.

2. Deposition: August 28, 2014, L.H. (Henning) vs. County of Los Angeles, et al., Cause No. CV13-1156-GW (JCGx), Superior Court of California, County of Los Angeles.

3. Deposition: September 15, 2014, A.D., et al. vs. City of Los Angeles, et al., Cause No. CV13-6510-JFW (Asx), United States District Court for the Central District of California.

4. Deposition: October 28, 2014, Goodlow vs. City of El Cajon, Cause No. 3:13-cv-01542, United States District Court for the Southern District of California.

5. Deposition: February 3, 2015, Castro vs. County of Los Angeles, et al., Cause No. 2:13-cv-06631, United States District Court for the Central District of California.

6. Deposition: April 10, 2015, James Gallegos vs. Havana House, Gilardo Lopez, Donald Bernard, Joseph Escandon and DOES 1-100, Cause No. BC508561, Superior Court of California, County of Los Angeles.

7. Trial Federal Court: April 29, 2015, Goodlow vs. City of El Cajon, Cause No. 3:13-cv-01542, United States District Court for the Southern District of California.

8. **Deposition**: May 14, 2015, Eloy Jacobo vs. City of Palm Springs, a Government Agency, DOES 1 through 50, inclusive, Cause No. INC 1302171, Superior Court of California, County of Riverside.

9. **Deposition**: August 14, 2015, Valine Gonzalez (Santibanez Matter) vs. City of Visalia; Tim Haener; and DOES 2-10, inclusive, Cause No:1:13-cv-01697, United States District Court for the Eastern District of California.

10. Trial State Court: August 18, 2015, James Gallegos, Plaintiff vs. Havana House; Gilardo Lopez; Donald Bernard; Jose Escandon and DOES 1-100, inclusive, Defendants. Cause No. BC 508561, Superior Court of California, County of Los Angeles.

11. **Deposition**: September 1, 2015 (Part 1) and September 4, 2015 (Part 2), Frederick Ronald Thomas; JR., individually and as successor-in-interest of Kelly James Thomas, deceased, Plaintiff, vs. City of Fullerton, et al. Cause No. 30-2012-00581299, Superior Court of California, Court of Orange.

12. **Deposition:** September 15, 2015, Anthony Del Real, individually and as successor-in-interest to John Del Real, Jr; Brittany Del Real Davis, individually and as successor-in-interest to John Del Real Jr.; and Shirley Lowery, Plaintiff vs. City of Long Beach; et al., Defendants, Cause No. CV-14-02831-PLA, United States District Court for the Central District of California.

13. Deposition: September 23, 2015, R.A., a minor, by and Through his guardian ad Litem Adrianne Penrose, Individually and as successor in interest of John Armes, deceased, and Adrianne Penrose, individually, Plaintiffs vs. County of Riverside, Et al., Defendants, Cause No. ED CV14-00077, United States District Court for the Central District of California.

14. Deposition: October 19, 2015. Tara Garlick, individually; M.L.S., C.J.S., C.R.S., and E.Z.S., minors, by and through their guardian ad litem, Judy Silva, in each cause individually and as successors in interest to David Silva, deceased; J.S., individually and as successor in interest to David Silva, by and through her guardian ad litem Adriane Dominguez; Merri Silva, individually; and Salvador Silva, individually, vs. County of Kern, Et al., Defendants, Lead Cause No. 1:13-CV-01051, United States District Court for the Eastern District of California.

15. **Deposition**: November 20, 2015, Gonzalo Martinez, Plaintiff vs. County of Los Angeles; Cuauhtemoc Gonzalez and Does 1 through 10, inclusive. Defendants, Cause No. 2:2014-cv-05456, United States District Court for the Central District of California.

16. **Deposition**: December 1, 2015, Mindy Losee, individually and as successor in interest to Breanne Sharpe, deceased, Plaintiff vs. City of Chico, Scott Zuschin, Damon Selland, Nick Vega, Jared Cumber, David Quigley; and DOES 1-10, inclusive. Defendants, Cause No. 2:14-CV-02199, United States District Court for the Eastern District of California.

17. Deposition: December 17, 2015, Stanley Jordan, an individual, Plaintiff vs. City of Hawthorne, Officer Matthew Manley, and DOES 1-10, inclusive, Cause no. 2:2014-CV-07554; United States District Court for the Central District of California.

18. Deposition: February 10, 2016, Bridget Wiseman, individually and as successor-in-interest of Dean Gochenour, deceased, Plaintiff vs. City of Fullerton, Vincent Mater, Carlos Medina and DOES 1 to 50, inclusive; Cause No. 8:2013-CV-01278, United States District Court for the Central District of California.

19. Deposition: April 1, 2016, N.W., a minor by through his guardian ad litem Tkeyah Boyd, individually and as successor-in-interest to Tyler Damon Woods, Plaintiffs vs. City of Long Beach, Officer John B. Fagan; Officer Daniel A. Martinez, and DOES 1-10, inclusive, Defendants. Cause No. 5:14-CV-01569, United States District Court for the Central District of California.

20. Deposition: April 7, 2016, R.D.C., a Minor, by and through his Guardian ad Litem, Maria Teresa Penaloza, Plaintiffs vs. County of Los Angeles, a public entity; Jerry Powers, Booker Waugh, Les Smith, and DOES 1 through 10, individually and in their official capacity as Probation Officers for the County of Los Angeles, Defendants, Cause No. 2:14-CV-06014, United States District Court for the Central District of California.

21. Trial State Court: April 20, 2016, Eloy Jacobo vs. City of Palm Springs, A Government Agency and DOES 1-50, inclusive, Cause No. INC 1302171, Superior Court of California, County of Riverside.

22. Deposition: April 28, 2016, Ledesma vs. Kern County, Cause No. 1:14-CV-01634, United States District Court for the Central District of California.

23. Deposition: May 16, 2016, Dennis Dean Sr., Susannah Hardesty, and Amy Dean, Plaintiff's vs. Sacramento County, Salvador Robles; Daryl Meadows; Randy Moya and DOES 4-25, Cause No. 2:13-cv-00730, United States District Court for the Eastern District of California.

24. **Trial Federal Court:** June 16, 2016, N.W., a minor by through his guardian ad litem Tkeyah Boyd, individually and as successor-in-interest to Tyler Damon Woods, Plaintiffs vs. City of Long Beach, Officer John B. Fagan; Officer Daniel A. Martinez, and DOES 1-10, inclusive, Defendants. Cause No. 5:14-CV-01569, United States District Court for the Central District of California.

25. **Deposition:** June 22, 2016, May 11, 2017, Marian Amaya, individually and as successor -in-interest of Emiliano Amaya, deceased; G.A., a Minor by and through his Guardian ad Litem Belinda Krawiec, individually and as successor-in-interest of Emiliano Amaya, deceased; Gloria Amaya, individually, Plaintiffs, vs. County of Los Angeles; Sheriff Lee Baca, and Does 1 to 50, Inclusive, Defendants. Cause No. VC062384, Superior Court of California, County of Norwalk.

26. **Deposition:** June 27, 2016, Robert J. Zambrano JR., Kathleen Zambrano, and Jillian Zambrano, a Minor and through her Guardian ad Litem, Robert J. Zambrano JR., Plaintiffs vs. Andrew Drobot, Redondo Beach Police Department, City of Redondo Beach, and DOES 1 to 50, Inclusive, Defendants. Cause No. BC566142, Superior Court of California, County of Los Angeles.

27. **Deposition:** July 5, 2016, NONA OPSITNICK AND LINDA STERETT, Plaintiffs vs. CITY OF LONG BEACH; ERIC BARICH, SALVADOR ALATORRE, ABRAM YAP, and DOES 4-10, inclusive Defendants. Cause No. 2:14-CV-09370, United States District Court for the Central District of California.

28. **Deposition:** July 7, 2016, Leslie Laray Crawford, individually and as Successor in Interest to Michael Laray Dozer, deceased, Plaintiff, vs. City of Bakersfield, a municipal entity, Officer Aaron Stringer, an individual, Michael Eugene Dozer (as a nominal defendant) and DOES 1 through 10, inclusive, Defendants, Cause No. 1:14-CV-01735, United States District Court for the Eastern District of California.

29. **Trial Federal Court:** August 19, 2016, Anthony Del Real, individually and as successor-in-interest to John Del Real, Jr; Brittany Del Real Davis, individually and as successor-in-interest to John Del Real Jr.; and Shirley Lowery, Plaintiff vs. City of Long Beach; et al., Defendants. Cause No. 2:14-CV-02831, United States District Court for the Central District of California.

30. **Deposition:** September 19, 2016, D.G., a minor, by and through his guardian ad litem, Denise Bonilla, individually and as successor-in-interest to David Garcia, deceased; D.E.G., a minor, by and through her guardian ad litem, Denise Bonilla, individually and as successor-interest to David Garcia, deceased; G.D., a minor, by and through her guardian ad litem, Denise Bonilla, individually and as successor-in-interest to David Garcia, deceased; RAMONA RAMIREZ NUNEZ, individually; Plaintiffs, vs. COUNTY OF KERN; ROBERT REED; DOES 2 THROUGH 10; Defendants. Cause No. 1:15-CV-00760, United States District Court for the Eastern District of California.

31. **Deposition**: October 4, 2016, J.M., a minor by and through his guardian ad litem Celine Lopez, individually and as successor-in-interest to Hans Kevin Arellano, Plaintiff vs. CITY OF SANTA ANA, OFFICER JESSICA GUIDRY; OFFICER STEPHEN CHAVEZ; and Does 1-10, inclusive, Defendants. Cause No. 8:15-cv-00432, United States District Court for the Central District of California.

32. **Trial Federal Court**: October 20, 2016, Leslie Laray Crawford, individually and as Successor in Interest to Michael Laray Dozer, deceased, Plaintiff, vs. City of Bakersfield, a municipal entity, Officer Aaron Stringer, an individual, Michael Eugene Dozer (as a nominal defendant) and DOES 1 through 10, inclusive, Defendants, Cause No. 1:14-CV-01735, United States District Court for the Eastern District of California.

33. **Deposition**: November 30, 2016, Brian Bunnak, Plaintiff, vs. KION JAMES MOSBAT, an individual, and DOES 1 through 10, inclusive, Defendants. Cause No. BC571975, Superior Court of California, County of Los Angeles.

34. **Deposition:** February 13, 2017, Abraham Valentin, Alejandro Francisco Peralta, Michael Dominguez, Frank Margarito Escobedo, Plaintiffs vs. ROBERT JACKSON, and DOES 1-50, Inclusive, Defendants. Cause No. 2:15-CV-09011, United States District Court for the Central District of California.

35. **Deposition:** March 3, 2017, ARTURO GONZALEZ, Plaintiff, vs. CITY OF BAKERSFIELD, GARY CARRUESCO, DOUG BARRIER, KASEY KNOTT, JUAN OROZCO, and DOES 5-10, Defendants. Cause No. 1:16-CV-00107, United States District Court for the Eastern District of California.

36. **Trial Federal Court:** March 9, 2017, LUIS ARIAS, an individual, Plaintiff, vs. COUNTY OF LOS ANGELES, a municipal entity; DEPUTY KENNETH FITCH, an individual and DOES 1 through 10, inclusive, Defendants. Cause No. 2:15-CV-02170, United States District Court for the Central District of California.

37. **Deposition:** March 10, 2017, FREDRICK THOMAS and ANNALESA THOMAS, as Co-Administrators of the Estate Leonard Thomas, and its statutory beneficiaries, Plaintiffs, vs. BRIAN MARKERT; MICHAEL WILEY; NATHAN VANCE; MICHAEL ZARO; SCOTT GREEN; JEFF RACKLEY; CITY OF FIFE; CITY OF LAKEWOOD; PIERCE COUNTY METRO SWAT TEAM; and JOHN DOES 1 through 10, Defendants. Cause No. 3:16-cv-05392, United States District Court for the Western District of Washington.

38. **Deposition:** March 16, 2017, DENNIS BLOCH, an individual and JENNIFER BLOCH, an individual, Plaintiff vs. STANFORD HOTELS CORPORATION, HARBOR VIEW HOLDINGS, Inc., A CALIFORNIA CORPORATION, MARRIOT INTERNATIONAL INC; A DELAWARE CORPORATION, SAN DIEGO HOTEL COMPANY, LLC; PORTER GREER, and DOES 1 through 25, Defendants. Cause No. 37-2015-000028814-CV-PO-CTL, Superior Court of California, County of San Diego.

39. **Deposition:** March 22, 2017, CINDY MICHELLE HAHN; AND BRANDON HAHN, Plaintiffs vs. CITY OF CARLSBAD; OFFICER J. KNISLEY; OFFICER KENYATTE VALENTINE; OFFICER KARCHES; CORPORAL GALANOS; OFFICER SEAPKER; AND DOES 1 THROUGH 50, Defendants. Cause No. 3:15-cv-02007, United States District Court for the Southern District of California.

40. **Deposition:** April 26, 2017, DEMETRICE SIGHTLER, Plaintiff, vs. CITY OF SAN DIEGO, SAN DIEGO POLICE DEPARTMENT ASSISTANT CHIEF DAVID NISLEIT AND DOES 1-30, Defendants, Cause No. 3:15-CV-02235, United States District Court for the Southern District of California.

41. **Trial State Court:** May 11, 2017, Marian Amaya, individually and as successor -in-interest of Emiliano Amaya, deceased; G.A., a Minor by and through his Guardian ad Litem Belinda Krawiec, individually and as successor-in-interest of Emiliano Amaya, deceased; Gloria Amaya, individually, Plaintiffs, vs. County of Los Angeles; Sheriff Lee Baca, and Does 1 to 50, Inclusive, Defendants, Cause No. VC062384, Superior Court of California, County of Norwalk.

42. **Deposition:** June 6, 2017, HECTOR MEJIA, an individual, NORA SANTILLAN, an individual, Plaintiffs, vs. ADIEB TIESSAN, an individual, LEWIS ANTHONY GEORGE, an individual; and LEWIS JOBY ANTHONY, an individual; FAHMY MUSHMEL, an individual; SALAM MUSHMEL, an individual; THE FAHMY MUSHMEL AND SALAM MUSHMEL LIVING TRUST; and DOES 1 through 20, Inclusive, Defendants. Cause No. BC594095, Superior Court of California, County of Los Angeles.

43. **Deposition:** June 8, 2017, Nathaniel Smith vs. City of Stockton, et al. Cause No. 5:15-CV-01603-JGB-(DTBx), Superior Court of California, County of Sacramento.

44. **Trial Federal Court:** June 21, 2017, Abraham Valentin, Alejandro Francisco Peralta, Michael Dominguez, Frank Margarito Escobedo, Plaintiffs vs. ROBERT JACKSON, and DOES 1-50, Inclusive, Defendants. Cause No. CV 2:15-CV-09011, United States District Court for the Central District of California.

45. **Trial Federal Court:** June 26-27, 2017, FREDRICK THOMAS and ANNALESA THOMAS, as Co-Administrators of the Estate Leonard Thomas, and its statutory beneficiaries, Plaintiffs, vs. BRIAN MARKERT; MICHAEL WILEY; NATHAN VANCE; MICHAEL ZARO; SCOTT GREEN; JEFF RACKLEY; CITY OF FIFE; CITY OF LAKEWOOD; PIERCE COUNTY METRO SWAT TEAM; and JOHN DOES 1 through 10, Defendants. Cause No. 3:16-cv-05392, United States District Court for the Western District of Washington.

46. **Deposition:** June 30, 2017, K.J.P., a minor, and K.P.P., a minor, individually, by and through their mother, LOAN THI MINH NGUYEN, who also sues individually and as successor in interest to her now deceased husband, Lucky Phounsy, and KIMBERLY NANG CHANTHAPHANH, individually, Plaintiffs vs. COUNTY OF SAN DIEGO; et al., Defendants. Cause No. 15-cv-02692, United States District Court for the Southern District of California.

47. **Deposition:** July 10, 2017, REBECKA JACKSON-MOESER, Plaintiffs, vs. DAVILA and DOES 1 through 10, inclusive, individually and in their official capacity as CALIFORNIA HIGHWAY PATROL OFFICERS, Defendants. Cause No. 2:16-CV-08733, United States District Court for the Central District of California.

48. **Deposition:** July 12, 2017, A.E.R., a Minor, by and through his Guardian ad Litem, STEPHANIE YANEZ, both Individually and as Successor in Interest on behalf of Plaintiff's Decedent EDUARDO EDWIN RODRIGUEZ, ESTELA RODRIGUEZ, and ABEL RODRIGUEZ, for themselves as parents of the Decedent, Plaintiffs, vs. COUNTY OF LOS ANGELES, a Public Entity, ANDREW ALATORRE, SANDY GALDAMEZ, and DOES 1 through 10, inclusive, individually and in their official capacity as Los Angeles County Sheriff's Department Deputies, Defendants. Cause No. 2:16-CV-04895, United States District Court for the Central District of California.

49. **Deposition:** July 14, 2017, JONATHAN A. GARCIA, an individual, Plaintiff, vs. UNITED STATES OF AMERICA, DRUG ENFORCEMENT ADMINISTRATION SPECIAL AGENT CHARLES VALENTINE, AND DOES 1-10, inclusive, Defendants. Cause No. 2:16-CV-01664, United States District Court for the Central District of California.

50. **Trial Federal Court:** August 2, 2017, CINDY MICHELLE HAHN; AND BRANDON HAHN, Plaintiffs vs. CITY OF CARLSBAD; OFFICER J. KNISLEY; OFFICER KENYATTE VALENTINE; OFFICER KARCHES; CORPORAL GALANOS; OFFICER SEAPKER; AND DOES 1 THROUGH 50, Defendants. Cause No. 3:15-cv-02007, United States District Court for the Southern District of California.

51. **Deposition:** August 4, 2017, Arnulfo Hernandez vs. United States of America, Cause No. 5:16-CV-00727, United States District Court for the Central District of California.

52. **Deposition:** August 9, 2017, PAMELA MOTLEY, ESTATE OF CINDY RAYGOZA, through its legal representative and administrator, YVETTE CALDERA; VALERIE CALDERA; DANNY RICE, Plaintiffs, vs. JOSEPH SMITH; BRIAN LITTLE; DERRICK JOHNSON; MICHAEL COUTO; BERNARD FINLEY; BYRON URTON; RYAN ENGUM; UNKNOWN POLICE OFFICERS; THE CITY OF FRESNO CALIFORNIA, Defendants. Cause No. 1:15-CV-00905, United States District Court for the Eastern District of California.

53. **Deposition:** August 14, 2017, Desiree Martinez, Plaintiff vs. KYLE PENNINGTON; KIM PENNINGTON; CONNIE PENNINGTON; KRISTINA HERSHBERGER; JESUS SANTILLAN; CHANNON HIGH; THE CITY OF CLOVIS; ANGELA YAMBUPAH; RALPH SALAZAR; FRED SANDERS; THE CITY OF SANGER; DOES 1-20, Defendants. Cause No. 1:15-cv-00683, United States District Court for the Eastern District of California.

54. **Trial Federal Court:** August 23, 2017, TREVOR WYMAN, Plaintiff vs. COUNTY OF ORANGE, ZACHARY VARELA and DOES 1 through 10, inclusive Defendants. Cause No. 8:15-CV-01523, United States District Court for the Central District of California.

55. **Deposition:** September 6, 2017, JUSTIN KAUFMAN, ESQ., as Personal Representative of the Estate of HANNAH E. BRUCH, Plaintiff, vs. EXPO NEW MEXICO, et al. Defendants. Cause No. D-101-CV-2015-01792, First Judicial District of the County of Santa Fe, State of New Mexico.

56. **Deposition:** September 8, 2017, KHANLY SAYCON, JR., and ANNA LUZ SAYCON, individually and as surviving heirs and successors in interest of MHARLOUN SAYCON (deceased), Plaintiffs vs. CITY OF LONG BEACH, ROBERT LUNA, VUONG NGUYEN, and DOES 1-20, Inclusive, Defendants. Cause No. 2:16-CV-05614, United States District Court for the Central District of California.

57. **Deposition:** October 17, 2017, JOSE PATINO, an individual, Plaintiff, vs. LIVE NATION ENTERTAINMENT INC., a Delaware Corporation; 4FINI, Inc., a California Corporation; ROCKSTAR BEVERAGE CORPORATION, a Nevada Corporation; and DOES 1 through 100, inclusive Defendants., Cause No. CIVDS1515083, Superior Court of California, County of San Bernardino.

58. **Deposition:** October 24, 2017, NICHOLAS MONTGOMERY, Plaintiff, vs. The WHISKEY BARREL, Hesperia, LLC, and DOES 1 through 20, inclusive, Defendants. Cause No. CIVDS1518148, Superior Court of California, County of San Bernardino.

59. **Deposition:** October 30, 2017, ESTATE OF FERAS MORAD, AMAL ALKABRA, and AMR MORAD Plaintiffs vs. CITY OF LONG BEACH, MATTHEW HERNANDEZ, ROBERT LUNA, Defendants, Cause No. 2:16-CV-06785, United States District Court for the Central District of California.

60. **Deposition:** November 3, 2017, ARMANDO AYALA, Plaintiff, vs. STATER BROS. MARKETS, and DOES 1 TO 50, INCLUSIVE, Defendants, Cause No. BC546436, Superior Court of California, County of Los Angeles.

61. **Deposition:** November 7, 2017, PRESTON vs. BOYER, et al., Cause No. 2:16-CV-01106, United States District Court for the Western District of Washington.

62. **Deposition:** November 8, 2017, TRINA KOISTRA; and LARRY FORD, Plaintiffs, vs. COUNTY OF SAN DIEGO; PLUTARCO VAIL; and DOES 1 through 50, inclusive, Defendants, Cause No. 3:16-CV-02539, United States District Court for the Southern District of California.

63. **Deposition:** December 5, 2017, JAMES GOOD, an individual, Plaintiff, vs. COUNTY OF LOS ANGELES; LEROY DAVID "LEE" BACA, as Former Sheriff in his individual and official capacity; JIM MCDONNELL, as Sheriff in his individual and official capacity; DEPUTY PETER NICHOLAS; DEPUTY JASON WILL, Defendants. Cause No. 2:15-CV-04290, United States District Court for the Central District of California.

64. **Deposition:** January 8, 2018, BRYAN JOSEPH FISHER, Plaintiff, vs. COUNTY OF ORANGE; TODD CARPENTER; ROXANA ENRIQUEZ, JAVIER MARQUEZ, et al., Defendants. Cause No. 8:16-CV-01866, United States District Court for the Central District of California.

65. **Deposition:** January 10, 2018, MICHAEL GEGENY, Plaintiff, vs. CITY OF LONG BEACH, CHIEF JIM MCDONNELL, OFFICER JOSE MANUEL RODRIGUEZ, #10153; OFFICER JUSTIN S. KRUEGER, #6152 and DOES 1 to 50, Inclusive, Defendants, Cause No. BC 553047, Superior Court of California, County of Los Angeles.

66. **Trial Federal Court:** January 23, 2018, JONATHAN A. GARCIA, an individual, Plaintiff, vs. UNITED STATES OF AMERICA, DRUG ENFORCEMENT ADMINISTRATION SPECIAL AGENT CHARLES VALENTINE, AND DOES 1-10, inclusive, Defendants. Cause No. 2:16-cv-01664, United States District Court for the Central District of California.

67. **Deposition:** February 8, 2018, DOMINIC ARCHIBALD, and NATHANAEL PICKETT I, AS SUCCESSORS IN INTEREST TO NATHANAEL PICKETT II, DECEASED, Plaintiff, vs. COUNTY OF SAN BERNARDINO, KYLE WOODS, WILLIAM KELSEY and DOES 2-10, INCLUSIVE, Defendants, Cause No. 5:16-cv-01128, United States District Court for the Central District of California.

68. **Deposition:** February 13, 2018, THE ESTATE OF JOHNNY MARTINEZ; PLAINTIFF, VS. COUNTY OF LOS ANGELES, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, SHERIFF JIM MCDONNELL, AND DOES 1 THROUGH 50, DEFENDANTS. CAUSE NO. BC 579140, Superior Court of California, County of Los Angeles.

69. **Deposition:** February 21, 2018, TIMOTHY McKIBBEN, an individual, Plaintiff, vs. OFFICER WILLIAM KNUTH, an individual; RAYMOND COTA, in his official capacity, CITY OF SEDONA, an Arizona municipal corporation; JOHN and JANE DOES I-X, Defendants, Cause No. 3:17-CV-08009, United States District Court for the District of Arizona.

70. **Deposition:** February 23, 2018, TIFFANIE HUPP and RILEY HUPP, a minor, by and through his next friend, Tiffanie Hupp, and CLIFFORD MYERS, Plaintiffs, vs. STATE TROOPER SETH COOK and COLONEL C.R. "JAY" SMITHERS, Defendants, Cause No. 2:17-CV-00926, United States District Court for the Southern District of West Virginia.

71. **Trial Federal Court:** March 7-8, 2018, DOMINIC ARCHIBALD, and NATHANAEL PICKETT I, AS SUCCESSORS IN INTEREST TO NATHANAEL PICKETT II, DECEASED, Plaintiff, vs. COUNTY OF SAN BERNARDINO, KYLE WOODS, WILLIAM KELSEY and DOES 2-10, INCLUSIVE, Defendants, Cause No. 5:16-cv-01128, United States District Court for the Central District of California.

72. **Deposition:** April 9, 2018, ROBERT PALMER, Plaintiff, vs. CALIFORNIA HIGHWAY PATROL OFFICER IOSEFA, et al., Defendants. Cause No. 1:16-CV-00787, United States District Court for the Eastern District of California.

73. **Deposition:** April 13, 2018, JEFFREY SIHTO, Plaintiff, vs. HYATT CORPORATION; JOSE CEBALLOS; and DOES 1 through 50, Inclusive, DEFENDANTS. Cause No. BC 594206, Superior Court of California, County of Ventura.

74. **Deposition:** April 18, 2018, ROSWITHA M. SAENZ, Individually and on behalf of THE ESTATE OF DANIEL SAENZ, Deceased, Plaintiff, vs. G4S SECURE SOLUTIONS (USA) INC., OFFICER JOSE FLORES AND ALEJANDRO ROMERO, Defendants. Cause No. 3:14-CV-00244, United States District Court for the Western District of Texas.

75. **Deposition:** April 19, 2018, MILDRED MAE MENDOZA as successor-in-interest of FRANK MENDOZA, SR., et al, Plaintiffs, vs. COUNTY OF LOS ANGELES, et al, Defendants. Cause No. BC 594206, Superior Court of California, Los Angeles County.

76. **Trial Federal Court:** April 25, 2018, LOUIS SANCHEZ, an individual, Plaintiff, vs. DEPUTY JOSHUA RICARD, an individual, and DOES 1 through 10, inclusive, Defendants. Cause No. 5:17-CV-00339, United States District Court for the Central District of California.

77. **Deposition:** May 1, 2018, DOUGLAS KEVIN VEALE, individually, and as the Personal Representative for the Estate of KATHRYN JEANETTE NEW, deceased, and on behalf of the beneficiaries of the Estate including AARON JAMES NEW, KENT ROBERT MCMAHON, HEATHER JANDICE BRIGETTE NEW, PATRICK JORDAN WILLIAM NEW, and DUSTY CODY SCOGGINS, Plaintiffs, vs. WASHINGTON FUGITIVE INVESTIGATIONS, a foreign limited liability company; TWO JINN, INC., d/b/a ALADDIN BAIL BONDS, a for-profit corporation, and MARIO D. CAREY, a Washington resident, Defendants. Cause No. 17-2-08870-1, Pierce County (Washington) Superior Court.

78. **Deposition:** May 7, 2018, ESTATE OF JAVIER GARCIA GAONA, JR., et al., Plaintiffs, vs. CITY OF SANTA MARIA, et al., Defendants, Cause No. 2:17-CV-01983, United States District Court for the Central District of California.

79. **Trial State Court**: June 4, 2018, NICHOLAS MONTGOMERY, Plaintiff, vs. The WHISKEY BARREL, Hesperia, LLC, and DOES 1 through 20, inclusive, Defendants. Cause No. CIVDS1518148, Superior Court of California, County of San Bernardino.

80. **Deposition:** June 14, 2018, C. V.; R. V., a minor, by and through his Guardian Ad Litem MIGUEL VILLEGAS; D. V., a minor, by and through his Guardian Ad Litem MIGUEL VILLEGAS; JOCELYN CASTILLO VILLEGAS and ESTATE OF BERNIE CERVANTES VILLEGAS, Plaintiffs. VS. CITY OF ANAHEIM, a California municipal entity; JOHN WELTER; NICHOLAS BENNALLACK; BRETT HEITMANN; KEVIN VOORHIS; MATTHEW ELLIS; and Does 1-10, inclusive. Cause No: 30-2017-00897184-CU-PO-CJC, Superior Court of California, County of Orange.

81. **Trial Federal Court:** July 6. 2018, ESTATE OF FERAS MORAD, AMAL ALKABRA, and AMR MORAD Plaintiffs vs. CITY OF LONG BEACH, MATTHEW HERNANDEZ, ROBERT LUNA, Defendants, Cause No. 2:16-CV-06785, United States District Court for the Central District of California.

82. **Deposition:** July 16, 2018, SHAWN EDWARD RUMENAPP, an individual; and ERICA RUMENAPP, an individual, Plaintiffs, vs. PANERA BREAD COMPANY, a Delaware corporation; PANERA, LLC, a Delaware limited liability company; SARA JAMAL ZEITOUN, an individual; JAMAL ZEITOUN, an individual; and DOES 1 through 50, inclusive, Defendants, Cause No: CIVDS 1700576, Superior Court of California, County of San Bernardino.

83. **Deposition:** July 17, 2018, Fralisa McFall, on behalf of the ESTATE OF JESSICA ANN MARIE ORTEGA, a deceased person, and her statutory beneficiaries I.S. and D.S., two minor children, Plaintiff, vs. PIERCE COUNTY, a subdivision of the State of Washington, Defendant, Cause No. 17-2-11836-8, Pierce County (Washington) Superior Court.

84. **Trial State Court**: July 20, 2018, ARMANDO AYALA, Plaintiff, vs. STATER BROS. MARKETS, and DOES 1 TO 50, INCLUSIVE, Defendants, Cause No. BC546436, Superior Court of California, County of Los Angeles.

85. **Deposition:** July 31, 2018, TOMMIE HARRIS, Individually; DERRICK EUGENE COKER, Individually; SHYWINA DIANE COLE, Individually; STEPHANIE LORRAINE WILLIAMS, Individually; JEMICA SHANDRA SPEARS, Individually, Plaintiffs, vs. GNL, CORP. d/b/a GOLD DIGGERS, a Domestic Corporation; Individually; DOE EMPLOYEES; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants. Cause No. A-16-741693-C, District Court, Clark County, Nevada.

86. **Deposition:** August 14, 2018, DAVID JESSEN and GRETCHEN JESSEN, Plaintiffs vs. COUNTY OF FRESNO, CITY OF CLOVIS, and DOES 1 to 100, inclusive, Defendants, Cause No. 1:17-CV-00524, United States District Court for the Eastern District of California.

87. **Deposition:** August 15, 2018, ARMANDO VILLANUEVA, and HORTENCIA SAINZ, INDIVIDUALLY and as successor in interest to Pedro Villanueva, deceased, and FRANCISCO OROZCO, individually, Plaintiffs vs. STATE OF CALIFORNIA; JOHN CLEVELAND; RICH HENDERSON; and DOES 1-10, inclusive, Defendants. Cause No. 8:17-CV-01302, United States District Court for the Central District of California.

88. **Deposition:** August 17, 2018, BRIAN O'NEAL PICKETT III, A MINOR, AND MICAH OMARI PICKETT, A MINOR, BY AND THROUGH THEIR GUARDIAN AD LITEM TAMIA GILBERT, Plaintiffs, vs. COUNTY OF LOS ANGELES, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, AND DOES 1 THROUGH 50, INCLUSIVE, Defendants. CAUSE NO. TC028173 (Consolidated with TC028210), Superior Court of California, County of Los Angeles.

89. **Deposition:** August 21, 2018, ESTATE OF TASHI S. FARMER a/k/a TASHII BROWN, by and through its Special Administrator, Elia Del Carmen Solano-Patricio; TAMARA BAYLEE KUUMEALI' FARMER DUARTE, a minor, individually and as Successor-in-Interest, by and through her legal guardian, Stevandra Lk Kuanoni; ELIAS BAY KAIMIPONO DUARTE, a minor, individually and as Successor-in-Interest, by and through his legal guardian, Stevandra Kuanoni, Plaintiffs, vs. LAS VEGAS METROPOLITAN POLICE DEPARTMENT, a political subdivision of the State of Nevada; OFFICER KENNETH LOPERA, INDIVIDUALLY and in his Official Capacity; and Does 1 through 50, inclusive, Defendants, Cause No. 2:17-CV-01946, United States District Court for the District of Nevada.

90. **Deposition:** August 24, 2018, TEAIRA SMALLWOOD, et al, Plaintiffs, vs. OFFICER JOSEPH KAMBERGER, JR., et al, Defendants, Civil Cause No. 24-C-16-005543, Circuit Court for Batimore City, Maryland.

91. **Deposition:** August 27, 2018, DANIEL MANRIQUEZ, Plaintiff, vs. J. VANGILDER, et al., Cause No. 16-cv-01320, United States District Court for the Northern District of California.

92. **Deposition:** September 14, 2018, ERIKA SEPULVEDA, FOR HERSELF AND ON BEHALF OF HER MINOR CHILDREN MELODY PATRICIO AND ERNESTO PATRICIO, AND MARIA CARMEN SARATE ANGELES, Plaintiffs vs. CITY OF WHITTIER, OFFICER HAUSE, OFFICER CABRAL, OFFICER MEDINA, MONETARY MANAGEMENT OF CALIFORNIA, INC. dba MONEY MART, DOLLAR FINANCIAL GROUP, INC., DFC GLOBAL CORP. fdba DOLLAR FINANCIAL U.S. INC., JOSE LOPEZ, DON MORTON, and DOES 2-10, inclusive, Defendants, Cause No. 2:17-CV-04457, United States District Court for the Central District of California.

93. **Deposition:** September 20, 2018, DAPHNE SMITH, an individual, Plaintiff, vs. GGP, INC., a California Corporation Dba EASTRIDGE; EASTRIDGE, a business organization, form unknown; GENERAL GROWTH PROPERTIES, INC, a Delaware Corporation dba EASTRIDGE; and DOES 1-50, inclusive, Defendants. Cause No. 2015-1-CV-283003. ABM ONSITE SERVICES-WEST, INC., Cross-Complainants, vs. ALLIED BARTON SECURITY SERVICES, LP; AND DOES 1-20, Cross-Defendants, Superior Court of California, County of Santa Clara.

94. **Deposition:** September 24, 2018, TIMOTHY GRISMORE, an individual; XAVIER HINES, an individual, Plaintiffs, vs. CITY OF BAKERSFIELD, a municipality; OFFICER MELENDEZ, an individual; OFFICER LUEVANO, an individual; OFFICER POTEETE, an individual; OFFICER CLARK, an individual; OFFICER McINTYRE, an individual; OFFICER VASQUEZ, an individual; OFFICER BARAJAS, an individual; SERGEANT McAFEE, an individual; and DOES 1-10, inclusive, Defendants. Cause No. 1:17-CV-00413, United States District Court for the Eastern District of California.

95. **Deposition:** September 25, 2018, CAROLYN GIUMMO and ANTHONY S. HILL, SR., Individually and as Surviving Parents and as Personal Representatives of the Estate of ANTHONY H. HILL, Plaintiffs, vs. ROBERT OLSEN, individually and in his official capacity as a law enforcement officer for DeKalb County Police Department; and the COUNTY OF DEKALB, GEORGIA, a municipal corporation, Defendants. Cause No. 1:15-CV-03928, United States District Court for the Northern District of Georgia.

96. **Deposition:** September 26, 2018, MARIA ADAME, in her individual capacity; CLARISA ABARCA, as a parent of minor child; C.A., in her individual capacity, and the ESTATE OF DEREK ADAME, as statutory beneficiaries of the claim for wrongful death of Derek Adame, deceased, Plaintiffs, vs. CITY OF SURPRISE, SURPRISE POLICE DEPARTMENT, OFFICER JOSEPH GRUVER and OFFICER SHAUN MCGONIGLE, Defendants. Cause No. 2:17-CV-03200, United States District Court for the District of Arizona.

97. **Deposition:** October 17, 2018, BRIAN A. RAMIREZ, Plaintiff, vs. COUNTY OF SACRAMENTO, SACRAMENTO COUNTY SHERIFF'S DEPARTMENT, OFFICER RYAN N. VICE, and DOES 1 through 10, Inclusive, Defendants. Cause No. 2:17-CV-01868, United States District Court for the Eastern District of California.

98. **Deposition:** October 18, 2018, RONEY COFFMAN, Plaintiff, vs. LOS ANGELES COUNTY SHERIFF'S DEPARTMENT; COUNTY OF LOS ANGELES; FRAY MARTIN LUPIAN, DOES 1 TO 20, Defendants, Cause No. BC653479, Superior Court of California, County of Los Angeles.

99. **Deposition:** October 23, 2018, ROBERT PROVOST, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ERIC PROVOST, PLAINTIFF, vs. CITY OF ORLANDO, A FLORIDA MUNICIPAL CORPORATION, POLICE OFFICER SONJA SAUNDERS AND POLICE OFFICER TINO CRUZ IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES, DEFENDANTS. Cause No. 6:17-CV-02133, United States District Court for the Middle District of Florida.

100. **Deposition:** October 24, 2018, ANGELA AINLEY, individually and as successor-in-interest for KRIS JACKSON, deceased; PATRICK JACKSON, individually and as successor-in-interest for KRIS JACKSON, Deceased, Plaintiff, vs. CITY OF SOUTH LAKE TAHOE, a public entity; JOSHUA KLINGE, individually and as a police officer for the City of South Lake Tahoe; City of South Lake Tahoe Chief of Police BRIAN UHLER, individually; and DOES 2 through 10, Jointly and Severally, Defendants. Cause No. 2:16-CV-00049, United States District Court for the Eastern District of California.

101. **Trial Federal Court**: October 29, 2018, ROBERT PALMER, Plaintiff, vs. CALIFORNIA HIGHWAY PATROL OFFICER IOSEFA, et al., Defendants. Cause No. 1:16-CV-00787, United States District Court for the Eastern District of California.

102. **Deposition:** November 9, 2018, KIMBERLY J. ZION, individually and as successor in interest to CONNOR ZION, Plaintiff, vs. COUNTY OF ORANGE, MICHAEL HIGGINS and DOES 1 through 10, inclusive, Defendants. Cause No. 8:14-cv-01134, United States District Court for the Central District of California.

103. **Deposition**: November 11, 2018, DONNA HUFF, Plaintiff, vs. THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT; THE COUNTY OF LOS ANGELES; DEPUTY GREG WHALEN (EMPLOYEE NO. 476475), OFFICER MICHAEL REYNOLDS (EMPLOYEE NO. 519952) and DOES 1 through 10, Inclusive, Defendants. Cause No. 2:16-CV-01733, United States District Court for the Central District of California.

104. Deposition: November 15, 2018, MERLIN OFFSHORE INTERNATIONAL, a California Corporation, et al., Plaintiffs, vs. ADVANCED RESERVATIONS SYSTEMS, INC., a California corporation, et al., Defendants. Cause No. SC12580, Superior Court of California, County of Los Angeles.

105. **Trial State Court:** December 5, 2018, C. V.; R. V., a minor, by and through his Guardian Ad Litem MIGUEL VILLEGAS; D. V., a minor, by and through his Guardian Ad Litem MIGUEL VILLEGAS; JOCELYN CASTILLO VILLEGAS and ESTATE OF BERNIE CERVANTES VILLEGAS, Plaintiffs. VS. CITY OF ANAHEIM, a California municipal entity; JOHN WELTER; NICHOLAS BENNALLACK; BRETT HEITMANN; KEVIN VOORHIS; MATTHEW ELLIS; and Does 1-10, inclusive. CAUSE No: 30-2017-00897184-CU-PO-CJC, Superior Court of California, County of Orange.

106. **Deposition:** December 19, 2018, VICTOR GARCIA, Plaintiff vs. REAL HOSPITALITY, INC., dba MARTINI'S FEEL GOOD LOUNGE; DYLAN OXFORD, and DOES 1-100, Inclusive, Defendants. Cause No. BCV-16-102039, Superior Court of California, County of Kern.

107. **Trial Federal Court**: January 15, 2019, KIMBERLY J. ZION, individually and as successor in interest to CONNOR ZION, Plaintiff, vs. COUNTY OF ORANGE, MICHAEL HIGGINS and DOES 1 through 10, inclusive, Defendants. Cause No. 8:14-cv-01134, United States District Court for the Central District of California.

108. **Deposition:** January 18, 2019, DYLAN KINNEY, individually and on behalf of the ESTATE OF REGINA ANNAS, a deceased person; RACHEL HOLLAND, individually, Plaintiffs, vs. PIERCE COUNTY, a subdivision of the State of Washington, Defendant, Cause No. 18-2-07321-4, Pierce County (Washington) Superior Court.

109. **Deposition:** January 22, 2019, GWENDOLYN WOODS, individually and as Successor in Interest to Decedent MARIO WOODS, PLAINTIFF, vs. CITY AND COUNTY OF SAN FRANCISCO; a municipal corporation, et al, DEFENDANTS. Cause No. 3:15-CV-05666, United States District Court for the Northern District of California.

110. **Deposition:** January 24, 2019, JANICE SLY, individually and as Successor in Interest to ISAAC JERMAINE KELLY, deceased, and CHARLES ROY, individually and as Successor in Interest to ISAAC JERMAINE KELLY, deceased, Plaintiffs, vs. LMV II AFFORDABLE, L.P., a California Limited Partnership doing business as MEADOWVIEW II APARTMENTS; FWC REALTY SERVICES CORPORATION, a Delaware Corporation; CBR PROPERTY MANAGEMENT LLC, a California Corporation; STEVEN RAY DILLICK JR., an individual; and DOES 1 through 50, inclusive, Defendants. Cause No. RIC1601732, Superior Court of California, County of Riverside.

111. **Trial Federal Court:** January 29, 2019, TRINA KOISTRA; and LARRY FORD, Plaintiffs, vs. COUNTY OF SAN DIEGO; PLUTARCO VAIL; and DOES 1 through 50, inclusive, Defendants, Cause No. 3:16-CV-02539, United States District Court for the Southern District of California.

112. **Deposition:** February 7, 2019, ANTHONY ECONOMUS, Plaintiff, vs. CITY AND COUNTY OF SAN FRANCISCO; a municipal corporation, et al, City of San Francisco Police Officer; DOES 1-50 INCLUSIVE, Defendants, Cause No. 4:18-CV-01071, United States District Court for the Northern District of California.

113. **Deposition:** February 11, 2019, GABRIEL LAKATOSH, on behalf of himself and all others similarly situated, Plaintiff, vs. TECHTRONIC INDUSTRIES COMPANY, LTD; MILWAUKEE ELECTRIC TOOL CORPORATION; THE HOME DEPOT, INC.; and DOES 1-10, inclusive, Defendants, Cause No. BC712875, Superior Court of California, County of Los Angeles.

114. **Deposition:** February 13, 2019. JOSE VILLEGAS, an individual; MARIA VILLEGAS, an individual; ALDO VILLEGAS, a minor, by and through his guardian ad litem, Plaintiffs, vs. COUNTY OF SAN BERNARDINO, a governmental entity; SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT, a governmental entity; RYAN CONNER, an individual; PAUL KOWALSKI, an individual; and DOES 1-100, inclusive, Defendants. Cause No. CIVDS1606504, Superior Court of California, County of San Bernardino.

115. **Deposition:** February 14, 2019, S.A.C A MINOR, BY AND THROUGH HER GUARDIAN AD LITEM, KAREN NUNEZ VELASQUEZ, INDIVIDUALLY AND AS SUCCESSOR INTEREST TO JONATHON CORONEL, AND MARIA B. CORONEL, AN INDIVIDUAL, PLAINTIFFS, vs. COUNTY OF SAN DIEGO, AN ENTITY; CHRISTOPHER VILLANUEVA AN INDIVIDUAL; AND DOES 1 THROUGH 10, INCLUSIVE, DEFENDANTS. Cause No. 17CV1459-WQH-AGS, United States District Court for the Southern District of California.

116. **Deposition:** February 28, 2018, FERMIN VINCENT VALENZUELA, Plaintiff, vs. CITY OF ANAHEIM, et al., Defendants, Cause No. 8:17-CV-00278, United States District Court for the Central District of California.

117. **Deposition:** March 7, 2019, K.C., a minor, by and through her guardian ad litem Carolina Navarro; A.S., a minor, by and through her guardian ad litem Araceli Saenz; K.C., by and through her guardian ad litem Amber Neubert; JACQUELINE LAWRENCE; KEITH CHILDRESS, SR., in each cause individually and as successor in interest to Keith Childress, Jr., deceased; and JACQUELINE LAWRENCE as administrator of the ESTATE OF KEITH CHILDRESS, JR., Plaintiffs, vs. LAS VEGAS METROPOLITAN POLICE DEPARTMENT, UNITED STATES OF AMERICA DEPARTMENT OF JUSTICE; ROBERT BOHANON; BLAKE WALFORD; JAMES LEDOGAR; BRIAN MONTANA; and DOES 2-10, inclusive, Defendants. Cause No. 2:16-CV-03039, United States District Court for the District of Nevada.

118. **Deposition:** March 13, 2019, BAO XUYEN LE, INDIVIDUALLY, and as the Court appointed PERSONAL REPRESENTATIVE OF THE ESTATE OF TOMMY LE, HOAI "SUNNY" LE, Tommy Le's Father, DIEU HO, Tommy Le's Mother, UYEN LE and BAO XUYEN, Tommy Le's Aunts, KIM TUYET LE, Tommy Le's Grandmother, and QUOC NGUYEN, TAM NGUYEN, DUNG NGUYEN, JULIA NGUYEN AND JEFFERSON NGUYEN, Tommy Le's Siblings, Plaintiffs, vs. MARTIN LUTHER KING JR. COUNTY as sub-division of the STATE OF WASHINGTON, and KING COUNTY DEPUTY SHERIFF CESAR MOLINA. Defendants. Cause No. 2:18-CV-00055, United States District Court for the Western District of Washington.

119. **Deposition:** March 19, 2019, MICHAEL WILLIAM FONG, M.D., an individual, Plaintiffs, vs. COUNTY OF LOS ANGELES COUNTY SHERIFF'S DEPARTMENT; VIRIDIANA PEREZ; AND DOES 1 THROUGH 20, Inclusive, Defendants. Cause No. BC630745, Superior Court of California, County of Los Angeles.

120. **Deposition:** March 27, 2019, KATHY CRAIG, and GARY WITT, individually and as successor-in-interest to BRANDON LEE WITT, deceased, Plaintiffs, vs. COUNTY OF ORANGE, and NICHOLAS PETROPULOS, an individual, and DOES 1-10, inclusive, Defendants. Cause No. 8: 17-CV-00491, United States District Court for the Central District of California.

121. **Deposition:** April 4, 2019, PATRICK J. CAVANAUGH, Plaintiff, vs. DONNY YOUNGBLOOD, Kern County Sheriff; BRIAN HULL, Classifications/Gang Unit Sergeant; JOSH JENNINGS, Lerdo Pre-Trial Facility Classification/Gang Unit Deputy; OSCAR FUENTEZ, Lerdo Pre-Trial Facility Classification/Gang Unit Deputy; DAVID K. FENNELL, M.D., Medical Director, Atascadero State Hospital; DAVID LANDRUM, Chief, Office of protective Services, Atascadero State Hospital; CHRISTOPHER GUZMAN; Classification/Gang Unit Officer, Atascadero State Hospital; DILLON MORGAN, Classification/Gang Unit Officer, Atascadero State Hospital, Defendants. Cause No. 1:17-CV-00832, United States District Court for the Eastern District of California.

122. **Deposition:** April 12, 2019, TATYANA HARGROVE, Plaintiff, vs. CITY OF BAKERSFIELD, BAKERSFIELD POLICE DEPARTMENT OFFICER CHRISTOPHER MOORE, BAKERSFIELD POLICE DEPARTMENT SENIOR OFFICER GEORGE VASQUEZ, and DOES 1-10, inclusive, Defendants. Cause No. 1:17-CV-01743, United States District Court for the Eastern District of California.

123. **Trial Federal Court:** April 25, 2019, KATHY CRAIG, and GARY WITT, individually and as successor-in-interest to BRANDON LEE WITT, deceased, Plaintiffs, vs. COUNTY OF ORANGE, and NICHOLAS PETROPULOS, an individual, and DOES 1-10, inclusive, Defendants. Cause No. 8:17-CV-00491, United States District Court for the Central District of California.

124. **Deposition:** May 21, 2019, DEMETRIC FAVORS, Plaintiff, vs. CITY OF ATLANTA, a municipal corporation of the State of Georgia, Defendant. Cause No. 1:17-CV-03996, United States District Court for the Northern District of Georgia.

125. **Deposition:** May 28, 2019, JESSE MONTELONGO, an individual; VICTORIA MONTELONGO, an individual; THERESA LOZANO an individual; J.M., a minor, by and through his Guardian Ad Litem, RUBY MORALES; E.M., a Minor, by and through his Guardian Ad Litem RUBY MORALES; ALE. M., a minor by and through her Guardian Ad Litem, ADOLFO GONZALEZ; ALI. M., a minor by and through her Guardian Ad Litem, ADOLFO GONZALEZ; ALA. M., a minor by and through her Guardian Ad Litem, ADOLFO GONZALEZ, Plaintiffs, vs. THE CITY OF MODESTO, a municipal corporation; DAVE WALLACE, individually and in his capacity as an officer for the CITY OF MODESTO Police Department; and DOES 1-25, DEFENDANTS. Cause No. 1:15-CV-01605, United States District Court for the Eastern District of California.

126. **Deposition:** May 30, 2019, STAN SEVERI and MYRANDA SEVERI, Plaintiffs, vs. COUNTY OF KERN; KERN COUNTY SHERIFF DONNY YOUNGBLOOD, in his individual capacity; DEPUTY GABRIEL ROMO, in his individual capacity; AND DOES 1 to 10, inclusive, in their individual capacities, Defendants. Cause No. 1:17-CV-00931, United States District Court for the Eastern District of California.

127. **Deposition:** June 12, 2019, ANDRE THOMPSON, a single man; and BRYSON CHAPLIN, a single man, Plaintiffs, vs. CITY OF OLYMPIA, a municipal corporation and local government entity; and RYAN DONALD AND "JANE DOE" DONALD, individually and the marital community comprised thereof, Defendants. Cause No. 3:18-cv-05267, United States District Court for the Western District of Washington.

128. **Deposition:** June 14, 2019, PRESTON vs. BOYER, et al., Cause No. 2:16-CV-01106, United States District Court for the Western District of Washington.

129. **Trial Federal Court:** June 20, 2019, DANIEL MANRIQUEZ, Plaintiff, vs. J. VANGILDER, et al., Cause No. 16-cv-01320 HSG (PR), United States District Court for the Northern District of California.

130. **Deposition:** June 25, 2019, LISA G. FINCH, Individually, as Co-Administrator of the Estate of Andrew Thomas Finch, deceased, and as Next Friend of her minor granddaughter, AF; DOMINICA C. FINCH, as Co-Administrator of the Estate of Andrew Thomas Finch, deceased; and ALI ABDELHADI, Plaintiffs, vs. CITY OF WICHITA, KANSAS; JOHN DOE POLICE OFFICERS 1-10, Defendants. Cause No. 18-CV-01018, United States District Court for the District of Kansas.

131. **Deposition:** June 28, 2019, PAMELA ANDERSON, Individually and as Independent Administrator of the Estate of JAMES ANDERSON, deceased, Plaintiff, vs. CITY OF CHICAGO, a Municipal Corporation, and OFFICER CHRISTOPHER RAMEY, individually and as agent, servant and employee of the CITY OF CHICAGO, Defendants, (Cause No. 16 L 003346), Circuit Court of Cook County, Illinois.

132. **Deposition:** July 2, 2019, BRIDGET BRYDEN, Plaintiff, vs. CITY OF SANTA BARBARA; and DOES 1 to 50, Cause No. 17CV01529, Superior Court of California, County of Santa Barbara.

133. **Trial State Court:** July 3, 2019, JANICE SLY, individually and as Successor in Interest to ISAAC JERMAINE KELLY, deceased, and CHARLES ROY, individually and as Successor in Interest to ISAAC JERMAINE KELLY, deceased, Plaintiffs, vs. LMV II AFFORDABLE, L.P., a California Limited Partnership doing business as MEADOWVIEW II APARTMENTS; FWC REALTY SERVICES CORPORATION, a Delaware Corporation; CBR PROPERTY MANAGEMENT LLC, a California Corporation; STEVEN RAY DILLICK JR., an individual; and DOES 1 through 50, inclusive, Defendants. Cause No. RIC1601732, Superior Court of California, County of Riverside.

134. **Deposition:** July 8, 2019, WENDY LAGUNA, individually and as The Successor in Interest of the ROBERT CAMACHO Estate, Deceased, Plaintiff, vs. COMMUNITY PROTECTIVE SERVICES, Aa California Corporation; AUSTIN HOUSIGN PATROL, a California Business entity of unknown form; WHEELER STEFFEN PROPERTY MANAGEMENT, a California business entity of unknown form; and DOES 1 through 100, inclusive, Defendants. Cause No. CIVDS1516654, Superior Court of California, County of San Bernadino.

135. **Deposition:** July 17, 2019, DAVID STEININGER, an individual, Plaintiff, vs. MARIPOSA GRILL AND CANTINA, INC., an FTB Suspended California Corporation; and DOES 1-50, Defendants. Cause No. BC 689374, Superior Court of California, County of Los Angeles.

136. **Trial State Court:** July 29, 2019, WENDY LAGUNA, individually and as The Successor in Interest of the ROBERT CAMACHO Estate, Deceased, Plaintiff, vs. COMMUNITY PROTECTIVE SERVICES, Aa California Corporation; AUSTIN HOUSIGN PATROL, a California Business entity of unknown form; WHEELER STEFFEN PROPERTY MANAGEMENT, a California business entity of unknown form; and DOES 1 through 100, inclusive, Defendants. Cause No. CIVDS1516654, Superior Court of California, County of San Bernadino.

137. **Deposition:** August 13, 2019, LISA G. FINCH, Individually, as Co-Administrator of the Estate of Andrew Thomas Finch, deceased, and as Next Friend of her minor granddaughter, AF; DOMINICA C. FINCH, as Co-Administrator of the Estate of Andrew Thomas Finch, deceased; and ALI ABDELHADI, Plaintiffs, vs. CITY OF WICHITA, KANSAS; JOHN DOE POLICE OFFICERS 1-10, Defendants. Cause No. 18-CV-01018, United States District Court for the District of Kansas.

138. **Trial State Court:** September 6, 2019, PAMELA ANDERSON, Individually and as Independent Administrator of the Estate of JAMES ANDERSON, deceased, Plaintiff, vs. CITY OF CHICAGO, a Municipal Corporation, and OFFICER CHRISTOPHER RAMEY, individually and as agent, servant and employee of the CITY OF CHICAGO, Defendants, Cause No. 16 L 003346, Circuit Court of Cook County, Illinois.

139. **Trial Federal Court:** September 25, 2019, ANDRE THOMPSON, a single man; and BRYSON CHAPLIN, a single man, Plaintiffs, vs. CITY OF OLYMPIA, a municipal corporation and local government entity; and RYAN DONALD AND "JANE DOE" DONALD, individually and the marital community comprised thereof, Defendants. Cause No. 3:18-cv-05267, United States District Court for the Western District of Washington.

140. **Deposition:** October 1, 2019, RUSSELL MANNING, Plaintiff, vs. CITY OF PALM SPRINGS, PALM SPRINGS POLICE DEPARTMENT, COUNTY OF RIVERSIDE, OFFICER MATT OLSON, DOES 1 to 100, inclusive, Defendants. Cause No. PSC 1704634, Superior Court of California, County of Riverside.

141. **Deposition:** October 10, 2019, ESTATE OF TYLER S. RUSHING, et al., Plaintiffs, vs.AG PRIVATE PROTECTION, INC., et al., Defendants. Cause No. 2:18-CV-01692, United States District Court for the Eastern District of California.

142. **Trial Federal Court:** October 17, 2019, TATYANA HARGROVE, Plaintiff, vs. CITY OF BAKERSFIELD, BAKERSFIELD POLICE DEPARTMENT OFFICER CHRISTOPHER MOORE, BAKERSFIELD POLICE DEPARTMENT SENIOR OFFICER GEORGE VASQUEZ, and DOES 1-10, inclusive, Defendants. Cause No. 1:17-CV-01743, United States District Court for the Eastern District of California.

143. **Trial State Court:** October 22, 2019, RUSSELL MANNING, Plaintiff, vs. CITY OF PALM SPRINGS, PALM SPRINGS POLICE DEPARTMENT, COUNTY OF RIVERSIDE, OFFICER MATT OLSON, DOES 1 to 100, inclusive, Defendants. Cause No. PSC 1704634. Superior Court of California, County of Riverside.

144. **Trial State Court:** October 29, 2019, BRIDGET BRYDEN, Plaintiff, vs. CITY OF SANTA BARBARA; and DOES 1 to 50, Cause No. 17CV01529, Superior Court of California, County of Santa Barbara.

145. **Deposition:** November 1, 2019, ROGER KIRSCHENBAUM, as Administrator of the Estate of GUADALUPE OSORNIO HURTADO, deceased, and ROGER KIRSCHENBAUM, as Next Friend and Conservator for ALEXANDER OSORNIO RESENDEZ, a minor, Plaintiffs, vs. COBB COUNTY, a political Subdivision of the State of Georgia, Defendant. CIVIL ACTION FILE NO.: 18-A-963, State Court of Cobb County, Georgia.

146. **Trial Federal Court:** November 13, 2019, FERMIN VINCENT VALENZUELA, Plaintiff, vs. CITY OF ANAHEIM, et al., Defendants, Cause No. 8:17-CV-00278, United States District Court for the Central District of California.

147. **Deposition:** November 14, 2019, ABRAM AND COURTNEY CLAY, Plaintiffs, vs. SUNFLOWER DEVELOPMENT, LLC, ET AL., Defendants. Cause No. 1716-CV-22823, Circuit Court of Jackson County, Missouri.

148. **Deposition:** December 5, 2019, FRANK GALLARDO, PLAINTIFF, vs. BEVERLY HOSPITAL, MICHAEL JOSEPH GAXIOLA; and DOES 1 through 20, inclusive, Defendants., Cause No. BC678192, Superior Court of California, County of Los Angeles.

149. **Deposition:** December 18, 2019, GEORGE FAULKNER, APRIL FAULKNER, Plaintiffs, vs. BRIAN LINDERMAN, STEVEN JOYCE, JEREMY MYERS, DOES 1 TO 20, Defendants, Cause No. 37-2019-00000497-CU-PO-CTL, Superior Court of California, County of San Diego.

150. **Deposition:** January 6, 2020, DAVID COLEMAN, an individual, Plaintiff, vs. ESTATE OF JEROME TENHUNDFELD, DECEASED; AND DOES 1 TO 10, Defendants. Cause No. MCC 1800683, Superior Court of California, County of Riverside.

151. **Trial State Court:** January 16, 2020, GEORGE FAULKNER, APRIL FAULKNER, Plaintiffs, vs. BRIAN LINDERMAN, STEVEN JOYCE, JEREMY MYERS, DOES 1 TO 20, Defendants, Cause No. 37-2019-00000497-CU-PO-CTL, Superior Court of California, County of San Diego.

152. **Deposition:** February 13, 2020, MITCHELL LOWREY; GREGORY PERRY; NICHOLE PERRY; CYNTHIA RILEY; and LORENA RASCON, Plaintiffs, vs. NATIVIDAD MEDICAL CENTER; GARLAND GILL, R.N., MICHAEL MOELLER, M.D.; EUGENE RODRIGUEZ as a nominal defendant; DAVID WILLIAMS as a nominal defendant; COUNTY OF MONTEREY; STATE OF CALIFORNIA; FIRST ALARM SECURITY AND PATROL INC., and DOES 1-50, Inclusive, Defendants. Cause No. M129305, Superior Court of California, County of Monterey.

153. **Deposition:** February 19, 2020, RUDY GONZALEZ, Plaintiff, vs. STATE OF CALIFORNIA, CALIFORNIA HIGHWAY PATROL, RAYMOND CHAVEZ, BRADLEY KEMP, Does 1 to 20, Defendant(s). Cause No. RIC1804244, Superior Court of California, County of Riverside.

154. **Deposition:** February 24, 2020, BRIAN O'NEAL PICKETT III, A MINOR, AND MICAH OMARI PICKETT, A MINOR, BY AND THROUGH THEIR GUARDIAN AD LITEM TAMIA GILBERT, Plaintiffs, vs. COUNTY OF LOS ANGELES, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, AND DOES 1 THROUGH 50, INCLUSIVE, Defendants. CAUSE NO. TC028173, Consolidated with TC028210, Superior Court of California, County of Los Angeles.

155. **Deposition:** February 28, 2020, ODILA PENALOZA, INDIVIDUALLY AND AS SUCESSOR IN INTEREST TO ERICK AGUIRRE; AND SAMANTHA GOODE, AN INDIVIDUAL, PLAINTIFFS, vs. CITY OF RIALTO; JARROD ZIRKLE; MATTHEW LOPEZ AND DOES 1-10, INCLUSIVE, DEFENDANTS. Cause No. 5:19-CV-01642, United States District Court for the Central District of California.

156. **Trial Federal Court:** March 5, 2020, ODILA PENALOZA, INDIVIDUALLY AND AS SUCESSOR IN INTEREST TO ERICK AGUIRRE; AND SAMANTHA GOODE, AN INDIVIDUAL, PLAINTIFFS, vs. CITY OF RIALTO; JARROD ZIRKLE; MATTHEW LOPEZ AND DOES 1-10, INCLUSIVE, DEFENDANTS. Cause No. 5:19-CV-01642, United States District Court for the Central District of California.

157. **Deposition:** March 12, 2020, MARLON JOHNSON, an individual, Plaintiff, vs. COUNTY OF SAN BERNARDINO; SAN BERNARDINO SHERIFF'S DEPARTMENT; SHERIFF JOHN MCMAHON; DEPUTY ALEJANDRO RAMOS; DEPUTY MATTHEW BALTIERRA; DEPUTIES Does 1 through 5; and DOES 6 through 10, Inclusive, Defendants. Cause No. 5:18-CV-02523, United States District Court for the Central District of California.

158. **Deposition:** April 27, 2020, EDWARD BRIAN BOOKER, Plaintiff, vs. POLICE OFFICER ANTHONY WONG SHUE, POLICE OFFICER LUIS MATEO and POLICE SERGEANT WILLIAM C., in their individual capacities, Defendants. Cause No. 6:19-CV-00773, United States District Court for the Middle District of Florida.

159. **Deposition:** May 1, 2020, RACHEL FEAR; SARAH FEAR; STEVEN FEAR; BETTY LONG; AND LORI CHEVOYA, DEFENDANTS, vs. ALEX GEIGER; CITY OF EXETER POLICE DEPARTMENT, CITY OF GROVER BEACH; CITY OF GROVER BEACH POLICE DEPARTMENT; CHRISTOPHER BELAVIC; MONICA BELAVIC; AND DOES 1 THROUGH 100, INCLUSIVE, DEFENDANTS. Cause No. 17CV-0529, Superior Court of California, County of San Luis Obispo.

160. **Deposition:** May 21, 2020, JOHN BOWLES, individually, Plaintiff, vs. CITY OF SAN JOSE; TODD AH YO; WILLIAM WOLFE; ERICK ENDERLE, and DOES 1-10, inclusive, Defendants. Cause No. 5:19-CV-01027, United States District Court for the Northern District of California.

161. **Deposition:** July 6, 2020, JEAN HENDERSON, as next friend, and guardian of and for CHRISTOPHER DEVONTE HENDERSON, Plaintiff, vs. HARRIS COUNTY, TEXAS; and ARTHUR SIMON GARDUNO, Defendants. Cause No. 4:18-CV-02052, United States District Court for the Southern District of Texas.

162. **Deposition:** July 10, 2020, ANGEL JOSE VELASCO, Plaintiff, vs. CITY OF EL MONTE, CITY OF BALDWIN PARK; CORPORAL DANNY TATE; OFFICER ERNEST BARRIOS; and DOES 1 to 10, Inclusive, Defendants. Cause No. 2:19-CV-07956, United States District Court for the Central District of California.

163. **Deposition**: August 25, 2020, RHONDA HAGOOD, Plaintiff, vs. KERN COUNTY, a California municipal entity; NICK EVANS, an individual; TODD NEWELL, an individual; and DOES 1 THROUGH 10, Inclusive, Defendants. Cause No. 1:18-CV-01092, United States District Court for the Eastern District of California.

164. **Deposition:** August 31, 2020, S.S.L., A MINOR, by and through his Guardian Ad Litem MARISSA J. LOPEZ AVILA as an individual and heir-at-law; S.S.L., A Minor, by and through his Guardian Ad Litem MARISSA J. LOPEZ AVILA as Successor in Interest to SERGIO SILVA-CARVAJAL, aka SERGIO SILVA, Plaintiffs, vs. COUNTY OF LOS ANGELES; JOHN APOSOTOL, an individual; and DOES 1 through 10, Inclusive, Defendants. Case No. 2-17-CV-05544-TJH-AGR, United States District Court for the Central District of California.

165. **Deposition:** October 09, 2020, M.H. C., a minor, by and through his guardian ad litem, ANNA CANO, Plaintiffs, vs. COUNTY OF LOS ANGELES; LOS ANGELES COUNTY PROBATION CHIEF TERRI MCDONALD, in her individual and official capacity; and DOES 1 through 20, inclusive, Defendants. Case No. 2:18-cv-08305-MWF-AFM, United States District Court for the Central District of California.

166. **Deposition:** October 20, 2020, ANTHONY THOMAS, Plaintiff, vs. CITY OF CONCORD; OFFICER DAVID SAVAGE (Badge No. 360); OFFICER DANIEL WALKER; CORPORAL CHRISTOPHER BLAKELY (Badge No. 491); SERGEANT TODD STROUD; and DOES 1-50, Defendants. Case No. 3:18-cv-07484-EDL, United States District Court for the Northern District of California.

167. Deposition: October 23, 2020, Mussalina Muhaymin, as Personal Representative of the Estate of Muhammad Abdul Muhaymin Jr., Plaintiff. vs. City of Phoenix, an Arizona Municipal Corporation; Antonio Tarango; Officer Oswald Grenier; Officer Kevin McGowan; Officer Jason Hobel; Officer Ronaldo Canilao; Officer David Head; Officer Susan Heimbigner; Officer James Clark; Officer Dennis Leroux; Officer Ryan Nielsen; Officer Steven Wong; and Does Supervisors 1-5, Defendants, Case No. 17-cv-04565-PHX-SMB, United States District Court for the District of Arizona.

168. Deposition: November 18, 2020, JOSEPH FOSHEE, Plaintiff, vs. CITY OF GILROY; ROBERT ZUNIGA; and DOES 1-10, inclusive, Defendants. Case No. 5:20-cv-00132, United States District Court for the Northern District of California.

169. Deposition: November 30, 2020, DEBRA BRAVO and FRED BRAVO, Plaintiffs, vs. DEFENSE LOGISTICS SPECIALIST CORPORATION, a California corporation, NICK CARTER, an individual, and Does One through Twenty, inclusive, Defendants. Case No. CIV MSC16-00194, Superior Court of California, Contra Costa County.

170. Deposition: December 16, 2020, LISA VARGAS, Plaintiff, vs. COUNTY OF LOS ANGELES, NIKOLIS PEREZ, JONATHAN ROJAS, and DOES 1 through 10, inclusive, Defendants. Case No. 2:19-cv-03279-PSG-AS, Unites States District Court, Central District of California.

171. Deposition: January 6, 2021, ESTATE OF ALEJANDRO SANCHEZ and BERTHA SANCHEZ, Plaintiffs. vs. COUNTY OF STANISLAUS, STANISLAUS COUNTY SHERIFF'S DEPARTMENT, ADAM CHRISTENSEN, SHANE ROHN, BRETT BABBITT, EUGENE DAY, JUSTIN CAMARA, JOSEPH KNITTEL, ZEBEDEE POUST, HECTOR LONGORIA, and DOES 8 to 50, Defendants, (Case No. 1:18-cv-00977-DAD-BAM), United States District Court for the Eastern District of California.

172. Deposition: January 8, 2021, KATRINA EISINGER, an individual; GREGORY J. EISINGER, an individual, Plaintiffs, vs. CITY OF ANAHEIM, Police Chief JORGE CISNEROS, in his Individual and OFFICIAL capacity, DOES 1-100, Inclusive, Defendants, (Case No. 30-02018-01035259-CU-PA-CJC), superior Court of California, Orange County.

173. **Deposition:** January 13, 2021, ANGELA JANELL BURROWS, individually and as independent administrator of, and on behalf of, the ESTATE OF STEPHANIE GONZALES and STEPHANIE GONZALES' heirs-at-law, Plaintiff, vs. MIDLAND COUNTY, TEXAS; GEORGE DARRELL RHEA; MATTHEW FRANCIS GROESSEL; MONICA MARIE ALLEN; CITY OF MIDLAND, TEXAS; and BLAKE ALLEN BLANSCETT, Defendants. CIVIL ACTION NO. 7:20-CV-00062-DC, United States District Court for the Western District of Texas.

174. **Deposition:** January 18, 2021, REYNA ANGELITA AMEZCUA, an individual, Plaintiff, vs. MCDONALD'S CORPORATION; MCDONALD'S STORE #640; MCRU INCORPORATED; TOP WATCH SECURITY; HASHEM MOHAMMAD; and DOES 1through 30, inclusive, Defendants. Case Number BC724108, Superior Court of the State of California for the County of Los Angeles-Long Beach.

175. **Deposition:** February 3, 2021, ISMAEL RAMIREZ, an individual, Plaintiff, vs. NELSON RESTAURANT GROUP, INC., A California corporation; JULIAN NELSON, an individual; and DOES 1 through 20, Defendants.
Case No. MCC18800814, Superior Court of the State of California, for the County of Riverside-Southwest District.

176. **Deposition:** February 11, 2021, ESTATE OF EDWARD LOWELL HILLS; JOSHUA HILLS, individually and as the Personal Representative of the ESTATE OF EDWARD LOWELL HILLS, Plaintiff, vs. MICHAEL J. GENTRY, et al., Defendants, Case No. 3:19-cv-05634-RBL, Western District of Washington at Tacoma.

177. **Deposition:** February 22, 2021, OMAR GOMEZ, individually, Plaintiff, vs. CITY OF SANTA CLARA; JORDAN FACHKO; and DOES 1-10, inclusive, Defendants, Case No. 5:19-cv-05266-LHK, Northern District of California.

178. **Deposition:** February 25, 2021, Noel Hall and Christina Hall, Plaintiffs, vs. City of Atlanta, a municipal corporation of the State of Georgia; GEORGE N. TURNER, in his individual capacity as former Chief of Police of the City of Atlanta Police Department and MATHIEU CADEAU, in his individual capacity as former Police Officer of the City of Atlanta Police Department, Defendants.
Civil Action File No. 1:18-cv-4710, Northern District of Georgia, Atlanta Division.

179. Deposition: March 5, 2021, STEVEN RICHARD ALLGOEWER, Plaintiff, vs. CITY OR TRACY; TRACY POLICE DEPARTMENT; TRACY POLICE CHIEF DAVID KRAUSS; TRACY POLICE DEPARTMENT OFFICER N. MEJIA, ID NO. 1233; TRACY POLICE DEPARTMENT OFFICER T. FREITAS, ID NO. 1250; and DOES 1 THROUGH 20, INCLUSIVE, Defendants. Case No. STK-CV-UCE-2008-0011184, Superior Court of California, County of San Joaquin.

180. Deposition: March 9, 2021, AMANDA SOMMERS; and RICHARD SOMMERS, Plaintiffs, vs. CITY OF SANTA CLARA; COLIN STEWART; and DOES 1-25, Defendants, Case No. 5:17-cv-04469 BLF, United States District Court, Northern District of California.

181. Deposition: March 12, 2021, KYRA BERNHARDT, in her individual capacity as a Personal Representative of THE ESTATE OF GENE BERNHARDT aka MERVYN GENE BERNHARDT, Plaintiff, vs. COUNTY OF HAWAI, STANLEY KAINA, in his individual capacity and as a Police Officer of the Hawaii Police Department, JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, DOE UNINCORPORATED ORGANIZATIONS 1-10. Case No. CV19-00209 DKW-KJM, Unites States District Court, District of Hawaii.

182. Deposition: March 17, 2021, CINDY M. ALEJANDRE; and DAVID GONZALEZ II as Co-Successors-in-Interest to Decedent David Gonzalez III, Plaintiffs, vs. COUNTY OF SAN JOAQUIN, a municipal corporation, et. al., Defendants. Case Number: 2:19-cv-00233-WBS-KJN, United States District Court, Eastern District of California.

183. Deposition: March 26, 2021, TYLER GRIFFIN, Plaintiff, vs. CITY OF ATLANTA, DONALD VICKERS, MATTHEW ABAD, and JOHN DOE's #1-5, Defendants. Civil Action File No. 1:20-cv-02514-TWT, Northern District of Georgia, Atlanta Division.

184. **Deposition:** March 29, 2021, CLIFTON PLEASANT, JR., an individual and successor-in-interest of CLIFTON PLEASANT, SR., deceased, Plaintiff, vs. HUMBERTO MIRANDA, an individual; TARRON BROADWAY, an individual; UNIDENTIFIED DEPUTIES, individuals; CITY OF VICTORVILLE, a public entity; COUNTY OF SAN BERNARDINO, a public entity; MILES KOWALSKI, an individual, Defendants, Case No. 5:20-cv-00675-JGB-SHK, United States District Court, Central District of California.

185. **Trial State Court:** April 6-7, 2021, KATRINA EISINGER, an individual; GREGORY J. EISINGER, an individual, Plaintiffs, vs. CITY OF ANAHEIM, Police Chief JORGE CISNEROS, in his Individual and OFFICIAL capacity, DOES 1-100, Inclusive, Defendants. (Case No. 30-2018-0101-35259-CU-PA-CJC), Superior Court of California, County of Orange.

186. **Deposition:** April 22, 2021, Darrell Allen, Sr. and Mary V. Jennings, Plaintiffs, vs. County of San Bernardino, San Bernardino County Sheriff-Coroner John McMahon, Kyle Schuler, Jared Rodgers, inclusive, Defendants. Case Number: 5:20-cv-00283-JFW (SHKx), United States District Court, Central District of California.

187. **Deposition:** May 10, 2021, FRANCES EARLINE SIMS, INDIVIDUALLY AND AS DEPENDENT ADMINISTRATOR OF THE ESTATE OF STEVEN MITCHELL QUALLS; Plaintiff, vs. CITY OF JASPER TEXAS, TODERICK D. GRIFFIN, STERLING RAMON LINEBAUGH, HEATHER RENEE O'DELL, JOSHUA HADNOT, DEFENDANTS, CIVIL ACTION NO. 1:20-CV-00124, United States District Court for the Eastern District of Texas.

188. **Deposition:** May 11, 2021, MICHAEL DAVIS, Plaintiff, vs. CITY OF RICHMOND; POLICE CHIEF BISA FRENCH; SERGEANT KRISTOPHER TONG; OFFICER SAVANNAH STEWART; and DOES 1-50; Defendants. Case No. 4:20-cv-02774-SBA. United States District Court, Northern District of California.

189. **Deposition:** May 18, 2021, MELANIE GILLILAND, an individual, Plaintiff, vs. CITY OF PLEASANTON, a governmental entity; ELIJAH NATHANIEL HENRY, an individual; and DOES 1-50, inclusive, Defendants. Case No. RG18924833. Superior Court of the State of California, County of Alameda.

190. **Federal Trial:** May 28, 2021, MILES PARISH, an unmarried man, Plaintiff, vs. CITY OF TUSCON, an Arizona municipality; John and Jane Does 1-100, Defendants, Case No. C20165714. United States District Court of Arizona.

191. **Deposition:** June 7, 2021, MARY SMITH, and GEORGE SMITH, Individually, and MARY SMITH, as Administrator of the ESTATE OF MARCUS DEON SMITH, deceased, Plaintiffs. vs. CITY OF GREENSBORO, GUILFORD COUNTY, Greensboro Police Officers JUSTIN PAYNE, ROBERT DUNCAN, MICHAEL MONTALVO, ALFRED LEWIS, CHRISTOPHER BRADSHAW, LEE ANDREWS, DOUGLAS STRADER, and JORDAN BAILEY, and Guilford EMS Paramedics ASHLEY ABBOTT and DYLAN ALLING, Defendants, United States District Court, Middle District of North Carolina, (Civil Action No. 1:19-cv-386).

192. **Deposition:** June 8, 2021, Patricia Lopez as Personal Representative for the ESTATE OF ANTHONY LOPEZ; and PATRICIA LOPEZ and CAESAR LOPEZ, surviving parents of ANTHONY LOPEZ, deceased, Plaintiffs, vs. CITY OF MESA, HEATH CARROLL; and DOES 1-10, inclusive, Defendants. For the District of Arizona. Case No. CV-19-04764-PHX-DLR.

193. **Federal Trial**: June 10-11, 2021, JOSEPH FOSHEE, Plaintiff, vs. CITY OF GILROY; ROBERT ZUNIGA; and DOES 1-10, inclusive, Defendants. United States District Court, Northern District of California. Case No. 5:20-cv-00132

194. **Deposition:** June 22, 2021, BRAD M. KLIPPER, Plaintiff, vs. CITY OF LONG BEACH; JOSE RIOS AND 1 THROUGH 20, INCLUSIVE, Defendants. Superior Court of California for the County of Los Angeles. Case No. BC651553.

195. **Federal Trial**: June 25, 2021, JOHN BOWLES, individually, Plaintiff, vs. CITY OF SAN JOSE; TODD AH YO; WILLIAM WOLFE; ERICK ENDERLE, and DOES 1-10, inclusive, Defendants. Cause No. 5:19-CV-01027, United States District Court for the Northern District of California.

196. **Deposition:** June 28, 2021, RACHEL FEAR; SARAH FEAR; STEVEN FEAR; BETTY LONG; AND LORI CHEVOYA, DEFENDANTS, vs. ALEX GEIGER; CITY OF EXETER POLICE DEPARTMENT, CITY OF GROVER BEACH; CITY OF GROVER BEACH POLICE DEPARTMENT; CHRISTOPHER BELAVIC; MONICA BELAVIC; AND DOES 1 THROUGH 100, INCLUSIVE, DEFENDANTS. Cause No. 17CV-0529, Superior Court of California, County of San Luis Obispo.

197. **Deposition:** June 29, 2021, A.I.P., A MINOR, BY AND THROUGH HIS GUARDIAN AD LITEM, ROSA MARIA MONTES, INDIVIDUALLY AND AS HEIR-AT-LAW AND SUCCESSOR IN INTEREST TO ARTURO PADILLA, JR.; ARACELY PADILLA; AND ARTURO PADILLA, PLAINTIFFS, vs. CITY OF SANTA ANA; CHRISTOPHER SHYNN; DAVID VALENTIN; AND DOES 1-10, INCLUSIVE, DEFENDANTS. Case No. 8:19-cv-02212-FLA-JDE, Superior Court of the State of California, County of Orange.

198. **Deposition:** July 9, 2021, TYLER HOLTE, Plaintiff, vs. THE CITY OF EAU CLAIRE and HUNTER BRAATZ, (in his individual capacity), Defendants. Case No. 20 CV 131, United States District Court, Western District of Wisconsin.

199. Deposition: July 16, 2021, JESSICA DOMINGUEZ, INDIVIDUALLY AND JESSICA DOMINGUEZ AS GUARDIAN AD LITEM FOR JAD (1), JAD (2), AND JAD (3), Plaintiffs, vs. CITY OF SAN JOSE, SAN JOSE POLICE DEPARTMENT, MICHAEL PINA, AND DOE POLICE OFFICERS 2 through 5, Defendants. Case No. 5:18-CV-04826.

200. Trial State Court: July 19, 2021, RACHEL FEAR; SARAH FEAR; STEVEN FEAR; BETTY LONG; AND LORI CHEVOYA, DEFENDANTS, vs. ALEX GEIGER; CITY OF EXETER POLICE DEPARTMENT, CITY OF GROVER BEACH; CITY OF GROVER BEACH POLICE DEPARTMENT; CHRISTOPHER BELAVIC; MONICA BELAVIC; AND DOES 1 THROUGH 100, INCLUSIVE, DEFENDANTS. Cause No. 17CV-0529, Superior Court of California, County of San Luis Obispo.

201. Deposition: July 26, 2021, ANGELA EVANS, individually, Plaintiff, vs. NYE COUNTY SHERIFF'S OFFICE, a political subdivision of the State of Nevada; DAVID BORUCHOWITZ, individually, Defendants. Case No. 2:20-cv-00986-RFB-VCF, Consolidated with:2:20-cv-01919-APG-DJA, United States District Court, District of Nevada.

202. **Deposition:** July 28, 2021, AASYLEI LOGGERVALE; AASYLEI HARDGE-LOGGERVALE, AAOTTAE LOGGERVALE, Plaintiffs vs. COUNTY OF ALAMEDA; STEVEN HOLLAND; MONICA POPE; KEITH LEEPER; ANTHONY DESOUSA; and DOES 1 to 50, inclusive, Defendants. Case No. C20-4679-WHA.

203. **Deposition:** August 6, 2021, ANTHONY PEREZ, individually, CECILIA PEREZ, individually, TERRALEE PEREZ, individually, and as Successor in Interest to Joseph Perez, JOSEPH PEREZ, JR., individually and as Successor in Interest to Joseph Perez, and X.P., a minor, by and through his Guardian Ad Litem, MICHELLE PEREZ, individually and as Successor in Interest to Joseph Perez, Plaintiffs, vs. CITY OF FRESNO, COUNTY OF FRESNO, AMERICAN AMBULANCE, JAMES ROSSETTI, an individual, SEAN CALVERT, an individual, CHRIS MARTINEZ, an individual, BRAITHAN STOLTENBERG, an individual, ROBERT MCEWEN, an individual, KARLSON MANASAN, an individual, JIMMY ROBNETT, an individual, MORGAN ANDERSON, and DOES 1-10, inclusive, Defendants.(Case No. 1:18-cv-00127-AWI (EPG), United States District Court, Eastern District of California.

204. **Deposition:** August 13, 2021, ADROA ANDERSON, Plaintiff, vs. TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY; San Jose State Police Officer JOHN DOE; and DOES 1-50, Defendants. Case No. 19-cv-06997 VKD. United States District Court, Northern District of California.

204. **Federal Trial:** August 26, 2021-August 27, 2021, K.J.P., a minor, and K.P.P., a minor, individually, by and through their mother, LOAN THI MINH NGUYEN, who also sues individually and as successor in interest to her now deceased husband, Lucky Phounsy, and KIMBERLY NANG CHANTHAPHANH, individually, Plaintiffs, vs. COUNTY OF SAN DIEGO; et al., Defendants. (Case No. 15-cv-02692-H-MDD), United States District Court, Southern District of California.

206. **Deposition:** September 15, 2021, ZACHARY CHITWOOD, Plaintiff, vs. OCEAN PARK RESTAURANT CORPORATION, d.b.a., THE VICTORIAN, a California corporation; SANTA MONICA R/RESTAURANTS ASSOCIATES, INC., d.b.a., THE VICTORIAN, a California Corporation; JACOB TANDY, an individual; GARRETT DUNN, an individual; and DOES 1-10, inclusive, Defendants. Case No. BC710131. Superior Court of the State of California, County of Los Angeles, Santa Monica Court.

207. Deposition: September 20, 2021, Marketa Thomas on behalf of the Estate of Danny Ray Thomas; Donald Woods, Individually; Adenike Thomas, Individually; Naisha Bell, as Next Friend of M.K. Thomas, Individually; Diane Turner, as Next Friend of B.D. Turner, Individually; Necole West, as Next Friend of D.R. Thomas, (12), Individually; Denise Mathews, as Next Friend of D.R. Thomas, (3), Individually; Ronshell Hampton, as Next Friend of L.N. Hampton, Individually, Plaintiffs, vs. Harris County, Texas; Cameron Brewer, Defendants. C.A. No. 4:18-CV-1152. In the United States District Court of the Southern District of Texas, Houston Division.

208. Deposition: October 19, 2021, ROSE DIAZ; and DIMAS DIAZ, individually; EDITY DIAZ, JESSE DIAZ; DAVID CHASE DIAZ and D.A.D., a minor by and through her guardian ad litem Alexis Marie Olivarez, individually and as co-successors-in-interest to Decedent DIMAS DIAZ JR., Plaintiffs, vs. for the COUNTY OFVENTURA, a municipal corporation; NOEL JUAREZ, individually and in his official capacity as a Sheriff's Deputy for the Ventura County Sheriff's Department and DOES 1-50, inclusive, individually and in their official capacities as agents for the Ventura County Sheriff's Department; and BRIAN GREEN, individually and in his official capacity, Defendants. Case No. 2:19-cv-04695, United States District Court, Central District of California.

209. Deposition: October 25, 2021, TRAVIS SCOTT KING by and through his Guardian Ad Litem Breanna Raymundo and BREANNA RAYMUNDO, Plaintiffs, v. RONALD DAVIS and DOES 1-25, inclusive, Defendants. Case No. 3:19:cv-07722-VC. United States District Court, Northern District of California.

210. Deposition: November 8, 2021, ZACHARY JOHNSON, Plaintiff, vs. COUNTY OF KERN; KERN COUNTY SHERIFF DONNY YOUNGBLOOD, in his individual capacity, and DOES 1 to 100, inclusive, in their individual capacities, Defendants. (Case No. 1:20-cv-01062-NONE-JLT), Superior Court of California, County of Kern.

211. Deposition: November 9, 2021, IVAN J. FIELD, Plaintiff vs. COUNTY OF LOS ANGELES; DEPUTY MAYER, DEPUTY MAYER, DEPUTY JOHN DOE, DEPUTY WEALER, GABRIEL REED, DIANA REED, DOES 1-10 INCLUSIVE, Defendants. Case No. BC684848. Superior Court of California, County of Los Angeles, Central District.

212. Deposition: November 12, 2021, DEANNA SULLIVAN, Plaintiff, vs. CITY OF BUENA PARK, et al., Defendants. Case No. 8:20-cv-01732 CJC ADS. United States District Court, Central District of California-Southern Division.

213. Deposition: November 15, 2021, RICHARD RAUGUST, Plaintiff, vs. WAYNE ABBEY, Individually, Defendant. Case No. CV 20-9-H-DWM. United States District Court for the District of Montana, Helena Division.

214. State Criminal Trial: November 24, 2021, The People of the State of California, Plaintiff, v. DARYOUSH SAMEYAH, Defendant. Case No. 9CJ04260. In the Superior Court of the State of California for the County of Los Angeles-CCB Branch.

215. **Federal Trial:** November 30, 2021, OMAR GOMEZ, individually, Plaintiff, vs. CITY OF SANTA CLARA; JORDAN FACHKO; and DOES 1-10, inclusive, Defendants. Case No. 5:19-cv-05266-LHK. United States District Court, Northern District of California.

216. Deposition: December 14, 2021, PATRICIA NARCISO, INDIVIDUALLY AND THROUGH HER CONSERVATORS MARCELINA LUNA AND TRACYNARCISO, Plaintiffs, vs. COUNTY OF SAN DIEGO, SHERIFF WILLIAM GORE, DEPUTIES DONALD FRANK AND DARSHAUN DOUGLAS, AND DOES 1 TO 10, (Case No. 20-CV-00116-L-MSB).

217. Deposition: January 6, 2022, Peter B. Komis and DORINDA HOPPER-KOMIS, Plaintiffs, vs. FARMERS INSURANCE COMPANY, Defendant, Case No. D-101-CV-2017-02777, State of New Mexico, County of Santa Fe, First Judicial District.

218. Deposition: January 7, 2022, PHIL NOSRAT and GRANT NEAG, Plaintiffs, vs. GARNET OMG, LLC, dba BACKYARD KITCHEN AND TAP; and DOES 1 to 20, Defendants. Case No. 2019-34682. Superior Court for the State of California, County of San Diego, Central Division.

219. Deposition: January 18, 2022, LONDON WALLACE, a minor, by and through his Guardian ad Litem, LOIS ROBINSON, Plaintiff, vs. CITY OF FRESNO; FRESNO POLICE DEPARTMENT; OFFICER CHRISTOPHER MARTINEZ; and DOES 1 to 25, inclusive, Defendants. Case No. 1:19-CV-01199-AWI-SAB, United States District, Eastern District of California.

220. Deposition: January 27, 2022, D.W., A MINOR, BY AND THROUGH HER GUARDIAN AD LITEM, JESSICA MARTINEZ, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO SERGIO WEICK; L.W. AND E.W., MINORS BY AND THROUGH THEIR GUARDIAN AD LITEM MAGDALENA LUGO, INDIVIDUALLY AND AS SUCCESSORS IN INTEREST TO SERGIO WEICK; CRUZ WEICK, AN INDIVIDUAL; AND STEVEN NEIL WEICK, AN INDIVIDUAL, PLAINTIFFS, vs. COUNTY OF SAN DIEGO, AN ENTITY; PETER MEYERS, AN INDIVIDUAL; CHRISTOPHER VILLANUEVA AN INDIVIDUAL; AND DOES 1 THROUGH 10, INCLUSIVE, DEFENDANTS. Case No. 17CV1459-WQH-AGS. Superior Court of the State of California, County of San Diego, North County Regional Center.

221. Deposition: January 28, 2022, JACK EMMITT WILLIAMS, Plaintiff, vs. LAWRENCE, et al., Defendants. Case No. 19-cv-01369-CRB (PR), United States District Court, Northern District of California, San Francisco Division.

222. Deposition: February 1, 2022, JAMES MCFARLIN, Plaintiff, vs. BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ROOSEVELT, Defendant. Case No. 19-CV-01106-JAP-GJF. In the United States District Court for the District of New Mexico.

223. Deposition: February 14, 2022, ADAM HARARI, Plaintiff, vs. MICHAEL RAY NGUYEN-STEVENSON, aka MICHAEL RAY STEVENSON, aka TYGA; AND DOES 1-20, Inclusive, Defendants. Case No. BC693665. Superior Court of the State of California, for the County of Los Angeles, Spring Street Courthouse.

224. Deposition: February 16, 2021, JAMES WEAVER, JR., et al., Plaintiffs, vs. CITY OF STOCKTON, et al., Defendants. Case No. 2:20-CV-00990-JAM-JDP, United States District Court, Eastern District of California.

225. Deposition: February 18, 2022, AMBER CELANI, an individual; AMBER CELANI as the successor interest of JAMES V. CELANI, JR; MARCELLA CELANI, an individual; KADE STEWART, an individual; ABBEY STEWART, an individual; and SEAN RAFFERTY, an individual, Plaintiffs, v. WESTFIELD CORPORATION, dba WESTFIELD HORTON PLAZA; ALLIED UNIVERSAL SECURITY; THE MAD HOUSE COMEDY CLUB, LLC; ARROW MORRIS, an individual; and DOES 1-100, inclusive, Defendants. Case No. 37-2018-00013965-CU-PO-CTL. Superior Court of the State of California for the County of San Diego.

226. Federal Trial: March 7, 2022-March 8, 2022, K.J.P., a minor, and K.P.P., a minor, individually, by and through their mother, LOAN THI MINH NGUYEN, who also sues individually and as successor in interest to her now deceased husband, Lucky Phounsy, and KIMBERLY NANG CHANTHAPHANH, individually, Plaintiffs, vs. COUNTY OF SAN DIEGO; et al., Defendants. (Case No. 15-cv-02692-H-MDD), United States District Court, Southern District of California.

227. Deposition: March 29, 2022, CYNTHIA LAKEY AND DOUGLAS LAKEY, as co-Special Administrators for the Estate of Jared Lakey, Plaintiff, vs. CITY OF WILSON; JOSHUA TAYLOR, in his official and individual capacities; BRANDON DINGMAN, in his individual capacity; CHRIS BRYANT, in his official and individual capacity as Sheriff of Carter County; DAVID DUGGAN, in his individual capacity; LONE GROVE; TERRY MILLER, in his individual capacity; and KEVIN COOLEY, in his official and individual capacity, Defendants, (Case No. 20-cv-152-RAW). United States District Court for the Eastern District of Oklahoma.

228. Deposition: April 12, 2022, V.R., a minor, by and through her guardian ad litem Ariana Toscano, individually and as successor in interest to Juan Ramon Ramos, deceased; and RAMONA TERRAZAS, individually, Plaintiffs, vs. CITY OF SAN BERNARDINO; GARY WHEELER; THUN HOUN; JASON CALVERT; and DOES 4-10, inclusive, Defendants., Case No. 5:19-CV-01023-JGB-SP, United States District Court, Central District of California.

229. **Federal Trial:** April 14, 2022, R., a minor, by and through her guardian ad litem Ariana Toscano, individually and as successor in interest to Juan Ramon Ramos, deceased; and RAMONA TERRAZAS, individually, Plaintiffs, vs. CITY OF SAN BERNARDINO; GARY WHEELER; THUN HOUN; JASON CALVERT; and DOES 4-10, inclusive, Defendants., Case No. 5:19-CV-01023-JGB-SP, United States District Court, Central District of California.

230. **Deposition:** April 18, 2022, Matthew C. Poulin, Plaintiff, vs. Keith Bush, individually, as a police officer for the City of North Port, Florida, Chad Walker, individually, as a police officer for the City of North Port, Florida, Matthew Lagarce, individually, as a police officer for the City of North Port Florida, John Mike Hetteberg, individually, as a police officer for the City of North Port Florida, Stephen Cambria, individually, as a police officer for the City of North Port Florida, John Contorno, individually, as a police officer for the City of North Port, Florida, and the City of North Port, a municipal corporation of the State of Florida, Defendant(s), Case No. 8:21-CV-1516. United States District Court, Middle District of Florida, Tampa Division.

231. **Federal Trial:** April 19-20, 2022, DEANNA SULLIVAN, Plaintiff, vs. CITY OF BUENA PARK, et al., Defendants. Case No. 8:20-cv-01732 CJC ADS. United States District Court, Central District of California, South Division.

232. **Deposition:** April 20, 2022, ANN ROSALIA and ERIC ROSALIA, J.R., as successor-in-interest to Decedent ERIC ROSALIA; and MARIA MARTINEZ, ELIAS JIMENEZ, and A.R., a minor, by and through her Guardian Ad Litem, Yvonne Deguair, individually Plaintiffs, vs. CITY OF HAYWARD, a municipal entity; NESAR NAIK, individually and in his official capacity as a police officer for the City of Hayward Police Department; and DOES 1-50, inclusive, individually and in their official capacities as police officers for the City of Hayward Police Department, Defendants. Case No. 3:21-cv-00380-VC, United States District Court, Northern District of California.

233. **State Trial:** April 25, 2022, PHIL NOSRAT and GRANT NEAG, Plaintiffs, vs. GARNET OMG, LLC, dba BACKYARD KITCHEN AND TAP; and DOES 1 to 20, Defendants. Case No. 2019-34682. Superior Court for the State of California, County of San Diego, Central Division.

234. **Deposition:** April 28, 2022, ESTATE OF RANDY ASHLAND, Plaintiff, vs. CITY OF WAUKESHA, et. al., Defendants. Case No. 2:20-CV-01640-PP. United States District Court, Eastern District of Wisconsin.

235. Deposition: May 4, 2022, JERRY GALLEGOS, Plaintiff, vs. BREWSKI'S ON HISTORIC 25TH STREET; HARWOOD PROPERTIES, LLC; ONE COMMERCE STREET, LLC and DOES I-V, Defendants. Civil No. 200902686. In the Second Judicial District Court of Weber County, State of Utah, Ogden Department.

236. State Trial: May 5, 2022, ADAM HARARI, Plaintiff, vs. MICHAEL RAY NGUYEN-STEVENSON, aka MICHAEL RAY STEVENSON, aka TYGA; AND DOES 1-20, Inclusive, Defendants. Case No. BC693665. Los Angeles County Superior Court, Van Nuys.

237. Deposition: May 16, 2022, LINDSEY LAIRD & ANDRE ROBERTS, FAREED ALSTON, JONATHAN ZIEGLER, DEMETRIUS THOMAS, KEITH ROSE, and CHRISTOPER ROBERTSON, Plaintiffs, vs. CITY OF ST. LOUIS, et al., Defendants. Case No. 4:18-CV-1567 (LINDSEY LAIRD & ANDRE ROBERTS), Case No. 4:18-CV-01569 (FAREED ALSTON), Case No. 4:18-CV-1577 (JONATHAN ZIEGLER), Case No. 4:18-cv-01566 (DEMETRIUS THOMAS), Case No. 4:18-cv-01568 (KEITH ROSE), 4:18-cv-01570, (CHRISTOPHER ROBERTSON). In the United States District Court, Eastern District of Missouri, Eastern Division.

238. Deposition: June 9, 2022, VERONICA ORDAZ GONZALEZ, et al., Plaintiffs, vs. COUNTY OF FRESNO, Defendants. Case No. 1:18-cv-01558-DAD-BAM. Superior Court of California, County of Fresno.

239. Deposition: June 10, 2022, FRANCISCO HURTADO, an individual, Plaintiff, vs. STATE OF CALIFORNIA; CALIFORNIA HIGHWAY PATROL; EDGARDO YEPEZ AKA EDGARDO LOPEZ AND DOES 1 THROUGH 100, INCLUSIVE, and DOES 1-10, inclusive, Defendants. Case No. 2:19-CV-02343-TLN-AC. In the United States District Court for the Eastern District of California.

240. Deposition: June 16, 2022, JENNIFER ROOT BANNON, as the Special Personal Representative of the Estate of Juston Root, Plaintiff, vs. BOSTON POLICE OFFICERS DAVID GODIN, JOSEPH MCMENAMY, LEROY FENANDES, BRENDA FIGUEROA, and COREY THOMAS; MASSACHUSETTS STATE TROOPER PAUL CONNEELY; and THE CITY OF BOSTON, MASSACHUSETTS, Defendants. Civil Action Number 1:20-cv-11501-RGS. United States District Court, District of Massachusetts.

241. **Deposition:** June 29, 2022, DEBRA M. NOVAK, mother of DAVID NOVAK, deceased, individually and as Personal Representative of the Estate of DAVID NOVAK, deceased, and CRYSTAL JENKINS, sister of DAVID NOVAK, individually, Plaintiffs, MICHAEL NOVAK, in his individual capacity, Plaintiff/Joiner, vs. CITY OF SPOKANE, Defendant. Case No. 21-2-00037-32. In the Superior Court of the State of Washington in and for the County of Spokane.

242. Deposition: July 14, 2022, SUSAN LYNN CLOPP and PARIS FRIDGE as Co-Administrators of the ESTATE OF MICIAH WILLIAM LEE, Plaintiffs, vs. CITY OF SPARKS; ERIC DEJESUS; RYAN PATTERSON; JAMES HAMMERSTONE; JAMES AHDUNKO; and DOES 1-10, inclusive, Defendants. Case No. 3:20-cv-00465-MMD-WGC. United States District Court, District of Nevada.

243. **Deposition:** July 29, 2022, KEVIN HART JR., an individual, Plaintiff, vs. SAN JOAQUIN COUNTY SHERIFF'S OFFICE, a government entity; KENGIE YANG, an individual; and DOES 1 through 25, inclusive, Defendants. Case No. STK-CV-UNPI-2020-0003813, C/W Case No. STK-CV-UNPI-2020-4361. Superior Court of California, County of San Joaquin.

244. **Federal Trial**: August 12, 2022, ERIKA SEPULVEDA, FOR HERSELF AND ON BEHALF OF HER MINOR CHILDREN MELODY PATRICIO AND ERNESTO PATRICIO, AND MARIA CARMEN SARATE ANGELES, Plaintiffs v. CITY OF WHITTIER, OFFICER HAUSE, OFFICER CABRAL, OFFICER MEDINA, MONETARY MANAGEMENT OF CALIFORNIA, INC. dba MONEY MART, DOLLAR FINANCIAL GROUP, INC., DFC GLOBAL CORP. fdba DOLLAR FINANCIAL U.S. INC., JOSE LOPEZ, DON MORTON, and DOES 2-10, inclusive, Defendants. Case No. 2:17-cv-4457-JAK (KSx). United District Court, Central District of California.

245. **Federal Trial**: August 23, 2023, JESSICA DOMINGUEZ, INDIVIDUALLY AND JESSICA DOMINGUEZ AS GUARDIAN AD LITEM FOR JAD (1), JAD (2), AND JAD (3), Plaintiffs, vs. CITY OF SAN JOSE, SAN JOSE POLICE DEPARTMENT, MICHAEL PINA, AND DOE POLICE OFFICERS 2 through 5, Defendants. Case No. 5:18-CV-04826. United States District Court, Northern District of California, San Jose Division.

246. **Deposition:** August 30, 2022, MICHAEL J. HORTON, Plaintiff v. PARSONS, et. al. Case No. 3:17-cv-01915-WHA. United States District Court, Northern District of California.

247. Deposition: September 6, 2022, ELEAQIA MCCRAE, Plaintiff, vs. CITY OF SALEM; MAYOR CHUCK BENNETT; CITY MANAGER STEVE POWERS; POLICE CHIEF JERRY MOORE; OFFICER RAMIREZ; OFFICERS JANE OR JOHN DOES 1-21, all in their official or individual capacities, Defendants. Case No. 6:20-cv-1489-MC. United States District Court, District of Oregon, Eugene Division.

248. Federal Trial: September 28, 2022, ELEAQIA MCCRAE, Plaintiff, vs. CITY OF SALEM; MAYOR CHUCK BENNETT; CITY MANAGER STEVE POWERS; POLICE CHIEF JERRY MOORE; OFFICER RAMIREZ; OFFICERS JANE OR JOHN DOES 1-21, all in their official or individual capacities, Defendants. Case No. 6:20-cv-1489-MC. United States District Court, District of Oregon, Eugene Division.

249. Deposition: October 4, 2022, ANTHONY SUNG CHO, Plaintiff, vs. CITY OF SAN JOSE, MATTHEW RODRIGUEZ, TYLER MORAN, STEVEN GAONA, ZACHARY DAVID PREUSS, and DOES 1-10, inclusive, Defendants. Case No. 5:21-cv-05503-VKD, United States District Court, Northern District of California, San Jose Division.

250. Deposition: October 6, 2022, ARTHUR Y. WADA, Plaintiff, vs. TRI-PACIFIC TERMITE COMPANY; JOHN Mc CAULEY, individually and doing business as TRI-PACIFIC TERMITE COMPANY; CARLO COVINO, and DOES 1 to 100, Defendants. Case No. BC654510. Superior Court of the State of California, County of Los Angeles-Spring Street Courthouse.

251. Deposition: November 11, 2022, VERONICA BAXTER, as Personal Representative of the ESTATE OF ANGELO J. CROOMS, Deceased, AL-QUAN PIERCE as Personal Representative of the ESTATE OF SINCERE PIERCE, Deceased, Plaintiffs, vs. JAFET SANTIAGO-MIRANDA, et al., Defendants. Case No. 6:21-cv-718-CEM-LRH. United States District Court, Middle District of Florida, Orlando Division.

252. **State Trial:** November 14, 2022, D.W., A MINOR, BY AND THROUGH HER GUARDIAN AD LITEM, JESSICA MARTINEZ, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO SERGIO WEICK; L.W. AND E.W., MINORS BY AND THROUGH THEIR GUARDIAN AD LITEM MAGDALENA LUGO, INDIVIDUALLY AND AS SUCCESSORS IN INTEREST TO SERGIO WEICK; CRUZ WEICK, AN INDIVIDUAL; AND STEVEN NEIL WEICK, AN INDIVIDUAL, PLAINTIFFS, vs. COUNTY OF SAN DIEGO, AN ENTITY; PETER MEYERS, AN INDIVIDUAL; CHRISTOPHER VILLANUEVA AN INDIVIDUAL; AND DOES 1 THROUGH 10, INCLUSIVE, DEFENDANTS. Case No. 17CV1459-WQH-AGS. Superior Court of the State of California, County of San Diego, North County Regional Center.

253. **Deposition:** December 7, 2022, ESTATE OF ROBERT JOSEPH MILLER, by and through IAN MILLER, a personal representative of the Estate, Plaintiff, vs. SEAN ROYCROFT and SPENCER JACKSON, in their capacities, and the TOWN OF BARSTABLE, MASSACHUSETTS, Defendants. (Civil Action No. 21-10738-AK), United States District Court, District of Massachusetts.

254. **Deposition:** December 16, 2022, J.A., a minor, by and through his Guardian ad Litem Cindy Plascencia, Plaintiffs, vs. COUNTY OF SAN BERNARDINO; DEPUTY ED FAKHOURY, an Individual; DEPUTY BRANDON BECKER, an Individual and Does 3-10, Inclusive, Defendants. United States District Court, Central District of California, Western Division. Case No. 5:20-cv-02468-MEMF-KK.

255. **State Trial:** December 21, 2022, Peter B. Komis and DORINDA HOPPER-KOMIS, Plaintiffs, vs. FARMERS INSURANCE COMPANY, Defendant, Case No. D-101-CV-2017-02777, State of New Mexico, County of Santa Fe, First Judicial District.

256. **Deposition:** January 4, 2023, Mickel Erich Lewis, Jr., individually and as successor-in-interest; and Briona Lewis, individually and as successor-in-interest, Plaintiffs vs. Kern County, Deputy Jason Ayala, and DOES 1-2, inclusive, Defendants. Case No. 1:21-CV-00378-DAD-SKO. United States District Court, Eastern District of California.

257. **Deposition:** January 5, 2023, LATOYA REINHOLD, individually and as successor-in-interest to Kurt Reinhold; S.R. and J.R., minors, by and through their

guardian ad litem Latoya Reinhold, individually and as successors-in-interest to Kurt Reinhold; JUDY REINHOLD-TUCKER, Plaintiffs, vs. CITY OF ORANGE, a public entity; JONATHAN ISRAEL, an individual; EDUARDO DURAN, an individual, and DOES 3-20, inclusive, Defendants. Case No. 8:20-cv-02369 JLS (DFMx). United States District Court, Central District of California.

258. Deposition: January 6, 2023, RAYMOND RICHARD WHITALL, Plaintiff v. GUTIERREZ, et. al. Case No. 3:18-cv-01376-CRB. In the United States, District Court, Northern District of California, San Francisco Division.

259. Federal Court: January 11, 2023, PATRICIA NARCISO, INDIVIDUALLY AND THROUGH HER CONSERVATORS MARCELINA LUNA AND TRACYNARCISO, Plaintiffs, vs. COUNTY OF SAN DIEGO, SHERIFF WILLIAM GORE, DEPUTIES DONALD FRANK AND DARSHAUN DOUGLAS, AND DOES 1 TO 10, (Case No. 20-CV-00116-L-MSB).

260. **Deposition**: January 12, 2023, JENNIFER SHEPARD, Plaintiff, vs. ASM GLOBAL, and DOES 1 through 10, Defendants. Case No. 21STCV28363. Superior Court of the State of California, Los Angeles County.

261. Deposition: January 19, 2023, SHANITA D. SWANSON, Plaintiff, vs. FULTON COUNTY, GA, et al., Defendants. (Civil Action Number 1:21-CV-00996-AT). United States District Court, Northern District of Georgia, Atlanta Division.

262. Deposition: February 2, 2024, January 5, 2023, LATOYA REINHOLD, individually and as successor-in-interest to Kurt Reinhold; S.R. and J.R., minors, by and through their guardian ad litem Latoya Reinhold, individually and as successors-in-interest to Kurt Reinhold; JUDY REINHOLD-TUCKER, Plaintiffs, vs. CITY OF ORANGE, a public entity; JONATHAN ISRAEL, an individual; EDUARDO DURAN, an individual, and DOES 3-20, inclusive, Defendants. Case No. 8:20-cv-02369 JLS (DFMx). United States District Court, Central District of California.

263. **Deposition:** February 6, 2023, NANCY HOOKS, Plaintiff, vs. CITY OF WARREN, a Municipal corporation; dba CITY OF WARREN POLICE DEPARTMENT, and POLICE OFFICERS: OFFICER LUCAS DOE; OFFICER BRYAN MUNAFO; OFFICER ANDREW KOERNER; OFFICER ANTHONY GIANNOLA; OFFICER MARCHELLOE DELOS BROWN; each in their individual and official capacity jointly and severally; Defendants. Case No. 2:21-cv-10743. United States District Court, Easter District of Michigan, Southern Division.

264. **Deposition:** February 9, 2023, MARCIA WELLS and TEENA ACREE, Individually and as Co-Special Administrators of the Estate of BYRON LEE WILLIAMS, Deceased, et al., Plaintiffs, vs. LAS VEGAS METROPOLITAN POLICE DEPARTMENT, et al., Defendants. Case No. 2:21-cv-01346.

265. **Federal Trial:** February 14, 2023, AASYLEI LOGGERVALE; AASYLEI HARDGE-LOGGERVALE, AAOTTAE LOGGERVALE, Plaintiffs, vs. COUNTY OF ALAMEDA; STEVEN HOLLAND; MONICA POPE; KEITH LEEPER; ANTHONY DESOUSA; and DOES 1 to 50, inclusive, Defendants. Case No. C20-4679-WHA.

266. **Deposition**: March 3, 2023, JOHN KRUEGER, individually and as Co-Administrator of the Estate of Jeffery Krueger and PAMELA KRUEGER, individually and as Co-Administrator of the Estate of Jeffery Krueger, Plaintiffs, vs. BOARD OF COUNTY COMMISSIONERS FOR WAGONER COUNTY, OKLAHOMA, A/K/A WAGONER COUNTY, OKLAHOMA; WAGONER COUNTY SHERIFF'S DEPARTMENT; WAGONER EMERGENCY SERVICES IN., A/K/A WAGONER EMS; et al., Defendants. Case No. 21-CV-044-RAW.

267. **State Trial:** March 9, 2023, VERONICA ORDAZ GONZALEZ, et al., Plaintiffs, vs. COUNTY OF FRESNO, Defendants. Case No. 1:18-cv-01558-DAD-BAM. Superior Court of California, County of Fresno.

268. **Deposition:** March 30, 2023, AGUSTIN MARTINEZ, Plaintiff, vs. CITY OF ONTARIO; and DOES 1-10, inclusive, Defendants. Case No. CV21-01099 JGB (SP).

269. Deposition: March 31, 2023, MATILDA CLAH as Personal Representative of the ESTATE OF SHAWN MARVIN THOMAS, Deceased, Plaintiff, vs. SAN JUAN COUNTY DEPUTY JON GONZALES, Defendant, Civil Number 22-10 SMV/SCY.

270. Federal Trial: April 12, 2023, LISA VARGAS, Plaintiff, vs. COUNTY OF LOS ANGELES, NIKOLIS PEREZ, JONATHAN ROJAS, and DOES 1 through 10, inclusive, Defendants. Case No. 2:19-cv-03279-PSG-AS, Unites States District Court, Central District of California.

271. Deposition: April 14, 2023, Charles H. Cooper, Jr., as Administrator of the Estate of Joseph E. Haynes, deceased, Plaintiff, vs. Deputy Richard Scarborough, Franklin County Sheriff's Department, et al., Defendants, Case No. 2:19-CV-04470.

272. **Deposition**: May 2, 2023, JAMES MICHAEL BOOTH, JR., Plaintiff, vs. WALMART INC., DESHEAN ANTWAN WAGES, and DOES 1 to 20, Defendants, CIVDS 1805223.

273. Deposition: May 22, 2023, LUTHER D. GONZALES-HALL, Plaintiff, vs. CITY OF DEARBORN, a Municipal Corporation; dba CITY OF DEARBORN POLICE DEPARTMENT, and Police Officers: MARVIN SANDERS, AARON NAJOR, PETER HOYE, STEVEN VERT, ADAM WALKER and JOHN DOE #1, JOHN DOE #2, and JANE DOE #3, COLLECTIVELY ("assisting and supervising officers"), Each in their individual and official capacity jointly and severally; Defendants. Case No. 5:18-cv-02523-GW.

274. Deposition: May 25, 2023, LIONEL S. DORSEY, et al., Plaintiffs, vs. MICHAEL SOKOLOFF, et al., Defendants, (Case No. 8:18-cv-00829-PJM).

275. Deposition: May 31, 2023, JAMES A. BURK, JR., et al., Plaintiff, vs. CITY OF COLUMBUS, et al., Defendants. Case No. 2:20-cv-6256.

276. State Trial: June 6, 2023, LUTHER D. GONZALES-HALL, Plaintiff, vs. CITY OF DEARBORN, a Municipal Corporation; dba CITY OF DEARBORN POLICE DEPARTMENT, and Police Officers: MARVIN SANDERS, AARON NAJOR, PETER HOYE, STEVEN VERT, ADAM WALKER and JOHN DOE #1, JOHN DOE #2, and JANE DOE #3, COLLECTIVELY ("assisting and supervising officers"), Each in their individual and official capacity jointly and severally; Defendants. Case No. 5:18-cv-02523-GW.

277. Deposition: June 9, 2023, C.R., and D.R., by and through their Guardian ad Litem, JESSICA MENDOZA; UR., by and through her Guardian ad Litem, FELIZ GOMEZ, Individually, and as Successors in Interest to DANIEL DAVID REYES; and ANN CADENA, individually, Plaintiffs, vs. COUNTY OF KERN, a legal subdivision of the State of California; PHILIPPE TAMPINCO, an individual; and DOES 1 through 10, inclusive, Defendant. Case No. 1:21-CV-01593-ADA-CDB.

278. Deposition: June 20, 2023, GLORIA S. ZAPATA, as special administrator for the estate of JONATHAN BLACKSTONE, deceased, and MITCHELL BLACKSTONE, individually and as heir to the Estate of JONATHAN BLACKSTONE, Plaintiffs. vs. U.S. SECURITY ASSOCIATES, INC., a foreign business entity conducting business entity conducting business in Nevada; DOE AGENTS/EMPLOYEES 1-10 for U.S. SECURITY ASSOCIATES, INC., individuals, et al. Defendants, Case No. A-19-799464-C.

279. Deposition: July 11, 2023, KEVIN MAY, an individual; ALBERT CARLOS, an individual; MIGUEL LOZANO, an individual; ANTHONY DIGIORGIO, an individual; GREG LEIBSCHER, an individual, Plaintiffs, vs. CITY OF LOS ANGELES, a California City; LOS ANGELES WORLD AIRPORTS POLICE DEPARTMENT; and DOES 1-30 INCLUSIVE, Defendants. Case No. YC072952.

280. Deposition: July 13, 2023, TYLER BRANDON, an individual, Plaintiff, vs. COUNTY OF SAN BERNARDINO, a public entity; STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, a public entity; and DOES 1-50, inclusive, Defendants. Case No. CIVDS1924226.

281. Deposition: July 21, 2023, RICARDO TORRES; Plaintiff, vs. SYUFY ENTERPRISES dba WEST WIND FLEA MARKET; RESOLUTE SECURITY GROUP, INC.; FAIRMONT HOSPIAL; and DOES 1 to 50, inclusive. Defendants. Case No: RG18925918.

282. **Deposition:** July 26, 2023, OMRI BEN-ARI, an individual; Plaintiff, vs. BASIC SAN DIEGO LLC dba BASIC URBAN KITCHEN & BAR, a business entity form unknown; JON MANGINI GROUP, INC., a corporation; and DOES 1 through 50, inclusive, Defendants. Case No. 37-2021-00036638-CU-PO-CTL.

283. **Deposition:** August 15, 2023, GAYSHA GLOVER and COURTNEY GRIFFIN, individually and on behalf of the ESTATE OF D'ETTRICK GRIFFIN, Plaintiffs, vs. CITY OF ATLANTA; ERIKA SHIELDS; OLIVER SIMMONDS and DOES 1-5, Defendants, CIVIL ACTION FILE NO. 1:20-cv-04302-VMC.

284. **Deposition:** August 24, 2023, DEBORAH MOLLER, an individual and successor-in-interest of BRET BREUNIG, deceased, Plaintiff, vs. COUNTY OF SAN BERNARDINO, a public entity; UNIDENTIFIED DEPUTIES, individuals; CITY OF REDLANDS, a public entity; UNIDENTIFED OFFICERS, individuals; LOMA LINDA UNIVERSITY MEDICAL CENTER; a non-profit corporation; UNIDENTIFIED HEALTH CARE PROFESSIONALS, individuals; and KENNETH BREUNIG, a nominal defendant, Defendants.
Case No. 5:22-cv-01306-DSF.

285. **Deposition:** September 11, 2023, ALEXIS MENDOZA, as Special Administrator of the Estate of MAX GARCIA; ALEXIS MENDOZA on behalf of her minor child; RIPLEY GARCIA, as heir to the Estate of MAX GARCIA, Plaintiffs, vs. PALM DELUXE GROUP, LLC, a foreign limited liability company; SOS SECURITY, LLC, Delaware of limited liability company; BRIAN WILLIAM LOVE, an individual; DOES I-X, inclusive and ROE CORPORATIONS I-X, inclusive, Defendants, Case No. A-20-809943.

286. **Deposition:** September 22, 2023, EMILY GARCIA, et al., Plaintiffs, vs. CITY OF TUSTIN, Defendants, Case No. 8:22-CV-00131-DOC-KES.

287. **Deposition:** October 11, 2023, LUIS A. GALVAN, Plaintiff, vs. STANISLAUS COUNTY, DEPUTY JUSTIN WALL, DEPUTY JOSHUA SANDOVAL, DEPUTY EARL GAARDE, and DOES 1-25, inclusive, Defendants, Case No. 1:21-cv-01641-DAD-BAM.

288. **Deposition:** October 27, 2023, Michelin D. McKee, as Personal Representative of the Estate of SALAYTHIS MELVIN, the deceased, Plaintiff, vs. Deputy James Montiel, Orange County Sheriff's Office, et. al., Defendants. Case No. 6:21-cv-01085-CEM-EJK

289. **Deposition:** November 1, 2023, OMID RAHIMI, an individual, Plaintiff, vs. IRVINE POLICE DEPARTMENT, CITY OR IRVINE, NICHOLAS GIOVANO SOEWONO, and DOES 1 to 10, Inclusive, Defendants. Case No. 30-2020-01149747-CU-PA-CJC.

290. **Deposition:** November 7, 2023, HEATHER CAMARENA, an individual; HELENA FUIMAONO, an Individual, Plaintiffs, vs. PHARMERICA MOUNTAIN, LLC; ROLAND WERNER; HENRY INDUSTRIES, INC., BPP PAC IND NV NON-REIT; CHRISTOPHER MILLER; VANNEAL REDDICK; AAROWHEAD SECURITY, INC; CBRE, INC; LBA INC.; DOES I-X; and ROE BUSINESS ENTITIES XI-XX, inclusive, Defendants, Case No. A-20-819565-C.

291. **Deposition:** November 21, 2023, H.L., a minor, by and through his guardian ad litem, MARIA SIGALA, an individual; Plaintiff,
vs. CITY OF McFARLAND, a governmental entity; DEPUTY CHIEF TYLER HELTON, an individual, OFFICER MATTHEW DEWAR, an individual; OFFICER COLIN NEWHOUSE, an individual; OFFICER KARISSA ALBERTO, an individual; OFFICER CHRISTOPHER RIVERA, an individual; OFFICER FREDDY HERNANDEZ, an individual; and DOES 1-10, Inclusive, Defendants. Case No. 1:22-cv-00106-DAD-BAK.

292. **Deposition:** November 30, 2023, SHI BIAO HU, Plaintiff, vs. JORGE OCHOA and DOES ONE through 20, Defendants. Case No. 20STCV24052.

293. **Deposition**: December 21, 2023, TAWAYNE HOLLOWAY v. Plaintiff, vs. City of Fort Worth, Texas; and Mitchell J. Miller, Defendants.
Civil Action No. 4:23-cv-0087

294. **Deposition:** January 8, 2024, DAVID BACA, Plaintiff, vs. JONATHAN ANDERSON, MICHAEL JOSEPH SIMONINI, BRETT MICHAEL WEIDNER, ZACHARY DAVID PREUSS, and DOES 1-150, Defendants.
Case No. 3:22-CV-02461 WHO.

295. Deposition: January 9, 2024, MAURICIO ALANIZ, Plaintiff, vs. YARD HOUSE USA, INC., et al., Defendants, Case No. 19STCV09739

296. Deposition: January 12, 2024, MARSHA VAUGHN, on behalf of the ESTATE OF NICHOLAS W. LEE, et al., Plaintiffs, vs. GIANT FOOD, LLC, et al., Defendants. Case Number: 24-C-23-001010 MT

297. **Deposition**: January 15, 2024, RICARDO TORRES; Plaintiff, vs. SYUFY ENTERPRISES dba WEST WIND FLEA MARKET; RESOLUTE SECURITY GROUP, INC.; FAIRMONT HOSPIAL; and DOES 1 to 50, inclusive. Defendants. Case No: RG18925918.

298. Deposition: January 24, 2024, INOCENCIO RIVERA, JR., an individual; and MIDORI RIVERA, an individual, Plaintiffs, vs. VICTOR VARVEL, as Trustee of the Varvel Family Trust, dated November 3, 1993; RICHARD CONKLIN, an individual; JONNELLE SMITH-CONKLIN, an individual; and DOES 1 through 10, inclusive, Defendants, Case No. 37-2021-00023432-CU-OR-NC.

299. State Trial: January 31, 2024, Re: JAMES MICHAEL BOOTH, JR., Plaintiff, vs. WALMART INC., DESHEAN ANTWAN WAGES, and DOES 1 to 20, Defendants. CIVDS 1805223

300. Deposition: February 20, 2024, LASHA JOHNSON, individually and as successor-in-interest to Gerald Johnson; ZANA VALENZUELA, individually and as successor-in-interest to Gerald Johnson; GERALD JOHNSON, JR. and ZAMORAH JOHNSON, minors, by and through their guardian *ad litem*, Zenobia O' Keith, individually and as successor-in-interest to Gerald Johnson, WILLIE JOHNSON, individually, Plaintiffs, v. CITY OF FRESNO, a public entity; DOES 1-20, inclusive, Defendants, Case No. 21CECG00057

301. Federal Trial: February 28, 2024, RUBY JOHNSON, Plaintiff, vs. GARY STAAB, an officer of the Denver Police Department, in his individual capacity, and GREGORY BUSCHY, an officer of the Denver Police Department, in his individual capacity, Defendants. Case No. 2022CV33434.

302. Deposition: March 1, 2024, JAVONTE VALENTINE, Plaintiff v. TORRES-QUEZADA, et. al. Case No. 4:22-cv-101520-JSW.

303. Deposition: March 11, 2024, MARQUETTA WILLIAMS, Plaintiff, vs. CITY OF CANTON, et al., Defendants. Case No. 5:23-CV-00655.

304. State Court: March 12, 2024, People v. Catsouras, Case No. 20HF1281.

305. Federal Court: March 13, 2024, FRANCISCO HURTADO, an individual, Plaintiff, vs. STATE OF CALIFORNIA; CALIFORNIA HIGHWAY PATROL; EDGARDO YEPEZ AKA EDGARDO LOPEZ AND DOES 1 THROUGH 100, INCLUSIVE, and DOES 1-10, inclusive, Defendants. Case No. 2:19-CV-02343-TLN-AC.

306. Deposition: March 18, 2024, MARGARITO T. LOPEZ, SONIA TORRES, KENI LOPEZ, ROSY LOPEZ, Plaintiffs, vs. CITY OF LOS ANGELES, JOSE ZAVALA, JULIO QUINTANILLA, AND DOES 1 THROUGH 10, INCLUSIVE, Case No. 2:22-CV-07534-FLA-MAA.

307. Deposition: March 25, 2024, A.J.P. and A.M.P., minors, by and through their guardian ad litem CYNTHIA NUNEZ, individually and as successor in interest to ALBERT PEREZ, deceased, and PATRICIA RUIZ, individually, Plaintiffs, vs. COUNTY OF SAN BERNARDINO, DAVID MOORE, CHRISTINA OLIVAS, CORY MCCARTHY, ANDREW POLLICK, individuals, and DOES 5-10, inclusive, Case No. 5:22-CV-01291-SSS-SHK.

308. Deposition: April 4, 2024, JAWONE ROBINSON, Plaintiff, vs. ORLANDO JILES, EDGAR DESANTOS, and CITY OF FAIRBURN, GEORGIA, Defendants, Case No. 1:23-cv-02034-JPB.

309. Deposition: April 5, 2024, ROSA NUNEZ, individually; ANTHONY NUNEZ, JR., individually and as successor-in-interest to Decedent, Anthony Nunez; and, ANDREW NUNEZ, individually, Plaintiffs, vs. COUNTY OF SAN BERNARDINO, CITY OF HESPERIA; MICHAEL MARTINEZ; SABRINA CERVANTES; JEREMY DEBERG; JONATHAN CAMPOS; and DOES 5-15, inclusive, Case No. 5:22-CV-01934-SSS-SPx.

310. Deposition: April 8, 2024, DENNIS MURPHY AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF DANIEL HUMPHREY and LORRAINE WARE AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF SONIA TENORIO, and CYNTHIA HUMPHREY, Plaintiffs, vs. CITY OF ALBUQUERQUE, et. al., Defendants, Case No. D-202-CV-2022-06680

311. Deposition: April 9, 2024, DERRICK HARRIS, Plaintiff, vs. CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, OFFICER SHARON KIM, DETECTIVE DENNIS PARKER, DEPUTY P. VALENCIA, OFFICER JOHN COUGHLIN, SERGEANT NICOLE AUFDEMBERG, OFFICER TERESA SPIRES, DETECTIVE LEONARD FELIX, UNKNOWN OFFICERS OF THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, UNKNOWN OFFICERS OF THE LOS ANGELES POLICE DEPARTMENT, Defendants. Case No. 2:21-7999.

312. Deposition: April 10, 2024, Energy Transfer, et al., Plaintiffs, vs. Greenpeace, et al., Defendants, Case No. 30-2019-cv-00180.

313. **Deposition:** April 12, 2024, VERONICA MCLEOD, individually and as successor in interest to decedent, DOLORES HERNANDEZ; AMADO HERNANDEZ, individually and as successor in interest to decedent, DOLORES HERNANDEZ; and YSIDRA REGALDO, individually, Plaintiffs, vs. CITY OF REDDING; GARETT MAXWELL, an individual; and DOES 1-10, inclusive, Defendants, Case No. 2:22-CV-00585-WBS-JDP.
Depositions: 250
Trial Testimony: 63

EXHIBIT 46

PLEASE NOTE:

Grand jury materials are protected from public disclosure under Minnesota Rule of Criminal Procedure 18.07.

On June 28, 2024, the Hennepin County Attorney's Office (HCAO) asked the court for permission to disclose the grand jury transcript to the public.

On July 19, 2024, the court denied that request. For that reason, the HCAO is not allowed to release the grand jury transcript to the public and must redact references to grand jury materials in this exhibit.

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

Court File No. 27-CR-24-1844

v.

Ryan Patrick Londregan,

Defendant.

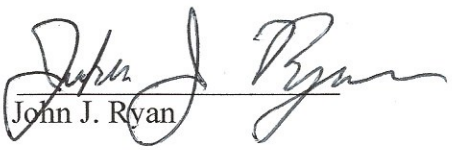
DECLARATION OF JOHN J. RYAN

I, John J. Ryan, have personal knowledge of the following facts and if called as a witness would testify to the following:

1. I prepared the attached Expert Report of John J. Ryan, dated April 26, 2024, in connection with the above-captioned case. Based on all the facts presently known to me, if called to testify at a hearing or trial, I would do so consistently with my statements therein.

I signed this declaration pursuant to Minnesota Statute section 358.116. I declare under penalty of perjury that everything I have stated in this document is true and correct. I signed this declaration on the date below in Providence County, Rhode Island.

Executed on April 26, 2024

By: 

John J. Ryan

State of Minnesota

V.

Trooper Ryan Londregan

Expert Report of John J. Ryan

1. My name is John Ryan. I have been actively involved in police practices and law enforcement since 1981. I was an active police officer for twenty years in Providence, Rhode Island. In the final year of my active career and since my retirement in June of 2002 from police services, I have been involved in police and law enforcement practices as a private consultant regarding law enforcement issues.
2. My education includes a Bachelor of Science Degree in the Administration of Justice from Roger Williams University in Bristol, Rhode Island; a Master of Science Degree in the Administration of Justice from Salve Regina University in Newport, Rhode Island and; a Juris Doctor Degree from Suffolk University Law School.
3. From 1993 until 2002 I served as an adjunct faculty member in the graduate Administration of Justice Program at Salve Regina University in Newport, Rhode Island. In that capacity I was responsible for graduate courses on Constitutional Issues in Law Enforcement; Police Misconduct/Civil Liability; Managing Police Organizations; Contemporary Issues in the Justice Field; Juvenile Justice; Mental Health Law; and Business Crime.
4. I am currently the co-director of the Legal and Liability Risk Management Institute along with James Alsup, and Lou Reiter. In that capacity I author and edit the institute's legal update service for law enforcement. This update service and an archive of all articles that I have written can be found at and www.llrmi.com. Additionally, I provide multiple on-line video roll-call trainings annually for both the road and jail operations. This on-line roll-call series is a subscription service offered by the Legal & Liability Risk Management Institute.

5. As part of the Legal and Liability Risk Management Institute I also conduct policy, training and operations reviews for law enforcement agencies and jails throughout the United States. These reviews focus on the manner in which agencies treat the critical tasks in law enforcement and jail operations. As part of these reviews I assist agencies in identifying areas in policy, training and operations that may be improved upon to bring the agency within the legal mandates and generally accepted practices in law enforcement and jail operations.
6. Since 1993, I have conducted numerous training sessions for public employees. Participants in this training have included law enforcement officials, school officials, attorneys and judges. Training I have provided are detailed in my CV.
7. I am a former police Captain of the Providence Police Department in Providence, Rhode Island where I served for twenty years before retiring in 2002. During my tenure as a police officer I served in the following capacities: patrol officer in both the Patrol Division and the Tactical Unit; a detective in the Detective Bureau; a sergeant in the Patrol Division; a lieutenant in the Patrol Division; Director of Training; Director of the Department's Office of Public Affairs and; Director of the Department's Administrative Staff. During most of my career I also took an active role in researching and authoring department policy.
8. Since my retirement in June of 2002, I have taught numerous courses on police policy and procedure, arrest, search and seizure, use of force, police pursuits, dealing with the mentally ill, emotionally disturbed, and suicidal, domestic violence, law enforcement's response to autism, law and best practices in the internal affairs process, civil liability for law enforcement agencies, and specialized courses for narcotics officers, SWAT commanders, and internal affairs officers. Participants in these courses have come from thousands of law enforcement agencies around the United States. Officers in attendance have come from departments with under ten sworn officers and departments with sworn

officers numbering in the thousands. These programs are conducted numerous times annually throughout the United States and also include on-line courses on these topics for law enforcement.

9. The course on policy and procedure focuses on critical tasks in law enforcement and includes, inter alia, policy issues relating to use of force; police pursuits; domestic violence; sexual harassment and external sexual misconduct; off-duty conduct; hiring & retention issues; internal affairs; supervisory practices; search and seizure; property and evidence; care, custody and transport of prisoners as well as training issues relating to critical tasks in law enforcement.
10. The programs on High Risk Critical Tasks/Best Practices in Law Enforcement includes instruction on Use of Force including inter alia: dealing with individuals of diminished capacity i.e. emotionally disturbed, mentally impaired; and suicidal, excited delirium, as well as persons with disabilities and use of electronic control devices; Search-Seizure and Arrest; Pursuit and Emergency Vehicle Operation; Care, Custody, Control, and Restraint of Prisoners; Domestic Violence; Off-Duty Conduct; Sexual Harassment, Discrimination, and Misconduct; Selection and Hiring; Internal Affairs; Special Operations; and Property and Evidence.
11. As a co-director of the Legal & Liability Risk Management Institute I regularly research and draft policies for law enforcement agencies and jails relating to high-risk critical tasks including use of force, arrest-search & seizure, pursuit, emergency vehicle operation, special operations, internal affairs, hiring and selection-retention of officers, care-custody-control & restraint of prisoners, sexual harassment-discrimination & sexual misconduct, domestic violence, arrest procedures, care, custody, and control of persons with disabilities, and dealing with the mentally ill. In addition, I write, record, produce, and distribute on-line training videos for law enforcement nationwide.
12. Since 2002, I have been involved in the auditing of law enforcement operations throughout the United States conducting several audits annually based on either a need or as a proactive measure of agency

performance in the high liability areas of the road and jail operation. I have been involved in assisting dozens of departments nationally through these audits in developing policy, training, and enhancing operations for law enforcement services.

13. My experience, training and background are more fully described in the attached curriculum vitae, which I incorporate by reference to this report.
14. I have reviewed the following materials to date regarding this case: See Schedule D
15. This expert report is based upon the materials provided to this date. The opinions presented in this report are based upon my specialized experience, training and knowledge of police practices as well as my continued research and work with law enforcement nationally. This work includes conducting training for law enforcement around the United States as well as auditing the policies and operations of law enforcement agencies around the United States. My opinions are provided with a reasonable degree of certainty within the fields of law enforcement, police activity and police administration and supervision. I am familiar with police civil litigation and know the normal phases of discovery. I recognize that there may be additional documentation as the case progresses. If additional material is produced, I shall be prepared to supplement this report.
16. At the outset it is important to note that this report is based upon the facts as presented by the material and specifically avoids drawing conclusions based upon credibility issues of the parties.

[redacted]

17. [redacted]

18. [redacted]

[redacted]

19. [redacted]

20. [redacted]

21. [redacted]

22. [redacted]

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[redacted]

24. [redacted]

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25. [redacted]

26. [redacted]

27. [redacted]

28. [redacted]

29. [redacted]

30. [redacted]

[redacted]

31. [redacted]

[redacted]

32. [redacted]

33. [redacted]

34. [redacted]

35. [redacted]

36. [redacted]

37. [redacted]

[redacted]

[redacted]

38. [redacted]

39. [redacted]

40. [redacted]

41. [redacted]

42. [redacted]

43. [redacted]

44. [redacted]

45. [redacted]

46. [redacted]

47. [redacted]

48. [redacted]

49. [redacted]

50. [redacted]

[redacted]

[redacted]

51. [redacted]

52. [redacted]

53. [redacted]

54. [redacted]

55. [redacted]

56. [redacted]

[redacted]

57. [redacted]

[redacted]

[redacted]

58. [redacted]

59. [redacted]

60. [redacted]

61. [redacted]

62. [redacted]

63. [redacted]

64. [redacted]

65. [redacted]

66. [redacted]

67. [redacted]

68. [redacted]

69. [redacted]

70. [redacted]

71. [redacted]

72. [redacted]

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74. [redacted]

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76. [redacted]

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77. [redacted]

78. [redacted]

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81. [redacted]

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83. [redacted]

84. [redacted]

85. [redacted]

86. [redacted]

87. [redacted]

88. [redacted]

89. [redacted]

90. [redacted]

91. [redacted]

92. [redacted]

93. [redacted]

94. [redacted]

95. [redacted]

96. [redacted]

97. [redacted]

98. [redacted]

99. [redacted]

Use of Force PowerPoint 2021

100. The PowerPoint directs that the Rules pertaining to Use of Force come from Federal case law, State law, and General order policy. The PowerPoint sets forth consistently with law

enforcement training and policy nationwide that decisions by the United States Supreme Court informs and directs proper force.

Force Concepts

Reasonable Force – Force used within the constraints presented by Graham v. Conner.

Use of Deadly Force – Force used within the parameters of Tennessee v. Garner.

Force is used as defense or control.

101.

Graham v Conner

Because reasonableness "is not capable of precise definition or mechanical application, when reviewing an excessive force claim, a reviewer should give attention to the facts and circumstances of each particular case, including:

- **The severity of the crime at issue**
- **Whether the suspect poses an immediate threat to the safety of the officers or others**
- **Whether suspect is actively resisting arrest or attempting to evade arrest by flight**

102.

Tennessee v. Garner, 471 U.S.1 (1985)

- Tennessee v. Garner, 471 U.S. 1 (1985)[1], was a case in which the Supreme Court of the United States held that, under the Fourth Amendment, when a law enforcement officer is pursuing a fleeing suspect, he or she may not use deadly force to prevent escape unless "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others."

103.

104. The training PowerPoint outlines Minnesota law on use of force:

609.06 AUTHORIZED USE OF FORCE

Subdivision 1.When authorized.

- Except as otherwise provided in subdivision 2, reasonable force may be used upon or toward the person of another without the other's consent when the following circumstances exist or the actor reasonably believes them to exist:

  (1) when used by a public officer or one assisting a public officer under the public officer's direction:

  - **(a) in effecting a lawful arrest; or**
  - **(b) in the execution of legal process; or**
  - **(c) in enforcing an order of the court; or**
  - **(d) in executing any other duty imposed upon the public officer by law;**

105.

609.066 AUTHORIZED USE OF DEADLY FORCE BY PEACE OFFICERS
(Effective March 1, 2021)

- Subd. 2.**Use of deadly force.**(a) Notwithstanding the provisions of section 609.06 or 609.065, the use of deadly force by a peace officer in the line of duty is justified only if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary:

(1) to protect the peace officer or another from death or great bodily harm, provided that the threat:

(i) can be articulated with specificity by the law enforcement officer;

(ii) is reasonably likely to occur absent action by the law enforcement officer; and

(iii) must be addressed through the use of deadly force without unreasonable delay;

106.

[1] It is noted that law has been changed to indicate that threat '**(i)** can be articulated with specificity;" and does not include that specificity must be articulated by the officer.

(2) to effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony and the officer reasonably believes that the person will cause death or great bodily harm to another person under the threat criteria in clause (1), items (i) to (iii), unless immediately apprehended.

107.

- (b) A peace officer shall not use deadly force against a person based on the danger the person poses to self if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that the person does not pose a threat of death or great bodily harm to the peace officer or to another under the threat criteria in paragraph (a), clause (1), items (i) to (iii).

108.

Legislative Intent

- Subd. 1a. **Legislative intent.** The legislature hereby finds and declares the following:
- (1) that the authority to use deadly force, conferred on peace officers by this section, is a critical responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law;

109.

Legislative Intent

- (2) as set forth below, it is the intent of the legislature that peace officers use deadly force only when necessary in defense of human life or to prevent great bodily harm. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case;

110.

Legislative Intent

- (3) that the decision by a peace officer to use deadly force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using deadly force;

111.

Legislative Intent

- (4) that peace officers should exercise special care when interacting with individuals with known physical, mental health, developmental, or intellectual disabilities as an individual's disability may affect the individual's ability to understand or comply with commands from peace officers.

112.

113. The Use of Force PowerPoint also includes MSP policy provisions:

Shooting from a moving vehicle

-Members shall not shoot at or from a moving vehicle unless deadly force is authorized.

-Members shall make every effort not to place themselves in a position that would increase the possibility of a vehicle being used as deadly force against themselves or others.

-Firearms shall not be utilized without a high probability of striking the intended target or when there is a high risk to the safety of other persons.

114.

Vehicle Contacts PowerPoint 2022 Update

115. In this PowerPoint, an example case of shooting involving Trooper Thelen, which is factually similar to the event under review in this report.

STOP SUMMARY

As allowed by MN Statute 609.066

- Discharged firearm one time, striking and killing the suspect.
- Dragged by the suspect vehicle for approximately 858 feet
- Trooper Thelen's fear was that if he immediately let go he would be run over, or sustain great bodily harm to his person, or death.

116. 

117. The slide notes explain: "Trooper Thelen discharged his pistol one time, striking and killing the suspect. Trooper Thelen had been dragged by the suspect vehicle for approximately 858 feet before firing his service pistol. Trooper Thelen stated that he did not immediately let go of the vehicle as the suspects foot was still on the accelerator and traveling at a high rate of speed down the roadway. Trooper Thelen's fear was that if he immediately let go he would be run over by the suspects vehicle, or sustain great bodily harm to his person, or death." I would note that the distance an officer is endangered or dragged by a vehicle would not, in accord with law enforcement training change the nature of the threat a vehicle poses to an officer.

118. Video of Thelen's stop provides officers with an example of the immediate threat of seriously bodily harm or death that exists when a subject flees with officers being dragged or partially in a vehicle and how it was necessary for Thelan to stop the threat by shooting the driver.

119. 

120. The training outlines the authority of an officer to order vehicle occupants out of the stopped vehicle.

Pens Vs. Mimms

- 1997 federal ruling stating police officer ***may*** have passengers exit vehicles
- Rental car speeding & registration problem
- Occupants very nervous
- Police order everyone out
- Bindle of cocaine falls on ground as passenger exits

121. 

122. Citing state law, the training directs that officers should document why they directed the driver or other occupants to exit the vehicle.

Case Law
State vs. Askerooth

- A video showing an officer at the window for only 2-3 seconds may be enough for dismissal
- Make sure you fully document in your reports your reason/reasons for having the driver, or any vehicle occupant, get out of the vehicle

123. 

Use of Force Policy [12/20/2021] GO 21-10-027

124. A. The use of force is only authorized when it is objectively reasonable and for a lawful purpose. B. The decision by troopers to use force or deadly force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when troopers may be forced to make quick judgments about using such force. C. Every human life has inherent value (sanctity) and members shall treat people with respect and dignity and without prejudice. D. Every person has a right to be free from excessive use of force by law enforcement officers acting under the color of law. E. Troopers shall use deadly force only when necessary in defense of human life or to prevent great bodily harm.

F. Troopers should exercise special care when interacting with individuals with known physical, mental health, developmental, or intellectual disabilities as an individual's disability may affect the ability to understand or comply with commands. G. Troopers who use excessive or unauthorized force are subject to discipline, possible criminal prosecution, and/or civil liability.

125. The policy defines a "Deadly Force Assault" as "Any action which would cause a reasonable officer to believe it will result in death or great bodily harm to the member or another."

126. The policy defines "Deadly Force" as All force actually used by trooper(s) against another which the trooper(s) know or reasonably should know, creates a substantial risk of causing death or great bodily harm. The intentional discharge of a firearm in the direction of another person, or at a vehicle (including tires) in which another person is believed to be, constitutes deadly force. The use of a chokehold, as defined in this policy, constitutes deadly force."

127. "11-Use of Deadly Force It shall be the policy of the Minnesota State Patrol, unless expressly negated elsewhere, to allow troopers to exercise discretion in the use of deadly force to the extent permitted by Minn. Stat. §609.066, subd. 2, which authorizes peace officers acting in the line of duty to use deadly force only if an objectively reasonably officer would believe, based on the totality of circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary: 1.To protect the peace officer or another from death or great bodily harm, provided that the threat: a. can be articulated with specificity; b.is reasonably likely to occur absent action by the law enforcement officer; and c. must be addressed through the use of deadly force without unreasonable delay; or 2.To effect the arrest or capture, or prevent the escape, of a person whom the trooper knows or has reasonable grounds to believe has committed or attempted to commit a felony and the trooper reasonably believes that the person will cause death or great bodily harm to another person under the threat criteria in IV.C.(1)a.-c. (above), unless immediately apprehended. 3.Where

reasonably feasible, troopers shall identify themselves as a law enforcement officer and warn of his or her intent to use deadly force. 4.In cases where deadly force is authorized, less-than-lethal measures must be considered first by troopers.

Opinions

128. It is my opinion, based upon my specialized background, education, training and experience as well as my continued research, authoring, auditing, consulting and training on law enforcement practices nationwide that the use of deadly force by Trooper Ryan Londregan was consistent with generally accepted policies, practices, training, and industry standards as well as the training and policies of the Minnesota State Patrol.

129. At the outset I would note All officers are trained that on any traffic stop, the officer can control the stop by ordering any occupant out of the vehicle and no level of suspicion related to safety is necessary.[2] Thus, while the ability to control whether the occupants stay in the car or get out of the car is based on officer-safety, the officer need not point to any observations or facts to indicate that a safety issue is actually present.

130. There are several basic concepts trained to officers and embodied in policy and practice that must be applied to any use of force analysis.

[2] Law Officers Pocket Manual 2022 Edition: "Occupants of Vehicles" "Once you have made a legal stop of a vehicle for a traffic offense, you automatically have the authority to order the occupants to stay inside or to exit the vehicle…For example, you run a computer check on the license plates of the car in front of you and learn that the registration has been suspended for an insurance-related reason. You stop the car and cover a passenger while your partner addresses the driver and the registration issue. You notice that the passenger has tattoos that, from your experience, you know are gang-related. From your experience arresting gang members in the area, you also reasonably suspect that the passenger is armed and dangerous. You order the passenger "to get out of the car, frisk him, and find a handgun. Your actions are constitutional, and the handgun can be used to obtain a conviction. It may also be reasonable, depending on the facts, to enter a lawfully stopped car to look for the vehicle identification number. The U.S. Supreme Court ruled that common sense dictates, and it is reasonable to assume, lacking other information, that the vehicle's driver is the registered owner. An officer was justified in pulling over a vehicle" Excerpt From The Law Officer's Pocket Manual, John G. Miles Jr., David B. Richardson & Anthony E. Scudellari https://books.apple.com/us/book/the-law-officers-pocket-manual/id6442790803This material may be protected by copyright."

131. The ultimate desire or goal of every citizen and law enforcement contact is for cooperation, compliance and control without injury or harm to anyone. In the current society we live in, officers are frequently and sometimes violently confronted with dangerous circumstances, situations and individuals in rapidly evolving situations that require officer to make split second decisions that are necessary to preserve their lives and the lives of others. It is well known in law enforcement that it is the subject who controls the decision as to whether any law enforcement contact escalates, and that officer are placed into to a position of having to respond to the subject's escalation. It is clear from the materials that Mr. Cobb could have submitted to the troopers' authority at any point in time, but instead failed to comply and escalated the event by refusing to get out of the car and putting the car in gear as the officers were trying to extract him from the vehicle. [3]

132. It is well understood in law enforcement that the use of force must be judged from the perspective of the officer on the scene, taking into account what the officer reasonably believed to be the circumstances at the time and not with 20/20 hindsight. At the time that Londregan used deadly force he was aware that Cobb was subject to an order of arrest, he was aware that Cobb was being non-compliant with lawful commands of uniformed officers to get out of the vehicle, he was aware that Seide was partially in the vehicle and trying to extricate Cobb, and he was aware of Cobb's response of putting the car in gear while Seide was in the vehicle. Any reasonable and well-trained officer would have recognized the immediate threat of serious bodily harm or death to Seide, Londregan and any other person or motorist in the vicinity.

133. All officers are trained that they will be confronted with events where they will be forced to make split-second judgments in circumstances that are tense, uncertain and rapidly evolving,

[3] It is noted that Seide was the officer attempting the physical extraction and that Londregan participated by unlocking the doors to the vehicle from the passenger side.

about the amount of force that is necessary in a particular situation. It is noted that split-second decision making includes the decisions that must be made as the ground situation changes. Here, the ground situation began changing when Cobb refused to get out of his vehicle and then escalated to a deadly force encounter when Cobb decided to put the car in gear while the officers were trying to extricate him from the vehicle. The objective video establishes that the officers were in the very type of split-second decision making during a rapidly evolving event that is contemplated by use of force training, policy, and analysis.

134. As noted by the Federal Law Enforcement Training Center "use of force" instructor course, "Law enforcement officers may use reasonable force to complete a variety of different objectives. These objectives may include a. Detentions; b. Frisks; c. Arrests; d. Self-defense; e. Defense of others; f. Defense of property; g. Preventing a person from self-injury; h. Enforcing protective custody commitments. i. Preventing a person(s) from destroying evidence; j. Stopping or preventing riots and or crowd control; k. prisoner escapes."[4] Here, it is clear that Londregan was in the process of assisting with the arrest of Cobb and based on the resistance of Cobb which placed both Londregan and Seide at risk of serious bodily harm or death, deadly force became necessary to stop Cobb from causing serious injury or death to the officers and in particular Trooper Seide whose body was inside the vehicle. See screen captures of same moment in time below.

[4] Use of Force Student Text". FLETC, U.S. Department of Homeland Security Instructor Certification Course May 2021.

135. 
Seide
2023-07-31 02:17:02 -0500
AXON BODY 3 X60A5561P
Londregan
2023-07-31 02:17:03 -0500
AXON BODY 3 X60A57
Erickson
2023-07-31 02:17:03 -0500
AXON BODY 3 X60A5255R
Seide Squad Video

136. 

137. A zoom of this same moment depicts the position of Seide as Cobb has hold of the gear selector from the viewpoint of Londregan's BWC.

138. 

139. I would note that a tenet of law enforcement training is to develop muscle memory or a conditioned response when faced with a split-second rapidly evolving event. It is clear that Seide would be trained on extraction by a single officer and was using tactics consistent with that training when Cobb decided to grab the gear selector. As noted, [redacted] It is clear that while Seide's actions are not at issue in this case, Seide was acting consistently with Minnesota State Patrol training on vehicle extraction at the time that Cobb escalated the event to an immediate threat of serious bodily harm or death by putting the car into gear.

140. Officers throughout the United States are trained in two formulas with respect to use of force decision-making and justification. The first of these formulas is a three-part test that parallels

the mandates announced by the United States Supreme Court in *Graham v. Connor*.[5] The training directs officers to consider the seriousness of offense; whether or not the subject poses an immediate physical threat to the officer or anyone else; and finally, whether the subject is actively resisting or attempting to evade arrest by flight. It is clear based on a review of the policies and training of the Minnesota State Patrol as well as the Minnesota statutory law on use of force that a Graham based approach to use of force has been adopted. It is noted that the training, and the policy of the Minnesota State Patrol, as well as the Minnesota statutes and Federal Law trained to officers on use of force generally and deadly force specifically applies a standard that contemplates the objective reasonableness standard, based on the totality of circumstances and without the benefit of 20/20 hindsight.

141. Consistent with generally accepted policy, practice, and training as well as the Minnesota statutes and Federal standards, the Minnesota State Patrol policy directs, "that such [deadly] force is necessary: 1.To protect the peace officer or another from death or great bodily harm, provided that the threat: a. can be articulated with specificity; b.is reasonably likely to occur absent action by the law enforcement officer; and c. must be addressed through the use of deadly force without unreasonable delay;…" Here, the threat to both officers was not only clearly articulated by Seide, but it also clearly established by the objective video where a large portion of Seide's body was inside the vehicle and in danger of being dragged along the highway at the time Londregan used deadly force. It is clear from the objective video, that both officers were thrown to the pavement as a result of Cobb's escalation of this event to what all law enforcement would recognize as a deadly force encounter. As noted, a portion of the Minnesota State Patrol training which used the Trooper Thelen case, specifically

[5] This formula is derived from *Graham v. Connor*, 490 U.S. 386 (1989) and can be found in law enforcement training lesson plans as well as Use of Force policies throughout the United States

addressed the danger of serious bodily harm or death a trooper would face if dragged by a vehicle. The objective videos make clear that there was an immediate threat of serious bodily harm or death to Seide. Additionally, law enforcement recognizes the immediate threat that a subject fleeing recklessly from law enforcement poses to all other persons in the area to include vehicles and pedestrians.

142. All law enforcement recognizes that a vehicle can be used as a deadly weapon. Training directs that it is proper for an officer to reasonably perceive a vehicle as a weapon anytime the subject uses the vehicle in a manner that poses a threat of serious bodily harm or death to the officer or another person. Here, based on the objective videos, any reasonable and well-trained officer would recognize the danger of serious bodily harm or death to Seide, Londregan, and other persons using the highway in the vicinity, by Cobb's decision to escalate this event.

143. While I do not offer legal opinions in this report, I was a consultant in *Plumhoff v. Rickard,* where the United States Supreme Court made clear that the presence of other persons, even if close proximity to the officer's target does not change the reasonableness of an officer's shooting at the intended target.[6] I note that this has become a principle trained to officers throughout the United States since *Plumhoff* was decided. Here, Londregan fired his weapon at Cobb and only hit Cobb who was in close proximity to Londregan at the time of the shooting.

144. It is recognized that when considering the seriousness of the offense; that such consideration includes the offense the officer suspects at the time the control tactic is used and not just the original offense or other justification which led the officer to contact the individual at the outset. Any reasonable and well-trained officer to include Minnesota State Patrol officers trained on the events

[6] *Plumhoff v. Rickard*, 134 S. Ct. 2012 * (U.S. 2014). "In arguing that too many shots were fired, respondent relies in part on the presence of Kelly Allen in the front seat of the car, but we do not think that this factor changes the calculus. Our cases make it clear that "Fourth Amendment rights are personal rights which . . . may not be vicariously asserted." *Alderman v. United States*, 394 U. S. 165, 174, 89 S. Ct. 961, 22 L. Ed. 2d 176 (1969); see also *Rakas v. Illinois*, 439 U. S. 128, 138-143, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978).

involving Trooper Thelen, would recognize that Cobb was committing a violent assault on the troopers who were attempting to extract him from the vehicle, that this assault posed an immediate threat of serious bodily harm or death to Seide and that Cobb was actively resisting arrest and attempting to evade arrest by flight. Officers are also trained of the danger that a subject in a fleeing in a motor vehicle poses to all other persons in the vicinity and that significant force can be used to stop that threat.

145. The second formula was commonly referred to as the "Use of Force Continuum." While agencies utilize different force continuum models, all of the models recognize that officers have various subject control tactics available to them and that these tactics range from a low-level intrusion, such as officer presence and verbal commands, to the highest level, which is deadly force. It should be recognized that even in those agencies that still use a force continuum, the continuum is not a ladder that must be climbed step by step. Instead, it is a presentation of various force options, each of which must be objectively reasonable under the circumstances with which the officer is faced. It is noted that due to confusion over application of such continuums, law enforcement is moving away from this concept and simply train "force options." It is recognized that many law enforcement agencies are moving away from the so-called "continuum" and moving toward a "Graham" decision-making model.

146. Law enforcement training directs officers that the option they choose must be proportional to the offense they suspect, the articulable physical threat to the officer(s) or others, and the level of resistance offered by the subject. It is recognized that the more significant the crime, the more serious the degree of physical threat, and the more significant the degree of resistance, will authorize a more significant force option.

147. As noted, it is clear that the Minnesota State Patrol, consistent with Minnesota statute has adopted a Graham-based decision-making analysis. That said, officers have several force options, however where an officer is confronting an immediate threat of serious bodily harm or death, the necessary response is deadly force. While other force options are not unreasonable, it is recognized that if less significant options fail, the threat of serious bodily or death may be carried out.

148. I would note that the Minnesota State Patrol policy is more restrictive than the generally accepted policy, practice, training, industry standard and Minnesota Statute §609.066 in directing officers "4. In cases where deadly force is authorized, less-than-lethal measures must be considered first by troopers." Here, the troopers had established officer presence, Seide and Londregan had given verbal commands, and Seide attempted soft-empty hand control to extricate Cobb. Thus, here the officers not only "considered" lesser alternatives, a number of lesser alternatives were utilized before deadly force was used by Londregan in response to the actions of Cobb.

149. In fact, one of the premier programs for use of force trainers is to attend the Federal Law Enforcement Training Center's Use of Force Instructor Certification program where instructors from the Federal Government provide the training. FLETC instructs under a section Legal Misunderstandings (Myths v. Realities): (1) Minimal Force (a) Many officers have been taught (according to agency policy) that police officers must use the minimal amount of force available during a use of force incident. (b) The correct standard for use of force is 'objective reasonableness' not 'minimal force.' 'Minimal force' is a subjective standard, inconsistent with the precedent set forth in Graham v. Connor (1989). (2) Exhaustion or alternative force options not required (a) Some officers may believe that 'deadly force' is employed as a last resort and only when all lesser means have been exhausted. (b) The legal standard of reasonableness does not require officer to select the least intrusive means, only a reasonable one. (c) A domino effect occurs when reasonable use of force is not applied

immediately to gain control. Circumstances of the incident may become more dangerous, out of control, or unmanageable for the officer. (d) The officer's ability to choose a reasonable force option quickly and efficiently erodes the as the complexity of the situation increases. "Officer 'have' a duty to retreat. (a) Police officers have no duty to retreat in an effort to avoid using force on a suspect. (b) Officer must remember that based upon the totality of circumstances, disengaging from a threat in order to gain a tactical advantage and put themselves into a position of advantage may be a reasonable response to a critical incident."[7]

150. When an officer is confronted with an immediate threat of serious bodily harm or death the trained response is the use of deadly force to stop the threat. Other options while of course reasonable, are discouraged due to the fact that if such less-lethal options are unsuccessful, the officer will be unable to transition to deadly force before the threat is carried out by the subject.

151. At this stage of my review, I do not know if I may be asked to review additional documents. Should I be asked to review any additional documents, I will be prepared to render additional opinions or supplement the opinions stated within this report.

152. At this point in the development of this case, I do not know whether I will be using any demonstrative aids during my testimony. Should I decide to use any such tool; I will assure that they are made available for review, if requested, prior to their use.

153. This report is signed on April 26th, 2024 in Greenville, Providence County, Rhode Island.

s/*John J. Ryan*
John J. Ryan

[7] Use of Force Student Text". FLETC, U.S. Department of Homeland Security Instructor Certification Course May 2021.

SCHEDULE A

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EDUCATION

1990-1994 Juris Doctorate, Cum Laude, Suffolk University Law School
1986-1990 Master of Science, Administration of Justice, Salve Regina University
1981-1986 Bachelor of Science, Administration of Justice, Roger Williams University

EMPLOYMENT

2002- Police Practices Consultant, Trainer, Auditor
2003- Co-Director, Legal Liability Risk Management Institute
1993-2002 Adjunct Professor, Salve Regina University
Administration of Justice Graduate Program
Courses:

Constitutional Issues in Law Enforcement
Police Civil Liability
Juvenile Justice
Mental Health Law
Managing Police Organizations
Business Crime
Contemporary Issues in the Administration of

Justice 1982-2002 Police Officer, Providence Police Department
1982-1985 Patrol Officer, Patrol Division
1985-1987 Patrol Officer, Tactical Division
1986- 1997 SWAT Team, as Patrol Officers, Sergeant, and Lieutenant (1 of 4 Team Commanders)
1987-1988 Detective, Detective Division
1988-1992 Sergeant, Patrol Division
1992-1995 Lieutenant, Patrol Division
1995-2000 Director of Training
1995-2001 Department Public Information Officer
1997-2001 Captain, Administrative Staff Division
1998-2001 Director of Administration
2001-2002 Research and Policy

* As Director of Administration for the Providence Police Department-Supervisory Responsibilities included:

- Administrative Staff
- Advisor to Chief of Police and Internal Affairs
- Fleet Operations
- Human Resource Bureau
- MIS
- Property/Evidence
- Prosecution Bureau

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- Public Information Office
- Record Bureau
- Training Division

1981-1982 Private Security/Retail

- Uniformed Security
- Retail Store Detective
- Night Supervisor overseeing uniform security as well as store detectives

CERTIFICATIONS:

2009 Certified with TASER by the Muncie Indiana Police Department

AWARDS:

1999 Salve Regina University, Alumnus, Distinguished Service Award
1994 American Jurisprudence Award, Trial Practice
1992 American Jurisprudence Award, Constitutional Law
1991 Moot Court Outstanding Performance Award

LAW ENFORCEMENT ACHIEVEMENT AWARDS:

1996 Chief's Award, Off-Duty Shooting in Progress Arrest
1987 City Council Award, Off-Duty Breaking and Entering Arrest
1986 Rhea Archambault (Officer of the Year) Award
1982-2002 Over 35 Letters of Commendation

PROFESSIONAL AFFILIATIONS:

Rhode Island Bar Association Fraternal
Order of Police Providence Police
Association
International Municipal Lawyers Association

ADMITTED TO PRACTICE OF LAW:

State of Rhode Island, November 1994
District of Rhode Island Federal Court, June 1995

VOLUNTEER ORGANIZATIONS:

Northern Rhode Island Vikings Junior Hockey Association, President 2002-2004 Northern Rhode Island Vikings Junior Hockey Association, Board Member 1998-2003

DEPOSITIONS AND TESTIMONIES:

January 2014: Jenny Rebecka Royal v. City of Blythe, Superior Court of Richmond County, Georgia, Civil Action File No: 2012RCCV735 (Deposed 2/24/17) (Defense) August 2014: Johnathan Rose et al, v. County of Sacramento, et al, U.S. District Court Eastern District of California, Case No. 2:13-cv-01339-TLN-EFB (Testimony 9/22/17) (Plaintiff)
June 2015: Nathan Felts v. Valencia County, et al., U.S. District Court for the District of New Mexico, No: 1:13-cv-1094 MCA/RHS, (Testimony 10/17/17) (Defense)
December 2015: Estate of Dillon McGee v. Madison County, Tennessee, et al., U.S. District, U.S. District Court for the Western District of Tennessee Eastern Division, No.: 1:15-1069, (Deposed 7/31/17) (Defense)
September 2016: Sacchetti, Manganelli, et al. v. Gallaudet University, et al., U.S. District Court for the District of Colombia. Case No.: 1:15-cv-455-RBW (Deposed 6/19/17)(Plaintiff)

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November 2016: Estate of Brunette, et al. v. City of Burlington, U.S. District Court of Vermont, No.: 2:15-cv-61. (Deposed 7/26/17)(Defense)
December 2016: Katherine Elizabeth Sikes, individually and as Administrator of the Estate of Gary Thomas Latimer v. City of Douglasville, a municipal Corporation of the State of Georgia; Chief Chris Womack, Mayor Harvey Persons, Damon Partin, and Officer Michael McDonald, U.S. District Court for the Northern District of Georgia, Atlanta Division. Civil Action No.: 1:15-cv-03111. (Deposed 5/10/17)(Defense) February 2017: Estate of Marquez Smart by Randall Smart & Brenda Bryant as Administrators of the Estate and Heirs of Deceased v. The City of Wichita, Wichita PD, Officers Lee Froese & Aaron Chaffee. U.S. District Court for the District of Kansas. No.: 2:14-cv-02111-EFM-JPO. (Deposed 8/29/17)(Defense)
March 2017: Sureshbhai Patel v. City of Madison, et al. U.S. District Court for the Northern District of Alabama. No. 5:15-cv-00253-VEH. (Deposed 7/28/17)(Defense) May 2017: Stephen Horn v. City of Covington, et al. U.S. District Court, Eastern District of KY-Covington. No.: 2:14-cv-73-DLB (Deposed 8/30/17)(Defense)
June 2017: Tyrone Zwiegart v. Clinton County, et al. U.S. District Court for the Southern District of Illinois. No.: 3:16-cv-01182-MJR-RJD. (Deposed 9/16/17)(Defense)
July 2017: Sandra Harris, Special Administrator of the Estate of David Harris, Deceased, v. Village of Calumet Park, et al. Circuit Court of Cook County, IL, County Department, Law Division. No.: 2014-L-009643. (Deposed 9/07/17)(Defense)
June 2017: Maria Touchet, Personal Representative for Estate of Rudy Baca v. Valencia County and Seth Chavez. New Mexico Thirteenth Judicial District Court. No.: D-1314- cv-201501125. (Deposed 10/30/17)(Defense)
July 2017: Chaundraya Goodwin, Admx. V. Ohio State Highway Patrol. No.: 2016- 00864. Court of Claims of Ohio. (Deposed 10/31/17)(Defense)
October 2017: Baltimore PD v. Officer Caesar Goodson. Trial Board (Employment Disciplinary Hearing). (Testimony 11/6/17)(Defense)
August 2016: Jamie Nelson, et al. v. City of Elizabethtown, et al., U.S. District Court, Western District of KY at Louisville, Case No.: 3:16-CV-429-DJH.
(Deposed 12/4/17)(Defense)
April 2017: Megan McGuire v. Douglas County, et al. U.S. District Court-District of Nebraska. No.: 8:16CV4. (Deposed 2/1/18)(Defense)
November 2017: Derrick Wynn v. City of Griffin, et al. U.S. District Court for the Northern District of Georgia, Newnan Division. No. 3:16-cv-94-TCB.
(Deposed 2/13/18)(Defense)
August 2017: Neuroth v. Mendocino County, et al. U.S. District Court – Northern District California. No.: 3:15-cv-03226-RS. (Deposed 3/12/18)(Plaintiff)
July 2017: Estate of John Livingston, Tyrone Bethune, Christine Broom, Michael Cardwell, Ryan Holloway, and Wesley Wright v. Kehagias. U.S. District Court, Eastern District of North Carolina. No.: 5:16-cv-906. (Deposed 4/12/18)(Defense)
March 2018: Moses Stryker v. The City of Homewood; Chief Jim Roberson; Jason Davis; Brian Waid; and Frederick Blake. U.S. District Court, Northern District of Alabama, Southern Division. No.: 2:16-cv-00832-VEH. (Deposed 4/17/18)(Defense) January 2018: Jon Luer, et al. v. St. Louis County, MO. U.S. District Court, Eastern District of Missouri. Case No.: 4:17-cv-767 NAB. (Deposed 5/22/18) (Defense) February 2017: Darren A. Dickerson v. County of Camden, et al., U.S. District Court, District of New Jersey. No.: 1:14-cv-06905. (Deposed 6/13/18)(Defense)
December 2017: Francois Severe v. City of Miami and Antonio Vicente Torres, IV. District Court for the Southern District of FL. No. 17-cv-22153-DPG.
(Deposed 7/2/18)(Defense)
December 2016: Joshua Skinner v. Alexander Tower, Eric Shepard, Brian Claffy, and Michael DeFiore. U.S. District Court for the District of Vermont. Civil Case No.: 2:16- cv-127.
(Deposed 7/23/18)(Defense)
February 2017: Thomas Pryor v. County of Camden, et al., Superior Court of New Jersey, Law Division, Civil Part. No.: L-2767-15. (Testimony 7/27/18)(Defense)

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May 2016: Sheila Brawley, Mother and Next Friend of Rhaykeem D. Samuels, a minor, v. City of Madison, et al., Circuit Court Third Judicial Circuit Madison County, Illinois, Case No.:15-L-1505 (Deposed 8/15/18)(Defense)
January 2016: Clark v. Village of Grayslake, et al., Circuit Court of Lake County, (Deposed 8/17/18) (Defense)
May 2016: Robert Bryant v. Camden County Police Department, Jose Gonzalez, and Officer Jacob Levy, Superior Court of New Jersey, Law Division, Docket No.: L-3505-15. (Testimony 9/6/18) (Defense)
April 2018: Anthony Wilson and Kimberly Wilson, the parents of Martez Wilson, and the Estate of Martez Wilson v. Douglasville, Officer Coylee Danley, Officer Andrew Smith, Sgt. Caldwell, EMT Sean Flack and paramedic Brian Porterfield. U.S. District Court, Northern District of Georgia. CAFN 1:17-cv-00634-ELR.
(Deposed 9/7/18)(Defense)
May 2018: Angela Ainley v. City of South Lake Tahoe, et al. Federal Court Eastern District of California. No. 2:16-cv-00049-TLN-CKD. (Deposed 9/12/18) (Plaintiff) January 2018: Cajun Snorton as administrator of the estate of Nicolas Thomas v. Smyrna Police Lt. Kenneth Owens, et al. U.S. District Court, Northern District of Georgia. No.: CAFN 1:17-cv-01036-RWS. (Deposed 9/14/18) (Defense)
May 2018: Estate of Tashi S.Farmer, et al. v. LVMPD, et al. U.S. District Court, District of Nevada. No. 2:17-cv-01946-JCM-PAL. (Deposed 10/19/18) (Defense)
October 2018: John Hernandez, et al. v. City of Sacramento, et al. Eastern District of California. No. 2:17-cv-02311-JAM-DB (Deposed 11/30/18) (Plaintiff)
October 2018: Carolyn Giummo, et al. v. Robert Olsen, et al. U.S. District Court for the Northern District of Georgia. Civ. A. No. 1:15-cv-03928-TCB.
(Deposed 12/7/18) (Defense)
November 2018: Bill Stanley, Administrator of The Estate of Brandon Stanley v. Bobby Joe Smith and David Westerfield. U.S. District Court, Eastern District of Kentucky, London Division. No.: 6:16-cv-00264-REW-HAI. (Deposed 12/20/18) (Defense)
July 2016: Tad Woods v. Geraldine Martinez, Twelfth Judicial District Court, State of New Mexico, Case No.: D-1215-CV-2013-00689. (Testimony 1/16/19) (Defense) July 2016: Bethany Anderson, et al. v. City of Westlake, OH, et al. Court of Common Pleas, Lorain County, OH. No.: 18-CV-194655. (Deposed 1/25/19) (Defense)
December 2018: Smith v. County of Santa Cruz, CA. No. 17-6594 LHK, S.S. v. County of Santa Cruz, CA. No. 17-5095 LHK. U.S. District Court – ND California.
(Deposed 3/8/19) (Plaintiff)
July 2014: Fraternal Order of Police v. City of Camden, et al., U.S. District Court for the District of New Jersey, Civil Action No.:1:10-cv-01502 (Testimony 3/18/19) (Defense) September 2018: Jamie Ann Cox, individually and as successor in interest for Humberto Rosario Martinez, Deceased, et al. v. City of Pittsburg, et al. U.S. District of N.D. Cal. No.: 3:17-cv-04246-RS. (Deposed 3/25/19) (Plaintiff)
October 2017: Mario Alberto Madero, Jr., et al. v. City of Prairie Village, Kansas, et al. District Court of Johnson County, Kansas. No.: 18-CV140 (Testimony 4/16/19) (Defense)
May 2017: Keith Childress, Sr., et al. v. LVMPD, et al. U.S. District Court, District of Nevada. No.: 2:16-cv-03039-JCM-NJK. (Deposed 4/18/19) (Defense)
December 2018: Amanda Hoskins/Jonathan Taylor v. Knox County, et al. U.S. District Court, Eastern Kentucky Division. No.: 17-cv-84. (Deposed 5/21/19) (Defense) December 2017: State of New Jersey v. P.O. Joseph P. Reiman. Superior Court of N.J., Criminal Division. Criminal Complaint # 1201-W-2017-000360 (Testimony 5/22/19) (Defense)
March 2019: United States of America v. Nicholas Romantino. District Court of New Jersey, Camden Vicinage. Crim. No. 18-673 (RBK) (Testimony 6/7/19 and 9/10/19) (Defense)
February 2018: Yvonne Mote, as Personal Representative of the Estate of Shane Watkins, deceased v. Steven Moody, et al. U.S. District Court for the Northern District of Alabama; Northwest Division. No.: 3:17-cv-00406-AKK. (Testimony 6/27/19) (Defense)

SCHEDULE A

May 2018: Rashawn Quaneece Middleton, as Personal Representative of the Estate of Roy Howard Middleton, SR., deceased v. Sheriff David Morgan (Escambia), et al. U.S. District Court, Northern District of Florida, Pensacola Division. No. 3:17-cv-00346- MCR-GRJ. (Deposed 7/8/19) (Defense)
May 2018: Velvet Clowers v. Union City and John Does 1 through 4. Superior Court of Fulton County, GA. No.: 2017CV298022. (Deposed 8/14/19) (Defense)
February 2019: Roger Dean Gillispie v. City of Miami Township, et al. U.S. District Court, Southern District of Ohio, Western Division. No. 3:13-cv-00416-TMR-MRM. (Deposed 9/4/19) (Defense)
November 2018: Tiffany Washington, et al. v. Crystal Marlowe, et al. Jefferson Circuit Court, Kentucky. No.: 10-CI-001183. (Testimony 10/1/19) (Defense)
June 2018: Celia Sanchez and Oscar Salas, Statutory Death Beneficiaries of Erik Emmanuel Salas-Sanchez v. Mando Kenneth Gomez, Alberto Rivera, Pamela Smith and the City of El Paso, TX. U.S. District Court, Western District of Texas, El Paso Division. No. 3:17-cv-00133-PR. (Deposed 9/13/19) (Defense)
April 2019: Lisa G. Finch v. City of Wichita, Kansas. U.S. District Court for the District of Kansas. No.: 18-cv-1018-JWB-KGS. (Deposed 10/2/19) (Defense)
May 2018 Trinita Farmer v. Las Vegas Metropolitan Police Department, US District Court for the District of Nevada, Case No. 2:18-cv-00860-GMN-VCF (Deposed 10/25/19) (Defense)
August 2018 Fleming v. Albuquerque, Second Judicial District Court Bernalillo County, New Mexico, Case No. D-202-CV-2014-5954 (Testimony 11/8/19) (Defense) September 2018 Charles Mills v. William Clogston, III, Individually and in his Official Capacity as Scott County Deputy Sheriff, et al., Case No. 5:18-cv-00025-DCR (Deposed 1/22/20) (Defense)
March 2019 Joey Brockman v. City of Falmouth, Case No. 18-CI-00012 (Deposed 2/5/20) (Defense)
February 2020 Garrett Collick, et al., v. William Paterson University, et al., Case No. 2:16-cv-00471 (KM-JBC)(Deposed 2/6/20) (Defense)
June 2019 Patrick Cornely v. Camden County Corrections, Docket No. CAM-L-4671-17 (Testimony 2/25/20) (Plaintiff)
July 2019 Hurtado v. Cobb County, GA. Case No. 18-A-963-3 (Deposed 3/9/20)(Defense)
November 2019 Finley v. Loggains, City of Jonesboro. Case No. 3:18-cv-55-DPM (Deposed 4/30/20)(Defense)
January 2020 Nakiya Moran v. Calumet City, et al., Case No. 1:17-cv-02027 (Deposed 5/11/20 & 6/12/2020)(Defense)
December 2019 James Griffin v. Donald Wright, II, et al., Civil Action No. CV-2018- 903480 (Deposed 5/13/20)(Defense)
April 2020 Arterburn v. Eddy's Chevrolet Cadillac, LLC, Case No. 2018 CV 000683 (Deposed 6/8/20)(Plaintiff)
December 2019 Murrietta v. City of Fresno, Case No. 1:18-at-00152 (Deposed 6/29/20)(Plaintiff)
January 2020 Lankford v. Plumerville, Case No. 4:19-cv-00619-JM (Deposed 7/14/20)(Defense)
March 2020 Ghaisar v. U.S., Case No. 1:19cv1224 (Deposed 7/29/20)(Defense)
October 2018 Rudavsky v. City of South Burlington, Case No. 2:18-cv-25 wks (Deposed 8/27/20)(Defense)
February 2019 Herndon v. Henderson Police Department, et al., Case No. 2:19-cv-00018- GMN-NJK (Deposed 9/16/20)(Defense)
September 2020 Martin, et al. v. City of San Jose, et al., Case No. 3:19-cv-01227-EMC (Deposed 9/28/20)(Plaintiff)
March 2019 Estate of Marco Gomez v. Village of Forest Park, et al., Case No. 18 CV 910 (Deposed 11/20/20)(Defense)
January 2020 McLemore v. Columbus Consolidated Gov't, et al., Case No. 4:19-cv- 00090-CDL (Deposed 12/4/2020)(Defense)
December 2020 Moore v. City and County of San Francisco, Case No. 3:18-cv-00634-SI (Deposed 12/22/20)(Plaintiff)
October 2020 Mobley v. Underwood, Case No. 0:19-cv-03223-JFA-SVH (Deposed 1/14/21)(Defense)
February 2020 Jok v. City of Burlington, Civil Action No. 2:19-CV-70 (Deposed 1/21/21)(Defense)

SCHEDULE A

September 2020 Virgil v. City of Newport, Case No. 16-CV-222 (Deposed 2/24/21)(Defense)
February 2020 Mendez v City of Chicago, Case No. 1:18-cv-05560 (Deposed 3/18/21)(Plaintiff)
March 2021 Ramos - FCMS #200815-09122 (Testimony 4/8/21)(Defense)
April 2021 Anderson v Lyon County, Case No. 3:20-cv-00435-LRH-WGC (Deposed 4/20/21)(Defense)
October 2019 Lobato v LVMPD, Case No. 2:19-cv-01273-RFB-EJY (Deposed 4/27/21)(Defense)
July 2020 Andy Martin v City of San Jose, Northern District of California, Case No. 3:19-cv-01227-EMC (Testimony 5/18/21)(Plaintiff)
May 2021 Antwon Rafael Gallmon, Jr. v Forest Acres Police Department, Case No. 3:17-cv-00059-TLW-PJG (Deposed 5/26/21)(Defense)
January 2020 Meli v City of Burlington, Civil Action No. 2:19-cv-71 (Deposed 6/2/21)(Defense)
August 2020 O'Kelley v Pickens County, Civil Action No. 2:17-CV-0215-RWS (Deposed 8/10/21)(Defense)
May 2020 Crowe v Steward, Case No. 5:20-cv-00203-REW-MAS (Deposed 8/26/21)(Defense)
May 2021 Lucas v County of Fresno, Case No. 1:18-cv-01488-DAD-EPG (Deposed 10/01/21)(Plaintiff)
March 2021 Pizer v City of Rock Hill, Case No. 0:20-cv-03620-JMC-SVH (Deposed 10/27/21)(Defense)
February 2021 Estate of Napouk v LVMPD, Case No. 2:20-cv-01859-JCM-BNW (Deposed 11/3/21)(Defense)
July 2021 Estate of Soheil Antonio Mojarrad v. William Brett Edwards and City of Raleigh, NC, Civil Action No. 5:20-cv-397-FL (Deposed 11/8/21)(Defense) August 2021 Latimer v William Patterson University, Docket No. PAS-L-421_20 (Deposed 11/22/21)(Defense)
November 2020 Daniel Shaham, Dec. v California Highway Patrol, 2:17-cv-01075-TLN- JDP3 (Deposed 11/23/21)(Plaintiff)
February 2020 Tate v City of Chicago, No. 18 CV 07439 (Deposed 11/29/21)(Plaintiff) March 2019 Haines v Frank, Civil Action-Law December Term, 2017 No. 2017 (Testimony 12/1/21)(Defense)
March 2017 Pollard v Columbus Consolidated Government, et al., Civil Action File No: SC-19-CV-1150 (Deposed 12/15/21)(Defense)
December 2021 Steffel, et al. v The City of Jefferson, Missouri, et al., Case No. 20AC-CC00145 (Deposed 12/16/21/(Defense)
November 2020 Randall Johnson, Dec. v City of Redding, Case No. 2:19-cv-01722-JAM-DB (Deposed 12/20/21)(Plaintiff)
April 2021 Travis Scott King, et al. v Ronald Davis, et al., Case No. 3:19-cv-07722 VC (Deposed 1/3/22)(Plaintiff)
November 2021 Katie Whitworth v Mark Kling, et al., Case No. 4:21CV-00025 LPR (Deposed 1/10/22)(Defense)
October 2020 McCree v Chester Police Department, et al., Case No. 0:20-cv-00867- MGL- PJG (Deposed 2/14/22)(Defense)
April 2015: Ingram v. Camden County, et al., U.S. District Court, District of New Jersey, Civil Case No. 1:14-cv-05519 (Deposed 6/13/18)(Testimony 3/22/22)(Defense)
December 2020: Darnel Banks v. Cortez Maxwell and Country Club Hills, Case No. 19-cv-542 (Deposed 3/25/22)(Defense)
September 2021: Ahmad Norwood v. Calumet City, Case No.: 2018 L 010991 (Deposed 3/30/22)(Defense)
September 2021: Ryan Thomas v. Calumet City, Case No.: 2018 L 010798 (Deposed 3/30/22)(Defense)
December 2021: Tapia v. City of Albuquerque, Case No.: D-202-CV-2019-06610 (Deposed 3/31/22)(Defense)
May 2021: Pope, et al. v. Hill, et al., Civil Action No.: STSV2021000286 (Deposed 4/12/22)(Defense)
December 2021: Gomez v LVMPD, et al., Case No.: 2:20-cv-1589-RFB (Deposed 4/18/22)(Defense)
January 2021: Ford v Glasgow, Civil Action No. 20-CI-89 (Deposed 4/9/21)(Testimony 4/19/22)(Defense)

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October 2021: Estate of Hale v Justin Swope, et al., Case No.: 5:20-CV-178-TBR (Deposed 5/23/22)(Defense)
September 2020: Ethan Marks v Minneapolis Police Officers, Case No.: 20-CV-01913 (Deposed 6/15/22)(Plaintiff)
March 2022: Eric Lurry v. City of Joliet, Case No.: 20-CV-4545 (Deposed 6/21/22) (defense)
August 2021: Tuggle (Cuevas) v City of Tulare, Case No.: 1:19-cv-01525-NONE-SAB (Deposed 7/19/22)(Plaintiff)
June 2019: AJA Seats, et al. v. Village of Dolton, et al. Circuit Court of Cook County, IL. No.: 2016-L-010353. (Deposed 8/20/19) (Testimony 8/2/22) (Defense)
January 2022: Thomas Barbosa, Dec. v. Shasta County, Case No.: 2:20-cv-02298-JAM-DMC (Deposed 8/18/22)(Plaintiff)
March 2021: Clark and Hardin v. Meade County, KY, Civil Action No.: 3:17-CV-00419-DJH (Deposed 8/23/22)(Defense)
May 2018: Estate of Luke Stewart v. City of Euclid, et al., Case No. 1:17-cv-02122 (Deposed 9/9/22)(Testimony 10/31/22)(Defense)
November 2021: State of Washington v Burbank; Collins and Rankine, Case Nos.: 21-1-01286-6; 21-1-01287-4; and 21-1-01288-2 (Testimony 11/23/22)(Plaintiff)
October 2022: Bruce Washington, et al. v Randy Smith, et al., Civil Action No.: 2:22-CV-632 (Deposed 11/28/22)(Defense)
March 2022: The Estate of Eric Lurry, Jr. v City of Joliet, Case No.: 20-CV-4545 (Testimony 11/30/22)(Defense)
August 2022: Ariel Hill & Jamal Wood v City of Chicago, Case No.: 2017-L-7368 (Deposition 12/12/22)(Defense)
May 2022: Epps v Anderson County Sheriff's Office, Case No.: 8:22-cv-00934-TMC-KFM (Deposition 12/14/22)(Defense)
July 2022: Jaddo v City of Stamford, Case No.: 3:21-cv-00350 (Deposition 12/20/22)(Defense)
December 2021: Fair v LVMPD, et al, Case No.: 2:20-cv-01841-JCM-BNW (Deposition 1/19/23)(Defense)
June 2021: Coequyt v. Holien and City of Redwood, Case No.: 0:20-cv-01178-PJS-TNL (Testimony 1/25/23)(Plaintiff)
July 2022: Timothy Ellis v City of Providence, William Dukes, Jr. and Dustin Winstead, Case No.: 4:17-cv-00042-JHM-HBB (Deposition 1/27/23) (Defense)
November 2021: Estate of Byron Williams, et al. v LVMPD, et al., Case No.: 2:21-cv-01346 (Deposition 2/6/23) (Defense)
December 2022: James v City of Chicago, et al., Case No.: 21-cv-6750 (Deposition 2/10/23)(Plaintiff)
April 2021: Jeffrey Lilley v Wood County, et al., Case No.: 22-CV-08 (Deposition 2/14/23)(Plaintiff)
May 2019: Johnny Banks v. Shelby Hawkins and City of Shannon Hills. U.S. District Court Eastern District of Arkansas. No.: 2:18-cv-00039-BSM. (Deposed 7/29/19)(Testimony 3/16/23)(Defense)
July 2022: Richter, et al. v City of Norwich, et al. Case No.: KNL-CV16-6032558-S (Deposition 3/21/23)(Defense)
February 2023: Tully v Lynch and Tully v Bloomfield. Case No.: USDC 1:22-CV-233 and NMDC D-1116-CV-202200176 (Deposition 3/27/23)(Defense)
January 2023: Pacheco v City of Stockton. Case No.: 2:20-CV-01404-TLN-KJN (Deposition 3/28/23)(Plaintiff)
September 2022: Ramona Colon v City of Easton, et al. Case No.: 21-3337 (Testimony 4/13/23) (Defense)
March 2023: Leonard v Shelton. Case No.: 1:22-cv-01345-RLY-DLP (Deposition 5/18/23)(Defense)
April 2021: Legette v Officer Sean Rollins, Columbia PD. Case No.: 3:20-cv-02439-JMC-PJG (Deposition 5/25/23)(Defense)
May 2023: Estate of George Herrera v Village of Angle Fire. Case No.: 1:21-cv-465-SCY-LF (Deposition 6/12/23)(Defense)

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May 2023: McDermid v City of Duquesne, et al. Case No.: 22AO-CC00129 (Deposition 6/26/23)(Defense)
December 2022: Tenell Coleman and Andrew Gates v Village of Forest Park. Case No.: 2021-L-007302 (Deposition 6/27/23)(Defense)
April 2023: Redding v City of Chicago. Case No.: 20 L 4141 (Deposition 7/19/23)(Defense)
March 2023: Adam Christian Gabriel v. County of Sonoma, et al. Case No.: 3:22-cv-00781-JD (Deposition 7/24/23)(Plaintiff)
February 2021: Robert Anderson v William Vanden Avond. Case No.: 20-cv-1147-DWF-LIB (Testimony 8/4/23)(Plaintiff)
May 2023: Quinto-Collins v City of Antioch, et al. Case No.: 3:21-cv-06094-AMO (Deposition 8/16/23)(Plaintiff)
May 2021: Mario Gonzalez, et al. v City of Alameda, et al. Case No.: 4:21-cv-09733-DMR (Deposition 9/6/2023)(Plaintiff)
October 2021: Hearing to Overturn Conviction. Testimony on Behalf of Whitehead, Shelby County Criminal Court, Division 2 (Testimony 9/7/2023)
March 2021: Stephen Syms v County of Camden and George Lewis, III, US District Count for the District of New Jersey, Case No.: 1:20-cv-02073-NLH-AMD (Testimony 10/3/2023)(Defense)
June 2023: Estate of Trevon L. Mitchell v Benjamin Sullivan. Case No.: 21-CI-004780 (Deposition 10/19/2023)(Defense)
March 2023: Nathan Jones, et al. v City of Chicago, et al. Case No.: 2022 L 1735 (Deposition 10/30/2023)(Defense)
August 2023: Betty Jean and Latoya James v Camden County Sheriff's Office, et al. Case No.: 2:22-cv-00078-LGW-BWC (Deposition 11/1/2023)(Defense)
May 2022: Songer v Bledsoe County Government. Case No.: 1:22-CV-00022 (Deposition 11/2/2023)(Defense)
November 2021: State of Washington v Rankine, Collins, Burbank. Case Nos.: 21-1-01286-6; 21-1-01287-4; and 21-1-01288-2 (Testimony 11/6/2023)(Prosecution)
October 2022: Christopher Sterusky v David Cooper. Case No.: 3:22-CV-218-GNS-LLK (Deposition 11/9/2023) (Defense)
March 2023: Almir O'Neal v Officer Corey Williams, et al. Case No.: 220102078 (Testimony 11/15/2023)(Defense)
March 2023: Estate of Cedric Lofton v City of Wichita, Kansas. Case No.: 22:CV-01134-EFM-ADM (Deposition 11/17/2023)(Defense)
September 2023: Brandon Adams v Henry County. Case No.: STSV2022002131 (Deposition 11/20/2023)(Defense)
February 2023. Estate of Angle McIntyre v Collingdale Borough and Darby Borough, et al. Case No.: 22-1965 (11/22/2023)(Defense)
May 2023. Latoya Ratlieff v City of Fort Lauderdale, et la. Case No.: 0:22-cv-61029 (11/30/23)(Defense)
September 2023: Eddie Banks, Jr. v City of Chicago. Case No.: 2021L 009966 (12/7/2023)(Defense)
September 2021 Haidon v Danaher, Case Action No.: 3:19-cv-00119 (SRU) (Deposed 2/25/22) (Testimony 12/11/2)(Defense)
June 2021: Danny Ojeda v Tucson Police Department, Case No.: C20202521 (Deposed 11/29/22)(Defense)(Testimony 12/18/23)
April 2022: Gilbert v City of Minneapolis, Case No.: 21-2350 (NEB/LIB) (Deposed 12/20/23)(Plaintiff)
November 2022: Anderson v Town of Sandwich, et al. Case No.: 1:20-cv-12203-RWZ (Testimony 12/21/23)(Defense)
September 2023: Kelly Wayne Patterson v LVMPD, Officer S. Salazar, Case No.: 2:23-cv-00539-RFB-DJA (Deposed 12/27/23)(Defense)
December 2023: Jonathan Strickland v City of Las Cruces, et al., Case No. CIV-23-00116 KG/KRS (Deposed 1/9/24)(Defense)
July 2020: Piper Partridge, et al. v City of Benton, et al., Case No.: 4:17-cv-00460-BSM (Testimony 2/2/24)(Defense)
August 2023: Rivera v City of Chicago, Case No.: 2020 L 5842 (Deposed 2/13/24)(Defense)
February 2023: Patricia Porter, Special Administrator of the Estate of Lakisel Thomas v City of Chicago, Case No.: 2021 L 5510 (Deposed 2/14/24)(Defense)

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January 2023: Shiflett v. City of San Leandro, Case No.: 3:21-CV-07802-LB (Deposed 2/27/24)(Plaintiff)
July 2023: Jawone Robinson v Orlando Jiles, Edgar DeSanto and City of Fairburn, GA, Case No.: 1:23-CV-02034 (Deposed 4/23/24)(Defense)

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PUBLICATIONS:

- Standards & Training Director Magazine, What Are Officers Being Trained and How Will It Impact Agency Liability –The Need to Audit Training. Vol 4, Number 1 (2024)
- Law and Best Practices for Successful Police Operations, 12 High Risk Critical Tasks That Impact Law Enforcement Operations and Create Exposure to Liability Litigation (2007, 2010, 2013, 2016, 2018 and 2021 editions)
- Legal and Liability Risk Management Manual Guide -The Law and Best Practices of Successful Jail/corrections Operations (2009 and 2016 editions)
- Recent Developments in the Use of Force, Excessive Force by Law Enforcement, Touro Law Review, Vol. 24, Number 3 (2008)
- 25th Annual Section 1983 Civil Litigation, by Practicing Law Institute Video/Audio-The Unbiased Witnesses in Law Enforcement Litigation. Vol. 1, Section 8 (2008)
- Legal & Liability Issues in SWAT, Emergency Response and Special Operations (2006)
- Public Safety Media Relations (Manual and Guide) (2005)
- School Legal Update (2005)
- Critical Tasks in Law Enforcement, A Legal Guide for Officers and Supervisors (2005) (Annual)
- Arrest, Search & Seizure (2005) (Annual)
- Legal & Liability Issues for Hostage Negotiators (2005)
- Use of Force (2005)
- Administrative Investigations in Law Enforcement Agencies (2004)
- Law Enforcement Legal/Liability Update (2004)
- Civil Liability and Risk Management for Law Enforcement Agencies (2003)
- Case Law on Critical Tasks in Law Enforcement (2003)
- Legal Guide to Administrative Investigations (2003)
- Policy Development for Public Safety Agencies (2002)
- Legal and Liability Issues in Public Schools (2001)
- Rhode Island Law Enforcement Officers' Guide to Criminal Procedure (2000)
- Rhode Island Law Enforcement Officers' Bill of Rights, A Guide to Investigations and Hearings (2000)

PUBLISHED ARTICLES:

- What Are Officers Being Training and How Will It Impact Agency Liability "The Need to Audit Training" (2023)
- Qualified Immunity, Suffolk Law Alumni Magazine, Suffolk University, Boston (2022)
- United State Court of Appeals for the Ninth Circuit Holds, Pre-Trial Detainees have Due Process Right to Adequate Safety Checks Video Monitoring is Insufficient-Direct View Safety Checks Required (2022)
- Neck Restraints, Choke Holds/Carotid Holds, What Law Enforcement Policy/Training Tells Us, The Medical/Scientific Debate, What the Cases Tell Us (2020)
- Law Enforcement Response to Unlawful Assemblies Protests and Riots (2020)
- Duty to Intervene Duty to Render Aid (2020)

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- Prone/Restraint/Positional Asphyxia/Compression Asphyxia (2020)
- Law Enforcement Practices During a Pandemic (2020)
- NYMIR Law Enforcement Newsletter, a publication of the New York Municipal Insurance Reciprocal. "Understanding Exculpatory Evidence and How it May Impact Convictions – The U.S. Supreme Court Provides Further Explanation of Brady v. Maryland," pp. 2, 6-7 (2018)
- 2006 Legal and Liability Risk Management Manual Guide – The Law and Best Practices of Successful Jail/Corrections Operations (2009 and 2016)
- Public Risk, published by the Public Risk Management Association, January 2006, Vol. 21, No. 2, "A Continuing Story Taser™ Policies for Police Departments Continue to Evolve," pp. 14-17 (2006)
- Public Risk, published by the Public Risk Management Association, March 2006, Vol. 21, No. 3, "Freeze" Off-Duty Firearms and Intervention: Avoiding Tragedy and Liability," pp. 16-18 (2006)
- Public Safety Media Relations (Manual and Guide) (2005)
- Administrative Investigations in Law Enforcement Agencies (2004)
- Crime and Justice International May/June Vol. 20, No. 80, "High Speed Vehicle Pursuit," pp. 30-34; "Developing Trends in Stop & Frisk" p. 35; "Fighting Words Directed at a Police Officer: Viability and Liability," pp. 36-37 (2004)
- Crime and Justice International July/August Vol. 20, No. 81, "Law Enforcement Liability Issues-Agency or Individual Officer's Response to Misconduct by Others May Create Agency or Individual Liability," pp. 29-30 (2004)
- Public Risk, published by the Public Risk Management Association, July 2004, Vol. 19, No. 6, "Handcuffs: How to Manage the Risk," pp. 14-17 (2004)
- The Law Enforcement Trainer published by American Society of Law Enforcement Trainers, Vol. 19, No. 3, May/June, "Training Liability in The Use of Deadly Force" pp. 24-28 (2003)

2022 Legal Updates Archive

- U.S. Supreme Court Update: Vega v Tekoh, No. 21-499 (June 2022)

2021 Legal Updates Archive

- U.S. Supreme Court Update: Rivas-Villegas v Cortesluna, No. 20-1539 (October 2021)
- U.S. Supreme Court Update: Bond v City of Tahlequah, No. 20-1668, Per Curiam Decision (October 2021)
- U.S. Supreme Court Update: Bond v City of Tahlequah, No. 20-1668, Petition for Certiorari (September 2021)
- U.S. Supreme Court Update: Torres v Madrid, No. 19-292 (March 2021)
- U.S. Supreme Court Update: Caniglia v Storm, No. 20-157 (May 2021)

2020 Legal Updates Archive

- U.S. Supreme Court Update: Kansas v. Glover, No. 18-566 (April 2020)
- U.S. Supreme Court Update: Ybarra v. City of Chicago, No. 946 F.3d 975 (7th Circuit 2020) (May 2020)

2019 Legal Updates Archive

- U.S. Supreme Court Update: DUI Blood Draw on Unconscious Driver (July 2019)
- U.S. Supreme Court Update: The Existence of Probable Cause to Arrest May Defeat a First Amendment Claim as a Matter of Law (June 2019)

2018 Legal Updates Archive

- An Unarmed Individual Has Been Shot – Is the Officer Always Wrong? (July 2018)
- United States Supreme Court: *Sause v. Bauer*, 138 S. Ct. 2561 (July 2018)
- The United States Supreme Court Decides Privacy Issues Related to Cellular Phone Records (June 2018)
- United States Supreme Court Decides that an Arrest with Probable Cause Can Still Violate the Arrestee's First Amendment Rights (June 2018)
- United States Supreme Court: The Automobile Exception Does Not Permit the Warrantless Entry

of a Home or its Curtilage in Order to Search a Vehicle Therein (May 2018)

- United States Supreme Court: Possessor of Rental Car has Right to Privacy Even When No on Rental Agreement (May 2018)
- United States Supreme Court Grants Qualified Immunity in Case of Woman with Mental Impairment Shot by Officer (April 2018)
- The United State Supreme Court Grants Summary Judgment and Qualified Immunity to D.C. Officers in False Arrest Case (January 2018)

2017 Legal Updates Archive

- Understanding Exculpatory Evidence and How It May Impact Convictions: The United States Supreme Court Provides Further Explanation of Brady v. Maryland (2017)
- United States Supreme Court Rejects 9th Circuit Provocation Theory in Deadly Force Confrontation (2017)
- Using Force on Persons in Medical Emergencies: United States Court of Appeals for the 6th Circuit in a Published Decision Applies New Analysis (2017)
- U.S. Supreme Court Grants Appeal in Arrest Lawsuit (2017)
- U.S. Supreme Court Clarifies "Clearly Established Law" for Qualified Immunity in Deadly Force (2017)
- U.S. Court of Appeals for Fourth Circuit Finds Police Department Social Media Policy Unconstitutional & Punishment of Two Officers Under That Policy to be Unconstitutional (2017)
- U.S. Supreme Court to Examine Provocation Theory in Law Enforcement Shootings (2017)

2016 Legal Updates Archive

- Private Health Care Contractors May Also Be Liable for a Civil Rights Violation (2016)
- Reasonableness of Entry as Force When There Is a Use of Flash Bangs As Part of Entry (2016)
- Use of Restraint Chairs (2016)
- United States Court of Appeals for the 4th Circuit Decides Limitations on TASER™ Use (2016)
- US Supreme Court Finds Child's Statements to Teachers May Sometimes be Used Against Abuser Even Though Child is Unavailable for Cross-Examination (2016)
- US Supreme Court Finds That Evidence Seized During Unconstitutional Stop May Not Be Excluded (2016)
- US Supreme Court Distinguishes Breath Test from Blood Test under Implied Consent Statutes that Criminalize a Refusal-Warrantless Blood Test Violates Fourth Amendment (2016)
- US Court of Appeals Distinguishes Use of Force (TASER™) on Persons of Diminished Capacity (2016)
- US Supreme Court Finds That Electronic Control Weapons Are Protected Under the Second Amendment's Right to Bear Arms (2016)
- Mail Policy in Jails (2016)
- Jail Staff Not Deliberately Indifferent to Pre-Trial Detainee Medical Needs (2016)
- Post-TASER™ Confession: Is a Waiver Knowing and Voluntary? (2016)
- US Court of Appeals for the 4th Circuit Decides Limitations on TASER™ Use and Announces Use of Force Analysis When Dealing with Persons of Diminished Capacity (2016)

2015 Legal Updates Archive

- US Supreme Court: Shooting at Fleeing Vehicles (2015)
- US Supreme Court: Use of Force on Pretrial Detainees Judged by Objective Reasonableness Standard (2015)
- US Supreme Court: No Answer to Whether ADA Applies When Officers are Dealing with a Mentally Impaired, Violent and Armed Subject (2015)
- US Supreme Court: Absent Reasonable Suspicion Police Extension of a Traffic Stop in Order to Conduct a Dog Sniff Violates the Constitution's Shield Against Unreasonable Seizures (2015)

2014 Legal Updates Archive

- US Supreme Court: Are Knock and Talks Restricted to the Front Door of a Residence? (2014)

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- US Supreme Court: Officers Must Act Reasonably Not Perfectly (2014)
- US Supreme Court: Cellular Device Search Incident to Arrest (2014)
- US Supreme Court: Shooting at Vehicle & 4th Amendment (2014)
- US Supreme Court: Summary Judgment in Use of Force Cases (2014)
- US Supreme Court: When Does an Anonymous Report Amount to Reasonable Suspicion? (2014)
- US Supreme Court Clarifies Consent and Co-Occupants (2014)

2013 Legal Updates Archive

- US Supreme Court: Can Officer Pursue Fleeing Misdemeanor Suspect into Home or Residential Curtilage (2013)
- US Supreme Court: Pre-Custody and Un-Mirandized Silence to Questions by Law Enforcement May Be Commented on by the Prosecutor at Trial (2013)
- Forced Blood Draw for DUI (2013)
- US Supreme Court: Narcotics Sniffing Dog & 4th Amendment Search (2013)
- US Supreme Court: K-9 Alert Establishes Probable Cause to Search Vehicle (2013)

2012 Legal Updates Archive

- US Supreme Court: Exigent Entry Based on Belief of Imminent Violence (2012)
- US Supreme Court: Intentional Violation of Miranda Rule and the Impact on Subsequent Warned Confession (2012)
- Taser™ Used to Subdue Non-Compliant 73-Year-Old (2012)
- US Supreme Court: Visual Strip Searches at Jail Intake of Persons Being Placed in General Population Need Not Be Supported by Reasonable Suspicion (2012)
- Facebook© and the First Amendment Rights of Police Officers (2012)
- US Supreme Court: A Convicted Prisoner May Not be in Custody for Miranda Purposes (2012)
- US Supreme Court: A Determination of Probable Cause by a Magistrate Will Generally Protect Officers/Investigators from Liability (2012)
- Fourth Amendment Protection Applies to Placing GPS on Vehicle (2012)
- How Eyewitness Identification Will Be Reviewed When There is No Improper Conduct by Law Enforcement (2012)

2011 Legal Updates Archive

- Federal Liability for Pursuit (2011)
- Court Applies Graham in Deciding that Use of the TASER® was Unconstitutional (2011)
- Officers Being Recorded by Citizens While Working (2011)
- TASER® Probe Mode, Secondary Impact and Liability (2011)
- US Supreme Court: Prosecution Must Present Actual Forensic Analyst in Court (2011)
- US Supreme Court Clarifies Miranda Warnings and Juveniles (2011)
- US Supreme Court: Exclusionary Rule (2011)
- Fleeing from Law Enforcement in a Vehicle is a Violent Crime (2011)
- Indiana Supreme Court: A Person Cannot Resist Officer (2011)
- U.S. Supreme Court Clarifies Destruction of Evidence Exigency (2011)
- Picketing Funerals and the First Amendment (2011)
- Statements Taken During On-Going Emergency are Admissible at Trial (2011)

2010 Legal Updates Archive

- Use of Taser™ in Drive-Stun Mode on Protestors: Objectively Reasonable in 2nd Circuit (2010)
- 9th Circuit TASER® Case Re-visited (2010)
- Use of Force: Pre-Shooting Conduct and Suicide by Cop Cases (2010)
- US Supreme Ct: Search of Officer's Text Messages from Department Issued Pager Was Reasonable (2010) (Co-Authored with Lou Reiter)

2009 Legal Updates Archive

- US Court of Appeals for the Ninth Circuit Restricts the Use of TASER™ (2009)

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- Michigan v Fisher: U.S. Supreme Court Clarifies Exigent Home Entries (2009)
- TASER™, the Target Zone, Policy & Training (2009)
- TASER™ International, Inc. Warns Against Targeting the Chest with Electronic Control Devices (2009)
- Taser® On Non-Compliant Arrestee (2009)
- Exam Violated Rights of White and Hispanic Firefighters (2009)
- Three 2009 U.S. Supreme Court Cases Impacting Law Enforcement (2009)
- Ashcroft v. Iqbal and Law Enforcement Supervisory Liability (2009)
- AZ v. Gant: Inventory Searches of Motor Vehicles (2009)
- AZ v. Gant: Commentary & Misinterpretations (2009)
- AZ v. Gant: Final Case Judgment & What It Means to Law Enforcement (2009)
- An Unreasonable Delay in Bringing a Suspect to Court May Render the Suspect's Confession Inadmissible (2009)
- US Supreme Court Changes Qualified Immunity Rules for Civil Rights Lawsuits Against Law Enforcement (2009)
- U.S. Supreme Court Further Diminishes Reach of Exclusionary Rule (2009)

2008 Legal Updates Archive

- Summary of Arguments: U.S. v. Herring, AZ v. Gant (2008)
- Preview of 2008-2009 U.S. Supreme Court Cases Impacting Law Enforcement (2008)
- Hostages & The Legal Duty to Protect (2008)
- Negotiator Liability (2008)
- Hostages & the Legal Duty to Protect (2008)
- An Investigator's Road Map to Out of Court Statements (2008)
- Managing Law Enforcement Liability Risk (2008)
- Handcuffing as Excessive Force (2008)
- Vehicle Checkpoints (2008)
- Supreme Court Decides Incident to Arrest –Vehicle Case (2008)
- Covert Video Surveillance (2008)
- Compelled Substance Abuse Testing (2008)
- Liability Exposure in Special Operations (2008)
- Sexual Misconduct, Sexual Harassment and Sexual Discrimination Series with Lou Reiter: Part 1: Introduction to Sexual Misconduct & Agency Liability (2008)
- Sexual Misconduct, Sexual Harassment and Sexual Discrimination Series with Lou Reiter: Part 2: Policy v. Custom / Operational Policy & Failure to Have a Policy (2008)
- Sexual Misconduct, Sexual Harassment and Sexual Discrimination Series with Lou Reiter: Part 3: Failure to Train & Failure to Supervise (2008)
- Sexual Misconduct, Sexual Harassment and Sexual Discrimination Series with Lou Reiter: Part 4: The Need for Policy and Training, and Avoiding Deliberate Indifference (2008)

2007 Legal Updates Archive

- Garrity Issues in Law Enforcement Series: Part 1: Garrity and the Administrative Interview (2007)
- Garrity Issues in Law Enforcement Series: Part 2: Immunity Granted Under Garrity (2007)
- Garrity Issues in Law Enforcement Series: Part 3: Compulsion as the Triggering Mechanism (2007)
- Garrity Issues in Law Enforcement Series: Part 4: Civilian Review Boards and Garrity (2007)
- Garrity Issues in Law Enforcement Series: Part 5: Are Off-Duty Incidents within the Scope of Garrity? (2007)
- Garrity Issues in Law Enforcement Series: Part 6: Once Immunized, Officer Must Tell the Truth (2007)
- What Happens When the Plaintiff Cannot Identify Which Officer Beat Him? (2007)
- Training Liability in Use of Deadly Force (2007)
- Supreme Court to Hear Incident to Arrest –Vehicle Case (2007)
- Cellular Phones/Digital Devices and Search Incident to Arrest (2007)

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- Vehicle Stops: Does a Motorist Have a Privacy Interest in Their License Plate? (2007)
- Model Policy: Off-Duty Action (2007)
- U.S. Supreme Court Decides Passenger Privacy Case (2007)
- No Liability in Search Warrant Execution (2007)
- Persons with Disabilities (2007)
- Off-Duty Murder Not Under "Color of Law" Thus, No Agency Liability (2007)
- Georgia v. Randolph: Police Cannot Use the Consent of a Co-Occupant to Make Entry in Order to Search for Evidence to be used Against the Opposing Occupant Who Is Present and Objects to the Entry (2007)
- U.S. Supreme Court Decides on Scott v. Harris - Vehicle Pursuit Implications (2007)
- U.S. Supreme Court to Decide Privacy Interests of Passenger (2007)
- Court Dismisses Lawsuit Based Upon Death of Emotionally Disturbed Person (2007)
- Anticipatory Search Warrant: United States v. Grubbs (2007)
- Anonymous Calls and Reasonable Suspicion Standard (2007)
- Scott v. Harris: Summary of Oral Arguments (2007)
- Municipal Insurance Pool Not Liable: Robbery and Murder by Police Trainee (2007)
- Cocaine Discovered in Auto Leads to Probable Cause to Arrest All Occupants (2007)
- LEO's Duty to Protect Persons from 3rd Party Harm (2007)
- Ramming During Pursuit Viewed as Deadly Force (2007)
- Companion with Gun May Provide Reasonable Suspicion for Pat-Down (2007)

2006 Legal Updates Archive

- Duty of Officer's to Intervene when Observing an Excessive Use of Force (2006)
- The Law of Citizen Contacts and Stop and Frisk (2006)
- Positional Asphyxia (2006)
- Seizure at Gunpoint (2006)
- Pepper Spray (2006)
- Beanbag Rounds (2006)
- U.S. Supreme Court Upholds Canine Sniffs of Vehicles (2006)
- Liability Based on Agency or Individual Failure to Intervene (2006)
- Legal/Liability Issues in the Training Function (2006)
- Overview of Police Liability (2006)
- Deadly Force to Prevent the Escape of a Violent Felon (2006)
- Bite and Hold Canines: Warning Required Before Release (2006)
- Reasonableness of Handcuffing during a valid "Terry Stop" (2006)
- Focus on Liability Reduction and Better Performance (2006)
- Dealing with the Mentally Ill and Emotionally Disturbed in the Use of Force (2006)
- Use of Deadly Force: Pre-Shooting Conduct and the 21 Foot Rule (2006)
- Consent Searches of Motor Vehicles (2006)

Other Articles

- US Supreme Court Places New Restrictions on Search Incident to arrest in Vehicles (2009)
- "Use of Force-Policy and Training Considerations" (2004)

From the LLRMI Jail/Corrections Article Archive

- 8th Cir: A Foreseeable Suicide May Create Liability (2010)
- The United States Court of Appeals for the Ninth Circuit Upholds the Blanket Strip Search Policy of San Francisco County (2010)
- Strip Searches for Institutional Security in a Jail or Lock-up Setting (2009)
- 1st Cir: Strip Search in Jails / Detention Centers (2009)
- 2nd Cir: Strip Search in Jails / Detention Centers (2009)
- 3rd Cir: Strip Search in Jails / Detention Centers (2009)
- 4th Cir: Strip Search in Jails / Detention Centers (2009)

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- 5th Cir: Strip Search in Jails / Detention Centers (2009)
- 6th Cir: Strip Search in Jails / Detention Centers (2009)
- 7th Cir: Strip Search in Jails / Detention Centers (2009)
- 8th Cir: Strip Search in Jails / Detention Centers (2009)
- 9th Cir: Strip Search in Jails / Detention Centers (2009)
- 10th Cir: Strip Search in Jails / Detention Centers (2009)
- 11th Cir: Strip Search in Jails / Detention Centers (2009)
- 9th Cir: Dental Care in Jails / Detention Centers (2009)
- 9th Cir: Jail (Officer) Failure to Follow Doctor's Orders (2009)
- 9th Cir: Strip Search and Self Surrender (2009)
- Classification of Arrestees Upon Entry into a Jail (2009)
- Duty to Protect Prisoners from Assault (2009)
- Handling Grievances in a Jail / Detention Setting (2009)
- Identity Verification (2009)
- Failure to Provide Medication in Jail / Detention Setting (2009)
- Inmate Mail – PLRA and Allegations of Rights Violations (2009)
- 9th Cir References 8th Amendment and Nutrition Requirements for Inmates (2009)
- Inmates and Freedom of Religion (2009)
- Strip Search Substitute / Subterfuge (2009)
- Use of Force in Jails / Detention Centers (2009)

From the LLRMI Law Enforcement Model Policy Electronic Control Devices website

- Model Policy - Electronic Control Devices (multiple years)
- In-Custody Deaths and Excited Delirium (2007)

From LLRMI Legal Questions Answered website

- Can Pointing a gun be considered a use of force? (2010)
- Off-Duty Carry by Reserve Officers (2009)
- Agency and Personal liability in failure to provide shooting training (2009)
- Involuntary Transport to Station for Identification (2008)
- Questioning a passenger during a traffic stop (2008)
- Bingo Hunting and Privacy Interests in License Plate (2008)
- Using Dog Sniff's for Probable Cause to Obtain Search Warrant (2008)
- Garrity application with EMS (2008)
- Truant Officer Questioning Student - at request of Superintendent (2007)
- Dorm Room Searches. Response at school-training.com (2007)
- "Fruits of the Poisonous Tree" - A Miranda Example (2007)
- Releasing Mug Shots to the Media (2007)
- Joint Liability in Multi-Agency Operations (2007)
- Miranda after confession given during non-custody interview (2007)
- No-Knock clause in search warrants (2007)
- Court requirements for police training on EDP's (2007)
- Responding to an Open House Party (2007)
- Officer with search warrant gets door shut in face... OK to enter? (2007)
- Miranda and Detention during Search Warrant Execution (2007)
- Creating a Use of Force Report (2007)
- Failure to Protect (2007)
- Interviewing/Interrogating Students on Campus (2007)
- Probable Cause, and taking a person to police stations (2007)
- Vehicle Search Consent (2007)
- Need for search warrant for vehicle towed to private lot (2007)
- Reasonable expectation of privacy in information supplied to a third party (2007)
- First Appearance Hearings & the 48/72 Hour Window - City & Officer Liability (2007)

SCHEDULE B

- Citizen Complaint Recordings (2007)
- Hiring and the Probationary Period (2007)
- Permission to search during stop & Robinette decision (2007)

*** Note: articles published electronically on a weekly basis and archived- available at www.patc.com and www.llrmi.com

SCHEDULE C

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CONFERENCE PRESENTATIONS/TRAINING SESSIONS:

2024 IMLA Mid-Year Seminar "The Need to Audit Training, Internally and Externally & Policy and the Implications on Municipal Liability" Washington DC, April

2024 Local Government Insurance Trust, Maryland Municipal League Police Executive Association Conference "Nuclear Police Settlements Impact on Police Chiefs and Police Agencies" Ocean City, MD. April

2024 LLRMI "5 Day Use of Force Certification" Las Cruces, NM. April

2024 LLRMI Online Webinar Training- "Legal Issues in Use of Force "What Every Officer, Supervisor and Training Officer Should Know" March

2024 Eighth Judicial District Court Marshal Division. Las Vegas, NV. "Legal Issues in the Use of Force, Laws of Arrest, and Best Law Enforcement Practices." March

2024 LLRMI 5 Day Use of Deadly Force and Officer Involved Shooting. Las Vegas, NV. "Deeper Dive into Bifuricated Investigations." March

2024 LLRMI Supervising, Managing and Legal Issues for Protests, Demonstrations and Civil Unrest Operations. Las Vegas, NV. "Best Practices in Acceptable Use of Force Standards." March

2024 LLRMI Jail/Correction Liability & Risk Management and Legal Issues Conference. Las Vegas, NV. "Emerging Legal Trends for Jails." March

2024 LLRMI Use of Force Conference and Certification. Las Vegas, NV. "The Law and Best Practices with Respect to Law Enforcement Use of Force?" November

2024 LLRMI "Legal Issues in Officer Involved Shootings and Use of Force" Hanover, VA. February

2024 LLRMI 5 Day Use of Deadly Force and Officer Involved Shooting. New Braunfels, TX. January

2023 LLRMI Use of Force Conference and Certification. Las Vegas, NV. "Documentation, Review Process and Complaints" December

SCHEDULE C

2023 LLRMI New Detective and New Criminal Investigator. Las Vegas, NV. "Legal Issues: 4th Amendment Considerations and 5th & 6th Amendment Legal Issues" December

2023 LLRMI National Internal Affairs Training & Certification. Las Vegas, NV. "How Routine and Consistent Audits Can Reduce Liability and Employee Disciplinary Issues" December

2023 LLRMI National Internal Affairs Training & Certification. Las Vegas, NV. "Understanding Garrity and Giglio and How These Cases Can Affect the Agency and Police Employee" December

2023 Tennessee Prima Annual Conference. Nashville, TN "Public Risk Management as an Integral Part of Public Safety" November

2023 Tennessee Law Enforcement Training Officer Association. Gatlinburg, TN "Instructor Liability Certification" November

2023 County Risk Sharing Authority, Ohio. "Law Enforcement Legal Update" October

2023 LLRMI "Emerging Legal Trends for Supervisors and Law Enforcement" October

2023 CRL Conference "Pursuit Cases, Federal Court, Ministerial Duty-Based Policy and Defensibility" September

2023 Arkansas County Association, Little Rock, AR "Use of Force -Take Downs & Choke Holds and OC Spray/Taser in Jails" August

2023 Tennessee Sheriff's Association, Sevierville, TN "Failure to Train and Liability" July

2023 ACCG/GMA Defense Counsel Summit, Atlanta, GA "Law Enforcement Emerging Litigation Trends" July

2023 New Hampshire Public Risk Management Exchange, Concord, NH "Why Are We Getting Sued for Law Enforcement and Jails" June

2023 Municipal Association of South Carolina, Columbia, SC "The Law and Best Practices with Respect to Law Enforcement, Use of Force and Protests" May

2023 Idaho Sheriff's Association, Sun Valley, ID "Current Use of Force Updates" May

2023 South Dakota Public Assurance Alliance and Safety Benefits, Inc. "Law Enforcement Liability Risk Management Conference" Deadwood, SD May

2023 LLRMI "Use of Force Conference and Certification", Clermont, FL April

2023 International Municipal Lawyers Association, Washington D.C. "Section 1983: Recruiting, Hiring, Retention. How the Current State of Law Enforcement has Impacted Hiring and Will Lead to Increased Civil Liability" April

2023 LLRMI Tennessee Law Enforcement Training Officers Association. Franklin, TN. "Jail/Correction Liability, Risk Management and Legal Issues" April

SCHEDULE C

2023 LLRMI "Jail Operations and Best Legal Practices" Anchorage, AK April

2023 LLRMI 5 Day "Use of Deadly Force and Officer Involved Shooting" LaPlace, LA March

2023 Constitutional Review of the Griffin Police Department, Griffin, GA March

2023 Conway Police Department Training, Conway, SC. "Emerging Legal Trends & Liability Management for Tactical, SWAT & Emergency Response Operations" March

2023 Kentucky League of Cities, Frankfort, KY. "12 High Risk Critical Task" February

2023 Kentucky Association of Counties and Kentucky League of Cities, Frankfort, KY. "Emerging Legal Trends & Liability Management for Tactical, SWAT & Emergency Response Operations" February

2023 Michigan Chief of Police Conference, Grand Rapids, MI. "Managing Risk in Today's Environment" February

2022 Kentucky Jailers Conference, Lexington, KY. "Understanding Response to Resistance from an Administrative Standpoint" December

2022 Kentucky Sheriff's Association Conference. Owensboro, KY. "Current Law and Best Practices for a Profession Sheriff's Office" December

2022 Tennessee Law Enforcement Training Officers Association. Gatlinburg, TN. "Emerging Legal Trends & Liability Management for Tactical, SWAT & Emergency Response Operations" November

2022 LLRMI Use of Force Conference and Certification. Las Vegas, NV. "The Law and Best Practices with Respect to Law Enforcement Use of Force?" November

2022 LLRMI Jail/Correction Liability, Risk Management, and Legal Issues. Las Vegas, NV. "Emerging Legal Trends" November

2022 LLRMI Supervising, Managing, and Legal Issues for Protests, Demonstrations, and Civil Unrest Operations. Las Vegas, NV. "First Amendment Rights of Protestors Fourth Amendment Rights" November

2022 LLRMI National Internal Affairs Training & Certification. Las Vegas, NV. "Compelled Garrity Statements" November

2022 Georgia Local Government Risk Management Services – "Emerging Legal Trends" October

2022 Tennessee County Services Association Conference – "Entity Liability – How Policies, Custom, Training and Supervision Impacts Your Entity" October

2022 Clearwater Florida National Internal Affairs Conference – "Legal Updates in Internal Affairs Investigations" September

2022 Minot North Dakota Police Seminar – "Use of Force" September

2022 FBINAA Leadership Seminar – "Mastering Leadership, Supervisor Liability" August

2022 United Counties Council of Illinois Conference – "Emerging Legal Trends" July

SCHEDULE C

2022 Tennessee Association of Chiefs of Police – "Emerging Legal Trends" July

2022 Vermont League of Cities and Towns – "Law Enforcement Independent Civilian Oversight"

2022 Maryland Municipal League Police Executive Association – "Decision Making" April

2022 International Municipal Lawyers Association – "The Law Enforcement Response to Assemblies/Protests/Unlawful Assemblies/Riots" April

2022 LLRMI Use of Force Conference and Certification "Training Officers, Lesson Plans, Policy Development, Officer Safety and Community Expectations Reducing and Influencing Agency Liability" – April

2022 LLRMI National Internal Affairs Training and Certification Conference. Franklin, TN "Compelled (Garrity) Statements" April

2022 Legal and Liability Risk Management Institute Online Virtual Training – "Use of Force" March

2022 Springdale Police Department Training "Use of Force/De-Escalation" February

2022 Southern Illinois Criminal Justice Summit "Policing Demonstrations, Protests, and Civil Unrest" February

2022 Georgia Sheriffs' Association "New Sheriff's Conference", February

2021 LLRMI National Internal Affairs Training & Certification. Las Vegas, NV. "Investigating Citizen Complaints for Field Supervisors" December

2021 LLRMI 5 Day Mastering Performance Supervision, Leadership and Management. Las Vegas, NV. "What Police Reform and Accountability Means to Supervisors" December

2021 CRL Conference "Staying Ahead of the Losses: Policies, Training and Supervision that Stays Ahead of the Risks" November

2021 CRL Conference "The Changing Environment of Law Enforcement and How It Impacts Coverage, Claims and Risk Control" November

2021 Alabama Municipal Attorney Association, Gulf Shores, AL. "Use of Force Training Policy in the Reform Movement" October

2021 Law Enforcement Liability Risk Management Conference, Franklin, Tennessee, "Staying Ahead of Liability: Policing in the Reform Movement" October

2021 Platte County Sheriff's Office. Kansas City, MO. "Emerging Law Enforcement Legal Trends: Policing in the Reform Movement" October

2021 Local Government Insurance Trust, Maryland, "The Law and Best Practices of a Successful Police Operations" September

2021 Illinois Mobile Team Unit 9, "Implicit Bias – De-Escalation – Procedural Justice: A Call for Change in Law Enforcement Training and Operations" June

SCHEDULE C

2021 Arkansas City Attorney's Association Virtual CLE: - "Analyzing the Derek Chauvin Trail" June

2021 Legal and Liability Risk Management Institute Online Virtual Training – "Policing in Police Reform Times" June

2021 Kentucky Jailers Association. Bowling Green, KY. "Legal Update for Law Enforcement and Jails" June

2021 CRL Conference "De-Escalation: Training, Policy and How De-Escalation is Impacting Use of Force" May

2021 LLRMI Tactical, SWAT & Emergency Response Operations Seminar. St. Louis, MO. "Emerging Legal Trends & Liability Management for Tactical, SWAT & Emergency Response Operations" May

2021 LLRMI National Internal Affairs Training and Certification Conference. Smyrna, TN. "Garrity in Today's Changing Environment" April

2021 LLRMI Jail/Correction Risk Management, Liability and Loss Control Conference. Smyrna, TN. "Emerging Legal Trends for Jails and Correction" April

2021 LLRMI Tactical, SWAT & Emergency Response Operations Conference. Smyrna, TN. "Emerging Legal Trends and Liability Management for Tactical, SWAT and Emergency Response Operations" April

2021 West Michigan Tactical Officers Association "SWAT Liability" March

2021 CRL Conference "Current State of Law Enforcement Reform Post- George Floyd" March

2021 Southern Illinois Criminal Justice Training Program. Effingham, IL. "Implicit Bias" March

2021 Central Illinois Police Training Center. Peoria, IL. "Implicit Bias" March

2021 Southwestern Illinois Law Enforcement Commission. Belleville, IL. "Policing Demonstrations, Protest and Civil Unrest" March

2021 Kentucky Sheriff's Association Annual Conference. Bowling Green, KY. "Emerging Legal Trends and Best Law Enforcement Practices" February

2021 Legal and Liability Risk Management Institute Online Virtual Training – "Procedural Justice and Legitimacy of Authority" January

2021 Legal and Liability Risk Management Institute Online Virtual Training – "Managing Demonstrations, Protests, Civil Disobedience, Legal and Liability Issues" January (1.5 hours)

2020 Legal and Liability Risk Management Institute Online Virtual Training – "De-Escalation – Reducing Intensity" December (1.5 hours)

2020 Georgia Sheriffs' Association Emerging Legal and Liability Trends "What Every Sheriff Needs to Know" December

SCHEDULE C

2020 Tennessee Trainers Association Conference, "Current Issues Impacting Law Enforcement" November

2020 Madison Police Department Legal Update Training November

2020 CRL Risk Control Conference "Political Unrest, Cultural Movement" October

2020 Practising Law Institute- "Use of Force" October

2020 SWAT Training, Providence Police Department September

2020 CRL Conference "Police Reform, Implicit Bias, Procedural Justice, De-Escalation and Legislative Action on Police Reform" September

2020 VRSA Duty to Intervene in Unreasonable Force/Duty to Render Aid During a Use of Force Event Webinar August (1 hour)

2020 IMPG Online Presentation- "How Current Events are Impacting and Shaping Law Enforcement" August (1 hour)

2020 Legal and Liability Risk Management Institute Online Webinar Training- "How Current Events are Impacting and Shaping Law Enforcement" August (2 hours)

2020 Legal and Liability Risk Management Institute Online Webinar Training- "Law Enforcement Personnel and Implicit Bias During Interactions with Citizens and Suspects" July (1.5 hours)

2020 VRSA Carotid Restraint Webinar July (1.5 hours)

2020 TML: How Current Events Are Affecting Police Tactics and Policies Webinar July (1.5 hours)

2020 VRSA Arrestee Restraint Webinar July (1.5 hours)

2020 Nampa, Idaho. "Emerging Legal Trends & Liability Management for Tactical, SWAT & Emergency Response Operations" June

2020 Policing Demonstrations, Protest and Civil Unrest Webinar Training June (2 hours)

2020 TML: Crowd Control Webinar June (1 hour)

2020 SWAT Training, Providence Police Department June (2 hours)

2020 CLM, A Member of the Institutes Online Webinar Training – "Covid-19 & Correctional Facilities: Mitigating both Transmission and Liability" April (1 hour)

2020 Legal and Liability Risk Management Institute Online Webinar Training- "Covid-19 Law Enforcement Operations in the Midst of a Pandemic" April (1 hour)

2020 Legal and Liability Risk Management Institute Online Webinar Training- "Use of Force: Moving Forward" April (1 hour)

2020 Lexington, South Carolina. "SWAT & Emergency Response Operations" March

SCHEDULE C

2020 Smithfield, Rhode Island. “Arrest, Search and Seizure” February

2020 Danville, Virginia. “Arrest, Search and Seizure” February

2020 Champaign, Illinois. “Emerging Legal Trends & Liability Management for Tactical, SWAT & Emergency Response Operations” February

2020 Champaign, Illinois. “ILEAS Policing Demonstrations, Protest and Civil Unrest” February

2020 San Diego, California. Civil Rights & Governmental Tort Liability Seminar. “Litigation Skills Workshop” January

2019 Dawsonville, Georgia. “Emerging Legal Trend & Liability Management for Tactical, SWAT & Emergency Response Operations” December

2019 Charlotte, North Carolina. County Reinsurance Annual Conference. “Emerging Issues Related to Law Enforcement Liability and Risk Management” November

2019 Sandy, Utah. LLRMI Tactical, SWAT & Emergency Response Operations Seminar. November

2019 Las Vegas, Nevada. “Supervision Leadership” October

2019 Las Vegas, Nevada. “Lost Control Risk Management” October

2019 Las Vegas, Nevada. “Advanced Internal Affairs” October

2019 Lafayette County Sheriff’s Office, Missouri. “Emerging Legal Trends for Law Enforcement” & “Legal Update for Law Enforcement and Jails” October

2019 County Risk Sharing Authority, Ohio. “Legal Update: Emerging Trends in Law Enforcement” October

2019 Arkansas Association of Chiefs of Police Conference, Rogers, AR. “Emerging Legal Trends and Best Law Enforcement Practices” September

2019 Kentucky Sheriff’s Association Annual Conference. Bowling Green, KY. “Emerging Legal Trends and Best Law Enforcement Practices” September

2019 Texas Association of Counties, multiple locations “Emerging Legal Trends and Liability Management for Tactical, SWAT and Emergency Response Operations” August

2019 Kentucky Association Chiefs of Police Annual Conference. Owensboro, KY. “Law and Best Practices Update” July

2019 LLRMI Tactical, SWAT & Emergency Response Operations Seminar. Franklin, TN. “Emerging Legal Trends and Liability Management for Tactical, SWAT and Emergency Response Operations” July

2019 SPIAA Training Conference, Kansas City, MO. “Law and Best Practices Update and the Impact of Liability on Officer Wellness.” July

2019 LLRMI Liability Management for Tactical, SWAT & Emergency Response Operations Training Seminar. Fort Worth, TX. “SWAT Legal and Best Practices” July

SCHEDULE C

2019 Rhode Island Bar Association Annual Meeting "Section 1983 Litigation" June

2019 Local Government Insurance Trust, Maryland. "Emerging Legal Trends and Best Law Enforcement Practices" June

2019 Michigan Municipal Risk Management Authority. Livonia, MI. "Emerging Legal Trends and Liability Management for Tactical, SWAT and Emergency Response Operations" May

2019 Tennessee Trainers Association Conference, Franklin, TN. "Emerging Legal Trends and Best Law Enforcement Practices" May

2019 LLRMI Risk Management and Loss Control for Law Enforcement Conference, Cape Coral, FL "Law Enforcement Litigation and Legal Trends" May

2019 LLRMI Tactical, SWAT & Emergency Response Operations Seminar. Cape Coral, FL. "Emerging Legal Trends and Liability Management for Tactical, SWAT and Emergency Response Operations" May

2019 Missouri Public Risk "Law and Best Practices for Patrol" and "Law and Best Practices for Investigative Operations" April

2019 Georgia Sheriff's Association "Mastering Supervisor and Liability Management" April

2019 New Jersey Police Chiefs Association "Legal Update and Contemporary Best Practices in Law Enforcement" April

2019 IMLA Mid-Year Seminar, Washington D.C. "Section 1983: Trending Issues and Hot Topics" March

2019 University of Georgia, Athens, GA "Law and Best Practices Update" March

2019 LLRMI Jail/Correction Risk Management, Liability and Loss Control Conference. Las Vegas, NV. "Emerging Legal Trends for Jails and Correction" February

2019 LLRMI Tactical, SWAT & Emergency Response Operations Seminar. Las Vegas, NV. "Emerging Legal Trends and Liability Management for Tactical, SWAT and Emergency Response Operations" February

2019 IMLA Online Webinar "Use of Body Worn Camera Video at Trial" February

2018 LLRMI Liability Management for Tactical, SWAT & Emergency Response Operations Training Seminar. Grand Prairie, TX. "SWAT Legal and Best Practices" December

2018 KLC Instructor Simulator Conference "All Use of Force Training and Use of Force Shoot, Don't Shoot Decision Making" November

2018 Missouri Public Risk "Emerging Legal Trends and Best Law Enforcement Practices" November

2018 TN PRIMA "Legal Update" November

2018 Cookeville Police Department, TN "Supervisor Liability" November

SCHEDULE C

2018 Virginia "The Law and Best Practices of SWAT Operations and Tactical Command" October

2018 Georgia Local Government Risk Management Services – Georgia Law Enforcement Training "Law and Best Practices of the High-Risk Critical Tasks in Law Enforcement Including Use of Force, Deadly Force, Dealing with Person of Diminished Capacity, Pursuits, and Special Operations" October

2018 Texas Commission on Law Enforcement Annual Conference "Emerging Legal Trends – Impact on Police Operations" October

2018 Midwest Public Risk Fall Conference, MO. "Emerging Legal Trends – Impact on Law Enforcement" October

2018 Kentucky Association of Counties "Emerging Legal Trends for Attorneys" October

2018 Manassas Park Police Department, VA. "Emerging Legal Trends in Law Enforcement" October

2018 Arkansas Association of Chiefs of Police- "Emerging Legal Trends in Law Enforcement" September

2018 International Municipal Lawyers Association Webinar Training- "Officer Involved Shootings" August

2018 Twin River Management Group, Lincoln, RI. Casino Security Staff Training- "Active Shooter and Other Critical Incidents, Use of Force, Self-Defense, Citizen's Arrest, and Law and Best Practices." July

2018 LLRMI Emerging Legal Trends and Liability Management for Tactical, SWAT & Emergency Response Operations Training Seminar, Georgetown, TX. "SWAT Legal and Best Practices" July

2018 Michigan Association of Chiefs of Police- "Emerging Legal Trends in Law Enforcement" June

2018 RI Bar Association Annual Meeting "Officer Involved Shootings and Pursuits: Law, Litigation and Best Practices" June

2018 VML Insurance Programs, Virginia "Policing Demonstrations, Protest, and Civil Unrest" Legal, Liability Issues, First and Fourth Amendment Protections. May

2018 FBINAA Louisiana Chapter, "Legal Update: Emerging Trends in Law Enforcement". April

2018 South Dakota Police Chief's Association Joint Training Conference, Deadwood, SD. "Legal Update: Case Law Impacting Law Enforcement and Jail Operations". April

2018 LLRMI Risk Management and Loss Control for Law Enforcement Conference, Cape Coral, FL "Emerging Legal Updates Impacting Liability, Lawsuits, Policies and Procedures". April

2018 MCLE New England, Boston, MA. "Police Misconduct Litigation" March

SCHEDULE C

2018 VML Insurance Programs, Virginia "Policing Demonstrations, Protest, and Civil Unrest" Legal, Liability Issues, First and Fourth Amendment Protections. March

2018 Hanover County Sheriff's Office, Hanover, VA "Legal Update: Emerging Trends in Law Enforcement" March

2018 Palm Beach Police Department, Palm Beach FL "Policing Demonstrations, Protest, and Civil Unrest" Legal, Liability Issues, First and Fourth Amendment Protections. March

2018 Alabama Association of Chiefs of Police Conference, Montgomery, AL "Legal Update: Emerging Trends in Law Enforcement" February

2018 VML Insurance Programs, Virginia "Policing Demonstrations, Protest, and Civil Unrest" Legal, Liability Issues, First and Fourth Amendment Protections. February

2018 "Law of Use of Force" University of Arkansas School of Law, Fayetteville, AR. February

2018 "Law Enforcement in the Current Environment of Protests, Video, and Lawsuits" Salve Regina University, Newport, RI. February

2018 Alabama Sheriffs Association "Emerging Legal Trends and Best Law Enforcement Practices" Montgomery, AL, January (8 hours)

2018 Legal and Liability Risk Management Institute Online Webinar Training- "Demonstrations, Mass Protests, and the Occupy Movement" January (1 hour)

2017 Legal and Liability Risk Management Institute Online Webinar Training- "Use of Force: Moving Forward" December (1 hour)

2017 Tennessee Association of Chiefs of Police- "Protest and Demonstrations: The Interplay Between First and Fourth Amendment Rights" December (6 hours)

2017 County Reassurance Conference- "Emerging Trends and Law Enforcement Liability" Phoenix, AZ, November (2 hours)

2017 International Municipal Lawyers Association- "Law and Best Practices in the Use and Implementation of Body Worn Cameras" October, Niagara Falls, NY (2 hours)

2017 Legal and Liability Risk Management Institute Jail/Correction Risk Management, Liability and Loss Control Conference- "Emerging Litigation and Legal Trends" October, Cape Coral, FL (5 hours)

2017 Vermont League of Cities Annual Conference - "Emerging Legal Trends" October (2 hours)

2017 Virginia Association of Chiefs of Police- "Emerging Trends in Law Enforcement"

2017 Kentucky Sheriffs Conference- "Emerging Trends in Law Enforcement"

2017 Kentucky Council on Crime & Delinquency- "Emerging Trends in Jails and Corrections"

SCHEDULE C

2017 Twin River Management Group, R.I. – Security staff training. June (8 hours)

2016 Defense Research Institute, Austin, Texas

2015 International Municipal Lawyer's Association. Officer Involved in Shootings and Qualified Immunity Post Plumhoff

2015 IADLEST, International Association of Director of Law Enforcement Standards and Training. "Training Liability" and "Emergency Liability Trends"

2015 Georgia Jail Association's Annual Conference -High Risk Critical Task in the Jail Operation, Savannah Georgia

2015 Arkansas Association of Chiefs of Police Annual Meeting -Law and Best Practices for Policing in Trying Times.

2015 South Carolina Municipal Association's Annual Meeting for Elected Officials – Law Enforcement for Trying Times

2015 Texas Commission on Law Enforcement, training for 750 Law Enforcement trainers

2015 National Internal Affairs Investigators' Annual Conference – Law Enforcement Liability and the Interplay on the Internal Affairs

2013 Suffolk University Law School, "Policy in Trying Times" Boston Massachusetts

2013 Police K-9 Magazine, National Handler Instructor Training Seminar and Annual Conference for K-9

2013 Practising Law Institute- Annual Conference Section 1983 Civil Rights Litigation Program

2012 Developed a Training Program for Law Enforcement and attorneys dealing with Use of Force; Electronic Control Devices; and Sudden Custody Death.

2012 National Internal Affairs Investigation Association Annual Conference- Use of Force and Sudden in Custody Death

2012 Sheriff's Association New Sheriff's Conference Legal Update and Best Practices for Sheriffs

2012 Texas Commission Law Enforcement Officer on Standards and Education annual conference for Texas Trainers/ "Legal Issues for Law Enforcement Trainers"

2012 Practising Law Institute- "Mass Protest" 29th Annual Conference Section 1983 Civil Rights Litigation Program

2010 PRIMA, Law Enforcement Risk Management Program

2010 National Internal Affairs Investigators Association Annual Conference, Indianapolis, IN

2010 Annual Conference of the National Council of County Association Executives 2009 Utah Highway Patrol – Law Enforcement Pursuit Operations

SCHEDULE C

2009 Practising Law Institute- Annual Conference Section 1983 Civil Rights Litigation Program

2009 National Conference for Public Risk Managers.

2009 Continued training programs for Public Agency Training Council throughout the United States to include, Policy Development and Implementation, Arrest Search & Seizure, Use of Force, Civil Liability Issues, Liability Issues for Narcotics Officers, Legal Issues for Tactical Operations, Liability Issues in Public Schools and Internal Affairs

2009 Georgetown Law Center/Civil Rights Litigation, Session 1 "Strip Searches in Jails," Session 2 "Tasers"

2008 Practising Law Institute- Annual Conference Section 1983 Civil Rights Litigation Program

2008 Texas Commission on Law Enforcement Standards and Education "Liability Management for Law Enforcement Trainers

2008 Association of American Law Schools Annual Conference- "Law Enforcement Policy and Training/Use of Force & Pursuit in the Aftermath of Scott v. Harris"

2007 Continued training programs for Public Agency Training Council throughout the United States to include, Policy Development and Implementation, Arrest Search & Seizure, Use of Force, Civil Liability Issues, Liability Issues for Narcotics Officers, Legal Issues for Tactical Operations, Liability Issues in Public Schools and Internal Affairs

2007 Georgetown Law Center/Civil Rights Litigation: Session 1 "Law Enforcement Policy and Training in Use of Force"; Session 2: "Law Enforcement- the ADA and Persons of Diminished Capacity."

2007 South Dakota Annual Conference for Chiefs and Sheriffs- "Legal Update on High Liability Issues in Law Enforcement"

2007 Pennsylvania Chiefs of Police- "Legal Update on High Liability Issues in Law Enforcement"

2007 International Municipal Lawyer's Association Annual Conference- "Garrity and the Administrative Interview"

2007 Practising Law Institute- "Use of Force" 24th Annual Conference Section 1983 Civil Rights Litigation Program

2007 25th Annual Section 1983 Civil Litigation, by Practising Law Institute Video/Audio-The Unbiased Witnesses in Law Enforcement Litigation. Vol. 1, Section 8

2006 Continued training programs for Public Agency Training Council throughout the United States to include, Policy Development and Implementation, Arrest Search & Seizure, Use of Force, Civil Liability Issues, Liability Issues for Narcotics Officers, Legal Issues for Tactical Operations, Liability Issues in Public Schools and Internal Affairs

2006 Georgetown Law Center/Civil Rights Litigation "Police Misconduct" §1983

SCHEDULE C

2006 National Internal Affairs Investigators Association Annual Conference, Gatlinburg Tennessee "Use of Force and the Internal Affairs Process"

2006 Georgia Bar Association "ICLE", Atlanta Georgia "Evaluating Police Liability Claims"

2005 Legal and Policy Issues in the Use of Force- throughout United States

2005 Georgetown Law Center/ Civil Rights Litigation "Less-Lethal Force"

2005 Arrest, Search & Seizure, and Questioning-throughout United States

2005 Civil Liability and Risk Management in Law Enforcement-throughout United States

2005 Internal Affairs/Administrative Investigations- throughout United States

2005 PRIMA National Conference-Milwaukee "Use of Force" and "Critical Tasks in Law Enforcement"

2005 National Sheriff's Association Annual Conference-Louisville "Legal Issues in Administrative Investigations"

2005 National Leagues of Cities and Towns (Risk Consortium)-Seattle "Identifying Contemporary Risks in Law Enforcement Liability"

2004 Legal and Liability Issues in Public Schools, throughout United States

2004 Policy Development for Law Enforcement Agencies, throughout United States

2004 Civil Liability and Risk Management for Law Enforcement Agencies, throughout United States

2004 Legal Issues in Narcotics Operations, throughout United States

2004 Critical Legal Tasks for Patrol Officers, Illinois Mobile Training Unit

2004 Georgetown Law Center/Civil Rights Litigation-§ 1983

2004 Rhode Island Bar Association Annual Conference- "Stop in the Name of the Law"

2004 Oklahoma Attorney General's Annual Conference "Policy Summit" Policy session for Police Executives

2004 Texas Commission Law Enforcement Officer on Standards and Education annual conference for Texas Trainers/ "Legal Issues for Law Enforcement Trainers"

2003 Legal and Liability Issues in Public Schools, throughout United States

2003 Policy Development for Law Enforcement Agencies, throughout United States

2003 Civil Liability and Risk Management for Law Enforcement Agencies, throughout United States

2003 Advanced Internal Affairs, Myrtle Beach, SC, Las Vegas, NV.

2003 Georgetown Law Center/Civil Rights Litigation-§1983

SCHEDULE C

2003 Georgia Internal Affairs Investigators Annual Conference

2003 Tennessee Chiefs' Association Conference Training

2003 Alaska Chiefs' Association/FBINAA Executive Development Conference

2003 Office of Corporation Counsel/Metropolitan Police, Washington D.C.

2003 International Law Enforcement Educators and Trainers Association Annual Conference/Chicago "Trainers and Use of Force Liability"

2002 Legal and Liability Issues in Public Schools, throughout the United States

2002 Policy Development for Public Safety Agencies, throughout the United States

2002 International Association of Law Enforcement Planners National Conference, Long Beach, California

2002 National Internal Affairs Investigators Association National Conference, Tampa, Florida

2001 Legal Issues in Use of Force Seminar, Salve Regina University

2001 Advanced Internal Affairs Seminar, Las Vegas

2000 Police Misconduct/Racial Profiling, Georgetown University Law Center

2000 International Crime Prevention, University of Warwick, UK.

2000 Criminal Procedure Update Seminar, Salve Regina University

1999 Law Enforcement Officers' Bill of Rights Seminar, Salve Regina University

1998 Police Media Relations Seminar, Salve Regina University

1997 Police Civil Liability Seminar, Salve Regina University

1995 Basic Training for Detectives, Rhode Island State Police

1993 Search and Seizure in Schools, Rhode Island Legal/Educational Partnership

CURRICULUM DEVELOPMENT:

2004 Jail Liability Issues

2005 Arrest, Search & Seizure, and Questioning

2004 Legal Issues/ Case Law Update for Narcotics Investigators

2004 Legal and Liability Issues for Tactical Commanders

2004 Investigation of Officer Involved Shootings

2003 Legal Issues in Administrative Investigations

SCHEDULE C

2003 Civil Liability and Risk Management for Law Enforcement Agencies

2002 Policy and Procedure for Law Enforcement Agencies

2002 Legal and Liability Issues in Public Schools

1993 Graduate Course, Police Civil Liability

1993 Providence Police Academy Entry-Level, 22 Week Program Revamp

EXHIBIT 47

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State of Minnesota
1/24/2024 11:57 AM

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

Ryan Londregan,

Defendant.

Court File No. 27-CR-24-1844

DEFENDANT RYAN LONDREGAN'S NOTICE OF DEFENSES PURSUANT TO MINN. R. CRIM. P. 9.02, SUBD. 1(5)

Trooper Londregan provides the State with the following defenses pursuant to Minn. R. Crim. P. 9.02, Subd. 1(5). This notice is provided subject to Trooper Londregan's motion to dismiss the State's complaint, or alternatively, disqualify the Hennepin County Attorney's Office for abuse of the grand-jury process.

As will be shown at trial (if trial proves to be necessary), Trooper Londregan employed the use of deadly force against Ricky Cobb II ("Cobb") to protect: (1) Trooper Brett Seide ("Seide") from death and/or great bodily harm; and secondarily, (2) himself from death and/or great bodily harm. *See* Minn. Stat. § 609.066, Subds. 2(a)(1) & (2). Trooper Londregan will come forward with evidence showing that he acted in accordance with Minn. Stat. § 609.066, Subds. 2(a)(1) & (2),[1] and this evidence will include, but not be limited to, the following facts:

1. Before using deadly force, Trooper Londregan reviewed a Keep Our Police Safe

[1] Once a defendant comes forward with evidence to support a claim of (1) defense-of-another; or (2) self-defense, *the State* bears the burden of proving, beyond a reasonable doubt, that the defendant did not act in defense-of-another or in self-defense. *State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997); accord *State v. Valdez*, No. A22-1424, 2023 WL 6799150, 2023 Minn. App. LEXIS 374, at *9 (Minn. Ct. App. Oct. 16, 2023).

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("KOPS") alert that specified, among other things, that Cobb was: (a) wanted for a felony violation of an Order for Protection; (b) a registered/convicted predatory offender; and (c) prohibited from possessing a firearm.[2]

2. Before using deadly force, Trooper Seide informed Trooper Londregan that he communicated with a Ramsey County Duty Sergeant, and the Sergeant: (a) stated that the KOPS alert remained correct; and (b) requested Trooper Seide arrest Cobb.

3. As Trooper Seide indicated in his written statement provided to the Minnesota Bureau of Criminal Apprehension ("BCA"), among other things:

    a. Trooper Seide entered Cobb's vehicle to physically remove him from the vehicle. With his upper body inside the vehicle, the vehicle lurched forward as Trooper Seide attempted to gain physical control of Cobb. Around this time, Trooper Seide heard Trooper Londregan yell at Cobb to "get out of the car now."

    b. As Trooper Seide told the BCA: "I then could feel the vehicle accelerate forward. As the vehicle accelerated, I started feeling myself getting pulled with the vehicle. I feared for my safety and my life as Cobb accelerated with me half inside the vehicle. My upper torso was inside the car while my legs and feet were outside. As the vehicle increased speed I tried run alongside so as not to fall and get run over. At that time, I knew that Trooper Londregan and I were in danger of being run over by Cobb's car, being hit by an oncoming car on the highway, or otherwise being dragged away at a high rate of speed. Any of these scenarios were extremely dangerous and would likely lead to serious injuries or death to of any of us. During this time, I heard at least one gunshot. I continued to try and maintain my balance as Cobb accelerated with the hopes of apprehending him. However, Cobb continued to speed up and eventually I lost my footing and fell violently to the ground."

    c. Trooper Seide concluded his written statement to the BCA with the following: "Cobb's conduct was terrifying, dangerous, and lethal force was needed before he could kill me and Trooper Londregan. Cobb posed an enormous threat to public safety."

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[2] *See* Bureau of Criminal Apprehension, *BCA Data Access Policy & Inventory* 19 (Aug. 2023) (describing "Keep Our Police Safe" as "[d]ata from 'attempt to locate' and 'be on the lookout' messages to law enforcement agencies.") (available at <https://dps.mn.gov/divisions/bca/Documents/Data-Access-Policy-and-Inventory.pdf#search=KOPS>).

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4. As Trooper Garrett Erickson indicated in his written statement provided to the BCA, among other things:

    a. "As soon as Trooper Seide opened the door, I observed the vehicle begin to move forward. Trooper Seide struggled with him inside the vehicle. The vehicle stopped for a short period of time then began to accelerate. The second time the vehicle began to accelerate, it visually appeared to be at a much higher rate of speed. It became clear that [Cobb] was attempting to drive the vehicle away from the scene. I observed Trooper Seide being pulled by the vehicle as it was driving away. From the position in which I was standing, I was unsure if Trooper Seide was holding onto [Cobb] or if he somehow stuck inside the vehicle. Due to the fact that Trooper Seide was inside the vehicle, I was concerned that Trooper Seide was in an extremely vulnerable position. I feared for Trooper Seide's life because he could fall out and be run over, or that Trooper Seide would be trapped in the vehicle for an unknown amount of time traveling down the freeway. I could hear what I believed to be three gunshots from inside the vehicle."

    b. "I observed Trooper Seide fall out of the vehicle onto the roadway from the driver's side. Trooper Seide was not able to stay on his feet and fell onto the freeway. I also observed Trooper Londregan fall out of the vehicle on the passenger side. Trooper Londregan also was not able to stay on his feet and fell onto the ground."

It is believed, but not yet definitively known, that in December 2023, Troopers Seide and Erickson each provided testimony, under oath, to a grand jury that verified the above-described statements. Consequently, the Hennepin County Attorney's decision to bypass the grand jury and make her own decision to charge Trooper Londregan speaks volumes, i.e., it demonstrates that Hennepin County's citizens understand Trooper Londregan did nothing wrong, so the Hennepin County Attorney decided to end-run the grand jury in order to manufacture charges against Trooper Londregan.

Trooper Londregan respectfully reserves the right to amend this notice.

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DATED: January 24, 2024

Respectfully Submitted,

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EXHIBIT 48

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

State of Minnesota, Plaintiff, vs. Ryan Patrick Londregan, Defendant.	Omnibus Hearing District Court File Number 27-CR-24-1844 April 29th, 2024 9:00 a.m.

The above-entitled matter came on for hearing before the Honorable Tamara Garcia, District Court Judge, at the Hennepin County Government Center, City of Minneapolis, Minnesota.

APPEARANCES:

Christopher Freeman, Assistant Hennepin County Attorney, appeared for and on behalf of the State of Minnesota.

Christopher Madel, Esq., Todd Hennen, Esq., and Peter Wold, Esq., appeared for and on behalf of the Defendant, Ryan Londregan.

Ryan Londregan, the Defendant, appeared in person, with counsel.

REPORTED BY: Greta Ellingson, Court Reporter

P R O C E E D I N G S

THE CLERK: All rise, the Honorable Tamara Garcia now presiding.

THE COURT: Good morning, everyone. Please be seated. And I know my clerk already made the announcement, but, ladies and gentlemen, all phones, cellular devices off and stowed, please. If your phone goes off or the deputies see a phone, you will be asked to leave the courtroom. All right. This is State of Minnesota versus Londregan, 27-CR-24-1844.

Counsel, please note your appearances.

MR. FREEMAN: Your Honor, Chris Freeman appears for the State. I'm appearing, Your Honor, at this hearing only, as we did make a motion to the Court for continuance because the State has new counsel that will be on the case. I am appearing at this hearing. I am the managing attorney of the adult prosecution division. Josh Larson was previously on the case, he's one of the 50-plus attorneys that I manage, and I'm here in that capacity for this hearing today. Thank you, Judge.

MR. MADEL: Morning, Your Honor. Chris Madel, Peter Wold, and Todd Hennen for the defendant, Trooper Ryan Londregan, who is present.

THE COURT: Thank you. All right.

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Well, Mr. Freeman, you mentioned a motion. I haven't seen one filed.

MR. FREEMAN: No, Your Honor. To correct, I did -- the State did reach out to the Court and ask for a continuance of the matter, that's what I was referencing.

THE COURT: Okay. And I received an email from Mr. Madel.

MR. MADEL: Correct. We oppose.

THE COURT: So, I told you all to appear and here you are.

MR. FREEMAN: And that's why I'm here, Judge.

THE COURT: Thank you.

MR. FREEMAN: You're welcome.

THE COURT: Okay. So, is there any other formal motion to continue omnibus?

MR. FREEMAN: No.

THE COURT: All right. Then we're going to proceed. The first thing we should talk about is discovery motions. Discovery has been ongoing. The reason that this omnibus was set in April when the complaint was filed in January is because there was a lot of discovery to go through. And we're still talking about discovery, so let's talk about, first, the 4/9 motion to compel HCAO's additional media

communications. I received a motion. Defense wants all documents constituting, containing, or accompanying communication between the HCAO and media regarding Trooper Londregan, Ricky Cobb, II, or the case.

MR. MADEL: Mr. Hennen is going to handle this, so I think I'm going to switch seats with him so you don't have to bend your head around.

MR. HENNEN: Thank you, Your Honor. So, I -- before we started, Your Honor, I had just, kind of, a procedural question. We have a number of the exhibits that we'd like to offer to the Court.

THE COURT: I see that.

MR. HENNEN: I didn't know if Your Honor would like to address -- many of those relate to, specifically, this motion, and I didn't know if Your Honor wanted us to offer those first or offer argument first or whatever Your Honor would prefer.

THE COURT: Well, that's a good question.

Mr. Freeman, did you see the list?

MR. FREEMAN: Yes, Your Honor. I saw the list and I saw the binders.

THE COURT: Okay. I do not know what discussions you all have had before you arrived here today with regard to the these motions. Maybe we

should just talk about what kinds of exhibits you have, Mr. Hennen, and what they're going toward and then we can see what the State's position is on them.

MR. HENNEN: Absolutely, Your Honor. So, I wasn't sure if Your Honor would want us to break up the exhibits that we offered by motion. For this particular motion, I can tell you that the bulk of the exhibits are just articles that have been published by various media outlets that quote statements from the Hennepin County Attorney's Office.

I did discuss those exhibits with Mr. Freeman last Monday, a week ago today. And he indicated that while he couldn't give a final response, his assumption was because these are already publicly available, the State wouldn't have an objection, but I haven't heard an update since then.

MR. FREEMAN: Your Honor, that was my initial conversation. I think one of the -- the difficulties in parsing out the way the litigation has occurred is many times the filings in the court is the attempt to get things into the public sphere, and that was one of the concerns that I had initially. When I didn't see the filings, because they just were put on my table this morning, they were outlined, and counsel did a good job of outlining the things.

One of the concerns that I had about the way that the filings had occurred previously is mooted in this case, because they're already things in the public realm. I don't know their nexus to the ultimate question about whether or not why this needs to come to the Court for the determination of disclosure. But in the context of it's already out in the public domain, there is no further, kind of, information. I think the Court can receive these documents if it's going to assist you in your ultimate determination.

THE COURT: Okay.

MR. FREEMAN: That's something I can't say though.

THE COURT: So the documents, obviously, you have them, they're in binders. Are there things you still want, Mr. Hennen?

MR. HENNEN: Oh, I should clarify. So the documents we have, Your Honor are -- so, I'll take a step back. On April 3rd, Your Honor granted our motion to compel external media communications. That motion was particularly related to statements from the HCAO to the press related to Mr. Noble or the, you know -- his October, I believe it was 13, meeting notes document. So, Your Honor granted that motion.

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This motion is slightly different because we are seeking all external media, statements to the media that relate to the case, which is the Rule 9 standard. Frankly, I thought this, sort of, was subsumed in Your Honor's earlier order, but the State takes a different view. So, the exhibits that I would like to offer on this are just media stories quoting the Hennepin County Attorney's Office, the evidence, the number and the nature of the statements that we know about that have been made, although they don't quote the full writing, so we don't know exactly what was said, we just know the portions that were republished.

MR. FREEMAN: And, Your Honor, in reviewing the Court's ruling as to the Rule 9, Brady, it's the State's position that there are no communications that fall with -- under those -- Your Honor's rulings or within Brady. We did go through and provided some of our contacts and communications to defense that we felt fall -- fell under those rules. The State, in this matter, has been analyzing all of its communications in regards to Rule 9, to rule Brady, and has turned over everything relevant to those.

THE COURT: Okay.

MR. HENNEN: In that case, Your Honor, I think

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we better offer our exhibits, because there are a number of instances in which various media outlets cite statements provided by the Hennepin County Attorney's Office, and we don't have any disclosure of what that full statement was from the Hennepin County Attorney's Office.

So Rule 9 says that any statement that relates to the case or the substance of any oral statement needs to be disclosed by the prosecutor to the defense prior to the omnibus hearing. Your Honor's prior order, in considering the Hennepin County Attorney's Office's communications with the media, specifically related to Mr. Noble, Your Honor, said, "These statements are, however, often released as a written statement. As such, any written press releases are documents related to the case and are discoverable."

So I don't see why Your Honor's order there would be cabined to just things that related to Mr. Noble, as opposed to any statements that the Hennepin County Attorney's Office released that relate to case. Those have not been provided to us. The only thing that has been provided by the Hennepin County Attorney's Office are the press releases that relate specifically to Mr. Noble.

THE COURT: Okay. So just to be clear, do you

want other press releases or other documents released to any third party?

MR. HENNEN: Well, what this motion seeks, Your Honor, is press releases or any written statement -- which would include, I suppose, emails and things like that, because that's the form that these sometimes take -- between the Hennepin County Attorney's Office and the media that relate to the case.

THE COURT: Okay. And then you said you wanted to offer this three-page list or -- to be fair two, and a six-page list of exhibits in support of that motion?

MR. HENNEN: No, Your Honor. To clarify, the index that Your Honor is referring to is just for, essentially, keeping track of what we're offering and when and what has been admitted and what has not. That's just for the Court's convenience. Once the hearing is over, we'll provide an index, like we did after the last hearing, of all the exhibits that have been admitted.

THE COURT: Okay.

MR. HENNEN: What we're offering for this motion are specifically -- in our binders, they're tabs number 21 through 36 and also tab number 90.

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These are all just media articles that quote the Hennepin County Attorney's Office.

THE COURT: Okay.

All right. And then also, we had the 4/15 motion to compel, HCAO's communications with third parties.

MR. HENNEN: That is a separate motion, Your Honor, that is related to specific third parties. And I'm happy to address that motion now as well.

THE COURT: Okay. Go ahead.

MR. HENNEN: So, there -- this is, sort of, grouped into categories, Your Honor. I would -- I would address them as, sort of, bucket one would be communications in documents relating to meetings and the substance of oral statements with the members of the Cobb family and an individual named Harry "Spike" Moss or Spike Moss.

THE COURT: Uh-huh.

MR. HENNEN: As Your Honor may know, there was a fairly well-publicized meeting between the Hennepin County Attorney and members of Mr. Cobb's family. I believe it was in August of last year. What I learned from an email from Mr. Freeman -- I believe, it was late last week -- was that there was at least one other meeting between the Hennepin County Attorney and

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the Cobb family that we did not know about.

There we're -- again, we're relying on Rule 9 and the requirement to disclose statements of anyone related to the case -- excuse me -- any statements that relate to the case. And for this, I would, especially, like to draw Your Honor's attention to the fact that Rule 9.01, as applied to the prosecutor, is not -- does not limit the statements to those made by witnesses.

For the defense, in -- the rules are not symmetrical. For the defense, we are only required to disclose statements made by witnesses that we expect to call at trial. For the prosecution, Rule 9, specifically, says that these statements are not limited to statements made by witnesses, it is any statement that relates to the case. So, Your Honor, we're seeking statements made to or by the members of the Cobb family at any of these meetings.

We have had -- Mr. Freeman graciously told me on, I believe, it was last Thursday, in an email that we have, Your Honor, is a proposed exhibit here that we can provide that -- that these meetings were held, but that the State did not believe that any of the statements made therein triggered Rule 9 disclosures. Frankly, Your Honor, I find that very hard to believe,

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again, given the standard under Rule 9, is that related to the case.

In addition, Mr. Moss, who is, sort of, a local activist who has been involved with the family, particularly early on it seems, has given public interviews where he has characterized some of the statements that were made in that meeting. And that's another one of our proposed exhibits, Your Honor. We have the video and the transcript of that video where Mr. Moss gives a public interview, in which he states that with the Hennepin County Attorney, at least one of these meetings, they discussed whether they need an expert and why, supposed difficulties in getting materials from the state patrol, the reason for the -- why the investigation took so long, the reasoning behind the charges brought against the defendant, and the reasoning for how many charges were brought against the defendant, the prosecutors being assigned to the case, Trooper Londregan's intent, whether the State would seek bail requirements for Trooper Londregan and why, and, generally, the pressure that the Hennepin County Attorney's Office -- excuse me -- Hennepin County Attorney was going to go through for charging Trooper Londregan.

So, frankly, these are all statements that

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relate pretty directly to the case. The State has not disclosed anything about them, these are just from an interview that Mr. Moss gave. So with respect, we don't think that the State's representation that nothing triggers Rule 9 in those conversations is accurate.

THE COURT: Mr. Freeman.

MR. FREEMAN: Thank you, Judge. As was outlined by Attorney Hennen, I did communicate with those present at the meeting, and the determination was that no communications did fall under Brady or Rule 9. This is the same analysis that I represented for the prior with the communications in regards to the media. The Court has analyzed Rule 9 already in this case, which is helpful.

In your April 3rd memorandum and order discovering, you concluded that an order -- that items not explicitly listed in Rule 9 are not required to be disclosed. You concluded that it does not require disclosure regarding nonsubstantive communications with witnesses and their documents discoverable only when there are actual written documents with direct evidentiary value to either defendant's guilt or innocence or witnesses' credibility.

So I think given that analysis, Your Honor,

that you made, this clearly falls under that. As the Court is well aware, our office in most cases meets with victim's families. It's part of the absolute role of a prosecutor's office. And, frankly, when a family is going through things and other victims in other cases are going through things, it's our absolute duty to meet with them, to update them on the administrative process of the case, case expectations in terms of how it would progress through the system, what the kind of hearings are going to be.

Many parts of our role is advocate in the courtroom, but also in a liaison to the people that are going through the system for the first time. That's consistent with my practice and these are things that I believe the Court and the State never has falling under Rule 9. I don't know if there has ever been one of those synopsis meetings with a family that has ever been required by a court -- I don't know if in your judicial experience you can think of one -- but these are just -- these fall outside of Rule 9. If there is something that comes up in those that directly goes to witnesses, it goes to potentially if you're meeting with a victim and there is a recantation fall triggering Brady, of course those things are going to be turned over. But these kind of

preliminary administrative meetings are not required to be disclosed under Rule 9. Thank you.

THE COURT: All right. Mr. Hennen, what's your next group? That's group one, right?

MR. HENNEN: Well, and -- yes, that is, Your Honor. And, again, at some point, we're going to want to give these copies of these exhibits that we're proposing to Your Honor. So I want to make sure that that doesn't get lost in here.

So the next group then would be communications between the Hennepin County Attorney's Office and a group called the Color of Change -- between and the Hennepin County Attorney's Office and a group called the Color of Change, including Mr. Michael Collins. This is, I would say, interconnected with the motion to compel media communications, Your Honor. The -- again, Mr. Freeman acknowledged that there was either meetings that occurred or that -- or that communications took place, but that the State does not believe fall under Rule 9.

Mr. -- the Color of Change and Mr. Collins wrote an article for the Star Tribune -- that is one of our proposed exhibits here, Your Honor, that we'd like to provide -- that defends the Hennepin County Attorney, attacks the defense, and then gets some

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basic facts about the case incorrect or at least articulates them in a way that we feel is very misleading.

For example, the article says that Trooper Londregan was charged with assault and manslaughter, and doesn't mention the murder charge. It says that Mr. Cobb was unarmed, which we think is debatable for various reasons that Your Honor is already aware of. Is says that Mr. Londregan is -- excuse me -- Trooper Londregan's life was not in danger, that's again, debatable. But also, Your Honor, part of the issue here is defense of others, specifically with respect to Trooper Seide, and argues it is therefore justifiable to prosecute Londregan for manslaughter, a different legal standard from homicide. But again, this is a murder case, Your Honor.

The reason why we think this is particularly relevant is that the Hennepin County Attorney re-publicized this article by tweeting it from her public-facing Twitter account, and then quoting it several times, at length. That tweet -- that first tweet has over 100,000 views. And then, separately, the Hennepin County Attorney re-tweeted the Color of Change's own Twitter account, again, linking to Star Tribune articles that quote Mr. Collins, basically.

So the fact that there has been communications between the Hennepin County Attorney and Mr. Collins -- Mr. Collins wrote these articles about the case that get basic facts about the case wrong, and then the Hennepin County Attorney re-publicized those articles -- we think is deeply concerning. It relates directly to the proffered motion to dismiss for prosecutorial misconduct that Mr. Madel is going to be arguing here later, and it directly falls under Rule 9, these are statements, again, that relate to the case.

THE COURT: Mr. Freeman.

MR. FREEMAN: Your Honor, in regards to this communication, I did indicate to Attorney Hennen that I was not aware of the discussions that would have taken place. Again, I reiterated that all Rule 9 disclosures would be made. I don't -- and I was -- and the indication was there was none in regards to this person. I don't know if a re-tweet counts as a Rule 9 disclosure, but I suppose that's what defense is indicating. It would be a little bit novel, but I don't know.

THE COURT: All right. Moving on.

Mr. Hennen.

MR. HENNEN: I just wanted to clarify, Your

Honor, our concern is not the tweet itself, our concern is the communications that happened between the Hennepin County Attorney and, you know, individuals that are writing things to be publicized about the case that we think are wrong. If there is a media campaign being orchestrated by the Hennepin County Attorney that relates to this case, under Rule 9, we're entitled to disclosure of the statements that are made and not just whatever is republished by the media. What the Hennepin County Attorney says is relevant to us and to our pending motions.

THE COURT: Okay. And then is there another group?

MR. HENNEN: There is, Your Honor. This will be the last, I believe, group for now. That would be communications and statements with the Governor's office and the Attorney General's office that relate to the case.

THE COURT: Okay.

MR. HENNEN: Same, you know, basic concepts that we've already discussed, I don't think I need to go over this again, Your Honor. It falls directly under the Rule 9 rules for disclosure of statements, whether written or oral, including the substance of oral statements that relate to the case. Mr. Freeman,

again, indicated that there have been communications or meetings or both, but again, the State does not feel that Rule 9 was triggered by those.

Again, Your Honor, I would direct you to the text of Rule 9, particularly 9.01 subdivision 1, clause 2, which, again, expressly includes statements from non-witnesses that relate to the case, it's any person, and it's intended to be as broad as the text says that it is.

THE COURT: Mr. Freeman.

MR. FREEMAN: Same response as previously.

THE COURT: All right. And then, just to be clear, Mr. Hennen, buckets one, two, and three, these all relate to your prosecutorial misconduct motion.

MR. HENNEN: That's correct, Your Honor.

THE COURT: Okay.

MR. HENNEN: And just general discovery issues as well, Your Honor.

THE COURT: Yes. Are there any other -- are there any of these then that you all agree on? It sounds like not -- what you just outlined, right, you each have you own positions on this?

MR. FREEMAN: I believe that's true, Judge.

THE COURT: Okay.

MR. FREEMAN: Thank you.

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THE COURT: Okay. And the relevance of this discovery that we just talked about buckets one, two, and three is to your prosecutorial misconduct motion.

MR. HENNEN: Yes, Your Honor. With respect to Mr. Cobb's family, it's our understanding that the State intends to offer some spark of life evidence, and so we think that discussions with the family related to the case may also be relevant to that. But, it's primarily, I would say, related to prosecutorial misconduct, Your Honor.

MR. FREEMAN: Your Honor, it's -- I think when I saw several of these motions that we'll discuss later, the premature nature of some of them is out there. And I think we just had probably one of the best examples of that, we're talking about the potential for spark of life witness making this relevant. Spark of life, generally, is the only thing that, in my experience, is one of the first witnesses at a trial.

Certainly, if someone was going to be listed as that witness, called as that witness, if there were discussions with that witness that would be turned over, as in the normal course as in every other trial. I think this is a good example of the defense continuing to try to supercede the normal course of a

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case and engage in digging prematurely. If there is a spark of life witness that will be called, certainly we'll be giving disclosures as we do in every case. Thank you, Judge.

MR. HENNEN: I think Mr. Madel wanted to respond to that, Your Honor, so I'm going to step aside.

MR. MADEL: That does touch on something here Judge. So under Rule 9, the State was required to give us their list of witnesses before today. We received nothing. The State received no discovery under Minnesota Rule of Civil (sic) Procedure 9.01, subdivision 1(1)(a), 1(b), or 4, including any expert report. We have provided everything and satisfied all of our discovery obligations.

So, what counsel is, essentially, asking Your Honor is to let us shadowbox. Is -- I don't know who they're going to put into that witness stand. I don't know one person, frankly, that can provide competent evidence in this case that Trooper Londregan did something wrong. They have not given us a list of that. They haven't given us a list of one person. And with respect to the discovery, yes, it is related to that prosecutorial misconduct, but it's also related -- if you listen the -- what Mr. Hennen just

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talked about, there is also a number of things in there that went directly to descriptions of intent, that went to descriptions of what happened at the scene.

These are admissions of a party opponent. It's not just related to the misconduct, it's related to the underlying case itself. And if they're contradicting themselves in meetings that they're having with third parties, we're entitled to that. That's an admission of a party opponent, it's admissible, it's not hearsay, and we can also use it to impeach.

THE COURT: Okay.

MR. MADEL: I have two other things, Your Honor, that I would like to address that just came up since Friday.

THE COURT: With regard to discovery?

MR. MADEL: With regard to discovery.

THE COURT: Okay.

MR. MADEL: The first is that there has been -- as Your Honor well knows, on April 3rd, you issued your order denying the State's motion to quash the subpoena on Mr. Noble. We subpoenaed him on March 6th, 2024, and we received then -- even though we subpoenaed Mr. Noble, we received in the production

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and in an indication from Mr. Noble that the Hennepin County Attorney's Office was going to be handling his production pursuant to that subpoena. And we got that in the middle of April. Then we started getting documents from the Hennepin County Attorney's Office with respect to that.

The Hennepin County Attorney's Office then produced some of those emails -- I believe the number is 22 emails -- on April 12th. We then communicated with Mr. Noble and said the subpoena is on you, it's not on the Hennepin County Attorney's Office and we want all of the communications as our subpoena stated. Mr. Noble then provided us with 20 additional emails that the Hennepin County Attorney's Office did not provide us.

Then, after that, on Saturday, I receive an email from Mr. Freeman saying that -- or I'm sorry, it was on Friday, saying Mr. Noble doesn't want to talk to you -- the defense, anymore, he just wants you to talk through us. I then emailed -- Mr. Freeman then emailed Mr. Noble again on and Saturday, said, "Mr. Noble, who do you want to talk to?" I responded by saying, I don't want you to be the arbiter -- the Hennepin County Attorney's Office to be this arbiter of who is going to produce documents pursuant to our

subpoena.

We're entitled to get all of those documents under that subpoena that Your Honor denied the motion to quash for. And now, the Hennepin County Attorney's Office is trying to inject itself between us and the person that we are subpoenaing, and we're receiving, literally, almost 100 percent more documents from the person that we subpoenaed after they did the production. I would like Your Honor to say, "back off."

This subpoena is on Noble. They are not to be involved in obstruction-ing our subpoena and trying to put themselves in the middle of this. And then, frankly, I think we caught them with respect to hiding documents. And there are 20 more emails, that are, again, going to be relevant when we're coming up with the misconduct motion that we're going to be able to show with Noble that all go directly to that. That's bucket number one that's came up since Friday -- and I guess it's bucket four to stay sequential, sorry.

Bucket five. I received an email from a person associated with Hennepin County that told me that Mr. Larson has entered into an agreement with the Hennepin County Attorney that in exchange for leaving this case, he would not disparage the prosecution in

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any way. I believe that there have been violations with respect to Brady here. And if he has some obligation that he is being prevented from telling us about that, I want to know about it.

I am willing and more than happy to provide this email to Your Honor in camera, but there are people that are worried about their jobs, frankly, and I don't want to get in the way of that. But I am representing to Your Honor as an officer of this court that I received this email and this email says that this agreement exists and we would like to get a copy of that agreement if it exists. That's all I had.

THE COURT: Mr. Freeman.

MR. FREEMAN: A couple things to unpack. First, in regards to the subpoena issue with the -- with Jeff Noble. It's certainly true that Jeff Noble reached out to our office. Jeff Noble indicated that he was wishing for -- I guess for, in short terms, the harassment to stop from defense about the subpoena.

Certainly, in the email that I sent to counsel, as soon as we communicated that to defense, that Jeff Noble wanted us to deal with the issue of getting all the things to defense. Attorney Hennen did write back and he had a document, a summary of his statement from Mr. Noble, that said that he wanted to

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deal with defense directly. And that's why I wrote an email on Saturday.

In essence, it's, like, I'm tired of the telephone game. I don't care who you want to talk to. You have a subpoena obligation, please do that, keep doing that. If you want to us to facilitate it, that's fine. If you want it to go directly to defense, that's fine. Certainly, that's the telephone game that I had no desire to be into, and -- whatever. So the email went out to Mr. Noble just saying, could you please clarify how you want to produce these documents, and that's it.

He also, in his discussion with us, just wants to get defense the documents that they request. He wants to be done, he wants to comply with Your Honor's subpoena. It's our desire that he complies with the subpoena. It's your order, and that's the last thing on my email that said, "you have a subpoena obligation to the Court, you need to keep doing that." With that, switching gears --

THE COURT: Hang on one second. So, where does that stand?

MR. FREEMAN: He has not answered the email. And I know that he -- one of the issues -- and defense is aware of this too -- is Mr. Noble's scheduling. He

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is in trial all week this week in Portland and he was doing the prep this weekend. So I don't know. He has not responded, that's all I can tell the Court right now, unless he has responded to defense.

MR. MADEL: He has not.

MR. FREEMAN: So that at least is where we're at with that.

THE COURT: Okay. So you told him to get them there one way or the other, either through you or directly?

MR. FREEMAN: Precisely.

THE COURT: You all are, kind of, waiting to see what happens. And it sounds like this week might be a slow go because he's caught up in trial.

MR. FREEMAN: Yes. I would say also in regards to the subpoena, there was a production by Mr. Noble. The production was made in, I believe, a PDF. Defense felt that it was very essential to have the raw Word documents. One of the things the defense asks for was those documents so they could determine metadata within the Word documents. It's my understanding that Mr. Noble has no issue with doing that and he will provide it that way. So I think it's going to be a redundancy of things, but just in a different format so defense can examine the document a

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different way to see -- my guess is to see if there were substantial authoring changes, but that's my understanding. And, again, Noble continually says he just wants to give them what they need and have it be done, which seems like we can accomplish.

THE COURT: Okay. So it sounds like this may be a moot issue. Mr. Madel.

MR. MADEL: Moot insofar as we finally got the documents ordered from the subpoena directly from Noble that were filtered through the Hennepin County Attorney's Office, over 20 of which we were never going to see had we not pressed this issue.

THE COURT: Okay. Well, you just use the word "filtered."

Are you filtering something Mr. Freeman or are you just turning over what he gives you?

MR. FREEMAN: It's unfiltered.

THE COURT: Okay. Thank you.

Mr. Madel, anything else on this issue?

MR. MADEL: On that issue, no.

THE COURT: Well, on this particular point, I'm going to ask that the parties let me know when you hear from Mr. Noble. So, if I don't have to decide this, that'd be great.

MR. FREEMAN: Thank you, Judge.

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THE COURT: Then, Mr. Madel, you had something, I think -- or somebody wanted to talk more about number -- what I have as number 5.

Maybe it's to you, Mr. Freeman?

MR. FREEMAN: Sure. Bucket five. This is the first I'm hearing of it. Again, I'm only the managing attorney in the adult prosecution division. I would assume, that I would be aware of something like this being done. What I can indicate to the Court is that I think anyone that knows Attorney Larson knows him to be a rather communicative person, and I don't believe that if there was such a nefarious agreement in place, I find it hard to believe he wouldn't have mentioned to me, but that's surprising. I can't speak to Attorney Madel's sources or context, but I'm not aware of anything like that. I think this is another one of the occasions that defense is seeking to, kind of, throw things out there and in a grandiose way to, kind of, get some clicks, potentially.

But what I would say is that -- first of all, I don't believe this is there. But setting that aside, I don't know how -- well, I don't know what it is, so I can't say it's going to be relevant. But if it was potentially relevant, I would, of course, defer to the Court and your analysis of relevancy to this

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issue.

THE COURT: Mr. Madel, anything else to say on this issue?

MR. MADEL: I'm not going to respond to Mr. Freeman's ad hominem attacks. I'm only interested, Your Honor, in ensuring that we're getting all evidence in this case which negates my client's guilt, which we're only receiving when we continually put our foot on the gas. And then, more comes out, and then more comes out, and we get more chaos and then different lawyers. So I don't care what kind of drama is going on at the Hennepin County Attorney's Office. I simply want the documents, that's it.

THE COURT: Okay. At this point, Mr. Freeman, you're not aware of anything -- any documents or any --

MR. FREEMAN: No.

THE COURT: Any agreements, communications?

MR. FREEMAN: I'm not aware of any agreements or any documents.

THE COURT: Okay. All right. Still talking about discovery. What else?

MR. MADEL: When are we going to get the discovery under Rule 9.01 subdivision 1(1)(a), 1(b), and 4? That was due before the omnibus hearing. I

thought we were going to receive it and I didn't need to bring a motion for it.

THE COURT: Okay. Mr. Freeman.

MR. FREEMAN: I'd like to -- we've had several discovery motions and several discovery requests. If defense could please delineate what is missing in their estimation, that would be helpful. We've had several conversations, including reaching out. I don't believe that this was discussed, so now -- I'm excited to hear what it is.

THE COURT: Okay. So, Mr. Madel, just so I'm clear, are you talking about discovery ordered through the April 3rd order?

MR. MADEL: No. I am talking about Rule 9, which says that before the omnibus hearing, we're supposed to be getting disclosures from the State.

THE COURT: Okay.

MR. MADEL: And rule -- subdivision 1(1)(a) says the names and addresses of witnesses who may be called at trial, along with a record of convictions, if any, within the prosecutor's actual knowledge. We didn't get it. 1(1)(b), the names and addresses of anyone else with information relating to the case. We didn't get it. 1,1 -- subdivision 1(4)(a) and (b), expert reports -- and (c), expert reports. We didn't

get any. And now we've given all of ours because we -- Your Honor had made it very clear to us at the previous hearing you wanted to keep this on track. And now they're requiring me now to have to file a motion regarding something that they should have already done.

THE COURT: Okay. Well, let's hang on one second. And I don't know what Mr. Freeman is going to say, but my recollection is we -- defense asked for the deadlines for OM to be continued out for 60 days. So, we're not really at the deadline, deadline yet, I guess, if we're continuing OM another 60 days.

MR. MADEL: We asked for April 29th.

THE COURT: No, I understand.

MR. MADEL: That's it. We have never asked for anything beyond that other than a *Florence* hearing.

THE COURT: Well, I believe there was a request to continue OM for 60 days. And I said we would talk about that and we would set a new date today.

MR. MADEL: We asked to extend our deadlines. And right now, we have provided everything before the omnibus hearing, they have not.

THE COURT: Okay. Mr. Freeman.

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MR. FREEMAN: Thank you, Judge. One of the issues that is always nice in a case is when we have an experienced court, experienced counsel; and in this case, we have those things. As the Court is well aware, at omnibus hearing -- I don't know if Your Honor is aware of any case in which there is a witness list filed at the first omnibus hearing. Deadlines have been extended and these witness lists are always partial.

One of the things that is commonly done and is also done is that discovery has taken place. All of the witnesses that we called in this case -- minus any expert witness, which the deadlines were extended by the Court -- is that -- or not set by the Court, the deadlines for expert witnesses -- any other witnesses that have been called in this case have been turned over. I know defense has received hundreds and hundreds of pages of police reports. All the witnesses are contained in those police reports, as in the normal course of every case.

One of the things that I know this Court is very cognizant of is treating this case like any other matter that comes before Your Honor, and that's exactly what we've been doing in this matter. The police reports, all the witness information has been

turned over to defense. And to come into a hearing and indicate that somehow obligations in regards to witnesses have not been disclosed is, I think -- we have very experienced counsel on this other side, and it's just, to me, slightly disingenuous to put that before the Court at this particular time. Thank you.

MR. MADEL: If Mr. Freeman is saying that the discovery contains every witness in there, that's all he needed to say, and now it's been said. That's fine.

THE COURT: Okay. Let's find out.

MR. MADEL: But we also --

THE COURT: Hold on, Mr. Madel.

Is that what you're saying?

MR. FREEMAN: I would say this, at this particular point in time, minus an expert, correct? Which -- caveat -- if there is any additional witnesses that become witnesses in the matter, that will be produced to defense at the time of this. My understanding is every witness in the case right now should be contained within the police reports.

THE COURT: Okay. Mr. Madel.

MR. MADEL: We have now -- we filed a motion to set expert witness deadlines, that was denied. The only then default would be Rule 9.01 subdivision 1(4),

which says that they have to be provided before the omnibus hearing. That's what we did. We provided, I think, five perhaps now -- no, six people that are capable of providing expert testimony where we gave their reports, four of which are current or former troopers, and two are expert witnesses. But all that we disclosed as potential experts.

The State has done none. Now, we're placed in a position where they now get to put in their expert reports after we've already done it, and we're prejudiced. They get to respond to all of ours with respect to those reports. That's just not fair. We should be able -- if anything, the burden of proof is not on us, it's on them. We should be able to respond to their expert reports, if anything. And if they haven't filed those by today, I hope that Your Honor is going to tell them you can't put any experts on the stand, you've missed your deadline.

MR. FREEMAN: I -- I'm just -- I'm trying to make sure I understood. I believe that you did not set an expert deadline.

THE COURT: I did not.

MR. FREEMAN: Thank you.

MR. MADEL: Which is the omnibus hearing then.

THE COURT: Okay. And this is first omnibus,

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yeah? And we're going to have a second omnibus it seems. All right. What else, Mr. Madel, on discovery?

MR. MADEL: Nothing else, Your Honor.

THE COURT: Mr. Freeman, anything on discovery?

MR. FREEMAN: No, just that I've got a couple binders now that I didn't have a few minutes ago, so I believe the defense has provided discovery.

THE COURT: Okay. All right.

MR. HENNEN: Your Honor, for the exhibits, should we offer them now?

THE COURT: Just hang on one sec. Here is what I will say about discovery, because this has been ongoing, right, things have been popping up, people have new ideas, whatever. I need to set a cut off on discovery. We need to be done with this so we can move on. I totally understand in a case like this that discovery takes a while. No problem. As I said at the beginning, this is why we're having omnibus three months out, instead of 28 days out. But we need to be done.

So final -- any discovery motions final, final due by May 10th. Okay? If there are any other discovery motions, bring them -- today is the 29th, I

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can't imagine what's left, but maybe there is something that I'm not aware of -- you have until May 10th. You have two weeks to bring those discovery motions.

Mr. Hennen, you have a nice binder, which we appreciate, with tabs, which we appreciate. Do you want to offer something now?

MR. HENNEN: I would love to, Your Honor.

THE COURT: Okay. What are you offering?

MR. HENNEN: Well, Your Honor, I can offer all of our exhibits now, as they relate to the discovery motions and the probable cause motion, or I can limit it to just the discovery motion, whatever Your Honor prefers.

THE COURT: Okay. Mr. Freeman.

MR. FREEMAN: So, I guess this would be my proposal -- and -- so with the chunking out of the information that's done, would it be simpler for -- and I'll defer to Attorney Hennen here to determine what, if any, of all of the exhibits the Court would want to receive. If the Court says we're going to receive everything, then we can just give you that box, or if you want to go through and say we want 21 to 26, 36, 34 and then he pulls them out and gives them to you, I'll defer to the Court.

But I think most of the documents that are proffered by defense, I don't believe are relevant at this hearing. So I don't -- I would not ask to have them received at this time. But if they're limited to the discovery motion in regards to the information I referenced previously about the public statements, then you can receive those now.

THE COURT: All right. What it sounds like what we have is a mixed bag, right? We have the exhibits that are related to discovery, we have exhibits that are probably related to PC or -- right, or prosecutorial misconduct?

MR. HENNEN: That's right, Your Honor, and some are both.

THE COURT: Right. Okay.

Mr. Hennen, have a seat.

So let's do it this way, why don't I just, kind of, go through the other things on my list and then maybe at the end we'll have a better handle on which of those should be received, rather than doing it piecemeal.

MR. HENNEN: Works for us, Your Honor.

THE COURT: Okay. So, one of the things I also want to talk about is on 4/23 I received, I think it was two pages, a motion to dismiss Count 1. And I

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guess my question about that motion is, is it the defense's position that the Court cannot legally grant this motion?

MR. MADEL: I think that the Supreme Court precedent, yes, it prohibits you from granting that motion. This was a motion because we believe that the Supreme Court's current decision with respect to the merger doctrine is unconstitutional, so --

THE COURT: This is preservation of the issue.

MR. MADEL: Yes, correct.

THE COURT: Okay. That's what I took it as, but you never know.

Mr. Freeman, anything?

MR. FREEMAN: No, nothing.

THE COURT: So, that motion then will be denied today. That's probably the one oral ruling I'm going to make I'm denying the motion to dismiss Count 1 because the Supreme Court has spoken and that issue will remain out there for you.

MR. MADEL: Thank you, Your Honor.

THE COURT: The next thing on my list is the 4/1 motion to dismiss for lack of probable cause, *Florence*. So I asked the attorneys brief the relevance -- to brief 609.066, which is the authorized use of deadly force by peace officers, and the

relevance of that to the probable cause and/or need for a *Florence* hearing. And *Florence* is an unusual remedy, right, that you get a *Florence* hearing. PC motions are not unusual at all but *Florence* hearings are.

So I do have the briefing, I want to thank you very much. This is a legal argument. I was unsure if counsel wanted to make any oral argument today on that issue or do you want just want to stand on the briefs that you filed?

MR. FREEMAN: I'm very comfortable relying on the brief that was filed, Your Honor.

MR. MADEL: I would like to respond to some things in the State's brief.

THE COURT: Okay. Mr. Madel, go ahead.

MR. MADEL: Thank you, Your Honor. So, Judge, there is one thing it appears from the briefing that we both agree on, and that's at page 3 of their brief, is that *Florence* stated forth the -- that quote, unquote, "important question" for Your Honor to rule at. And that's given the facts disclosed by the record, is it fair and reasonable applying Rule 11.03 to require the defendant to stand trial.

Now, that does not say trial on the elements of the crime. It just says trial. On March 18th, in

a letter brief filed with this Court, the Hennepin County Attorney's Office said -- and I'm quoting here -- "A probable cause motion under any scenario contemplated under *State v Florence* is not the form to litigate affirmative defenses." Then we produced a number of cases where appellate courts talked about affirmative defenses being litigated at *Florence* hearings. And now, the State's latest brief now says that's still our argument, except with respect to alibi.

Alibi is an affirmative defense. An alibi is specifically identified in the Rule 9.02 subdivision 1 (5)(e) as an affirmative defense. And alibi shares a very similar requirement with respect to it as self-defense, defense of others, and every other affirmative defense. It's a two-step process. The Supreme Court has said with respect to every affirmative defense the defendant must produce evidence of it, and then once that meets that legal threshold for Your Honor to decide, then the State -- the burden shifts to the State to disprove it -- dis -- and prove the crime beyond a reasonable doubt.

Alibi is not special. You have to produce evidence, then it goes to the other side. Alibi is, specifically, identified by *Florence* in example 3B.

So this notion, in general, that all affirmative defenses are just out is just not true. So what the State then said in their brief was that, well, if you read 11.04 subdivision 1(a), it says, "The Court must determine whether probable cause exists to believe that an offense has been committed and that defendant committed it." And that that second part, "and that the defendant committed it," goes to alibi.

Self-defense and defense of others goes to both. It goes to whether or not an offense has been committed and the defendant committed it. So, it's our position that -- I mean, frankly, that argument with respect to alibi is just, frankly -- it's silly. It's -- it's -- you cannot under 11.04 subdivision 1 -- 1(a) determine whether or not an offense has been committed and that the defendant committed it without determining alibi in the relevant case, which is brought up in *Florence*, and in this case without determining whether or not self-defense and defense of others occurred in this case. How can you possibly do that?

We then brought up the dichotomy of Rule 11.04 and 26.01, where Your Honor knows that in a bench trial, the Supreme Court said, specifically, you have to discuss the elements of the offense. And that's in

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Rule 26.01 subdivision 4. Each element of the offenses is included in 26.01 subdivision 4, but subdivision 11.04 subdivision 1(a) just talks about offense. Then you bring up that Latin term -- I'm going to spare the court reporter saying it, but it starts with "expressio" -- but the inclusion of one thing implies the exclusion of the other. And that's -- there is no response to this from the State. Instead, what they do -- and may I approach, Your Honor?

THE COURT: Okay.

MR. MADEL: Instead what they do is they put in two statements in their brief. And I've given you a chart that puts both of them side by side. In their brief, they say, "Instead, the question is simply this: Given the facts disclosed by the record, is it fair and reasonable to require the defendant to stand trial? Thus, motions to dismiss for lack of probable cause are appropriately denied, where defendant produces witness, who, if believed, would exonerate him." The actual decision says, "Finally, under Rule 11.03, it is here interpreted, adversary procedures will be employed in every case where the defendant, in support of his motion to dismiss, produces witnesses, who, if believed, would exonerate

him."

We've given you now, and there is an additional one in the record that we'll describe when we're doing our proffer with respect to probable cause, but Major Chris Erickson is now an additional declarant, who -- he supervised the team that wrote the policy at the state troopers. He is an existing major today. He wrote in his declaration, I think it's 71 different paragraphs -- 71 paragraphs, 11 pages single spaced, where he comes to the conclusion that Trooper Londregan acted reasonably, did not violate the use of force policy, did not violate the pursuit policy, didn't violate a thing.

We've also given you Halvorson's declaration, which, specifically, said he was the "Trainer A" in the complaint, which was the only thing that the State mentioned with respect to a violation of policy upon which all probable cause rests. And he said that they lied by omission because he said, listen, Trooper Londregan didn't violate a thing.

We've given you two other trainers, said the exact same thing, acted in accordance with his training. We're now giving you in part of our proffer an expert that Hennepin County has used from the East coast, his name is Jack Ryan. And we're giving you

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another expert report from the West coast from Scott DeFoe, who is normally a plaintiff's civil rights expert. Both of whom said the exact same -- came to the exact same conclusion that Trooper Londregan's employment of force was absolutely reasonable under the circumstances.

Rule 11.04 obligates Your Honor to determine whether or not that offense has been committed and that the defendant committed it. But *Florence* in *Rud* -- and I always go back and forth on whether or not I should call it "Rud" or "Rude," but I'm going to call it "Rude" because I knew a guy when I grew up that had a similar name -- it says that if a defendant produces exonerating evidence, the State must show something in the record that it, quote, "Possesses substantial evidence that will be admissible at trial and that would justify denial of a motion for directed verdict of acquittal."

Now, I understand, Your Honor, that in a normal case, you can just look at the complaint -- in the four corners of the complaint and determine that there is probable cause there. I totally understand that. Here, Sergeant Halvorson has said that it's false -- the complaint itself is false. They're inviting you to just look at the four corners of a

document that a sworn law enforcement officer now has said under oath it's false, and they're fine with you determining probable cause on that basis.

We have now come forward with a multitude of exonerating evidence in order to show this. And we think that we're entitled to at least a hearing so they have to put somebody on the stand to say, here, here is what you did wrong. Now, why? Because in your jury instructions that Your Honor provides in every murder case or every case, frankly, where somebody dies or in every case of self-defense, the Supreme Court has said no crime is committed when a person takes the life of another, even intentionally, if the defendant's action is taken as resisting or presenting -- preventing an offense which defendant reasonably believes exposes defendant or another to great death (sic) or bodily harm. No crime is committed in those circumstances.

Well, how can you determine that an offense has been committed if you juxtapose that jury instruction, which has been approved by the Supreme Court in *State v Hare*, that's H-A-R-E, 575 N.W.2d 831, without determining that. And, finally, there is two other things I would like to say on this, Judge. If you assume as we leave here today, that Mr. Wold goes

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down in the atrium of the government center and somebody comes up and tries to steal his briefcase -- grabs him, grabs his briefcase, and starts running off, and one of the law enforcement officers down there sees it. Let's assume that every camera in Minnesota is pointing down at this incident. And the law enforcement officer puts his hand on the person that was trying to steal that from Mr. Wold and pulls him and then arrests him. Any misguided or, frankly, politically-motivated county attorney could charge that law enforcement officer with false imprisonment and assault, disorderly conduct.

Under their argument today, every case of use of force by a law enforcement officer cannot -- has to go straight to trial because you cannot bring up a use of force defense in response to that. That is subverting Your Honor's role. You are to act as that arbiter between the government and the accused. That's exactly why *Florence* and *Rud* said it's so flexible, and the key question, is it fair and reasonable for Trooper Londregan to stand trial based on the exonerating evidence that he has provided. The irony here is thick.

Rud is a really good example where they tried to call a victim of sexual assault and the Supreme

Court rightly said, as every -- I think every court federal or state it said since, you can't use a probable cause hearing in order to get discovery. Repeating a little bit of what I said earlier, we're giving them discovery. I don't even know one witness that is on their side. Why would they say no to this? They're getting a free bite at the apple to every one of our witnesses. We would have to produce some exonerating evidence, including, frankly, Trooper Londregan, who we would have testify at that probable cause hearing. Why would they say no?

The only reason that they're saying no, Judge, is the reality is they know they have nothing and that's why it's so important that Your Honor please take that important question from *Florence* and *Rud* so seriously to ask that key question, the important question that the Supreme Court said: Is it fair and reasonable for him to stand trial based on the record that we produced. And that's why we, respectfully, request that Your Honor have the probable cause hearing. I have nothing further. Thank you.

THE COURT: Mr. Freeman.

MR. FREEMAN: Thank you, Judge. With probable cause challenges, I believe, that probable cause challenges can be brought in cases. And really what

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we're talking about is the manner and the scope, right?

THE COURT: Right.

MR. FREEMAN: So, as -- one of the things that is very nice about the case law in this is that *Florence* is a very instructive piece of law. Not all of our decisions are as instructive. So instructive, Your Honor, that it almost reads like a teacher's manual about how to conduct challenges such as this, laying out certain kinds of examples.

In this case, certainly there can be a probable cause challenge. Certainly, as in many cases that we have, documents are received by the Court. The question then becomes whether we're going to have a hearing with witnesses for cross-examination, and whether or not 609.66 will be available.

Defense has been long on examples -- or long on, sort of, rhetoric about fairness, but has been very short on case support law, case law that supports the concept of 609.66 being available. And that's very much understandable because there isn't, really, any of that available. These types of cases do come before courts. Another matter that I think is super analogous to this -- not the best legal terminology, but I think is super analogous to this -- is

self-defense cases. Those cases come before the Court much more common than these kind of cases. In those cases, again, another affirmative defense.

If the Court would take a concept of having every self-defense-potential thing be available for a *Florence* hearing in which there is cross-examination, it -- as all of the things that are contemplated within the *Florence* decision, all those things that the court carefully examined, as times that would be available, they brought up one affirmative defense, and that's alibi. And that makes all the sense in the world, right? If you were not there, it absolutely makes sense that you should not stand trial. That makes sense.

If there is these highly nuanced discussions about -- for primary aggressor, like in a self-defense case, duty to retreat, or in these types of matters, what something is reasonable and necessary for this person to do, those are very fact-specific nuanced issues. And *Florence* also carefully prescribes the balancing act that a Court must do. We have these two really important principles that are going head to head, right, whether a person should have to face a trial. Also, the very important issue of what is a jury determination.

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This is precisely what *Florence* laid out. And that's, I think, drawing on your judicial experience and wisdom, I think it will become clear after submissions that 609.66 is not appropriate -- the probable cause hearing -- absolutely something that will likely be part of the trial, but that is a trial issue. Thank you.

THE COURT: Okay.

MR. FREEMAN: Oh, and I did -- the other thing that I neglected to say and I got lost a little bit was that the other thing that's very instructive about *Florence* is how many times it states what can be looked at is essential elements of the offense. As the Court is aware, the elements that the State has to prove are subject to the probable cause standard. The thing that's in addition is the affirmative defense, which is not an essential element -- certainly something that in order to find Mr. Londregan guilty beyond a reasonable doubt, if it is proffered that -- that defense, the State would have to overcome that, but it's an not an essential element of the charge. And the court in this decision, the *Florence* decision, was very careful about it's wording and its examples. So, I believe, in this matter that the Court should limit the 609.66 argument. Thank you.

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MR. MADEL: Thank you, Your Honor. So, on one thing I would agree with Mr. Freeman. That in the ordinary case, self-defense and defense of others, you're going to do from the four corners of the complaint, look at the police reports, look at, you know -- and there is some cases saying even the representations of the Hennepin County -- not Hennepin County -- the county attorney's office. In the normal case, you're going to be able to see, listen, there is fact issues here, I'm going to get it go.

What is the fact issue here? The only exonerating -- we have produced exonerating evidence, and there is literally nothing on the other side of the table. That's what makes this case, frankly, so unique. But also that policy, though, too, Judge, that if you're to accept the Hennepin County Attorney's Office's arguments here, the only thing stopping every law enforcement officer between being charged and going straight to trial is the whim of a county attorney. There is no judge that can stop that. And that cannot be the law, and, frankly, it's not.

And I agree, listen, I'm not saying that *Florence* didn't say the elements of the crime, it did. But it also included alibi, which is not the elements

of the crime. And it sounds like Hennepin County Attorney's Office agrees that that is an affirmative defense. So, what's different about alibi? What makes alibi so special that it gets to be determined at a *Florence* hearing but no other affirmative defense does? And, again, when you combine with that with the policy that law enforcement, frankly, every day uses some sort of force, and every day detains somebody and could be prosecuted for that on their argument, that is about as dangerous as it gets.

You stand between the government and the accused. And to quote one of my favorite lawyers, Brendan Sullivan, "You are not a potted plant." You're not there just to watch things happen that the county attorney does. We're asking you to look at that question of *Florence* and analyze the affirmative defense and say answer it. Under the current state of the record, is it fair and reasonable for this man to stand trial? I don't see how any reasonable person on this planet could say that it is.

THE COURT: All right. So the question is have you met your burden, right, on getting a *Florence* hearing. Are there any proffers?

MR. MADEL: Yes. So, Your Honor, we do have a number of proffers, and because there are a number of

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them and because I've been talking so much -- if you go first and I'll go second.

MR. WOLD: Sure.

MR. MADEL: We have -- we broke this up into myself having some proffers, I have Mr. Londregan, Trooper Seide, Trooper Erickson and Major Erickson. Mr. Wold has individuals, and then we left Mr. Hennen to handle the exhibits. So, if it's okay with the Court, we'll break it up that way if it's all right.

THE COURT: Okay. So how do you intend to do the proffer?

MR. MADEL: Mr. Wold -- we can do it anyway Your Honor wants. We have -- obviously have some declarations with respect to those, and -- but with respect to Trooper Londregan, I'm going to orally give you that, Judge.

THE COURT: Okay. So you're just going to tell me -- orally going to tell me what the proffers are?

MR. MADEL: Yes.

THE COURT: You're not going to submit anything in particular?

MR. MADEL: We are going to --

THE COURT: Okay. Additionally.

MR. MADEL: Yes.

THE COURT: Okay. All right.

MR. WOLD: Your Honor, I'll start first with Sergeant Jason Halvorson, he's referred to in the complaint as "Trainer A." Sergeant Halvorson is the use-of-force coordinator for the state patrol. He actually trained Trooper Londregan. Particularly relevant about Jason Halvorson is the fact that he's quoted in the complaint as Trainer A. Upon reading that complaint that's referenced him, he has accused that complaint of being false and dishonest, as being fully out of context in the statement he made.

If the Court recalls in the complaint itself, this is the only reference to expertise challenging the actions of Trooper Londregan, and they indicate that Trooper A (sic) was asked whether a reasonable officer would believe that pointing a gun at a fleeing driver and yelling at the driver to stop would cause the driver to stop. Trainer A said no. And then would ask would it be foreseeable to expect the exact opposite, meaning the driver would continue to leave, and Trainer A responds that it would.

That's -- that's it. That's their only suggestion that Trooper Londregan violated any policy. And after reading that, and in the declaration we'll provide the Court, Mr. Halvorson indicated how that

was totally taken out of context in the 37-page interview he gave to the county attorney's office and the BCA. Neither of the county attorneys mentioned and were present at that hearing are any longer involved in this case. But, the complaint itself was out of context and false.

Trooper Halvorson declared that after reviewing everything he saw, his own grand jury testimony, his -- the declarations of others, the -- the history of training, and the video of this incident, he found that Trooper Londregan violated no policies, no use-of-force policies that he was instructed on, and that his conduct was correct in all respects.

That brings us, kind of -- and I'll just mention the county attorney's expert, Jeff Noble. As the Court may be aware, Jeff Noble was hired by the county attorney within days of this incident -- within days. He was a noted use-of-force expert nationally. He has participated in several -- three I can think of off the top of my head -- cases in Minnesota, even for the county attorney. The county attorney, herself, indicated at the end of August, a month after this incident, that the input of this use-of-force expert would be critical to a charging decision.

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And Mr. Noble -- we -- obviously, the Court is aware of the litigation of the discovery demands we've made to get evidence from Mr. Noble, it was brought up earlier today. But in the report, he provided to the county attorney -- or at least orally to the county attorney in October of 2023, was that on his view of this case, and the report can be a part of this too, but that if Trooper Londregan was acting and used his weapon in the defense of Trooper Seide, then it was a reasonable use of force.

He said he couldn't comment because -- any further because he hadn't talked to Trooper Londregan, and if Trooper Londregan was merely trying to stop the vehicle from going forward, he would have to reexamine his opinion. That's not what the Court will hear in the proffer from Trooper Londregan. Trooper Londregan will say he acted only to protect Trooper Seide and himself. That was proffer regarding Jeff Noble, who then continued and developed his report -- his expert report that he provided to the county attorney with more information they had provided him through December of 2023.

The Court is further aware that -- and that report states the same thing I've just proffered here. After that -- within a month after that, Trooper

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Londregan was charged with second-degree murder and the other offenses here with no mention of the critical evidence of the use-of-force expert and merely mentioned, as I said first about Mr. Halvorson, the out-of-context statement he made about a fleeing vehicle, which he has in his own declaration. We'll say, this wasn't a pursuit issue. This was not a pursuit issue. And what they said about -- and what was out of context about what I said.

Going on to next, I'll proffer on Lieutenant Jonathan Wenzel. Lieutenant Wenzel is the firearms instructor and firearms coordinator for the state patrol. Trooper Wenzel instructed Trooper Londregan at the academy. And in review of the available videos and so forth, Lieutenant Wenzel will testify it appears that the Trooper Londregan acted in accordance with his training and saw no violation of the state patrol use-of-force policy.

Next is another state patrol sergeant, Sergeant Troy Morrell. Sergeant Morrell is recently retired after 25 years with the state patrol. He trained emergency vehicle operations. He was a vehicle contacts coordinator. He trained Trooper Londregan and he trained on the use of deadly force. And based on his review of the videos and --

available, his opinion is Londregan did not violate any use-of-force policies.

We have two expert witnesses that we have -- both have -- have prepared reports that we'll provide to the Court. One is John "Jack" Ryan. Mr. Ryan has been a consultant and an educator since 2002. He has a BS degree in the administration of justice, a master's of science degree in the administration of justice, and a juris doctor degree from Suffolk University. He has reviewed all of the grand jury testimony available in this case. He's quite familiar with *Graham v Connor* and *Tennessee v Garner*. He has consulted on the use of deadly force across the country for over 20 years. He's an educator, a teacher, a writer.

And in his expert opinion, he would testify, one, the use of deadly force by Ryan Londregan was consistent with generally accepted policies, practices, and training and industry standards, as well as the training and policies of the Minnesota State Patrol. Secondly, the resistance of Mr. Cobb placed both Londregan and Seide at risk of serious bodily harm or death, and deadly force became necessary to stop Mr. Cobb.

The second expert, we have noticed and have a

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report for is from Scott DeFoe. Scott DeFoe works at a group called On-Scene Consulting Group from 2013 to the present. He was an LAPD officer from 1989 to 2016. He's a SWAT supervisor, a use-of-force investigator and instructor. He has a bachelor of science from Northeastern University, a master of arts in public administration from California State University, and a master of arts in legal studies from Pepperdine Law School. He's testified as a use-of-force expert in over 60 trials and given over 250 depositions as an expert.

He's read all of the declarations of the state patrol officers that I have mentioned. He's reviewed expert Noble's opinions. He's reviewed the videos and all discovery provided. And he offered opinions from the beginning of this incident to the end. One finding that Officer Seide had a valid reason to stop Mr. Cobb. He then had a high -- cause to conduct a high-risk pull over.

He found that Seide, Erickson, and Londregan used appropriate deescalation tactics. He found that Ryan Patrick Londregan used appropriate, necessary, and reasonable lethal force when he fired two shots at Mr. Cobb. He went on to say Seide, Londregan, and Erickson provided appropriate life-saving measures

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after that fact, and that all of those officers were accurately and properly trained and that's the end of the -- what I have. I'll turn it back over to Mr. Madel.

MR. FREEMAN: Your Honor, at this point, I guess, I want to clarify from the Court. The Court still is determining whether 609.66 is going to be applicable. I don't know how many of these proffers go directly to the issues or they're not relevant until the Court determines that that issue is relevant. I think it is fair to say from -- the issue from where I stand is that the issue the Court can take probable cause under advisement, and that this be submitted has been -- the threshold has been met. It's the manner and then the scope that we're here to determine. Maybe I'm trying to do this in an effort for efficiency of hearing, but I think that, at this point, any of these additional things that are going to be brought to the Court are a little bit premature, as you haven't determined of the scope of the hearing and then it's just -- that avenue, rather than addressing the legal issues before Your Honor. Thank you.

THE COURT: Counsel, can you approach?

(A Bench discussion was held off the record.)

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(The bench discussion concludes.)

THE COURT: Okay. Mr. Freeman, did the State want to make any sort of proffer on this issue of whether or not a *Florence* hearing is appropriate?

MR. FREEMAN: Your Honor, the State in its brief did discuss the manners in which the hearing can be done. We rest on that. I think that the Court in this matter, as most matters of the like, in determining what manner that the *Florence* hearing could be conducted in, I don't think that evidentiary through the examination of witnesses is -- I think in *Florence*, itself, it said that's on a very rare occasion and it's not -- I don't think the preferred method, and also not a method that has standardly taken place, in part, because at the -- the reason you call witnesses is to determine to the credibility of witnesses, generally.

And this matter, at a *Florence* hearing, the credibility of the witnesses is not the tantamount decision of the Court. So, I believe that the manner in which I would propose to the Court for the probable cause determination would be the written submissions, witness statements, et cetera. I know defense has a box full of them. The State also would be submitting information. I would ask leave of the Court under the

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rule to allow grand jury testimony to be received by the Court.

THE COURT: Okay. Mr. Madel.

MR. MADEL: Thank you, Your Honor. With respect to, first, that grand jury testimony. We have provided all that to Your Honor with respect to a previous motion, and Your Honor has that under seal, so you don't need to receive another exhibit of that.

Respecting what Your Honor said at side bar with respect to the proffers, I have five witnesses to proffer. And I am going to try to abbreviate four of them, because four of them have statements, one does not. And the one that does not is my first one, and that's Trooper Londregan. If Your Honor grants the probable cause motion where Trooper Londregan can testify, it is anticipated that his testimony will include but not be limited to the following: Trooper Londregan is a licensed peace officer in the state of Minnesota. His badge number is 532. He reported for his regular shift, 21:00 to 07:00 hours, on July 30, 2023 in the West Metro District for the Minnesota State Patrol. He was in full uniform.

While monitoring the west metro state patrol radio traffic, Trooper Londregan became aware that the Trooper Seide had stopped a vehicle and that the

driver had a, quote, "attempt to locate," quote, associated with him. Trooper Londregan reviewed the KOPS alert, which stands for "keep our police safe" alert. He reviewed the attempt to locate and saw the subject was wanted by the Ramsey County Sheriff's Office, which I'll refer to as the "RCSO," for a felony order for protection violation. He also read that the subject, Ricky Cobb, II, was also designated as a predatory offender. Trooper Londregan --

MR. FREEMAN: Your Honor, I've been trying to be very judicious or patient with the proffers. At this point, it has reached a time that -- I think the information that the Court needed to receive in order to determine if a probable cause challenge was appropriate has been met and that we're getting into superfluous information that is clearly designed for one purpose in mind, and that's not focused on Your Honor at the bench, but focussed rather on who is in -- who is seated in the jury box or a gallery or outside. I think if defense could -- could circumvent or could, actually, respectfully focus on the issues that the Court needs to determine for legal issues and not direct it at external pontification, it would be much appreciated by myself. Thank you.

THE COURT: Okay. Mr. Madel.

MR. MADEL: I thought Your Honor wanted a proffer.

THE COURT: I do, but can we -- can we just maybe reduce the outline a little bit.

MR. MADEL: Okay. I will do my best.

THE COURT: Okay. And if you could speak a little bit slower.

MR. MADEL: Yeah, I apologize to the court reporter, I get yelled at a lot for that. And if I am, just scream, "slower." I'm sorry.

I'm trying to take some time here to just, kind of, go down and see what the -- Trooper Londregan arrived. Trooper Erickson was speaking with the driver at the suspect vehicle's front-side window, and Trooper Seide then advised Trooper Londregan that the driver was, in fact, a suspect wanted by the RCSO for a felony order for protection violation. It also said that the driver was, quote, "amped up."

Trooper Seide then told Trooper Londregan that the RCSO wanted the driver arrested and transported to the Ramsey County jail. They then exited their squad cars. Trooper Seide approached the driver's side, Trooper Londregan approached the front-passenger side window. Trooper Seide began speaking with the driver. Trooper Seide repeatedly requested that the driver

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exit his vehicle. Despite many requests, the driver refused to do so.

After hearing a number of Trooper Seide's lawful commands, Trooper Londregan observed Trooper Seide move his hand out of view and towards the exterior door handle of the driver's door multiple times. To Trooper Londregan, he appeared -- Trooper Seide appeared to be unsuccessfully attempting to open the door, so Trooper Londregan checked the passenger door handle and felt that it was locked. Trooper Londregan then reached through the open passenger-side window and used the electronic locking control to unlock the vehicle's doors at that time.

He then proceeded to open the front passenger door to show Trooper Seide that the doors were now unlocked and to assist Trooper Seide in persuading the driver to exit the vehicle, and ultimately, take him into custody. As Trooper Londregan opened the passenger door, Trooper Londregan noticed the driver move his right hand to the gear shift, place the vehicle in gear, and abruptly accelerate. Trooper Seide was entering the vehicle now through the open driver's door.

At this moment, Trooper Londregan recalled his training and immediately recognized the driver's

conduct posed an immediate threat of great bodily injury and death to Trooper Seide. He feared the driver would drag Trooper Seide to his death. He also feared that the driver would drag Trooper Seide into oncoming traffic or run him over, thus endangering Trooper Seide's life again, not to mention, innocent drivers.

Trooper Londregan drew his service weapon and extended his arms into the vehicle through the open front-passenger door to put himself into a position, if necessary, use deadly force to protect Trooper Seide from great bodily harm or death should the driver continue to accelerate, as Trooper Seide moved further inside the vehicle. The driver stopped the vehicle momentarily. Trooper Londregan then observed Trooper Seide's head, shoulders, torso, and arms now inside the vehicle and over the driver's body. Trooper Londregan ordered the driver to get out of the car now in a loud and clear voice. The driver responded by reaching for Trooper Londregan's service weapon his with his right hand, attempting to disarm him, as the driver, again, abruptly accelerated the vehicle with, approximately, one-half of Trooper Seide's body inside of the vehicle.

Trooper Londregan observed Trooper Seide, who

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is now in imminent danger of being dragged by the vehicle. At that moment, Trooper Londregan knew that Trooper Seide and he were in imminent danger of great bodily injury or death. The driver was using his vehicle as a deadly weapon against Trooper Seide and Trooper Londregan. Which we would also note, Your Honor, the Supreme Court in 2024, in *State v Abdus-Salam*, 1 N.W.3d 871, concluded that a vehicle was a dangerous weapon.

In the extremely short amount of time available, Trooper Londregan concluded that it was necessary for him to prevent the driver from continuing to control and use his vehicle as a deadly weapon. To prevent Trooper Seide and Trooper Londregan incurring great bodily injury or death, Trooper Londregan aimed his service weapon at the driver's right high center of mass and pelvic area, so as not to shoot Trooper Seide. He discharged his duty weapon twice. Force of the vehicle's acceleration caused Trooper Londregan to be rejected from the vehicle and thrown to the ground. As he reoriented himself, Trooper Londregan witnessed the suspect vehicle, no longer accelerating, roll onto the grass beyond the right shoulder. He also saw Trooper Seide on the ground and that he was moving.

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I'm abbreviating here again. While still on the scene, Trooper Londregan remembers that Trooper Seide asked him if Trooper Londregan shot the driver, Trooper Londregan nodded his head yes; Trooper Seide responded, "thanks." He will testify regarding stop sticks -- wrongfully referred to as "stop strips" by the Hennepin County Attorney's Office -- he will testify why those would not have worked.

I'm abbreviating again. He'll also testify to other facts that are incorrect in the State's complaint in this case. He'll also address and refute the Hennepin County Attorney's Office allegation that shooting Mr. Cobb did not prevent the vehicle from moving forward or Trooper Seide from being dragged. Indeed, you can hear on the video, which is one of our exhibits that we'll proffer, Your Honor, Trooper Seide, as he is running back to the car saying, "I just got f'ing" -- he said the actual word -- "dragged."

In addition to those then, Judge, and I'm abbreviating our proffer that I could provide the Court regarding Trooper Londregan's testimony, we also proffer Major Chris Erickson, who has been a licensed peace officer since 1992. I referenced his declaration earlier. It's 71 paragraphs where he

concludes that, "Trooper Londregan's use of deadly force was authorized by Minnesota State Patrol policy. A reasonable officer in the same situation, based upon the totality of circumstances described above, without the benefit of hindsight, considering the rapidly evolving set of circumstances, would have been in great fear of bodily injury or death, and therefore, would be justified in the use of deadly force."

Also proffering the statements made to the Hennepin County Attorney, both in written form and in oral form, as well as before the grand jury, including Trooper Seide's testimony that Ryan Londregan saved -- I'm sorry -- that Ryan Londregan saved his life on July 31, 2023.

Finally, we would -- and I'm hoping that this would be unnecessary, but we also would proffer the declarations and expert report of Alan Salmon, he is another expert witness that we have, Your Honor. He is a video expert that -- in one of the exhibits that we provided Your Honor is a screen with four different viewpoints, a body camera of Londregan, Seide, and Erickson, and the squad video of Londregan. And Salmon would testify about how he oriented those in order to match time as best as he could, because the frame rate is different on those -- on those videos.

With that, Your Honor, I would note, again, that is an abbreviated proffer with respect to what Trooper Londregan would testify if a probable cause hearing is granted.

THE COURT: Mr. Freeman.

MR. FREEMAN: Your Honor, I think it's fair to characterize, from my standpoint, that the proffer that was made mostly goes to the -- whether or not to be admissible by the Court's ruling as the 609.066, and also is steep with credibility determinations that is the province of the jury. And, Your Honor, if -- at some point, I would like to address the Court as -- in regards to the continuation of the counsel in this -- in this case and who will be representing the State in this matter, but I will defer to the Court as to that time. Thank you.

THE COURT: Okay. So what I just heard had to do with whether or not you get a *Florence* hearing at all, but also subject of PC. So my question to counsel is -- and I will make a decision on whether you get a hearing and call witnesses or not and I'll get that out to you. But let's play both scenarios. Obviously, if I do allow you to have a hearing and call witnesses, then I'm going to hear more in depth what I just heard from Mr. Madel and Mr. Wold. If I

say no, I also already know what I have. So my question is this: On this issue of PC, if we were to have another hearing of any kind on PC, what would I be getting at that point that I don't already have right now? In other words, do we need another hearing on probable cause, or based on what you have all have just told me and any brief you want to submit on PC, what else do I need?

MR. FREEMAN: Your Honor, I would ask that the Court allow, in this respect, that the State would have the ability to put together exhibits like we do most of these kind of probable cause hearings and provide that the Court for your analysis. Sounds like defense has that ready and the State would also.

THE COURT: Okay. So, I mean, it does sound like defense is ready. You're not ready with your exhibits, we can allow time for that. But, again, what else -- then once you do that, A, how long will you need, and once we have those exhibits that can be offered at our next whatever appearance, what else do we need other than for me to receive briefs on this, to the extent you want to?

MR. FREEMAN: Sure. I would anticipate the Court receiving pretty standard items in these kind of matters. The police reports would be one of things

that would be offered to Your Honor. With permission from the Court, the grand jury testimony would be received by Your Honor, also any videos and photographs. That's what I would anticipate, if there was any change, I would apprise the Court of that.

THE COURT: Okay.

MR. FREEMAN: And, Your Honor, then because the Court did indicate in terms of scheduling and other discussions in regards to that --

MR. MADEL: Can I respond just to what you just said, is that okay? Or were you going to go on to something else?

MR. FREEMAN: Go ahead.

MR. MADEL: We might be able to shorten that up, Judge. What I was just thinking is that with respect to everything that Mr. Freeman just indicated, for the purposes of probable cause, we're not going to object to anything that he just identified. So, if it would be easier for Your Honor and the Court's schedule, what you could just order the county attorney's office to do is say, okay, by this date, give the defense a list of the exhibits like they gave you. And then, we -- order us to meet and confer and we might just look at that entire list and say for probable cause purposes, it's all fine. We don't need

to have another hearing on that, Judge, and it might just make it easier for you. I anticipate -- like everything that Mr. Freeman just said, we don't care. It's -- it's going to be admissible for your purposes in order to determine probable cause, because probable cause is more or less everything that you can, kind of, look at, including reliable hearsay. And I think Your Honor's been on the bench long enough that we can trust that you know what reliable hearsay is. So, I don't think I need to argue that to you. So, I think we can just short circuit that.

THE COURT: Okay. I assume you're going to want to brief this, right?

MR. FREEMAN: Yes.

THE COURT: Okay. How long do you think you need?

MR. FREEMAN: So, Your Honor, and I did discuss --

THE COURT: Initial roll in to your next comment, I think.

MR. FREEMAN: Thank you. And I did address this with defense and Your Honor outside off the record. But I will put on the record that in this matter, the State is assembling a new team to handle this matter. As I prefaced the discussion to the

Court at the beginning of the hearing, this is my one hearing in regards to this case in my managerial role in the office. This team that will be taking up the case is made up of former federal prosecutors from the law firm of Steptoe, LLP. They are equipped and designed to handle prosecutions in a uniquely resource-intensive case. These former federal prosecutors will be deputized as special assistant Hennepin County attorneys. And I do have the list of attorneys and a little bit of their CVs, but I don't think I need to state that on the record right now.

THE COURT: So the question then is, Mr. Freeman, how quickly is this transition going to happen?

MR. FREEMAN: The transition should happen very shortly and we expect that the certificates of appearances will be filed later this week. They did send up available continued omnibus dates, as well as trial dates, because I did indicate that this Court likes to set dates and likes to have dates available. So we have some of those dates available, Judge.

THE COURT: All right. Well let's hold that thought for one moment. We also have a motion to dismiss for prosecutorial misconduct. I would imagine, Mr. Freeman, you're going to let the new

folks handle as well?

MR. FREEMAN: Certainly am, Judge.

THE COURT: Okay. Well, I mean I have a number of questions related to that. For example, what specific facts support finding of misconduct, what's the legal basis for the motion, what's the harm, what's the standard for proving misconduct, and does the defense need to meet a specific burden before they can call witnesses on this issue, and if so, what is the burden? And then if misconduct is proved, what's the remedy, right? So there are a lot of questions here and it doesn't sound like, Mr. Freeman, you're prepared to that address that today.

Mr. Madel, what do you want to say?

MR. MADEL: Your Honor, I think on that particular motion, there is really only one live witness from our perspective that's really relevant to that, and that's Sergeant Halvorson. But with respect to him, we have a declaration. And so, if it pleases the Court, we could just brief this one, as opposed to asking Your Honor to engage in live testimony in addition to it. Because if you grant the probable cause hearing, he'll testify at that anyway.

THE COURT: All right. Well, it sounds like we're going to have a continued omnibus because we're

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going to have new counsel. So, the question becomes when is it going to be and what are we going to do there. Briefing needs to be done on the misconduct issue and on the PC issue. Does counsel have some sort of thought about when we should set this omnibus, and, you know, as Mr. Freeman says, I'm not a super big fan of dragging feet or having people come in for hearings that are unnecessary, but because we're going to have new counsel, I'm wondering do we want to have a quick appearance just so the new folks can appear in a couple of weeks? You all can pick today your omnibus date, and if that doesn't work or something, we can alter it if we need to.

What I have for omnibus is -- my staff advises me any day the weeks of May 20th or May 28th.

MR. WOLD: May 28th?

THE COURT: Mr. Wold has a clear preference.

MR. WOLD: No, I didn't hear.

THE COURT: The week of May 20th, any day. I will clear my calendar for you all. All right. May 20th, any day. May 28th week, any day. June 10th, Monday through Thursday. So, what -- I'm going to give you all a minute to talk amongst yourselves because you have three lawyers at your table alone.

MR. FREEMAN: The June 10th week is available for Steptoe.

THE COURT: All right, then.

MR. MADEL: I don't want to be a pain, that's fine.

THE COURT: You what?

MR. MADEL: I don't want to be a pain, that's fine.

THE COURT: One more time, Mr. Madel.

MR. MADEL: I'll be a bigger pain later on.

THE COURT: I'll take that as a promise.

Okay. So, June 10th. What day do you want?

MR. MADEL: Any day is fine.

MR. FREEMAN: That's -- they just indicated availability the week of June 10th, so I believe any day would work.

THE COURT: Who is this "they," how many people are we talking about? I want to know how many people's schedules I need to work around.

MR. FREEMAN: Sure. My indication right now is they will have at least four attorneys on the matter.

THE COURT: Okay. Well, Mr. Freeman, you can tell them for me, I'm not going to try to figure out seven people's schedules.

MR. FREEMAN: No. And that's why, Judge, when they outlined this, they outlined availability for the entire team.

THE COURT: Just want to make that clear right up front.

MR. MADEL: Judge, we can make ourselves available any day that week that you want.

THE COURT: Monday, June 10th. So that's going to be our second omnibus, why don't we just call it that. So then, I guess my question is this, do we want to come in in two weeks so new counsel can appear on the case, we can make sure the State works, we can see how long people need for briefs. Do you have any dates available, Mr. Freeman?

MR. FREEMAN: Sorry, Judge, I just was conferring. In terms of the June 10th week, I do make this request that the family of Mr. Cobb is not available the week of June 10th. Are you available the week of June 17th, which counsel is also available for?

THE COURT: Well, here is the thing, I don't want to kick this can super far down the road. Why don't you back up to May 28th?

MR. FREEMAN: June 10th was the first week available. That's fine, June 10th. We can keep it at

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June 10th. And I did not hear the last thing you just said.

THE COURT: June 10th is a ways out, right, we're at April 29th. So what I want is the folks that are going to handle this case to show up in my courtroom, right? And let's make sure June 10th still works. We're going to pick a trial date too, let's make sure that works. And then I want to know from those folks, how long are they going to get up to speed and brief these -- the PC issue and the prosecutorial misconduct issue. We have what we need on that, except for briefing.

THE CLERK: We can do the afternoon of May 13th, 14th, or 15th.

THE COURT: Okay. Can those folks make an appearance in the afternoon on one of those days so we can see where we're at? I don't expect it to take long, I just want to know where we're at and make sure we're on track.

MR. FREEMAN: Your Honor, as to those dates, I do not have those dates as listed. What I would ask is that -- the Court's indulgence, if we could schedule this via email, I will confer with them to see their availability on the 13th, 14th, or 15th.

THE COURT: That's fine.

MR. FREEMAN: Thank you.

THE COURT: But keep that in your back pocket. Those are the dates that I'm, kind of, looking at.

MR. FREEMAN: I have those dates written down and I'll keep it in the front pocket.

THE COURT: So, maybe what can happen is the attorneys can confer and tell me a date in the next two weeks or so that work. I am unavailable next week. Okay, trial. How long is this going to take, ballpark, Mr. Wold? Have a seat, it's easier if you use that mic, but I appreciate you using proper courtroom decorum.

MR. WOLD: Thank you. I -- I don't know what the prosecution's case will be. We will certainly present a case that would be a matter of days, certainly, by the defense. As far as a trial date goes, I would -- we would -- we will make a speedy trial motion depending on the Court's ruling on our *Florence* hearing. So, perhaps, setting a trial date in -- on the 13th, 14th, or 15th when other counsel is here might be --

THE COURT: I can live with that, waiting until we have everybody in the courtroom. But please be thinking of at least a month that would be

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appropriate. You know you can demand speedy at any time.

MR. WOLD: Sure.

THE COURT: But I think we should get a date that seems realistic, where you all have the time, you know, it's going to take to try it. As I indicated, I will work more or less around you all. I know you all might find this shocking, but I do have other cases, a couple hundred of them. But I understand there are a lot of moving parts, so we'll try to make this as painless as possible in terms of setting dates. Give me one minute.

(Pause.)

THE COURT: Okay. So, exhibits -- or did you want to say something else, Mr. Wold?

MR. WOLD: No. I want -- besides exhibits, we -- May 10th is the deadline for discovery. We would ask, again, that that deadline be the same for notice of experts by the State. We're -- obviously, with potential of a speedy trial, that's -- that's essential for the defense.

THE COURT: Okay. And I'm -- I'm going to deny that request right now and I'll tell you why. I'm going to wait until we get new counsel on here, because I don't know what their plan is. So we will

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address it at the very next hearing in terms of a deadline for experts. Deadline for discovery remains May 10th. All right. The only exception is -- let's find out what's happening with experts once we get the new team on the case. So I'll make a note to revisit that with you all. I'm sure you all will remind me at that time.

Okay. Mr. Freeman, you indicated there were no -- there was no objection to certain of these exhibits, right?

MR. FREEMAN: Yes, Judge. I think what I indicated was that part of the issue with some of the exhibits is that it's placed into the court's system, and that they're disseminated that way. So the ones that I didn't have any objection to were the issues that are already in the public sphere. I think, though, what I would say at this particular point in time, is until the Court makes ruling as to the motion for prosecutorial misconduct or that is briefed, or the issue of 609.066 as to the *Florence* hearing, all of the exhibits that are offered by defense are premature at this time, so I'd object to any of their receipt.

THE COURT: So it sounded like, if I wrote the numbers down correctly, and I think Mr. Hennen had

indicated 21 through 36 and 90, right?

MR. HENNEN: Those all relate to the motion to compel discovery, external communications with the media.

THE COURT: Let me stop you there.

You didn't have an objection to those; is that right?

MR. FREEMAN: That's correct.

THE COURT: Those I can receive, and I'll take those today and we'll put them in. With respect to the rest of them, I will take them -- I'll take your binder and I will mark them, but I'm not going to officially receive those right now. All right.

Go ahead, Mr. Hennen.

MR. HENNEN: So the other pending discovery motions there are things that aren't in 21 through 36 and 90 that relate together other pending motions.

THE COURT: Of discovery?

MR. HENNEN: Correct, Your Honor.

THE COURT: Okay.

MR. HENNEN: For example, there are -- 37 is the press release from the Hennepin County Attorney's Office, dated August 21st, 2023. There is quite a few things that are already public.

THE COURT: Okay. Then let's do this, rather

than sit here and do it on the record. I'm going to take all these and mark them. I will receive today, as exhibits, the ones that there is no objection to. So, Mr. Freeman, you're going to have to go through this list and then you all can let me know by email which ones there is no objection, the ones relating to the discovery, most likely, and what's already in the public domain. The rest I will take and mark, but they're not going to be -- I'm just going to sit on them until we meet again.

MR. HENNEN: One brief follow-up question. Your Honor mentioned that there is going to be briefing on some of these motions. As Your Honor knows, under the Court's -- the Court's case management orders, we're not allowed cite exhibits unless they've been accepted into evidence by the Court, so we're at a little bit of a loss on how we're supposed to brief if we don't know what exhibits are in or not.

THE COURT: Okay. Hopefully, we're going to know what exhibits are in by the time I see you next. At least we'll have -- we'll have whittled them down. You all can write your briefs however you want to write your brief. And I would say please don't wait -- and I know you all, you've been thinking about this

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for a very long time and you have -- probably it's written in your head already. Feel free to write your brief, we're just not filing or anything or submitting anything until I tell you it's okay. All right. Until I -- until we have our hearing I take it from you and tell you you're good to go on filing your actual brief into the record, okay?

MR. WOLD: Your Honor, just as Mr. Madel said -- and we abbreviated the argument on the prosecutorial misconduct motion -- but necessary for that is the declaration of Mr. Halvorson. And so, if that could be included as an exhibit now, that would solve that problem.

THE COURT: Objection to that, Mr. Freeman?

MR. FREEMAN: Yes, Judge. I believe it -- as the Court has ruled, we have the legal arguments, and then we have the supporting documentation, so I think that should be maintained in the order. Just in terms of scheduling, I just received information. The May 10th date does not work for Steptoe, but they can do May 15th.

THE COURT: That's Friday?

MR. FREEMAN: I believe so.

THE COURT: Okay. So let's see if that works for defense. May 15th?

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MR. WOLD: The 15th is a Wednesday, but that works for us.

THE COURT: Let me see if it works for me now. All right. May 15th at 1:00 p.m. start?

MR. FREEMAN: Thank you.

THE COURT: Which time do you want?

MR. MADEL: 1:30 would be great.

THE COURT: So, here is what we're going to do: On the exhibits, in all fairness, this just came out this morning.

Mr. Freeman, I'm going to give you a chance to look at this, tell me what you object to. Whatever is not agreed upon, we'll save for our very next appearance. Whatever is agreed upon, I'll just put those in.

MR. MADEL: They've had that since last Monday, they've had it a week. It's just you that is it seeing it now.

THE COURT: I'm always the last to know, Mr. Madel.

MR. FREEMAN: It's absolutely correct. They provided the list, they just provided the documentation this weekend, I think, Saturday, and the files today.

THE COURT: Well, I was handed this

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ten minutes before I walked in the courtroom. All right. June 10th at 9:00 and May 15th at 1:30. So I'll see everybody on the 15th, we can talk about whatever remaining exhibits are there and when your briefs are going to come in and all that good stuff.

Mr. Hennen.

MR. HENNEN: I'm sorry, Your Honor, one last thing. We made some proffers about the expected witness testimony would be. To the extent the exhibits aren't accepted, we just -- I was, originally, planning on proffering exhibits and offering a description of them. I don't know if you want to still -- Your Honor would want to do that now, or if I can reference the index or maybe file an index that says here is what we would offer with a brief description. Whatever Your Honor's preference is.

THE COURT: One more time, Mr. Hennen.

MR. MADEL: What we're looking at -- what Mr. Hennen is, rightfully, saying is that if the motion is denied, we want to have something in the record that shows that we proffered all of this. So, if its granted this is moot, but we need to proffer all of those. Reading Your Honor right now, you do not want Mr. Hennen to describe each one of these documents.

THE COURT: That would be correct.

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MR. MADEL: What should we do with respect to that exhibit list, should we file it, should we --

THE CLERK: We can make anything that's not accepted as, like, a substantive exhibit as a court exhibit to be kept in the record for purposes of appeal.

MR. MADEL: There we go, that's fine.

MR. FREEMAN: Yeah. That would be acceptable, a court exhibit for those purposes.

THE COURT: Does that help you out, Mr. Hennen?

MR. HENNEN: Yes, Your Honor. Thank you.

THE COURT: All right. Is there anything else for the record today? Let me start with the State, Mr. Freeman?

MR. FREEMAN: No, Your Honor. Thank you.

THE COURT: Defense, Mr. Madel, Mr. Wold, Mr. Hennen?

MR. MADEL: Nothing, Your Honor.

MR. WOLD: No, Your Honor. Thank you.

THE COURT: Okay. 1:30 on the 15th, everyone. Mark your calendars for 6/10. Please bring your calendars to set trial at the next appearance. Thank you, everybody. We're adjourned.

(Court was adjourned for the day at 11:11 a.m.)

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REPORTER'S CERTIFICATE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I, Greta Ellingson, an Official Court Reporter, in and for the Fourth Judicial District of the State of Minnesota, do hereby certify that I have transcribed the foregoing transcript stenographically, and that the foregoing pages constitute a true and correct transcript of the proceedings taken in connection with the above-entitled matter.

Dated and signed the 1st day of May, 2024.

/s/ Greta Ellingson

Greta Ellingson, Official Court Reporter
C859 Government Center
300 South Sixth Street
Minneapolis, Minnesota 55487
612-348-3571

EXHIBIT 49

PLEASE NOTE:

Grand jury materials are protected from public disclosure under Minnesota Rule of Criminal Procedure 18.07.

On June 28, 2024, the Hennepin County Attorney's Office (HCAO) asked the court for permission to disclose the grand jury transcript to the public.

On July 19, 2024, the court denied that request. For that reason, the HCAO is not allowed to release the grand jury transcript to the public and must redact references to grand jury materials in this exhibit.

Kerr Putney
Security Global Collaborators, LLC.
1646 West Highway 160
Suite 105-331
Fort Mill, South Carolina 29708

Opinion Letter

May 31, 2024

Hennepin County Special Prosecutors
c/o Steptoe LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

Re: State of Minnesota v. Trooper Ryan Londregan, Case number: 27-CR-24-1844

Dear Hennepin County Special Prosecutors:

At your request, I have reviewed the materials relating to the Minnesota State Patrol (MSP) Trooper case involving the shooting death of Ricky Cobb. I reviewed this case to determine if the deadly use of force by Trooper Londregan was reasonable and necessary, and if the law enforcement control tactics used during the incident were aligned with best policing practices. After reviewing the materials received (listed in the attached Appendix), it is my professional opinion, based on the totality of the circumstances, that the use of deadly force by Trooper Londregan was objectively and reasonably necessary, and within the legal and departmental standards for using deadly force. I also found, however, that the MSP policies, training and practices require updating and modification as I outline below.

Incident

On July 31, 2023, at about 1:51 a.m., Minnesota State Patrol Trooper Seide made an evening traffic stop on Mr. Ricky Cobb for driving a motor vehicle without illuminated rear taillights as required by Minnesota State law. According to Trooper Seide, upon initiating the traffic stop, he saw a KOPS (Keep Our Police Safe) "critical hit" alert out of Ramsey County (a nearby law enforcement jurisdiction) on his in-car computer for the vehicle he had stopped. According to Trooper Seide, he engaged in a brief conversation with Mr. Ricky Cobb. Mr. Cobb gave Trooper Seide his driver's license when requested to do so. According to Trooper Seide, Mr. Cobb explained that he must have accidentally bumped the light switch with his knee which may have turned off the rear lights.

Trooper Erickson arrived on the scene of the traffic stop to assist Trooper Seide. Trooper Londregan arrived approximately 20 minutes later. Trooper Seide told the other troopers that he confirmed with Ramsey County that they wanted Mr. Cobb arrested for the felony protection order that caused the "critical hit" alert. Trooper Seide told the other troopers of his intent to arrest Mr. Cobb.

Trooper Erickson positioned himself behind Trooper Seide at the rear driver's side of Mr. Cobb's vehicle. Trooper Londregan positioned himself at the front passenger side door. Trooper Seide began speaking with Mr. Cobb to convince him to get out of his vehicle because they had "some stuff to talk about." Mr. Cobb and Trooper Seide continued a back-and-forth conversation about why the trooper was trying to convince Mr. Cobb to step out of his vehicle. Trooper Seide asked for his keys repeatedly and Mr. Cobb refused the requests. Mr. Cobb said "y'all pulled me over for my headlights" and Trooper Seide told him that "we are already past that". Trooper Seide asked Mr. Cobb to "step out of the vehicle," but again Mr. Cobb refused. Trooper Londregan reached into the opened passenger side window and unlocked the automatic door locks and began opening the passenger side door. As Trooper Seide opened the unlocked driver's side door, Mr. Cobb put the car in drive and the car lurched forward. My analysis focused on the critical 5 minutes of the stop, though the entire stop took approximately 20 minutes. Trooper Londregan was not involved in the conversations between Troopers Seide and Erickson.

The car stopped abruptly as Trooper Seide was leaning into the vehicle in an attempt to unbuckle Mr. Cobb's seatbelt to extract him from the vehicle. At that point, Trooper Seide's torso was in the interior of the vehicle and Trooper Londregan was leaning into the door frame of the passenger side of the vehicle as he drew his service weapon and pointed it at Mr. Cobb and yelled, "get out of the car now!"

The taillights began to dim as the vehicle accelerated forward. Trooper Londregan fired his service weapon immediately after yelling "get out of the car now," and both troopers were pulled forward by the vehicle's momentum causing them to fall to the ground. Mr. Cobb's vehicle sped away as all three troopers ran briefly on foot behind the vehicle. The troopers ran back to their patrol vehicles and followed Mr. Cobb's vehicle.

The troopers encountered Mr. Cobb's vehicle crashed into the side of the median roughly one-quarter of a mile away from the initial scene of the traffic stop. The troopers extracted Mr. Cobb from the vehicle and rendered aid. Mr. Cobb's injuries were fatal.

Legal Standard Review

Tennessee v. Garner, 471 U.S. 1 (1985)

The legal standard for determining when a law enforcement officer may use deadly force to prevent the escape of a fleeing suspect was established by the *Tennessee v. Garner* case. The Court held that "under the Fourth Amendment of the U.S. Constitution, a police officer may use deadly force to prevent the escape of a fleeing suspect only if the officer has a good-faith belief that the suspect poses a significant threat of death or serious physical injury to the officer or others."

Best practices in law enforcement training focus on whether the law enforcement officer "has a good-faith belief" that a suspect by his or her actions poses "a significant threat of death or serious physical injury to the officer or others." Best practices in law enforcement ensure that officers fully understand and can demonstrate their ability to interpret and apply this concept. In this case, the critical test is to determine the significance of the perceived threat from the fleeing

vehicle (driven by Mr. Cobb) to Troopers Seide and Londregan at the moment deadly force was applied and whether that level of force was objectively reasonable and necessary given all relevant factors known to the trooper.

Graham v. Connor, 490 U.S. 386 (1989)

The legal standard for determining the reasonableness of force used during a detention was established in 1989 by the United States Supreme Court case in *Graham v. Connor*, 490 U.S. 386 (1989). The Court found that:

> "The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation."

Best practices in law enforcement training focus on whether "a reasonable officer" would make a similar decision to use the level of force deployed given the relevant circumstances known to the officer at the "split-second" the officer is forced to use the level of force chosen. The Court understood the immediacy of the need for making the decision without the luxury of hindsight. Nonetheless, the Court established that the level of force used must meet the standard of "objectively reasonable." In this case involving the actions of Mr. Cobb and Trooper Londregan, the critical test is whether the use of deadly force was objectively reasonable given the circumstances at the time deadly force was used.

Legal Application

Given the holdings by the United States Supreme Court in *Tennessee v. Garner* and *Graham v. Connor*, this use of force incident must be viewed in terms of the significance of the perceived threat of death or bodily injury and the objective reasonableness of Trooper Londregan's use of deadly force against Mr. Cobb. Troopers Seide and Erickson gave statements that provide context to their perception of the threat posed during the moments prior to the shooting. Trooper Londregan's counsel, Mr. Madel, gave a representation of his anticipated testimony which was reviewed as well. In addition to Trooper Londregan's anticipated statement (given by Mr. Madel), the statements of Troopers Seide and Erickson are relevant to explaining the basis of my opinion regarding whether "a reasonable officer" would make a similar decision to use deadly force. The relevant highlights of the statements by Troopers Seide, Erickson, and Londregan (as presented by his counsel) are listed below.

<u>Trooper Seide</u>

- Trooper initiating the stop of Mr. Cobb:
    - Trooper Seide stated that he was "positioned stationary on ISTH 94 facing northbound in the median near Broadway Ave. At approximately 0150, a

silver/grey Ford Fusion passed my location with no rear lights illuminated,"

- Seide explained as he "closed the distance to the vehicle, I could read the displayed Minnesota license plate DBF402. I entered the information into my CAD system and began to close the distance behind the vehicle,"
- Upon the vehicle stopping, Trooper Seide received a "critical hit" on his in-car computer,
- Trooper Seide stated that he approached Cobb's vehicle and obtained his driver's license from him and he "could tell that Cobb had a defensive nature and appeared to be agitated,"

    - NOTE: At this point in the encounter, Trooper Seide perceived a defensive, agitated posture by Mr. Cobb.

- According to the trooper, Cobb explained that he must have inadvertently bumped the light switch with his knee causing it to turn off his rear lights,
- Seide explained that he returned to his vehicle and "clicked on the critical information section which provided an informational alert KOPS (Keep Our Police Safe) on the vehicle. I could see the informational alert was from Ramsey County regarding a felony OFP (Order for Protection) violation,"
- Trooper Seide stated that he "requested Trooper Erickson to go to Cobb and keep him calm while I waited for Ramsey County to get back to me,"

    - NOTE: This appears to be an attempt to de-escalate the situation given Mr. Cobb was already perceived to be in an "agitated" state by Trooper Seide,

- Trooper Londregan arrived on the scene and was told about "Cobb's demeanor" by Trooper Seide,
- Prior to approaching Cobb's vehicle the second time, Trooper Seide explained that he told the other troopers that an arrest was authorized by Ramsey County,
- Trooper Seide approached the driver's side of the vehicle, Trooper Londregan approached from the passenger's side, while Trooper Erickson remained at the rear of the vehicle's rear quarter panel on the driver's side,

    - NOTE: Trooper Seide can be heard on the body worn camera footage explicitly stating that the "hold" was not a warrant for arrest when asked by Mr. Cobb about this issue.

- At the driver's side window, Trooper Seide asked Cobb "to step out of the vehicle. Cobb became verbally defiant and was not complying with my requests,"
- According to Trooper Seide, Cobb became more agitated "as I peacefully continued to request his compliance with my requests,"
- After repeated attempts to gain compliance with Cobb, Trooper Seide "advised him that my request was a lawful order,"
- Trooper Seide explained that he "noted that Cobb's deflection of requests and failure to make an attempt to comply were consistent with someone who is preparing to flee or fight."

- NOTE: At this point, Trooper Seide has decided that further requests for compliance would probably be futile.

- Seide explained that Trooper Londregan opened the front passenger side door illuminating the interior of the vehicle,

  - NOTE: This action by Londregan allowed Trooper Seide to open the driver's side door, but also happened immediately before Mr. Cobb's vehicle "lurched forward" as described below. This action did not serve to further de-escalate the situation.

- According to Trooper Seide, as he started opening the driver's door, he saw Mr. Cobb reach "for the gear shifter and put the vehicle into drive. I knew at this time Cobb was actively making an attempt to flee, escalating the event,"
- Seide explained that the vehicle "lurched forward" as he was opening the driver's door,
- Trooper Seide stated that he "entered the vehicle to physically remove Cobb from the vehicle and with my upper body now inside of the vehicle, I attempt to gain physical control of Cobb,"

  - NOTE: This action was an attempt to "gain physical control" to extract Mr. Cobb from the vehicle to prevent him from fleeing.
  - NOTE: Ideally, the "distraction technique" described by Sergeant Halvorson (in his statement below) could have been employed to directly align with the training troopers receive for extractions which is best practices in law enforcement training – pushing the driver's head to one side to distract the driver's attention from the roadway.

- Trooper Seide stated that "At the same time, I witnessed Trooper Londregan "enter the vehicle on the passenger side with his gun drawn and pointed at Cobb. Due to my close proximity to Cobb, I decided not to draw my service weapon because I did not want to introduce my gun into a physical altercation with him as I was afraid that he could grab my gun and use it against me or my partners,"
- According to Seide, his "intention was to keep him from fleeing or doing something to hurt me or my partners,"
- That is when Seide said he heard Trooper Londregan yell at Cobb to "get out of the car now" and he "could feel the vehicle accelerate forward,"
- "As the vehicle accelerated, I started feeling myself getting pulled with the vehicle. I feared for my safety and my life as Cobb accelerated with me half inside the vehicle," according to Trooper Seide.
- Seide explained that "At that time, I knew that Trooper Londregan and I were in danger of being run over by Cobb's car, being hit by an oncoming car on the highway, or otherwise being dragged away at a high rate of speed,"

  - NOTE: This point explicitly describes the trooper's perspective on the concepts of imminent danger and the likelihood of serious bodily harm or

death.

- Seide explained that he "heard at least one gunshot" and "continued to try and maintain my balance as Cobb accelerated," and "eventually I lost my footing and fell violently to the ground."

    - NOTE: Trooper Seide described his belief that the accelerating vehicle could run over or drag him or Trooper Londregan,
    - NOTE: Trooper Seide objectively and reasonably believed that being dragged by or run over by the fleeing vehicle could cause "great bodily harm or death" at that moment.

Trooper Erickson

- Trooper Erickson was in his patrol vehicle beside Trooper Seide's vehicle when Mr. Cobb's vehicle passed them without taillights illuminated while traveling on Interstate 94
- Erickson was the second trooper on the scene to back up Trooper Siede
    - Trooper Erickson explained that Trooper Seide was in his patrol vehicle in a stationary position observing traffic with Trooper Erickson
    - Erickson stated that Trooper Seide drove after Mr. Cobb's vehicle to conduct a traffic stop,
    - "A short time later, dispatch advised Trooper Seide that there was an informational alert in regards to the registered owner of the vehicle," according to Trooper Erickson,
    - Trooper Erickson drove to the stop to back up Trooper Seide,
    - According to Trooper Erickson, "Trooper Seide was positioned on the passenger side of the vehicle. I approached the subject vehicle on the passenger side and began to look inside the vehicle,"
    - Erickson stated that he "repositioned to the driver's side of the vehicle to get a better view inside of the vehicle. This is common practice to ensure there are no visible weapons or contraband inside that would be hard to see from the passenger side of the vehicle,"
    - According to Erickson, "After Trooper Seide entered COBB's information into the computer, it was confirmed that COBB was the registered owner of the vehicle. It was also confirmed that the information alert was for COBB. The information alert stated that COBB was the subject of an investigation for a Felony Order for Protection Violation in Ramsey County,"
    - Trooper Erickson stated that he "returned to COBB's vehicle. I explained to COBB that we had to run some information through dispatch that we were unable to run ourselves,"
    - Upon returning to Trooper Seide's vehicle, Erickson "observed Trooper Londregan #532 had arrived on scene,"
    - Trooper Seide informed Trooper Londregan and Trooper Erickson that "Ramsey County wanted a hold placed for the violation. I approached the driver's side of the vehicle directly behind Trooper Seide. Trooper Londregan approached the vehicle on the passenger side,"

- NOTE: To accomplish the "hold", the troopers intended to arrest Mr. Cobb and transport him for processing at Ramsey County's request.

- According to Trooper Erickson, "While listening to Trooper Seide ask COBB to step out of the vehicle, it became apparent that COBB was not listening to commands. Trooper Seide also asked COBB to remove the keys of the vehicle to which he refused. After Trooper Seide gave COBB multiple opportunities to step out, Trooper Seide opened the driver's side door,"

    - NOTE: At this point multiple attempts to gain compliance and de-escalate the situation had failed.

- Erickson explained that "As soon as Trooper Seide opened the door, I observed the vehicle begin to move forward. Trooper Seide struggled with him inside the vehicle. The vehicle stopped for a short period of time then began to accelerate. The second time the vehicle began to accelerate, it visually appeared to be at a much higher rate of speed. It became clear that COBB was attempting to drive the vehicle away from the scene,"
- Erickson stated, "I observed Trooper Seide being pulled by the vehicle as it was driving away. From the position in which I was standing, I was unsure if Trooper Seide was holding onto COBB or if he somehow stuck inside the vehicle,"
- Trooper Erickson explained "I was concerned that Trooper Seide was in an extremely vulnerable position. I feared for Trooper Seide's life because he could fall out and be run over,"
- According to Erickson, he heard "what I believed to be three gunshots from inside the vehicle,"
- Trooper Erickson explained that he "observed Trooper Seide fall out of the vehicle onto the roadway from the driver's side,"
- Erickson said he "also observed Trooper Londregan fall out of the vehicle on the passenger side. Trooper Londregan also was not able to stay on his feet and fell onto the ground,"

    - NOTE: Of note from Trooper Erickson's statement, it was his objectively reasonable belief that Trooper Seide may have been "somehow stuck inside the vehicle" and "in an extremely vulnerable position" for which he "feared for Trooper Seide's life because he could fall out and be run over."
    - NOTE: This point speaks to the urgency of the moment and the reasonable fear of serious bodily injury or death to Trooper Seide. A reasonable officer would reasonably perceive that the driver's actions of accelerating a vehicle when a trooper was leaning into the interior of the vehicle could result in the officer being dragged or run over by the fleeing vehicle. A reasonable officer could reasonably believe that the result of the dragging or being run over by the fleeing vehicle could likely cause serious bodily injury or death to the officer.

Mr. Christopher Madel: Anticipated Testimony of Trooper Londregan (by his counsel)

- Madel served as counsel for Trooper Londregan.
- Madel gave an official statement to the Court of a representation of the testimony Trooper Londregan would give the Court.

As the statements above covered the initial approach thoroughly, a review of the anticipated testimony of Trooper Londregan by his attorney provides additional potential (should he, in fact, testify to the same) insight into the trooper's perspective of his use of force at the moment the deadly force was employed. According to Mr. Madel:

- Trooper Londregan was aware of the KOPS alert and believed that the alert was for a "felony order for protection violation". Madel said that Londregan read that Mr. Cobb "was also designated as a predatory offender."
- Trooper Seide told Trooper Londregan that Mr. Cobb was already "amped up."
- Trooper Londregan heard Trooper Seide repeatedly request "that the driver exit his vehicle. Despite many requests, the driver refused to do so."
- Trooper Londregan saw Trooper Seide "attempting to open the door, so Trooper Londregan checked the passenger door handle and felt that it was locked."
- Trooper Londregan "reached through the open passenger-side window and used the electronic locking control to unlock the vehicle's doors,"
- "Trooper Londregan noticed the driver move his right hand to the gear shift, place the vehicle in gear, and abruptly accelerate,"
- Trooper Seide was entering the vehicle now through the open driver's door. At this moment, Trooper Londregan "recalled his training and immediately recognized the driver's conduct posed an immediate threat of great bodily injury and death to Trooper Seide,"
- Trooper Londregan "feared the driver would drag Trooper Seide to his death,"
- Trooper Londregan drew his service weapon and "extended his arms into the vehicle through the open front-passenger door to put himself into a position, if necessary, use deadly force to protect Trooper Seide from great bodily harm or death should the driver continue to accelerate, as Trooper Seide moved further inside the vehicle."
    - NOTE: The only thing the BWC footage shows is that Cobb raised his right hand. It is equally plausible that he was protecting himself from being shot in the face.
- The driver stopped the vehicle momentarily. "Trooper Londregan then observed Trooper Seide's head, shoulders, torso, and arms now inside the vehicle and over the driver's body."
    - NOTE: At this point, Trooper Londregan saw that Trooper Seide was inside of the vehicle with his body over the driver's body which would prevent Londregan from having a clear view of the driver if he needed to fire his service weapon.

- NOTE: This position by Trooper Seide made a use of deadly force action by Trooper Londregan likely to harm his fellow trooper. From a tactical perspective, given the positioning of Trooper Seide at this point, using deadly force from Trooper Londregan's position would not be in line with best practices in police training.

- Trooper Londregan ordered the driver to "get out of the car now" in a loud and clear voice,
- "The driver responded by reaching for Trooper Londregan's service weapon his with his right hand, attempting to disarm him, as the driver, again, abruptly accelerated the vehicle with, approximately, one-half of Trooper Seide's body inside of the vehicle."
- "At that moment, Trooper Londregan knew that Trooper Seide and he were in imminent danger of great bodily injury or death. The driver was using his vehicle as a deadly weapon against Trooper Seide and Trooper Londregan."
- "To prevent Trooper Seide and Trooper Londregan incurring great bodily injury or death, Trooper Londregan aimed his service weapon at the driver's right high center of mass and pelvic area, so as not to shoot Trooper Seide."

    - NOTE: As stated above, this positioning is tactically not aligned with best training practices in policing, as Trooper Seide is still at risk of being struck by a round from Trooper Londregan's weapon. This tactical positioning could have cost Trooper Seide his life.

- Trooper Londregan "discharged his duty weapon twice. Force of the vehicle's acceleration caused Trooper Londregan to be rejected (sic) from the vehicle and thrown to the ground."
- "As he reoriented himself, Trooper Londregan witnessed the suspect vehicle, no longer accelerating, roll onto the grass beyond the right shoulder. He also saw Trooper Seide on the ground and that he was moving."
- According to Mr. Madel, Trooper Londregan would "testify regarding stop sticks – wrongfully referred to as "stop strips" by the Hennepin County Attorney's Office – he will testify why those would not have worked."

    - It is feasible and best practices to deploy a Stop Stick® "to prevent a stationary vehicle from fleeing a location, so as to prevent the escape of a wanted person" (St Petersburg PD, General Order III-3B, Section V, Subsection F, #5).
    - A tire deflation device may be utilized "when the possibility exists that a wanted or dangerous person may enter a vehicle and leave an area of containment (during an active police operation)" (City of Madison PD, S.O.P. Use of Tire Deflation Devices, Authorized Use Section, #1).
    - Tire deflation devices are defined as devices with "spiked strips or sticks that are put down on the roadway to deflate the tires of any vehicle running over them" (City of Madison PD, S.O.P. Use of Tire Deflation Devices).

Training and Policy Review

Use of Deadly Force Policy

"It shall be the policy of the Minnesota State Patrol, unless expressly negated elsewhere, to allow troopers to exercise discretion in the use of deadly force to the extent permitted by Minn. Stat. §609.066, subd. 2, which authorizes peace officers acting in the line of duty to use deadly force only if an objectively reasonably officer would believe, based on the totality of circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary:

1. To protect the peace officer or another from death or great bodily harm, provided that the threat:
    a. can be articulated with specificity;
    b. is reasonably likely to occur absent action by the law enforcement officer; and
    c. must be addressed through the use of deadly force without unreasonable delay; or
2. To effect the arrest or capture, or prevent the escape, of a person whom the trooper knows or has reasonable grounds to believe has committed or attempted to commit a felony and the trooper reasonably believes that the person will cause death or great bodily harm to another person under the threat criteria in IV.C.(1) a.-c. (above), unless immediately apprehended.
3. Where reasonably feasible, troopers shall identify themselves as a law enforcement officer and warn of his or her intent to use deadly force.
4. In cases where deadly force is authorized, less-than-lethal measures must be considered first by troopers."

The Minnesota State Patrol use of force general order (G.O. 23-10-027) was reviewed to determine if the troopers' actions were within departmental policy. The statements of Sergeant Halvorson and Major Erickson added substantial context to the depth and types of training conducted during the Trooper Training Academy sessions. To fully explain my opinion on whether the use of deadly force by Trooper Londregan was within policy and training guidelines, the statements by Sergeant Halvorson and Major Erickson are relevant. The review of their statements shed light onto the standard of training received by the involved troopers relative to known best training practices in policing. Body worn camera and dash camera video footage provided additional insight into the use of lethal force. The relevant highlights of the training troopers' statements are referenced below.

<u>Sergeant Halvorson</u>

- Use of force coordinator for the Minnesota State Patrol (MSP),
- Creates policies related to use of force at academy for cadets and senior troopers,
- His statement covered the following:

    - Sergeant Halvorson explained that the "whole spectrum" of the use of force continuum "from verbal compliance up to…lethal threat" is covered during the

MSP Trooper Training Academy curriculum,

- Halvorson stated that he believed that Trooper Londregan met all academy standards for use of force,
- Halvorson stated that the training covers general orders, policy, state statutes, and constitutional laws,
- Halvorson stated that he teaches "the vehicle extraction portions" at the academy for MSP's troopers,
- According to Halvorson, the training covers how to address "a person that's not compliant with our commands" necessitating the need for vehicle extraction,
- Halvorson explained that the scenarios for vehicle extraction are conducted in a "static" position – no moving vehicles demonstrated,

    - NOTE: This point made by Sergeant is important relative to this case in that a vehicle extraction technique is substantially less risky when applied while the vehicle is completely stopped (in a "static" position) versus when a vehicle is moving.

- Sergeant Halvorson explained that the training covers single trooper and team extractions related to removing the seatbelt and removing the driver while attempting to "limit the amount of risk of going into the car" and referred to the removal of the seatbelt as "our biggest obstacle most of the time,"

    - NOTE: Vehicle extractions are taught as a technique that limits the "amount of risk" posed to troopers who must reach into a vehicle to remove an occupant.

- Halvorson explained the need to attempt to gain compliance,

    - NOTE: Attempting to gain compliance is a lower level of control that was employed by Trooper Seide prior to any other higher level of force being utilized.

- Halvorson explained that extractions must be conducted "quickly" with a "surprise by force" type of action,
- Halvorson explained that the driver's side trooper would ideally push the driver's head to one side, reach in and grab the seatbelt "at the same time" to unbuckle it,
- When asked about preplanning for an extraction, Trooper Halvorson explained that "to choreograph an extraction it's tough to do,"
- Halvorson also explained that "boxing" in a vehicle is a SWAT technique that patrol troopers do not utilize as it "puts yourself at a tactical disadvantage" and it is not a tactic troopers are trained on during the academy,

    - NOTE: Based on this evidence from the statement of Sergeant Halvorson, the "boxing" technique was not an available option to the troopers in this case.

- Trooper Halvorson explained that deadly force cannot be used simply stop a vehicle

from fleeing a scene without the existence of a threat of "great bodily harm or death to the troopers or others,"

- Halvorson explained that regarding a scenario where troopers are attempting an extraction, deadly force is only authorized "when the officers feel that their life is in great bodily (threat of) harm or death,"
- Halvorson explained that the level of force a trooper may use during an extraction "all depends on the actions of the actual suspect,"

    - NOTE: This point by Sergeant Halvorson is critically important, as law enforcement officers must continue to weigh the level of resistance encountered against the level of control they exert to overcome such resistance. The officer must choose a level of control that is reasonable given the level of resistance being utilized by a resistive subject.

- Halvorson explained that troopers are trained to push the driver's head to one side during an extraction to avoid "over penetration into the vehicle" and the technique keeps the driver from looking down "where the shift knob is" so the vehicle cannot be placed into drive – he referred to the technique as a "distractionary technique,"

    - NOTE: This is a tactical technique that is a part of the training troopers receive. At issue in this case is whether such a technique was utilized properly or attempted. Deeper insight into this point becomes clearer when considering the statements of the troopers later in this letter.

- Halvorson explained that a hypothetical decision to extract a driver could be made even if the vehicle is in the drive gear, but the driver's foot is "on the brake,"
- Halvorson stated that attempting a hypothetical extraction when the driver has his/her foot on the brake at a stoplight would be a "high risk" action,
- Halvorson explained that those hypothetical scenarios are not a part of academy training and if a driver is stopped at a stoplight with the vehicle in drive, a trooper would not attempt an extraction due to the high level of risk,
- Halvorson stated that "if the de-escalation portion doesn't work where you can actually convince them to get out of the vehicle and they're still parked alongside the road, the only real other option is to extract the person from the car,"

    - NOTE: This is the situation in which Trooper Seide initially engaged with Mr. Cobb. The vehicle was in the park gear on the roadside.

- Halvorson explained that the calculation for how long a trooper feels he/she has needs to continue verbally attempting to gain compliance with the driver is a decision made by the trooper(s) on the scene,

    - NOTE: Best practices in police training and policy development do not specify the number of times and duration for which an officer must attempt to gain compliance.

Major Christopher Erickson

- Responsible for multiple sections with the Minnesota State Patrol including the Training and Development Section,
- Member of the team that developed policy and curriculum under the police reform bill,
- His declaration statement covered the following:
    - Major Erickson explained how use of force and pursuit incidents are assessed using a "two-step policy review process to determine whether the incidents were within or outside of MSP policy and to determine whether corrective action or discipline is necessary,"
        - NOTE: This process is aligned with best practices in policing.
    - Major Erickson explained that he believed that the decision to prosecute Trooper Londregan by the Hennepin County Attorney was based on "certain provisions of MSP G.O. 22-20-012 or the MSP Motor Vehicle Pursuit Policy,"
    - Erickson stated that in his opinion, that policy would not apply to the situation Troopers Seide and Londregan encountered,
    - Major Erickson explained that the Motor Vehicle Pursuit policy specifically defines a motor vehicle pursuit as "An active attempt by a sworn member operating a patrol unit to apprehend the driver of a motor vehicle,"
    - According to Major Erickson, since neither trooper was operating a patrol unit at the time of the incident, the "MSP Motor Vehicle Pursuit policy would not be implicated,"
    - Erickson stated that he believed the Hennepin County Attorney was relying on Section VIII(A) (Shooting from or at a Moving Vehicle) which states, "Members shall not shoot from or at a moving vehicle, except when deadly force is authorized pursuant to G.O. 23-10-027 (Use of Force),
        - NOTE: Erickson explained that the "intended purpose of Section VIII(A) is to discourage Troopers from shooting out tires of a suspect vehicle fleeing the scene of a traffic stop or shooting at or from a motor vehicle while in active pursuit of a suspect vehicle" (*emphasis added for clarity*),
    - Major Erickson explained that Section VIII(B) states: "members should make every effort not to place themselves in a position that would increase the possibility that the vehicle they are approaching can be used as a deadly weapon against members or other users of the road."
        - NOTE: Erickson explained that Section VIII(B) is included to ensure that a trooper will not "purposefully run in front of a car, with their gun drawn, as the individual began to drive off/flee, shoot at the driver in an attempt to stop the car only to later justify the use of lethal force due to the car advancing toward them."
        - NOTE: This section is not relevant to the case involving Trooper Londregan's use of deadly force given Erickson's explanation of how the

policy is applied.

- Erickson explained that extracting "non-compliant and resisting drivers/suspects from a motor vehicle is a common occurrence." Furthermore, MSP G.O. 03-10-058 (Standards for Full Duty Status of State Patrol Troopers) requires that "Troopers must be physically capable of "using force to remove resisting subject(s) from a vehicle, squad or cell." (G.O. 0310-58 Section H (15).
    - NOTE: Not only is this technique acceptable, but it is required by policy as an essential job function.
- Major Erickson gave two examples of troopers who fired their service weapons striking the driver, resulting in the vehicles to slow down and "safely come to rest."
    - NOTE: Major Erickson's point further clarifies the "objective reasonableness" of Trooper Londregan's actions on July 31, 2023.
- Finally, Major Erickson explained that given all the evidence he reviewed, his opinion is that "Trooper Londregan was justified in his use of deadly force and acted within MSP Policy."

Legal Standard Opinion

Based on my assessment of the relevant evidence received and reviewed, it is my professional opinion that Trooper Londregan acted within the boundaries of the legal standard of using deadly force in the case of Mr. Cobb. When considering the holdings of the United States Supreme Court in the cases of *Tennessee v. Garner* and *Graham v. Conner*, a use of force must be based on "a good-faith belief that the suspect poses a significant threat of death or serious physical injury to the officer or others" (*Tennessee v. Garner*) and "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation" (*Graham v. Connor*).

Given the totality of the circumstances, Trooper Londregan could have, with objective reasonableness, perceived that he and his fellow trooper (Trooper Seide) were in imminent danger of serious bodily injury or death. The imminent danger posed by the fleeing vehicle while the troopers were partially inside of the vehicle's interior was significant. It is my opinion that a reasonable officer would believe the use of deadly force was justified and necessary given all other factors available to Trooper Londregan at the time the deadly force was applied. Therefore, it is my opinion that the use of deadly force by Trooper Londregan was legal and within departmental guidelines. The tactics employed by Troopers Seide, Londregan, and Erickson during the encounter are a different matter, as discussed below.

Policy Standard and Tactical Review

The use of force policy of the Minnesota State Patrol is based on the principles of the United States Supreme Court decisions on the use of deadly force highlighted above. Those principles are the legal standard for uses of force. The next phase of review considered the portion of the policy related to the use of non-deadly force and whether those levels of force were properly applied by the troopers during the encounter with Mr. Cobb. Body worn camera and dash camera video footage provided insight into the non-deadly use of force tactics. The statements of Sergeant Halvorson and Major Erickson and their specific roles in developing, assessing, and delivering the training in accordance with departmental policies were critical in the policy and training evaluation as well.

As highlighted above, the purpose of the policy and tactical review is to determine whether the policy was properly applied relative to the non-deadly use of force tactics the troopers used. There are three main tactical issues which must be considered for this case.

- The first tactical issue is whether sufficient de-escalation attempts were employed.
- Next, the contact and cover tactics must be assessed.
- Lastly, an assessment of whether the extraction tactic used was within departmental training standards and within best practices in law enforcement training.

Body worn camera and vehicle dash camera video footage provided insight into the non-deadly use of force tactics. The statements of Trooper Seide, Sergeant Halvorson and Major Erickson provided substantial insight into determining whether the troopers used approved levels of non-deadly force during the encounter with Mr. Cobb. My assessment relied on the Minnesota State Patrol use of force General Order (23-10-027) as its basis. According to the Minnesota State Patrol use of force policy, the definitions of the levels of control are as follows:

1. Verbal Commands
   The use of advice, persuasion, warnings, and or clear directions prior to resorting to actual physical force. In an arrest situation, troopers shall, when reasonably feasible, give the arrestee simple directions with which the arrestee is encouraged to comply. Verbal commands are the most desirable method of dealing with an arrest situation.
2. Soft Hand Control
   The use of physical strength and skill in defensive tactics to control arrestees who are reluctant to be taken into custody and offer some degree of physical resistance. Such techniques are not impact oriented and include pain compliance pressure points, takedowns, joint locks, and simply grabbing a subject. Touching or escort holds may be appropriate for use against levels of passive physical resistance.
3. Hard Hand Control (hard empty hand)
   Impact oriented techniques that include knee strikes, elbow strikes, punches, and kicks. Control strikes are used to subdue a subject and may include strikes to pressure points such as: the common peroneal (side of the leg), radial nerve (top of the forearm), or brachial plexus origin (side of neck). • Defensive strikes are used by troopers to protect themselves from attack and may include strikes to other areas

of the body, including the abdomen or head. Techniques in this category include stunning or striking actions delivered to a subject's body with the hand, fist, forearm, legs, or feet. In extreme cases of self-defense, the trooper may need to strike more fragile areas of the body where the potential for injury is greater.

4. Contact Weapons
   All objects and instruments used by troopers to apply force which includes striking another or defending a trooper or another from an active aggressive person. Contact weapons include, but are not limited to, MSP issued equipment such as the expandable baton, flashlight, and riot baton.
5. Deadly Force
   All force actually used by trooper(s) against another which the trooper(s) know or reasonably should know, creates a substantial risk of causing death or great bodily harm. The intentional discharge of a firearm in the direction of another person, or at a vehicle (including tires) in which another person is believed to be, constitutes deadly force. The use of a chokehold, as defined in this policy, constitutes deadly force.

Tactics Reviewed

1. De-escalation:

Based on the evidence reviewed for this case, multiple attempts were made by Trooper Seide to de-escalate the incident from the initial contact with Mr. Cobb who he felt "had a defensive nature and appeared to be agitated" when stopped for the taillight violation. Trooper Seide began the traffic stop adhering to the use of the lowest level of control by using verbal commands to gain compliance and de-escalate the initial defensiveness and agitation he perceived from Mr. Cobb.

Additionally, Trooper Seide had Trooper Erickson reapproach Mr. Cobb's vehicle to engage him in conversation while Trooper Seide sought to confirm the "hold" with Ramsey County authorities. This is further evidence of the attempt by the troopers to de-escalate the situation by establishing a rapport through verbal communication.

Upon Trooper Seide's reapproach to the vehicle, he attempted to explain that he needed Mr. Cobb "to step out of the vehicle. Cobb became verbally defiant and was not complying with my requests," according to the trooper. Trooper Seide further explained that Cobb became more agitated "as I peacefully continued to request his compliance with my requests," Trooper Seide explained that he requested Mr. Cobb's car keys but was refused. These attempts are further evidence of verbal commands which are the lowest level of control on the use of force continuum of the Minnesota State Patrol (G.O. 23-10-027).

Given the multiple requests for compliance, it is reasonable for Trooper Seide to expect that his further requests for compliance would be refused. Based on the number of requests for compliance and the consistent refusal to comply by Mr. Cobb, it is my professional opinion that reasonable attempts to de-escalate the situation and gain

compliance were achieved by Trooper Seide. The body worn camera footage confirmed Trooper Seide's assertion that he repeatedly attempted to gain willing compliance before higher levels of control were employed such as the extraction technique. The use of the extraction technique will be analyzed later in this letter.

2. Contact and Cover:

Based on the evidence reviewed for this case, the troopers attempted to gain compliance and overcome resistance by deploying tactics that they had received during their training at the Minnesota State Patrol Training Academy. Sergeant Halvorson and Major Erickson gave detailed descriptions of the scope of training and tactics the troopers received. Body worn camera and vehicle dash camera footage provided visual evidence of the contact and cover tactics used by the troopers.

The initial step the troopers could have taken would have been discussing potential options to overcome Mr. Cobb's potential further resistance before reapproaching Cobb's vehicle. The initial approach to the driver's vehicle was made by Trooper Seide and the re-approach by Trooper Erickson were both to the driver's side window to speak with Mr. Cobb. Those approaches are consistent with best practices in policing. The third approach by Troopers Seide, Londregan and Erickson was also in alignment with best practices, as one officer should approach and communicate with the driver (contact officer). Trooper Seide was in the contact officer position in the final approach during the traffic stop. Trooper Londregan approached the front passenger side of the vehicle in the cover position. Trooper Erickson approached the vehicle on the driver's side and then moved to the rear of the vehicle. All of the tactics used by the troopers up to this point were in alignment with their training and best practices in law enforcement.

One tactical issue related to contact and cover by Troopers Seide and Londregan was problematic. That issue is the position of Trooper Londregan and Trooper Seide when Londregan drew his weapon from the holster. The likelihood of a crossfire incident was high given Trooper Seide's position inside of the vehicle as he was attempting to unbuckle the driver's seatbelt for an extraction attempt. Furthermore, Trooper Seide could have been struck by one of the rounds fired by Trooper Londregan, as Seide's body was across the torso of Cobb when the rounds were fired. Tactically, this positioning by Trooper Seide when Londregan fired his service weapon was not consistent with best practices and could have caused the death or serious bodily injury to Trooper Seide.

Due to the fast pace by which the incident was unfolding at the time, the positions taken by the troopers at that moment were influenced by the car's acceleration and Trooper Londregan's effort to stop the perceived threat of serious injury or death that Trooper Seide described in his statement above. Given the context added by Major Erickson (highlighted below in the review of vehicle extraction), Trooper Londregan's less desirable tactical decision to fire his weapon given Trooper Seide's position may have been reasonably necessary to prevent serious injury or death to Trooper Seide or himself from the fleeing vehicle. A reasonable officer may have made the same decision as Trooper Londregan if his/her partner's poor tactics placed him/her in such a precarious position.

3. Vehicle Extraction:

Based on the evidence reviewed for this case, the troopers attempted to gain compliance and overcome resistance of the driver by attempting an extraction technique taught during the Minnesota State Patrol academy training. The vehicle extraction technique was described in the statement of Sergeant Halvorson who was responsible for training the trooper cadets during academy training. Major Erickson explained the reason the tactic has inherent risk in his statement below. The body worn camera and dash camera video footage captured portions of the technique as well.

According to Sergeant Halvorson, the extraction technique could be utilized when "a person that's not compliant with our commands" and the trooper needs to "extract them from the vehicle." Sergeant Halvorson explained that this portion of training is delivered as practical, hands-on training. Sergeant Halvorson stated that the technique is only taught in the "static" position to ensure the safety of the role player and the cadets. Best practices in police training encourage hands-on scenario training described by Sergeant Halvorson to give the cadets a deeper understanding of how to apply the techniques that are allowed by their agencies. Of note, the technique is only taught when a vehicle is stationary to ensure the safety of the involved parties in the training session. Mr. Cobb's vehicle was initially in a stationary position when the extraction tactic was attempted.

Sergeant Halvorson explained that the vehicle extraction technique is taught as a single and two-officer technique. According to the sergeant, the contact officer should push the driver's "head off to the side" while reaching into the vehicle to unbuckle the seatbelt on a one-officer extraction. When two troopers conduct the technique, Halvorson explained that the "second person" (cover officer) should attempt to reach into the vehicle from the passenger's side and unbuckle the seatbelt for extraction. The sergeant explained that the "biggest obstacle most of the time is the seatbelt" when attempting the extraction technique. The role of the contact officer is pulling the driver from the vehicle once the seatbelt is unbuckled.

In the case of the traffic stop with Mr. Cobb, Troopers Seide and Londregan were attempting a two-officer extraction. Ideally, Trooper Londregan would have reached into the vehicle and unbuckled the seatbelt from the passenger side while Trooper Seide would have been responsible for extracting the driver. With all extraction attempts, inherent risk exists that must be weighed by the troopers when they engage in the technique.

Major Erickson explained the main threat to the troopers in his statement when he stated that "the vast majority of Troopers are aware of certain past incidents to illustrate and highlight the significant dangers presented by being dragged by a motor vehicle and using a firearm to slow or stop the vehicle. Specifically:

a. Incident 07601334 wherein a Trooper was dragged by a motor vehicle and shot the driver causing the vehicle to safely come to rest. The involved Trooper was found to be within policy, cleared and subsequently awarded the Medal of Valor.

b. Incident 11406877 wherein the involved Trooper was dragged by a vehicle, shot the driver of the vehicle again causing the vehicle to slow and come to rest just prior to striking a guardrail. Again, the Trooper was found to be within policy.
c. Contrasted by Incident 18203125 wherein the involved Trooper was physically unable to retrieve his firearm and was thrown from the moving vehicle resulting in traumatic brain injuries."

Considering best police practices, the following steps are necessary for the safest application of the extraction technique:

a. The extraction tactic should be conducted on a stationary vehicle while the vehicle is not in the drive gear,
b. To ensure that a vehicle cannot flee, a Stop Stick® device should be placed in front of the vehicle's rear tire(s). Failing to take this step allows a driver to attempt to flee. The flight would increase the likelihood for the officer(s) to employ higher levels of control, which is counter to the goal of de-escalation,
c. In a two-officer extraction, the contact officer must quickly push the head of the driver to one side while the cover officer reaches into the vehicle to unbuckle the seatbelt. At that point, the contact officer would pull the driver from the vehicle with a soft-empty hand technique such as an armbar takedown,
d. In a single-officer extraction, the contact officer must account for the first 2 steps highlighted above while keeping in mind the inherent higher level of risk of injury created when the contact officer reaches over the driver to unbuckle the seatbelt, and
e. The extraction technique is generally reserved for wanted subjects who have a history of violence and who demonstrate a likelihood of fleeing from law enforcement officers. This point further demonstrates the importance of Step 2 in the vehicle extraction tactic.

In contrast to the Cobb traffic stop, the ideal extraction technique would require critical steps that were missed which could have positively affected the outcome. Trooper Seide attempted a one-officer extraction technique with two officers. His decision to reach into the vehicle across the torso of Cobb increased his exposure to risk. The cover officer (Trooper Londregan) ideally should have reached into the vehicle to unbuckle the seatbelt. However, given the vehicle's initial lurch forward, ideally both troopers should have simply disengaged altogether. The reasons for this preference are:

1) Trooper Seide had information identifying the driver, thus allowing for a less risky attempt to apprehend the driver at a later time,
2) The driver has demonstrated his potential intent to flee the detention at that moment, and
3) Trooper Londregan would have been able to avoid the need to escalate to a higher level of control (deadly force).

Due to the speed at which the Cobb traffic stop unfolded, it is difficult to determine if a perfectly performed two-officer extraction would have been successful in extracting the driver. Given the fact that a Stop Stick® device was not utilized in this case, the driver would still have flight from the stop as an option. To properly perform the two-officer extraction, Trooper Londregan would have been further inside of the vehicle to successfully unbuckle the driver, thereby further exposing himself to the perceived threat of being dragged or run over that the troopers spoke about in their above statements.

Training and Tactics Opinion

Based on the evidence reviewed related to this incident involving Minnesota State Patrol Troopers and Mr. Cobb, it is my professional opinion that the levels of non-deadly force employed were within the policy guidelines and training curriculum for the Minnesota State Patrol. The extraction tactic used by the troopers was horribly executed, dangerous to the life of Trooper Seide, and not aligned with best policing practices. However, it is my opinion that the de-escalation tactics were reasonable when viewed considering the training they had been provided and the actions of the driver that precipitated their responses to the levels of resistance they encountered during the traffic stop. I have reviewed the recommendations in the Special Prosecutors' report, and I agree with and endorse those recommendations. My professional opinion regarding the use of non-deadly force tactics by the troopers is that those tactics were within Minnesota State Patrol policies and training protocols.

Please let me know if you have any questions regarding the contents of this opinion letter.

Respectfully submitted,
Kerr Putney
Kerr Putney
Security Global Collaborators, LLC.

Appendix

Evidence received and reviewed is highlighted below:

Grand Jury Exhibits

- [redacted]
- [redacted]
- [redacted]
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EXHIBIT 50

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EXHIBIT 51

The Making of the ABA Criminal Justice Standards

Forty Years of Excellence

BY MARTIN MARCUS

Although 20 years ago it could be said that "professional standards seem[ed] commonplace in every field of criminal justice administration," in 1964, when the American Bar Association first created and implemented its Criminal Justice Standards Project, "such standards were a novel concept." (B. J. George, Jr., *Symposium on the American Bar Association's Mental Health Standards: an Overview*, 53 GEO. WASH. L. REV. 338 (1985).) Forty years have now passed since the approval of the first volumes of the *Standards of Criminal Justice* in 1968, but the Standards remain, as they were when Professor George wrote, "pre-eminent." (*Id.* at 338-39.)

Indeed, the Standards continue to be frequently relied upon by judges, prosecutors, defense attorneys, legislatures, and scholars who recognize that they are the product of careful consideration and drafting by experienced and fair-minded experts drawn from all parts of the criminal justice system.

When the final volume of the first edition of the Standards was published in 1974, Warren Burger, chair of the Standards project until his appointment as chief justice of the U.S. Supreme Court in 1969, described the Standards project as "the single most comprehensive and probably the most monumental undertaking in the field of criminal justice ever attempted by the American legal profession in our national history" and recommended that "[e]veryone connected with criminal justice . . . become totally familiar with [the Standard's] substantive content." (Warren E. Burger, *Introduction: The ABA Standards for Criminal Justice*, 12 AM. CRIM. L. REV. 251 (1974).)

The Standards were an immediate success. As early as 1974, Chief Justice Burger could report that "the Justices of the Supreme Court and hundreds of other judges . . . consult the Standards and make use of them whenever they are relevant." (*Id.* at 253.) By that same year, the Standards had already been cited nationwide in more than 2,000 appellate opinions, and were increasingly used as "bench books" by trial court judges and as hornbooks by practicing defense lawyers and prosecutors. (William H. Erickson and William J. Jameson, *Monitoring and Updating the Standards: The Continuing Responsibility*, 12 AM. CRIM. L. REV. 469, 470 (1974).) "As of July 1979, according to *Shepard's Criminal Justice Citations*, there were 7,520 express citations to the standards. The appellate courts of each state were among those citing the standards, as well as the federal courts and the courts of military justice. All 18 separate sets of standards were cited." (ABA, STANDARDS FOR CRIMINAL JUSTICE, SECOND EDITION, VOL. 1 (Little Brown & Co. 1980), p. xxvii.)

The Standards have remained important sources of authority ever since. A recent Westlaw search indicates that more than 120 Supreme Court opinions quote from or cite to the Standards and/or their accompanying commentary. They were first cited in 1969, the year after the first Standards were approved. (*See* McCarthy v. U.S., 394 U.S. 459, 466, n.17 (1969), citing commentary to Standards Relating to Pleas of Guilty.) In 21 of the past 40 years, three or more opinions made reference to the Standards; in 1976 alone, eight opinions did so. While the Supreme Court does not make reference to the Standards as often as when they were new, they have nonetheless remained a consistent source for guidance. With one exception, Supreme Court opinions have quoted or cited the Standards no less frequently than every other year. Although no Supreme Court opinion made reference to the Standards in 2006 or 2007, three did so in 2005, and another did in 2008. (*See* Town of Castle Rock, Colo. v. Gonzales, 545 U.S. 748, 760-61 (2005); Rompilla v. Beard, 545 U.S. 387 (2005); Deck v. Missouri, 544 U.S. 622, 629 (2005); Gonzalez v. U.S., 128 S. Ct. 1765, 1770 (2008).)

In 1986, Justice O'Connor, speaking for the Court, agreed that the Court "frequently finds [the ABA Standards] helpful." (Moran v. Burbine, 475 U.S. 412, 440-41 (1986).) Included among the examples she gave was *Caldwell v. Mississippi*, 472 U.S. 320, 334 (1985), in which the Court held that it was impermissible for the prosecutor in a capital case to urge the jury "not to view itself as finally determining whether petitioner would die, because a death sentence would be reviewed for correctness by the Mississippi Supreme Court." In so concluding, the Court noted that "[t]he American Bar Association, in its standards for prosecutorial conduct, agrees with this judgment. (Footnote citing Prosecution Function Standard 3-5.8, 2d ed. 1980, omitted.) Justice O'Connor also pointed to *Holloway v. Arkansas*, 435 U.S. 475, 480, n.4 (1978), in which the Court cited Defense Function Standard 7.7(c) (1974), concerning the ethical obligations of a defense attorney assisting in the presentation of what the attorney had reason to believe was false testimony; and *Dickey v. Florida*, 398 U.S. 30, 37-38, nn.7 & 8, in which the Court, citing both the Speedy Trial Standards and the Prosecution and Defense Function Standards,

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held that a defendant, tried eight years after the commission of the crimes for which he was convicted, was denied his constitutional right to a speedy trial.

Over the past 40 years, the federal circuit courts have cited to the Standards in some 700 opinions, beginning the year the first Standards were published. (*See* Bruce v. U.S., 379 F.2d 113, 120, n.19 (D.C. Cir. 1967), citing Standards Relating to Pleas of Guilty.) The circuit courts have cited to the Standards at least seven times in 2008 alone. (*See*, *e.g.*, Davis v. Grant, 532 F.3d 132 (2d Cir. 2008) (approving, but holding not constitutionally required, Standard 6-3.9 (3d ed. 2000), providing that if a pro se defendant engages in disruptive conduct "the court should, after appropriate warnings, revoke the permission and require representation by counsel"); Correll v. Ryan, 539 F.3d 938, 942-43, 2008 WL 2039074 (9th Cir. 2008) (quoting Standard 4-4.1 of the Defense Function Standards, 2d ed.).) Over the same time span, state supreme courts have cited to or quoted from the Standards or their commentary in more than 2,400 opinions, including more than 30 in 2008 alone. Not surprisingly, a superior court judge in the District of Columbia described the Standards as "invaluable for trial judges" as well, noting that "[a] set should be readily available and preferably on or near the bench at all times, particularly the Standards Relating to the Function of a Trial Judge, Prosecution and Defense Function, Pleas of Guilty, and Sentencing Alternatives and Procedures." (Tim Murphy, *Trial Court Use of the Standards*, 12 Am. Crim. L. Rev. 421, 422 (1974).)

A jurisdiction may use the Standards not only as a source of authority for judicial opinions, but also "by adoption or reform of rules of criminal procedure by courts having rule-making authority; by new legislation or substantive penal code revision; . . . by utilization of the Standards by individual trial judges and practicing lawyers in their everyday work; and by administrative regulations." (Lauren A. Arn, *Implementation of the ABA Standards for Criminal Justice: A Progress Report*, 12 Am. Crim. L. Rev. 477, 478 (1974).) In fact, legislatures have frequently looked to the Standards for model legislation. By 1979, "20 states [could] be credited with substantial implementation of the Standards" (*id.* at 479), and "[a]s of May 1979, thirty-six states had revised their criminal codes; an additional six had completed drafting revisions but their legislatures had not yet enacted new codes; and in three additional states, revision was well under way, being planned, or in the preliminary planning stages. In the five remaining states, revision had been completed in three but had been aborted and in the two other states no overall revision was being planned." (Standards for Criminal Justice, *supra*, p. xxvii.)

There are recent examples as well. In 2008, federal legislation was enacted that "appears to be aimed at facilitating implementation of the recommendation by the ABA Criminal Justice Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons that legislatures 'collect, set out or reference all collateral sanctions in a single chapter or section of the jurisdiction's criminal code.' " (Kyo Suh, *Midyear Meeting Highlights*, 23 Crim. Just. 54 (Spring 2008).)

The Standards have also had a major impact on court rules. For example, "[m]any jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense." (Revised Comment 1 of the ABA Model Rules of Professional Conduct, adopted by the ABA House of Delegates in February 2008.) Recently, in *People v. Wartena,* 156 P.3d 469, 473 (Colo. 2007) (footnote omitted), the Supreme Court of Colorado pointed out that

> [t]he American Bar Association [had] recently addressed the duty to preserve evidence in consumptive testing situations, noting in the Criminal Justice Section Standards on DNA Evidence that courts should consider ordering procedures such as videotaping that would allow for independent evaluation. We agree with the recommendation of the American Bar Association and adopt Standard 3.4(e).

In its decision, the court also noted that it had adopted other ABA Standards in the past, including Standard 12-2.31, which prevents criminal defendants from asserting speedy trial violations while confined in a hospital or mental institution (*see* People v. Jones, 677 P.2d 383 (Colo. App. 1983)), and Standard 7-6.8, which sets out jury instructions for insanity claims (*see* Cordova v. People, 817 P.2d 66 (Colo. 1991).)

The Standards have also been implemented in a variety of criminal justice projects and experiments. Indeed, "[o]ne of the reasons for creating a second edition of the Standards was an urge to assess the first edition in terms of the feedback from such experiments as pretrial release

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projects, speedy trial statutes and court rules, public defender offices, police legal adviser units, and similar developments that had been initiated largely as a result of the influence of the first edition." (Standards for Criminal Justice, *supra*, at xvi.)

Prosecutors and defense attorneys have found the Standards useful, not only in supporting arguments to the judges before whom they appear, but also in guiding their own conduct, and in training and mentoring colleagues. For example:

> The American Bar Association, Criminal Justice Section, also provides general guidance for federal prosecutors. In particular, Standard 3-1.2, entitled "The Function of the Prosecutor," explains in pertinent part: "(b) The prosecutor is an administrator of justice, an advocate, and an officer of the court; the prosecutor must exercise sound discretion in the performance of his or her functions. (c) The duty of the prosecutor is to seek justice, not merely to convict."

(Melanie D. Wilson, *Prosecutors 'Doing Justice' Through Osmosis—Reminders to Encourage a Culture of Cooperation*, 45 Am. Crim. L. Rev. 67, 83-84 (2008) (footnote omitted).)

Similarly, in "Indigent Defense: National Developments in 2007," (22 Crim. Just. 58 (Winter 2008)), Georgia N. Vagenas, stated that:

> [i]n Tennessee, Knox County Public Defender Mark Stephens, faced with crushing caseloads, notified the County General Sessions Court that his office would suspend accepting any new misdemeanor cases. . . . Citing the American Bar Association's Standards for Criminal Justice along with other national standards, Stephens declared in his letter to the session court judges, "[w]e can no longer meet our professional, ethical and moral obligations to the clients of this office as contemplated by the laws and performance standards currently in place."

(*See also* Hans Sinha, *Prosecutorial Ethics: The Duty to Disclose Exculpatory Material*, 42 Prosecutor 20, 23, ("As the comment to the American Bar Association Prosecution Standard 3-3.11, 'Disclosure of Evidence by the Prosecutor' notes, 'independent of any rules or statutes making prosecution evidence available to discovery processes, many experienced prosecutors have habitually disclosed most, if not all, of their evidence to defense counsel.' " (footnote omitted).)

The Standards have also made their way into law school casebooks and other academic literature, having been cited in more than 2,100 law journal and law review articles. In 2008 alone, reference to the Standards has appeared in dozens of articles. Indeed, entire symposia have been devoted to the consideration of particular Standards and the issues they raise, and to the development, implementation, and significance of the Standards. (*See Symposium on the Collateral Sanctions in Theory and Practice*, 36 U. Tol. L. Rev. 441 (Spring 2005); B.J. George, Jr., *Symposium on the American Bar Association's Mental Health Standards: An Overview*, 53 Geo. Wash. L. Rev. 338 (1985); and *A Symposium: The American Bar Association Standards Relating to the Administration of Criminal Justice, Part I*, 12 Am. Crim. L. Rev. 251, 251-414 (1974): Part II; 12 Am. Crim. L. Rev. 415 (1975).)

The first edition of the Standards included 17 volumes of "black letter" recommendations and commentary, and was completed with the publication of an eighteenth summary volume in 1974. "[T]he idea for updating the standards emerged in 1976 . . . partly stimulated by the realization that almost ten years had passed since many of the volumes of standards in the first edition had been approved and that all of the standards needed refinement, sharpening, and a general reassessment in light of the changes that had swept through the criminal justice system in the 1970's . . . ." (Standards for Criminal Justice, *supra*, at xvi.) The second edition was published in 1980 and supplemented in 1986. In the second edition, some new Standards were added and "[s]ome of the first-edition standards were not changed at all, many only slightly, and a number substantially—depending on what had happened in the [previous] ten years and what each task force believed the present national norm should be and on the stylistic changes deemed appropriate." (*Id.*) Over the subsequent years, most of the Standards have been revised again.

Striving to take account of changing technology and science, as well as other developments in criminal justice, new Standards have been added to the third and latest edition. For example, Standards concerning Technologically Assisted Physical Surveillance were added in 1999, Standards concerning Collateral Sanctions and Discretionary Disqualification of Convicted Persons in 2004, and DNA Standards in 2007. One task force is now drafting standards on government access to third-party records, and another is addressing standards on diversion and special courts. For the past several years, all current "black letter" Standards have been available online and can be accessed at www.abanet.org/crimjust/standards. For those Standards published since 1989, the Web site also includes the commentary, which explains and elucidates the Standards.

Chief Justice Burger described the first edition of the Standards as "a balanced, practical work designed to walk the fine line between the protection of society and the protection of the constitutional rights of ac-

cused individuals." (Burger, *supra*, 12 Am. Crim. L. Rev. at 252.) In 1984, in *Strickland v. Washington*, 466 U.S. 668, 688 (1984), the Court described the Standards as reflecting "prevailing norms of practice" and "guides to determining what is reasonable." Since then, opinions of the Court have repeated that description as they have relied on particular Standards in fashioning and applying constitutional rules concerning such matters as ineffective assistance of counsel (*see* Rompilla v. Beard , *supra*, 545 U.S. at 375; Wiggins v. Smith, *supra*, 539 U.S. at 522; Williams v. Taylor, 529 U.S. 362, 396 (2000); Burger v. Kemp, 483 U.S. 776, 799, n.4 (1987); Darden v. Wainwright, 477 U.S. 168, 191-92 (1986); Nix v. Whiteside, 475 U.S. at 157, 170, n.6 (1986); and Alvord v. Wainwright, 469 U.S. 956, 960, n.4 (1984)); a prosecutor's *Brady* obligations (*see* Kyles v. Whitley 514 U.S. 419, 437 (1995), citing Prosecution Function and Defense Function 3-3.11(a), 3d ed. 1993; Giglio v. United States, 405 U.S. 150, 153-54 (1972) (same); *see also* the dissenting opinion in U.S. v. Williams, 504 U.S. 36, 64, n.9 (1992)); and a defendant's right to appear at trial free of visible restraints (Deck v. Missouri, 544 U.S. at 629 (2005).)

In some cases, the majority and dissent have debated whether a particular Standard reflected a constitutional requirement or was only a statement of better practice. In *Roe v. Flores-Ortega*, 528 U.S. at 479 (2000), for example, while the majority, citing ABA Standards for Criminal Justice, Defense Function 4-8.2(a) (3d ed.1993), observed that "the better practice is for counsel routinely to consult with the defendant regarding the possibility of an appeal," it held that such consultation is not constitutionally required in every case. The concurring and dissenting opinion, however, relied on the same Standard in finding it constitutionally necessary. Similarly, in *Mu'Min v. Virginia*, 500 U.S. 415, 430 (1991), the dissent relied on Standard 8-3.5 (2d ed. 1980), which would require excusing a potential juror who has been exposed to and remembers incriminating matters likely to be outside the trial evidence, but the majority, although recognizing it as, perhaps, the "better view," held it was not one incorporated in the Fourteenth Amendment. (*See also* Rector v. Bryant, 501 U.S. 1240 (1991) (Justice Marshall, in dissent, applying Mental Health Standard 7-5.6(b), concerning a convict's competency to be executed).)

It is no accident that the Standards are perceived as both balanced and practical. From the beginning of the project, the Standards have reflected a consensus of the views of representatives of all segments of the criminal justice system. The first edition was developed by an ABA Special Committee on Minimum Standards for the Administration of Criminal Justice, which Chief Justice Burger described as comprised of "more than 100 of the nation's leading jurists, lawyers and legal scholars operat-

STANDARDS FOR CRIMINAL JUSTICE

The "black letter" Standards for Criminal Justice are available on the Standards homepage at www.abanet.org/crimjust/standards/home.html. Standards that have been published with commentary since 1991 are also available in book format on the Web site as well as in hard copy. Listed here are the individual sets of Standards and the dates of publication.

- Collateral Sanctions and Discretionary Disqualification of Convicted Persons (published 2004)
- Criminal Appeals (published 1980, 1986 supp.)
- Defense Function (published 1993, 4th ed. forthcoming)
- Discovery (published 1996)
- DNA Evidence (published 2007)
- Diversion and Special Courts (new; forthcoming)
- Electronic Surveillance of Private Communications (published 2002)
- Fair Trial and Free Press (published 1992)
- Government Access to Third-Party Records (tentative title; forthcoming)
- Joinder & Severance (published 1980; 1986 supp.)
- Legal Status of Prisoners (published 1983; 1986 supp., 3d ed. forthcoming)
- Mental Health (published 1986; 1989)
- Pleas of Guilty (published 1999)
- Postconviction Remedies (published 1980, 1986 supp., 3d ed. forthcoming)
- Pretrial Release (published 2007)
- Prosecution Function (published 1993, 4th ed. forthcoming)
- Prosecutorial Investigations ("black letter" approved; publication forthcoming)
- Providing Defense Services (published 1992)
- Sentencing (published 1994)
- Special Functions of the Trial Judge (published 2000)
- Speedy Trial and Timely Resolution of Criminal Cases (published 2006)
- Technologically Assisted Physical Surveillance (published 1999)
- Trial by Jury (published 1996)
- Urban Police Function (published 1980)

ing in advisory committees of 10 or 12 each," with "the participants . . . drawn from every part of the country and includ[ing] state and federal judges, prosecuting attorneys, defense lawyers, public defenders, law professors, penology experts and police officials." (Burger, *supra*, at 251 (1974).) Thus, Chief Justice Burger concluded, "this project was much more than a theoretical and idealistic restatement of the law, but rather a synthesis of the experience of a diverse and highly experienced group of professionals." (*Id.* at 252.) This special committee was superseded in 1973 by an equally distinguished and similarly composed Special Committee on Administration of Criminal Justice, the purpose of which was to monitor and update the Standards. (Erickson and Jameson, *supra*, at 472 (1974).)

To give permanence to the project, in August of 1986 the House of Delegates transferred jurisdiction of the Standards to a newly created standing committee of the Section of Criminal Justice, which was composed, as the governing bylaws required, "of a balance of defense, judiciary, and prosecution." (STANDARDS FOR CRIMINAL JUSTICE, *supra*.) Originally, the ABA president appointed seven members to the committee, and the chair of the Criminal Justice Council, the governing body of the ABA's Criminal Justice Section, appointed two. A revised process, approved by the ABA Board of Governors in 2005, calls for the ABA president to appoint all members exclusively from recommendations of the Section chair that anticipate "balanced representation by prosecutors, defense attorneys, other criminal justice practitioners, judges, and academics." (American Bar Association, Summary of Action of the House of Delegates, 2005 Annual Meeting, August 8-9, 2005, "Reports of the Board of Governors," p. 59.) Optimally, three of the nine committee members are prosecutors, three are defense attorneys, and three are academics and judges. Nonvoting liaisons from the National District Attorneys Association, the National Association of Attorneys General, the U.S. Department of Justice, the National Association of Criminal Defense Lawyers, and the National Legal Aid & Defender Association are also invited to participate in the work.

In order to ensure that the Standards continue to be relevant, timely, and of the highest quality, the Standards Committee determines the priorities for updating, revising, and expanding existing volumes and for developing new ones. Whether revised or new, Standards are established as official ABA policy in four steps. First, the Standards Committee establishes a task force assigned to draft or revise a particular set of Standards. Like the Standards Committee, each task force is composed of a balance of prosecutors, defense attorneys, academics, and judges, and each task force welcomes liaisons from the National District Attorneys Association, the National Association of Attorneys General, the U.S. Department of Justice, the National Association of Criminal Defense Lawyers, and the National Legal Aid & Defender Association. With the chair presiding over its discussions, a particular task force may meet from four to eight times until a draft is finalized. At each meeting, the discussion focuses on extensive memoranda and preliminary drafts the task force reporter—usually a law professor, judge, or practitioner well schooled and experienced in the subject matter of the Standards—has disseminated well in advance of each meeting.

Second, once a task force draft is completed, it is sent to the Standards Committee. In a series of its own meetings, the committee, aided by the task force chair and reporter, reviews, revises, and approves the draft. Although the Standards Committee recognizes and often defers to the expertise of those specialists who serve on the task force and to the compromises reached in task force meetings, the discussions in the Standards Committee are often spirited and may lead to significant, substantive changes, as well as stylistic ones, in the Standards draft. As in the task forces, though, the goal is persuasion and consensus; close votes on the language of a particular Standard are rare.

Third, the draft that emerges from the Standards Committee is submitted to the 34 members of the Criminal Justice Section Council. Council elections follow the issuance of a slate of candidates from a Nominating Committee required by the Council bylaws to "strive to achieve broad representation . . . from the defense bar (including defender services), the prosecution (including law enforcement), the courts (including Court administration), the academic community, the military, corrections, and others with an interest in criminal justice." (ABA Criminal Justice Section Bylaws, Sec. 9.5(C).) The Council's bylaws require that voting members include, in addition to elected members, representatives appointed by the Federal Public and Community Defenders, the National Association of Attorneys General, the National Association of Criminal Defense Lawyers, the National District Attorneys Association, the National Legal Aid & Defender Association, and the U.S. Department of Justice. (*Id.*, Sec. 5.3.) Another bylaw requires that the Section chair rotate among prosecutors, judges, defense attorneys, and academics. (*Id.*, Sec. 9.4.)

Again with the assistance of the task force chair and reporter, the Council reviews, revises, and approves draft Standards in at least two meetings, in which the Standards receive a first and second "reading." Before each reading, drafts are circulated widely within and outside the ABA, and comments are solicited, not only from the Section's own committees, but also from the national organizations represented on the Council and other potentially interested individuals and organizations. As in the Standards Committee, despite the deference owed and given to the expertise and effort that produced the draft

before the Council, significant changes may result from the Council's discussions as the body seeks to achieve a final consensus of opinion.

Fourth, once the Council approves the proposed Standards, they are forwarded to the House of Delegates for its consideration. Before the House takes them up, the draft is again circulated widely within and outside the ABA, providing a final opportunity for comment and suggested revisions. Upon approval by the House of Delegates, the Standards become the official policy of the 400,000-member ABA. Thereafter, the task force reporter prepares a draft of the Standards' commentary, which is presented to and finalized by the Standards Committee prior to publication of the new volume.

This process is not only exhaustive; it is expensive as well. The annual budget of the Standards Committee is $200,000. The ABA employs one full-time and one part-time staff member for the committee and reimburses in substantial part the travel expenses of the members of the committee and of the task forces. In addition, each task force reporter receives an honorarium in recognition of the countless hours required for drafting memoranda and standards for consideration by the task force, the Standards Committee, the Criminal Justice Council, and the House of Delegates, and for drafting the commentary for consideration by the Standards Committee.

In sum, the Standards finally approved by the House of Delegates are the result of the considered judgment of prosecutors, defense lawyers, judges, and academics who have been deeply involved in the process, either individually or as representatives of their respective associations, and only after the Standards have been drafted and repeatedly revised on more than a dozen occasions, over three or more years. While this process is undeniably lengthy and painstaking, the final product can fairly be said to be a thoughtful, informed, and balanced reflection of the views of all the relevant parts of the criminal justice system. Indeed, "the Standards are a valued criminal justice asset largely because of the process through which they are created. . . . At the end of the process, the Standards represent the best thinking of the ABA." (Irwin Schwartz, "Introduction to Criminal Justice Standards," in The State of Criminal Justice 2006 (Criminal Justice Section, American Bar Association 2007), at 69.)

I have seen the Standards process up close, having served as a reporter for one task force and the chair of another, as a member of the Criminal Justice Council, as a member of the Standards Committee, and now as its chair. In all of these capacities, I have been consistently impressed with the willingness of all who participate in the process to set aside parochial interests and individual biases in order to produce a document upon which all parties can agree and upon which all others can rely. All these participants, past and present, can take immense satisfaction in the Standards' quality, in the high regard in which they have been held, and in the frequent use that they have enjoyed, over the past 40 years. ■

EXHIBIT 52

American Bar Association TM American Bar Association

Fourth Edition (2017) of the *CRIMINAL JUSTICE STANDARDS* for the *PROSECUTION FUNCTION*

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PART I: GENERAL STANDARDS

Standard 3-1.1 The Scope and Function of These Standards

(a) As used in these standards, “prosecutor” means any attorney, regardless of agency, title, or full or part-time assignment, who acts as an attorney to investigate or prosecute criminal cases or who provides legal advice regarding a criminal matter to government lawyers, agents, or offices participating in the investigation or prosecution of criminal cases. These Standards are intended to apply in any context in which a lawyer would reasonably understand that a criminal prosecution could result.

(b) These Standards are intended to provide guidance for the professional conduct and performance of prosecutors. They are written and intended to be entirely consistent with the ABA’s Model Rules of Professional Conduct, and are not intended to modify a prosecutor's obligations under applicable rules, statutes, or the constitution. They are aspirational or describe “best practices,” and are not intended to serve as the basis for the imposition of professional discipline, to create substantive or procedural rights for accused or convicted persons, to create a standard of care for civil liability, or to serve as a predicate for a motion

to suppress evidence or dismiss a charge. For purposes of consistency, these Standards sometimes include language taken from the Model Rules of Professional Conduct; but the Standards often address conduct or provide details beyond that governed by the Model Rules of Professional Conduct. No inconsistency is ever intended; and in any case a lawyer should always read and comply with the rules of professional conduct and other authorities that are binding in the specific jurisdiction or matter, including choice of law principles that may regulate the lawyer's ethical conduct.

(c) Because the Standards for Criminal Justice are aspirational, the words "should" or "should not" are used in these Standards, rather than mandatory phrases such as "shall" or "shall not," to describe the conduct of lawyers that is expected or recommended under these Standards. The Standards are not intended to suggest any lesser standard of conduct than may be required by applicable mandatory rules, statutes, or other binding authorities.

(d) These Standards are intended to address the performance of prosecutors in all stages of their professional work. Other ABA Criminal Justice Standards should also be consulted for more detailed consideration of the performance of prosecutors in specific areas.

Standard 3-1.2 Functions and Duties of the Prosecutor

(a) The prosecutor is an administrator of justice, a zealous advocate, and an officer of the court. The prosecutor's office should exercise sound discretion and independent judgment in the performance of the prosecution function.

(b) The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.

(c) The prosecutor should know and abide by the standards of professional conduct as expressed in applicable law and ethical codes and opinions in the applicable jurisdiction. The prosecutor should avoid an appearance of impropriety in performing the prosecution function. A prosecutor should seek out, and the prosecutor's office should provide, supervisory advice and ethical guidance when the proper course of prosecutorial conduct seems unclear. A prosecutor who disagrees with a governing ethical rule should seek its change if appropriate, and directly challenge it if necessary, but should comply with it unless relieved by court order.

(d) The prosecutor should make use of ethical guidance offered by existing organizations, and should seek to establish and make use of an ethics advisory group akin to that described in Defense Function Standard 4-1.11.

(e) The prosecutor should be knowledgeable about, consider, and where appropriate develop or assist in developing alternatives to prosecution or conviction that may be applicable in individual cases or classes of cases. The prosecutor's office should be available to assist community efforts addressing problems that lead to, or result from, criminal activity or perceived flaws in the criminal justice system.

(f) The prosecutor is not merely a case-processor but also a problem-solver responsible for considering broad goals of the criminal justice system. The prosecutor should seek to reform and improve the administration of criminal justice, and when inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, the prosecutor should stimulate and support efforts for remedial action. The prosecutor should provide service to the community, including involvement in public service and Bar activities, public education, community service activities, and Bar leadership positions. A prosecutorial office should support such activities, and the office's budget should include funding and paid release time for such activities.

Standard 3-1.3 The Client of the Prosecutor

The prosecutor generally serves the public and not any particular government agency, law enforcement officer or unit, witness or victim. When investigating or prosecuting a criminal matter, the prosecutor does not represent law enforcement personnel who have worked on the matter and such law enforcement personnel are not the prosecutor's clients. The public's interests and views should be determined by the chief prosecutor and designated assistants in the jurisdiction.

Standard 3-1.4 The Prosecutor's Heightened Duty of Candor

(a) In light of the prosecutor's public responsibilities, broad authority and discretion, the prosecutor has a heightened duty of candor to the courts and in fulfilling other professional obligations. However, the prosecutor should be circumspect in publicly commenting on specific cases or aspects of the business of the office.

(b) The prosecutor should not make a statement of fact or law, or offer evidence, that the prosecutor does not reasonably believe to be true, to a court, lawyer, witness, or third party, except for lawfully authorized investigative purposes. In addition, while seeking to accommodate legitimate confidentiality, safety or security concerns, a prosecutor should correct a prosecutor's representation of material fact or law that the prosecutor reasonably

believes is, or later learns was, false, and should disclose a material fact or facts when necessary to avoid assisting a fraudulent or criminal act or to avoid misleading a judge or factfinder.

(c) The prosecutor should disclose to a court legal authority in the controlling jurisdiction known to the prosecutor to be directly adverse to the prosecution's position and not disclosed by others.

Standard 3-1.5 Preserving the Record

At every stage of representation, the prosecutor should take steps necessary to make a clear and complete record for potential review. Such steps may include: filing motions including motions for reconsideration, and exhibits; making objections and placing explanations on the record; requesting evidentiary hearings; requesting or objecting to jury instructions; and making offers of proof and proffers of excluded evidence.

Standard 3-1.6 Improper Bias Prohibited

(a) The prosecutor should not manifest or exercise, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity, or socioeconomic status. A prosecutor should not use other improper considerations, such as partisan or political or personal considerations, in exercising prosecutorial discretion. A prosecutor should strive to eliminate implicit biases, and act to mitigate any improper bias or prejudice when credibly informed that it exists within the scope of the prosecutor's authority.

(b) A prosecutor's office should be proactive in efforts to detect, investigate, and eliminate improper biases, with particular attention to historically persistent biases like race, in all of its work. A prosecutor's office should regularly assess the potential for biased or unfairly disparate impacts of its policies on communities within the prosecutor's jurisdiction, and eliminate those impacts that cannot be properly justified.

Standard 3-1.7 Conflicts of Interest

(a) The prosecutor should know and abide by the ethical rules regarding conflicts of interest that apply in the jurisdiction, and be sensitive to facts that may raise conflict issues. When a conflict requiring recusal exists and is non-waivable, or informed consent has not been obtained, the prosecutor should recuse from further participation in the matter. The office should not go forward until a non-conflicted prosecutor, or an adequate waiver, is in place.

(b) The prosecutor should not represent a defendant in criminal proceedings in the prosecutor's jurisdiction.

(c) The prosecutor should not participate in a matter in which the prosecutor previously participated, personally and substantially, as a non-prosecutor, unless the appropriate government office, and when necessary a former client, gives informed consent confirmed in writing.

(d) The prosecutor should not be involved in the prosecution of a former client. A prosecutor who has formerly represented a client should not use information obtained from that representation to the disadvantage of the former client.

(e) The prosecutor should not negotiate for private employment with an accused or the target of an investigation, in a matter in which the prosecutor is participating personally and substantially, or with an attorney or agent for such accused or target

(f) The prosecutor should not permit the prosecutor's professional judgment or obligations to be affected by the prosecutor's personal, political, financial, professional, business, property, or other interests or relationships. A prosecutor should not allow interests in personal advancement or aggrandizement to affect judgments regarding what is in the best interests of justice in any case.

(g) The prosecutor should disclose to appropriate supervisory personnel any facts or interests that could reasonably be viewed as raising a potential conflict of interest. If it is determined that the prosecutor should nevertheless continue to act in the matter, the prosecutor and supervisors should consider whether any disclosure to a court or defense counsel should be made, and make such disclosure if appropriate. Close cases should be resolved in favor of disclosure to the court and the defense.

(h) The prosecutor whose current relationship to another lawyer is parent, child, sibling, spouse or sexual partner should not participate in the prosecution of a person who the prosecutor knows is represented by the other lawyer. A prosecutor who has a significant personal, political, financial, professional, business, property, or other relationship with another lawyer should not participate in the prosecution of a person who is represented by the other lawyer, unless the relationship is disclosed to the prosecutor's supervisor and supervisory approval is given, or unless there is no other prosecutor who can be authorized to act in the prosecutor's stead. In the latter rare case, full disclosure should be made to the defense and to the court.

(i) The prosecutor should not recommend the services of particular defense counsel to accused persons or witnesses in cases being handled by the prosecutor's office. If requested to make such a recommendation, the prosecutor should consider instead referring the person to the public defender, or to a panel of available criminal defense attorneys such as a bar association lawyer-referral service, or to the court. In the rare case where a specific recommendation is made by the prosecutor, the recommendation should be to an independent and competent attorney, and the prosecutor should not make a referral that

embodies, creates or is likely to create a conflict of interest. A prosecutor should not comment negatively upon the reputation or abilities of a defense counsel to an accused person or witness who is seeking counsel in a case being handled by the prosecutor's office.

(j) The prosecutor should promptly report to a supervisor all but the most obviously frivolous misconduct allegations made, publicly or privately, against the prosecutor. If a supervisor or judge initially determines that an allegation is serious enough to warrant official investigation, reasonable measures, including possible recusal, should be instituted to ensure that the prosecution function is fairly and effectively carried out. A mere allegation of misconduct is not a sufficient basis for prosecutorial recusal, and should not deter a prosecutor from attending to the prosecutor's duties.

Standard 3-1.8 Appropriate Workload

(a) The prosecutor should not carry a workload that, by reason of its excessive size or complexity, interferes with providing quality representation, endangers the interests of justice in fairness, accuracy, or the timely disposition of charges, or has a significant potential to lead to the breach of professional obligations. A prosecutor whose workload prevents competent representation should not accept additional matters until the workload is reduced, and should work to ensure competent representation in existing matters. A prosecutor within a supervisory structure should notify supervisors when counsel's workload is approaching or exceeds professionally appropriate levels.

(b) The prosecutor's office should regularly review the workload of individual prosecutors, as well as the workload of the entire office, and adjust workloads (including intake) when necessary to ensure the effective and ethical conduct of the prosecution function.

(c) The chief prosecutor for a jurisdiction should inform governmental officials of the workload of the prosecutor's office, and request funding and personnel that are adequate to meet the criminal caseload. The prosecutor should consider seeking such funding from all appropriate sources. If workload exceeds the appropriate professional capacity of a prosecutor or prosecutor's office, that office or counsel should also alert the court(s) in its jurisdiction and seek judicial relief.

Standard 3-1.9 Diligence, Promptness and Punctuality

(a) The prosecutor should act with diligence and promptness to investigate, litigate, and dispose of criminal charges, consistent with the interests of justice and with due regard for fairness, accuracy, and rights of the defendant, victims, and witnesses. The prosecutor's office should be organized and supported with adequate staff and facilities to enable it to process and resolve criminal charges with fairness and efficiency.

(b) When providing reasons for seeking delay, the prosecutor should not knowingly misrepresent facts or otherwise mislead. The prosecutor should use procedures that will cause delay only when there is a legitimate basis for such use, and not to secure an unfair tactical advantage.

(c) The prosecutor should not unreasonably oppose requests for continuances from defense counsel.

(d) The prosecutor should know and comply with timing requirements applicable to a criminal investigation and prosecution, so as to not prejudice a criminal matter.

(e) The prosecutor should be punctual in attendance in court, in the submission of motions, briefs, and other papers, and in dealings with opposing counsel, witnesses and others. The prosecutor should emphasize to assistants and prosecution witnesses the importance of punctuality in court attendance.

Standard 3-1.10 Relationship with the Media

(a) For purposes of this Standard, a “public statement” is any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication or media, including social media. An extrajudicial statement is any oral, written, or visual presentation not made either in a courtroom during criminal proceedings or in court filings or correspondence with the court or counsel regarding criminal proceedings.

(b) The prosecutor’s public statements about the judiciary, jurors, other lawyers, or the criminal justice system should be respectful even if expressing disagreement.

(c) The prosecutor should not make, cause to be made, or authorize or condone the making of, a public statement that the prosecutor knows or reasonably should know will have a substantial likelihood of materially prejudicing a criminal proceeding or heightening public condemnation of the accused, but the prosecutor may make statements that inform the public of the nature and extent of the prosecutor’s or law enforcement actions and serve a legitimate law enforcement purpose. The prosecutor may make a public statement explaining why criminal charges have been declined or dismissed, but must take care not to imply guilt or otherwise prejudice the interests of victims, witnesses or subjects of an investigation. A prosecutor’s public statements should otherwise be consistent with the ABA Standards on Fair Trial and Public Discourse.

(d) A prosecutor should not place statements or evidence into the court record to circumvent this Standard.

(e) The prosecutor should exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the prosecutor from making an extrajudicial statement or providing non-public information that

the prosecutor would be prohibited from making or providing under this Standard or other applicable rules or law.

(f) The prosecutor may respond to public statements from any source in order to protect the prosecution's legitimate official interests, unless there is a substantial likelihood of materially prejudicing a criminal proceeding, in which case the prosecutor should approach defense counsel or a court for relief. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(g) The prosecutor has duties of confidentiality and loyalty, and should not secretly or anonymously provide non-public information to the media, on or off the record, without appropriate authorization.

(h) The prosecutor should not allow prosecutorial judgment to be influenced by a personal interest in potential media contacts or attention.

(i) A prosecutor uninvolved in a matter who is commenting as a media source may offer generalized commentary concerning a specific criminal matter that serves to educate the public about the criminal justice system and does not risk prejudicing a specific criminal proceeding. A prosecutor acting as such a media commentator should make reasonable efforts to be well-informed about the facts of the matter and the governing law. The prosecutor should not offer commentary regarding the specific merits of an ongoing criminal prosecution or investigation, except in a rare case to address a manifest injustice and the prosecutor is reasonably well-informed about the relevant facts and law.

(j) During the pendency of a criminal matter, the prosecutor should not re-enact, or assist law enforcement in re-enacting, law enforcement events for the media. Absent a legitimate law enforcement purpose, the prosecutor should not display the accused for the media, nor should the prosecutor invite media presence during investigative actions without careful consideration of the interests of all involved, including suspects, defendants, and the public. However, a prosecutor may reasonably accommodate media requests for access to public information and events.

Standard 3-1.11 Literary or Media Rights Agreements Prohibited

(a) Before the conclusion of all aspects of a matter in which a prosecutor participates, the prosecutor should not enter into any agreement or informal understanding by which the prosecutor acquires an interest in a literary or media portrayal or account based on or arising out of the prosecutor's involvement in the matter.

(b) The prosecutor should not allow prosecutorial judgment to be influenced by the possibility of future personal literary or other media rights.

(c) In creating or participating in any literary or other media account of a matter in which the prosecutor was involved, the prosecutor's duty of confidentiality must be respected even after government service is concluded. When protected confidences are involved, a prosecutor or former prosecutor should not make disclosure without consent from the prosecutor's office. Such consent should not be unreasonably withheld, and the public's interest in accurate historical accounts of significant events after a lengthy passage of time should be considered.

Standard 3-1.12 Duty to Report and Respond to Prosecutorial Misconduct

(a) The prosecutor's office should adopt policies to address allegations of professional misconduct, including violations of law, by prosecutors. At a minimum such policies should require internal reporting of reasonably suspected misconduct to supervisory staff within the office, and authorize supervisory staff to quickly address the allegations. Investigations of allegations of professional misconduct within the prosecutor's office should be handled in an independent and conflict-free manner.

(b) When a prosecutor reasonably believes that another person associated with the prosecutor's office intends or is about to engage in misconduct, the prosecutor should attempt to dissuade the person. If such attempt fails or is not possible, and the prosecutor reasonably believes that misconduct is ongoing, will occur, or has occurred, the prosecutor should promptly refer the matter to higher authority in the prosecutor's office including, if warranted by the seriousness of the matter, to the chief prosecutor.

(c) If, despite the prosecutor's efforts in accordance with sections (a) and (b) above, the chief prosecutor permits, fails to address, or insists upon an action or omission that is clearly a violation of law, the prosecutor should take further remedial action, including revealing information necessary to address, remedy, or prevent the violation to appropriate judicial, regulatory, or other government officials not in the prosecutor's office.

Standard 3-1.13 Training Programs

(a) The prosecutor's office should develop and maintain programs of training and continuing education for both new and experienced prosecutors and staff. The prosecutor's office, as well as the organized Bar or courts, should require that current and aspiring prosecutors attend a reasonable number of hours of such training and education.

(b) In addition to knowledge of substantive legal doctrine and courtroom procedures, a prosecutor's core training curriculum should address the overall mission of the criminal justice system. A core training curriculum should also seek to address: investigation, negotiation, and litigation skills; compliance with applicable discovery procedures; knowledge of the development, use, and testing of forensic evidence; available conviction and

sentencing alternatives, reentry, effective conditions of probation, and collateral consequences; civility, and a commitment to professionalism; relevant office, court, and defense policies and procedures and their proper application; exercises in the use of prosecutorial discretion; civility and professionalism; appreciation of diversity and elimination of improper bias; and available technology and the ability to use it. Some training programs might usefully be open to, and taught by, persons outside the prosecutor's office such as defense counsel, court staff, and members of the judiciary.

(c) A prosecution office's training program should include periodic review of the office's policies and procedures, which should be amended when necessary. Specialized prosecutors should receive training in their specialized areas. Individuals who will supervise attorneys or staff should receive training in how effectively to supervise.

(d) The prosecutor's office should also make available opportunities for training and continuing education programs outside the office, including training for non-attorney staff.

(e) Adequate funding for continuing training and education, within and outside the office, should be requested and provided by funding sources.

PART II: ORGANIZATION OF THE PROSECUTION FUNCTION

Standard 3-2.1 Prosecution Authority to be Vested in Full-time, Public-Official Attorneys

(a) The prosecution function should be performed by a lawyer who is

(i) a public official,

(ii) authorized to practice law in the jurisdiction, and

(iii) subject to rules of attorney professional conduct and discipline.

Prosecutors whose professional obligations are devoted full-time and exclusively to the prosecution function are preferable to part-time prosecutors who have other potentially conflicting professional responsibilities.

(b) A prosecutor's office should have open, effective, and well-publicized methods for communicating with, and receiving communications from, the public in the jurisdiction that it serves.

(c) If a particular matter requires the appointment of a special prosecutor from outside the office, adequate funding for this purpose should be made available. Such special prosecutors should know and are governed by applicable conflict of interest standards for prosecutors. A private attorney who is paid by, or who has an attorney-client relationship

with, an individual or entity that is a victim of the charged crime, or who has a personal or financial interest in the prosecution of particular charges, or who has demonstrated any impermissible bias relevant to the particular matter, should not be permitted to serve as prosecutor in that matter.

(d) Unless impractical or unlawful, the prosecutor's office should implement a system for allowing qualified law students, cross-designated prosecutors from other offices, and private attorneys temporarily assigned to the prosecutor's office, to learn about and assist with the prosecution function.

Standard 3-2.2 Assuring Excellence and Diversity in the Hiring, Retention, and Compensation of Prosecutors

(a) Strong professional qualifications and performance should be the basis for selection and retention for prosecutor positions. Effective measures to retain excellent prosecutors should be encouraged, while recognizing the benefits of some turnover. Supervisory prosecutors should select and promote personnel based on merit and expertise, without regard to partisan, personal or political factors or influence.

(b) In selecting personnel, the prosecutor's office should also consider the diverse interests and makeup of the community it serves, and seek to recruit, hire, promote and retain a diverse group of prosecutors and staff that reflect that community.

(c) The function of public prosecution requires highly developed professional skills and a variety of backgrounds, talents and experience. The prosecutor's office should promote continuing professional development and continuity of service, while providing prosecutors the opportunity to gain experience in all aspects of the prosecution function.

(d) Compensation and benefits for prosecutors and their staffs should be commensurate with the high responsibilities of the office, sufficient to compete with the private sector, and regularly adjusted to attract and retain well-qualified personnel. Compensation for prosecutors should be adequate and also comparable to that of public defense counsel in the jurisdiction.

Standard 3-2.3 Investigative Resources and Experts

The prosecutor should be provided with funds for qualified experts as needed for particular matters. When warranted by the responsibilities of the office, funds should be available to the prosecutor's office to employ professional investigators and other necessary support personnel, as well as to secure access to forensic and other experts.

Standard 3-2.4 Office Policies and Procedures

(a) Each prosecutor's office should seek to develop general policies to guide the exercise of prosecutorial discretion, and standard operating procedures for the office. The objectives of such policies and procedures should be to achieve fair, efficient, and effective enforcement of the criminal law within the prosecutor's jurisdiction.

(b) In the interest of continuity and clarity, the prosecution office's policies and procedures should be memorialized and accessible to relevant staff. The office policies and procedures should be regularly reviewed and revised. The office policies and procedures should be augmented by instruction and training, and are not a substitute for regular training programs.

(c) Prosecution office policies and procedures whose disclosure would not adversely affect the prosecution function should be made available to the public.

(d) The prosecutor's office should have a system in place to regularly review compliance with office policies.

Standard 3-2.5 Removal or Suspension and Substitution of Chief Prosecutor

(a) Fair and objective procedures should be established by appropriate legislation that empowers the governor or other public official or body to suspend or remove, and supersede, a chief prosecutor for a jurisdiction and designate a replacement, upon making a public finding after reasonable notice and hearing that the prosecutor is incapable of fulfilling the duties of office due to physical or mental incapacity or for gross deviation from professional norms.

(b) The governor or other public official or body should be similarly empowered by law to substitute, in a particular matter or category of cases, special counsel in the place of the chief prosecutor, by consent or upon making a finding after fair process that substitution is required due to a serious conflict of interest or a gross deviation from professional norms.

(c) Removal, suspension or substitution of a prosecutor should not be permitted for improper or irrelevant partisan or personal reasons.

PART III: PROSECUTORIAL RELATIONSHIPS

Standard 3-3.1 Structure of, and Relationships Among, Prosecution Offices

(a) When possible, the geographic jurisdiction of a prosecution office should be determined on the basis of population, caseload, and other relevant factors sufficient to warrant at least one full-time prosecutor and necessary support staff.

(b) In all States, there should be coordination of the prosecution policies of local prosecution offices to improve the administration and consistency of justice throughout the State. To the extent needed, a central pool of supporting resources, forensic laboratories, and personnel such as investigators, additional prosecutors, accountants and other experts, should be maintained by the state government and should be available to assist local prosecutors. A coordinated forum for prosecutors to discuss issues of professional responsibility should also be available. In some jurisdictions, it may be appropriate to create a unified statewide system of prosecution, in which the state attorney general is the chief prosecutor and district or county or other local prosecutors are the attorney general's deputies.

(c) Regardless of the statewide structure of prosecution offices, a state-wide association of prosecutors should be established. When questions or issues arise that could create important state-wide precedents, local prosecutors should advise and consult with the attorney general, the state-wide association, and the prosecutors in other local prosecution offices.

(d) Federal, state, and local prosecution offices should develop practices and procedures that encourage useful coordination with prosecutors within the jurisdiction and in other jurisdictions. Prosecutors should work to identify potential issues of conflict, coordinate with other prosecution offices in advance, and resolve inter-office disputes amicably and in the public interest.

Standard 3-3.2 Relationships With Law Enforcement

(a) The prosecutor should maintain respectful yet independent judgment when interacting with law enforcement personnel.

(b) The prosecutor may provide independent legal advice to law enforcement about actions in specific criminal matters and about law enforcement practices in general.

(c) The prosecutor should become familiar with and respect the experience and specialized expertise of law enforcement personnel. The prosecutor should promote compliance by law enforcement personnel with applicable legal rules, including rules against improper bias. The prosecutor's office should keep law enforcement personnel informed of relevant legal and legal ethics issues and developments as they relate to prosecution matters, and advise law enforcement personnel of relevant prosecution policies and procedures. Prosecutors may exercise supervision over law enforcement personnel involved in particular prosecutions when in the best interests of justice and the public.

(d) Representatives of the prosecutor's office should meet and confer regularly with law enforcement agencies regarding prosecution as well as law enforcement policies. The prosecutor's office should assist in developing and administering training programs for law

enforcement personnel regarding matters and cases being investigated, matters submitted for charging, and the law related to law enforcement activities.

Standard 3-3.3 Relationship With Courts, Defense Counsel and Others

(a) In all contacts with judges, the prosecutor should maintain a professional and independent relationship. A prosecutor should not engage in unauthorized *ex parte* discussions with, or submission of material to, a judge relating to a particular matter which is, or is likely to be, before the judge. With regard to generalized matters requiring judicial discussion (for example, case-management or administrative matters), the prosecutor should invite a representative defense counsel to join in the discussion to the extent practicable.

(b) When *ex parte* communications or submissions are authorized, the prosecutor should inform the court of material facts known to the prosecutor, including facts that are adverse, sufficient to enable the court to make a fair and informed decision. Except when non-disclosure is authorized, counsel should notify opposing counsel that an *ex parte* contact has occurred, without disclosing its content unless permitted.

(c) In written filings, the prosecutor should respectfully evaluate and respond as appropriate to opposing counsel's arguments and representations, and avoid unnecessary personalized disparagement.

(d) The prosecutor should develop and maintain courteous and civil working relationships with judges and defense counsel, and should cooperate with them in developing solutions to address ethical, scheduling, or other issues that may arise in particular cases or generally in the criminal justice system. Prosecutors should cooperate with courts and organized bar associations in developing codes of professionalism and civility, and should abide by such codes that apply in their jurisdiction.

Standard 3-3.4 Relationship With Victims and Witnesses

(a) "Witness" in this Standard means any person who has or might have information about a matter, including victims.

(b) The prosecutor should know and follow the law and rules of the jurisdiction regarding victims and witnesses. In communicating with witnesses, the prosecutor should know and abide by law and ethics rules regarding the use of deceit and engaging in communications with represented, unrepresented, and organizational persons.

(c) The prosecutor or the prosecutor's agents should seek to interview all witnesses, and should not act to intimidate or unduly influence any witness.

(d) The prosecutor should not use means that have no substantial purpose other than to embarrass, delay, or burden, and not use methods of obtaining evidence that violate legal rights. The prosecutor and prosecution agents should not misrepresent their status, identity or interests when communicating with a witness.

(e) The prosecutor should be permitted to compensate a witness for reasonable expenses such as costs of attending court, depositions pursuant to statute or court rule, and pretrial interviews, including transportation and loss of income. No other benefits should be provided to witnesses unless authorized by law, regulation, or well-accepted practice. All benefits provided to witnesses should be documented and disclosed to the defense. A prosecutor should not pay or provide a benefit to a witness in order to, or in an amount that is likely to, affect the substance or truthfulness of the witness's testimony.

(f) A prosecutor should avoid the prospect of having to testify personally about the content of a witness interview. The prosecutor's interview of most routine or government witnesses (for example, custodians of records or law enforcement agents) should not require a third-party observer. But when the need for corroboration of an interview is reasonably anticipated, the prosecutor should be accompanied by another trusted and credible person during the interview. The prosecutor should avoid being alone with any witness who the prosecutor reasonably believes has potential or actual criminal liability, or foreseeably hostile witnesses.

(g) The prosecutor should advise a witness who is to be interviewed of his or her rights against self-incrimination and the right to independent counsel when the law so requires. Even if the law does not require it, a prosecutor should consider so advising a witness if the prosecutor reasonably believes the witness may provide self-incriminating information and the witness appears not to know his or her rights. However, a prosecutor should not so advise, or discuss or exaggerate the potential criminal liability of, a witness with a purpose, or in a manner likely, to intimidate the witness, to influence the truthfulness or completeness of the witness's testimony, or to change the witness's decision about whether to provide information.

(h) The prosecutor should not discourage or obstruct communication between witnesses and the defense counsel, other than the government's employees or agents if consistent with applicable ethical rules. The prosecutor should not advise any person, or cause any person to be advised, to decline to provide defense counsel with information which such person has a right to give. The prosecutor may, however, fairly and accurately advise witnesses as to the likely consequences of their providing information, but only if done in a manner that does not discourage communication.

(i) Consistent with any specific laws or rules governing victims, the prosecutor should provide victims of serious crimes, or their representatives, an opportunity to consult with and to provide information to the prosecutor, prior to making significant decisions such as whether

or not to prosecute, to pursue a disposition by plea, or to dismiss charges. The prosecutor should seek to ensure that victims of serious crimes, or their representatives, are given timely notice of:

(i) judicial proceedings relating to the victims' case;

(ii) proposed dispositions of the case;

(iii) sentencing proceedings; and

(iv) any decision or action in the case that could result in the defendant's provisional or final release from custody, or change of sentence.

(j) The prosecutor should ensure that victims and witnesses who may need protections against intimidation or retaliation are advised of and afforded protections where feasible.

(k) Subject to ethical rules and the confidentiality that criminal matters sometimes require, and unless prohibited by law or court order, the prosecutor should provide information about the status of matters in which they are involved to victims and witnesses who request it.

(l) The prosecutor should give witnesses reasonable notice of when their testimony at a proceeding is expected, and should not require witnesses to attend judicial proceedings unless their testimony is reasonably expected at that time, or their presence is required by law. When witnesses' attendance is required, the prosecutor should seek to reduce to a minimum the time witnesses must spend waiting at the proceedings. The prosecutor should ensure that witnesses are given notice as soon as practicable of scheduling changes which will affect their required attendance at judicial proceedings.

(m) The prosecutor should not engage in any inappropriate personal relationship with any victim or other witness.

Standard 3-3.5 Relationship with Expert Witnesses

(a) An expert may be engaged for consultation only, or to prepare an evidentiary report or testimony. The prosecutor should know relevant rules governing expert witnesses, including possibly different disclosure rules governing experts who are engaged for consultation only.

(b) A prosecutor should evaluate all expert advice, opinions, or testimony independently, and not simply accept the opinion of a government or other expert based on employer, affiliation or prominence alone.

(c) Before engaging an expert, the prosecutor should investigate the expert's credentials, relevant professional experience, and reputation in the field. The prosecutor should also examine a testifying expert's background and credentials for potential impeachment issues.

Before offering an expert as a witness, the prosecutor should investigate the scientific acceptance of the particular theory, method, or conclusions about which the expert would testify.

(d) A prosecutor who engages an expert to provide a testimonial opinion should respect the independence of the expert and should not seek to dictate the substance of the expert's opinion on the relevant subject.

(e) Before offering an expert as a witness, the prosecutor should seek to learn enough about the substantive area of the expert's expertise, including ethical rules that may be applicable in the expert's field, to enable effective preparation of the expert, as well as effective cross-examination of any defense expert on the same topic. The prosecutor should explain to the expert that the expert's role in the proceeding will be as an impartial witness called to aid the fact-finders, explain the manner in which the examination of the expert is likely to be conducted, and suggest likely impeachment questions the expert may be asked.

(f) The prosecutor should not pay or withhold any fee or provide or withhold a benefit for the purpose of influencing the substance of an expert's testimony. The prosecutor should not fix the amount of the fee contingent upon the expert's testimony or the result in the case. Nor should the prosecutor promise or imply the prospect of future work for the expert based on the expert's testimony.

(g) The prosecutor should provide the expert with all information reasonably necessary to support a full and fair opinion. The prosecutor should be aware, and explain to the expert, that all communications with, and documents shared with, a testifying expert may be subject to disclosure to opposing counsel. The prosecutor should be aware of expert discovery rules and act to protect confidentiality and the public interest, for example by not sharing with the expert confidences and work product that the prosecutor does not want disclosed.

(h) The prosecutor should timely disclose to the defense all evidence or information learned from an expert that tends to negate the guilt of the accused or mitigate the offense, even if the prosecutor does not intend to call the expert as a witness.

Standard 3-3.6 When Physical Evidence With Incriminating Implications is Disclosed by the Defense

When physical evidence is delivered to the prosecutor consistent with Defense Function Standard 4-4.7, the prosecutor should not offer the fact of delivery as evidence before a fact-finder for purposes of establishing the culpability of defense counsel's client. The prosecutor may, however, offer evidence of the fact of such delivery in response to a foundational objection to the evidence based on chain-of-custody concerns, or in a subsequent proceeding for the purpose of proving a crime or fraud regarding the evidence.

PART IV: INVESTIGATION; DECISIONS TO CHARGE, NOT CHARGE, OR DISMISS; AND GRAND JURY

Standard 3-4.1 Investigative Function of the Prosecutor

(a) When performing an investigative function, prosecutors should be familiar with and follow the ABA Standards on Prosecutorial Investigations.

(b) A prosecutor should not use illegal or unethical means to obtain evidence or information, or employ, instruct, or encourage others to do so. Prosecutors should research and know the law in this regard before acting, understanding that in some circumstances a prosecutor's ethical obligations may be different from those of other lawyers.

Standard 3-4.2 Decisions to Charge Are the Prosecutor's

(a) While the decision to arrest is often the responsibility of law enforcement personnel, the decision to institute formal criminal proceedings is the responsibility of the prosecutor. Where the law permits a law enforcement officer or other person to initiate proceedings by complaining directly to a judicial officer or the grand jury, the complainant should be required to present the complaint for prior review by the prosecutor, and the prosecutor's recommendation regarding the complaint should be communicated to the judicial officer or grand jury.

(b) The prosecutor's office should establish standards and procedures for evaluating complaints to determine whether formal criminal proceedings should be instituted.

(c) In determining whether formal criminal charges should be filed, prosecutors should consider whether further investigation should be undertaken. After charges are filed the prosecutor should oversee law enforcement investigative activity related to the case.

(d) If the defendant is not in custody when charged, the prosecutor should consider whether a voluntary appearance rather than a custodial arrest would suffice to protect the public and ensure the defendant's presence at court proceedings.

Standard 3-4.3 Minimum Requirements for Filing and Maintaining Criminal Charges

(a) A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice.

(b) After criminal charges are filed, a prosecutor should maintain them only if the prosecutor continues to reasonably believe that probable cause exists and that admissible evidence will be sufficient to support conviction beyond a reasonable doubt.

(c) If a prosecutor has significant doubt about the guilt of the accused or the quality, truthfulness, or sufficiency of the evidence in any criminal case assigned to the prosecutor, the prosecutor should disclose those doubts to supervisory staff. The prosecutor's office should then determine whether it is appropriate to proceed with the case.

(d) A prosecutor's office should not file or maintain charges if it believes the defendant is innocent, no matter what the state of the evidence.

Standard 3-4.4 Discretion in Filing, Declining, Maintaining, and Dismissing Criminal Charges

(a) In order to fully implement the prosecutor's functions and duties, including the obligation to enforce the law while exercising sound discretion, the prosecutor is not obliged to file or maintain all criminal charges which the evidence might support. Among the factors which the prosecutor may properly consider in exercising discretion to initiate, decline, or dismiss a criminal charge, even though it meets the requirements of Standard 3-4.3, are:

(i) the strength of the case;

(ii) the prosecutor's doubt that the accused is in fact guilty;

(iii) the extent or absence of harm caused by the offense;

(iv) the impact of prosecution or non-prosecution on the public welfare;

(v) the background and characteristics of the offender, including any voluntary restitution or efforts at rehabilitation;

(vi) whether the authorized or likely punishment or collateral consequences are disproportionate in relation to the particular offense or the offender;

(vii) the views and motives of the victim or complainant;

(viii) any improper conduct by law enforcement;

(ix) unwarranted disparate treatment of similarly situated persons;

(x) potential collateral impact on third parties, including witnesses or victims;

(xi) cooperation of the offender in the apprehension or conviction of others;

(xii) the possible influence of any cultural, ethnic, socioeconomic or other improper biases;

(xiii) changes in law or policy;

(xiv) the fair and efficient distribution of limited prosecutorial resources;

(xv) the likelihood of prosecution by another jurisdiction; and

(xvi) whether the public's interests in the matter might be appropriately vindicated by available civil, regulatory, administrative, or private remedies.

(b) In exercising discretion to file and maintain charges, the prosecutor should not consider:

(i) partisan or other improper political or personal considerations;

(ii) hostility or personal animus towards a potential subject, or any other improper motive of the prosecutor; or

(iii) the impermissible criteria described in Standard 1.6 above.

(c) A prosecutor may file and maintain charges even if juries in the jurisdiction have tended to acquit persons accused of the particular kind of criminal act in question.

(d) The prosecutor should not file or maintain charges greater in number or degree than can reasonably be supported with evidence at trial and are necessary to fairly reflect the gravity of the offense or deter similar conduct.

(e) A prosecutor may condition a dismissal of charges, *nolle prosequi*, or similar action on the accused's relinquishment of a right to seek civil redress only if the accused has given informed consent, and such consent is disclosed to the court. A prosecutor should not use a civil waiver to avoid a bona fide claim of improper law enforcement actions, and a decision not to file criminal charges should be made on its merits and not for the purpose of obtaining a civil waiver.

(f) The prosecutor should consider the possibility of a noncriminal disposition, formal or informal, or a deferred prosecution or other diversionary disposition, when deciding whether to initiate or prosecute criminal charges. The prosecutor should be familiar with the services and resources of other agencies, public or private, that might assist in the evaluation of cases for diversion or deferral from the criminal process.

Standard 3-4.5 Relationship with a Grand Jury

(a) In presenting a matter to a criminal grand jury, and in light of its *ex parte* character, the prosecutor should respect the independence of the grand jury and should not preempt a function of the grand jury, mislead the grand jury, or abuse the processes of the grand jury.

(b) Where the prosecutor is authorized to act as a legal advisor to the grand jury, the prosecutor should appropriately explain the law and may, if permitted by law, express an opinion on the legal significance of the evidence, but should give due deference to the grand jury as an independent legal body.

(c) The prosecutor should not make statements or arguments to a grand jury in an effort to influence grand jury action in a manner that would be impermissible in a trial.

(d) The entirety of the proceedings occurring before a grand jury, including the prosecutor's communications with and presentations and instructions to the grand jury, should be recorded in some manner, and that record should be preserved. The prosecutor should avoid off-the-record communications with the grand jury and with individual grand jurors.

Standard 3-4.6 Quality and Scope of Evidence Before a Grand Jury

(a) A prosecutor should not seek an indictment unless the prosecutor reasonably believes the charges are supported by probable cause and that there will be admissible evidence sufficient to support the charges beyond reasonable doubt at trial. A prosecutor should advise a grand jury of the prosecutor's opinion that it should not indict if the prosecutor believes the evidence presented does not warrant an indictment.

(b) In addition to determining what criminal charges to file, a grand jury may properly be used to investigate potential criminal conduct, and also to determine the sense of the community regarding potential charges.

(c) A prosecutor should present to a grand jury only evidence which the prosecutor believes is appropriate and authorized by law for presentation to a grand jury. The prosecutor should be familiar with the law of the jurisdiction regarding grand juries, and may present witnesses to summarize relevant evidence to the extent the law permits.

(d) When a new grand jury is empanelled, a prosecutor should ensure that the grand jurors are appropriately instructed, consistent with the law of the jurisdiction, on the grand jury's right and ability to seek evidence, ask questions, and hear directly from any available witnesses, including eyewitnesses.

(e) A prosecutor with personal knowledge of evidence that directly negates the guilt of a subject of the investigation should present or otherwise disclose that evidence to the grand jury. The prosecutor should relay to the grand jury any request by the subject or target of an investigation to testify before the grand jury, or present other non-frivolous evidence claimed to be exculpatory.

(f) If the prosecutor concludes that a witness is a target of a criminal investigation, the prosecutor should not seek to compel the witness's testimony before the grand jury absent immunity. The prosecutor should honor, however, a reasonable request from a target or

subject who wishes to testify before the grand jury.

(g) Unless there is a reasonable possibility that it will facilitate flight of the target, endanger other persons, interfere with an ongoing investigation, or obstruct justice, the prosecutor should give notice to a target of a grand jury investigation, and offer the target an opportunity to testify before the grand jury. Prior to taking a target's testimony, the prosecutor should advise the target of the privilege against self-incrimination and obtain a voluntary waiver of that right.

(h) The prosecutor should not seek to compel the appearance of a witness whose activities are the subject of the grand jury's inquiry, if the witness states in advance that if called the witness will claim the constitutional privilege not to testify, and provides a reasonable basis for such claim. If warranted, the prosecutor may judicially challenge such a claim of privilege or seek a grant of immunity according to the law.

(i) The prosecutor should not issue a grand jury subpoena to a criminal defense attorney or defense team member, or other witness whose testimony reasonably might be protected by a recognized privilege, without considering the applicable law and rules of professional responsibility in the jurisdiction.

(j) Except where permitted by law, a prosecutor should not use the grand jury in order to obtain evidence to assist the prosecution's preparation for trial of a defendant who has already been charged. A prosecutor may, however, use the grand jury to investigate additional or new charges against a defendant who has already been charged.

(k) Except where permitted by law, a prosecutor should not use a criminal grand jury solely or primarily for the purpose of aiding or assisting in an administrative or civil inquiry.

PART V: PRETRIAL ACTIVITIES and NEGOTIATED DISPOSITIONS

Standard 3-5.1 Role in First Appearance and Preliminary Hearing

(a) A prosecutor should be present at any first appearance of the accused before a judicial officer, and at any preliminary hearing.

(b) At or before the first appearance, the prosecutor should consider:

(i) whether the accused has counsel, and if not, whether and when counsel will be made available or waived;

(ii) whether the accused appears to be mentally competent, and if not, whether to seek an evaluation;

(iii) whether the accused should be released or detained pending further proceedings and, if released, whether supervisory conditions should be imposed; and

(iv) what further proceedings should be scheduled to move the matter toward timely resolution.

(c) The prosecutor handling the first appearance should ensure that the charges are consistent with the conduct described in the available law enforcement reports and any other information the prosecutor possesses.

(d) If the accused does not yet have counsel and has not waived counsel, the prosecutor should ask the court not to engage in substantive proceedings, other than a decision to release the accused. The prosecutor should not obtain a waiver of other important pretrial rights, such as the right to a preliminary hearing, from an unrepresented accused unless that person has been judicially authorized to proceed *pro se*.

(e) The prosecutor should not approach or communicate with an accused unless a voluntary waiver of counsel has been entered or the accused's counsel consents. If the accused does not have counsel, the prosecutor should make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel, and is given reasonable opportunity to obtain counsel.

(f) If the prosecutor believes pretrial release is appropriate, or it is ordered, the prosecutor should cooperate in arrangements for release under the prevailing pretrial release system.

(g) If the prosecutor has reasonable concerns about the accused's mental competence, the prosecutor should bring those concerns to the attention of defense counsel and, if necessary, the judicial officer.

(h) The prosecutor should not seek to delay a prompt judicial determination of probable cause for criminal charges without good cause, particularly if the accused is in custody.

Standard 3-5.2 The Decision to Recommend Release or Seek Detention

(a) The prosecutor should favor pretrial release of a criminally accused, unless detention is necessary to protect individuals or the community or to ensure the return of the defendant for future proceedings.

(b) The prosecutor's decision to recommend pretrial release or seek detention should be based on the facts and circumstances of the defendant and the offense, rather than made categorically. The prosecutor should consider information relevant to these decisions from all sources, including the defendant.

(c) The prosecutor should cooperate with pretrial services or other personnel who review or assemble information to be provided to the court regarding pretrial release determinations.

(d) The prosecutor should be open to reconsideration of pretrial detention or release decisions based on changed circumstances, including an unexpectedly lengthy period of detention.

Standard 3-5.3 Preparation for Court Proceedings, and Recording and Transmitting Information

(a) The prosecutor should prepare in advance for court proceedings unless that is impossible. Adequate preparation depends on the nature of the proceeding and the time available, and will often include: reviewing available documents; considering what issues are likely to arise and the prosecution's position regarding those issues; how best to present the issues and what solutions might be offered; relevant legal research and factual investigation; and contacting other persons who might be of assistance in addressing the anticipated issues. If the prosecutor has not had adequate time to prepare and is unsure of the relevant facts or law, the prosecutor should communicate to the court the limits of the prosecutor's knowledge or preparation.

(b) The prosecutor should make effort to appear at all hearings in cases assigned to the prosecutor. A prosecutor who substitutes at a court proceeding for another prosecutor assigned to the case should make reasonable efforts to be adequately informed about the case and issues likely to come up at the proceeding, and to adequately prepare.

(c) The prosecutor handling any court appearance should document what happens at the proceeding, to aid the prosecutor's later memory and so that necessary information will be available to other prosecutors who may handle the case in the future.

(d) The prosecutor should take steps to ensure that any court order issued to the prosecution is transmitted to the appropriate persons necessary to effectuate the order.

(e) The prosecutor's office should be provided sufficient resources and be organized to permit adequate preparation for court proceedings.

Standard 3-5.4 Identification and Disclosure of Information and Evidence

(a) After charges are filed if not before, the prosecutor should diligently seek to identify all information in the possession of the prosecution or its agents that tends to negate the guilt of the accused, mitigate the offense charged, impeach the government's witnesses or evidence, or reduce the likely punishment of the accused if convicted.

(b) The prosecutor should diligently advise other governmental agencies involved in the case of their continuing duty to identify, preserve, and disclose to the prosecutor information described in (a) above.

(c) Before trial of a criminal case, a prosecutor should make timely disclosure to the defense of information described in (a) above that is known to the prosecutor, regardless of whether the prosecutor believes it is likely to change the result of the proceeding, unless relieved of this responsibility by a court's protective order. (Regarding discovery prior to a guilty plea, see Standard 3-5.6(f) below.) A prosecutor should not intentionally attempt to obscure information disclosed pursuant to this standard by including it without identification within a larger volume of materials.

(d) The obligations to identify and disclose such information continue throughout the prosecution of a criminal case.

(e) A prosecutor should timely respond to legally proper discovery requests, and make a diligent effort to comply with legally proper disclosure obligations, unless otherwise authorized by a court. When the defense makes requests for specific information, the prosecutor should provide specific responses rather than merely a general acknowledgement of discovery obligations. Requests and responses should be tailored to the case and "boilerplate" requests and responses should be disfavored.

(f) The prosecutor should make prompt efforts to identify and disclose to the defense any physical evidence that has been gathered in the investigation, and provide the defense a reasonable opportunity to examine it.

(g) A prosecutor should not avoid pursuit of information or evidence because the prosecutor believes it will damage the prosecution's case or aid the accused.

(h) A prosecutor should determine whether additional statutes, rules or caselaw may govern or restrict the disclosure of information, and comply with these authorities absent court order.

Standard 3-5.5 Preservation of Information and Evidence

(a) The prosecutor should make reasonable efforts to preserve, and direct the prosecutor's agents to preserve, relevant materials during and after a criminal case, including

(i) evidence relevant to investigations as well as prosecutions, whether or not admitted at trial;

(ii) information identified pursuant to Standard 3-5.4(a); and

(iii) other materials necessary to support significant decisions made and conclusions reached by the prosecution in the course of an investigation and prosecution.

(b) The prosecutor's office should develop policies regarding the method and duration of preservation of such materials. Such policies should be consistent with applicable rules and laws (such as public records laws) in the jurisdiction. These policies, and individual preservation decisions, should consider the character and seriousness of each case, the character of the particular evidence or information, the likelihood of further challenges to judgments following conviction, and the resources available for preservation. Physical evidence should be preserved so as to reasonably preserve its forensic characteristics and utility.

(c) Materials should be preserved at least until a criminal case is finally resolved or is final on appeal and the time for further appeal has expired. In felony cases, materials should be preserved until post-conviction litigation is concluded or time-limits have expired. In death penalty cases, information should be preserved until the penalty is carried out or is precluded.

(d) The prosecutor should comply with additional statutes, rules or caselaw that may govern the preservation of evidence.

Standard 3-5.6 Conduct of Negotiated Disposition Discussions

(a) The prosecutor should be open, at every stage of a criminal matter, to discussions with defense counsel concerning disposition of charges by guilty plea or other negotiated disposition.

(b) A prosecutor should not engage in disposition discussions directly with a represented defendant, except with defense counsel's approval. Where a defendant has properly waived counsel, the prosecutor may engage in disposition discussions with the defendant, and should make and preserve a record of such discussions.

(c) The prosecutor should not enter into a disposition agreement before having information sufficient to assess the defendant's actual culpability. The prosecutor should consider collateral consequences of a conviction before entering into a disposition agreement. The prosecutor should consider factors listed in Standard 3-4.4(a), and not be influenced in disposition discussions by inappropriate factors such as those listed in Standards 3-1.6 and 3-4.4(b).

(d) The prosecutor should not set unreasonably short deadlines, or demand conditions for a disposition, that are so coercive that the voluntariness of a plea or the effectiveness of defense counsel is put into question. A prosecutor may, however, set a reasonable deadline before trial or hearing for acceptance of a disposition offer.

(e) A prosecutor should not knowingly make false statements of fact or law in the course of disposition discussions.

(f) Before entering into a disposition agreement, the prosecutor should disclose to the defense a factual basis sufficient to support the charges in the proposed agreement, and information currently known to the prosecutor that tends to negate guilt, mitigates the offense or is likely to reduce punishment.

(g) A prosecutor should not agree to a guilty plea if the prosecutor reasonably believes that sufficient admissible evidence to support conviction beyond reasonable doubt would be lacking if the matter went to trial.

Standard 3-5.7 Establishing and Fulfilling Conditions of Negotiated Dispositions

(a) A prosecutor should not demand terms in a negotiated disposition agreement that are unlawful or in violation of public policy.

(b) The prosecutor may properly promise the defense that the prosecutor will or will not take a particular position concerning sentence and conditions. The prosecutor should not, however, imply a greater power to influence the disposition of a case than is actually possessed.

(c) The prosecutor should memorialize all promises and conditions that are part of the agreement, and ensure that any written disposition agreement accurately and completely reflects the precise terms of the agreement including the prosecutor's promises and the defendant's obligations. At any court hearing to finalize a negotiated disposition, the prosecutor should ensure that all relevant details of the agreement have been placed on the record. The presumption is that the hearing and record will be public, but in some cases the hearing or record (or a portion) may be sealed for good cause.

(d) Once a disposition agreement is final and accepted by the court, the prosecutor should comply with, and make good faith efforts to have carried out, the government's obligations. The prosecutor should construe agreement conditions, and evaluate the defendant's performance including any cooperation, in a good-faith and reasonable manner.

(e) If the prosecutor believes that a defendant has breached an agreement that has been accepted by the court, the prosecutor should notify the defense regarding the prosecutor's belief and any intended adverse action. If the defense presents a good-faith disagreement and the parties cannot quickly resolve it, the prosecutor should not act before judicial resolution.

(f) If the prosecutor reasonably believes that a court is acting inconsistently with any term of a negotiated disposition, the prosecutor should raise the matter with the court.

Standard 3-5.8 Waiver of Rights as Condition of Disposition Agreements

(a) A prosecutor should not condition a disposition agreement on a waiver of the right to appeal the terms of a sentence which exceeds an agreed-upon or reasonably anticipated sentence. Any waiver of appeal of sentence should be comparably binding on the defendant and the prosecution.

(b) A prosecutor should not suggest or require, as a condition of a disposition agreement, any waiver of post-conviction claims addressing ineffective assistance of counsel, prosecutorial misconduct, or destruction of evidence, unless such claims are based on past instances of such conduct that are specifically identified in the agreement or in the transcript of proceedings that address the agreement. If a proposed disposition agreement contains such a waiver regarding ineffective assistance of counsel, the prosecutor should ensure that the defendant has been provided the opportunity to consult with independent counsel regarding the waiver before agreeing to the disposition.

(c) A prosecutor may propose or require other sorts of waivers on an individualized basis if the defendant's agreement is knowing and voluntary. No waivers of any kind should be accepted without an exception for manifest injustice based on newly-discovered evidence, or actual innocence.

(d) Although certain claims may have been waived, a prosecutor should not condition a disposition agreement on a complete waiver of the right to file a habeas corpus or other comparable post-conviction petition.

(e) A prosecutor should not request or rely on waivers to hide an injustice or material flaw in the case which is undisclosed to the defense.

Standard 3-5.9 Record of Reasons for Dismissal of Charges

When criminal charges are dismissed on the prosecution's motion, including by plea of *nolle prosequi* or its equivalent, the prosecutor should make and retain an appropriate record of the reasons for the dismissal, and indicate on the record whether the dismissal was with or without prejudice.

PART VI: COURT HEARINGS AND TRIAL

Standard 3-6.1 Scheduling Court Hearings

Final control over the scheduling of court appearances, hearings and trials in criminal matters should rest with the court rather than the parties. When the prosecutor is aware of facts that would affect scheduling, the prosecutor should advise the court and, if the facts are

case-specific, defense counsel.

Standard 3-6.2 Civility With Courts, Opposing Counsel, and Others

(a) As an officer of the court, the prosecutor should support the authority of the court and the dignity of the courtroom by adherence to codes of professionalism and civility, and by manifesting a professional and courteous attitude toward the judge, opposing counsel, witnesses, defendants, jurors, court staff and others. In court as elsewhere, the prosecutor should not display or act out of any improper or unlawful bias.

(b) When court is in session, unless otherwise permitted by the court, the prosecutor should address the court and not address other counsel or the defendant directly on any matter related to the case.

(c) The prosecutor should comply promptly and civilly with a court's orders or seek appropriate relief from such order. If the prosecutor considers an order to be significantly erroneous or prejudicial, the prosecutor should ensure that the record adequately reflects the events. The prosecutor has a right to make respectful objections and reasonable requests for reconsideration, and to seek other relief as the law permits. If a judge prohibits making an adequate objection, proffer, or record, the prosecutor may take other lawful steps to protect the public interest.

Standard 3-6.3 Selection of Jurors

(a) The prosecutor's office should be aware of legal standards that govern the selection of jurors, and train prosecutors to comply. The prosecutor should prepare to effectively discharge the prosecution function in the selection of the jury, including exercising challenges for cause and peremptory challenges. The prosecutor's office should also be aware of the process used to select and summon the jury pool and bring legal deficiencies to the attention of the court.

(b) The prosecutor should not strike jurors based on any criteria rendered impermissible by the constitution, statutes, applicable rules of the jurisdiction, or these standards, including race, sex, religion, national origin, disability, sexual orientation or gender identity. The prosecutor should consider contesting a defense counsel's peremptory challenges that appear to be based upon such criteria.

(c) In cases in which the prosecutor conducts a pretrial investigation of the background of potential jurors, the investigative methods used should not harass, intimidate, or unduly embarrass or invade the privacy of potential jurors. Absent special circumstances, such investigation should be restricted to review of records and sources of information already in

existence and to which access is lawfully allowed. If the prosecutor uses record searches that are unavailable to the defense, such as criminal record databases, the prosecutor should share the results with defense counsel or seek a judicial protective order.

(d) The opportunity to question jurors personally should be used solely to obtain information relevant to the well-informed exercise of challenges. The prosecutor should not seek to commit jurors on factual issues likely to arise in the case, and should not intentionally present arguments, facts or evidence which the prosecutor reasonably should know will not be admissible at trial. Voir dire should not be used to argue the prosecutor's case to the jury, or to unduly ingratiate counsel with the jurors.

(e) During voir dire, the prosecutor should seek to minimize any undue embarrassment or invasion of privacy of potential jurors, for example by seeking to inquire into sensitive matters outside the presence of other potential jurors, while still enabling fair and efficient juror selection.

(f) If the court does not permit voir dire by counsel, the prosecutor should provide the court with suggested questions in advance, and request specific follow-up questions during the selection process when necessary to ensure fair juror selection.

(g) If the prosecutor has reliable information that conflicts with a potential juror's responses, or that reasonably would support a "for cause" challenge by any party, the prosecutor should inform the court and, unless the court orders otherwise, defense counsel.

Standard 3-6.4 Relationship With Jurors

(a) The prosecutor should not communicate with persons the prosecutor knows to be summoned for jury duty or impaneled as jurors, before or during trial, other than in the lawful conduct of courtroom proceedings. The prosecutor should avoid even the appearance of improper communications with jurors, and minimize any out-of-court proximity to or contact with jurors. Where out-of-court contact cannot be avoided, the prosecutor should not communicate about or refer to the specific case.

(b) The prosecutor should treat jurors with courtesy and respect, while avoiding a show of undue solicitude for their comfort or convenience.

(c) After discharge of a juror, a prosecutor should avoid contacts that may harass or embarrass the juror, that criticize the jury's actions or verdict, or that express views that could otherwise adversely influence the juror's future jury service. The prosecutor should know and comply with applicable rules and law governing the subject.

(d) After a jury is discharged, the prosecutor may, if no statute, rule, or order prohibits such action, communicate with jurors to investigate whether a verdict may be subject to legal challenge, or to evaluate the prosecution's performance for improvement in the future. The

prosecutor should consider requesting the court to instruct the jury that, if it is not prohibited by law, it is not improper for jurors to discuss the case with the lawyers, although they are not required to do so. Any post-discharge communication with a juror should not disparage the criminal justice system and the jury trial process, and should not express criticism of the jury's actions or verdict.

(e) A prosecutor who learns reasonably reliable information that there was a problem with jury deliberations or conduct that could support an attack on a judgment of conviction and that is recognized as potentially valid in the jurisdiction, should promptly report that information to the appropriate judicial officer and, unless the court orders otherwise, defense counsel.

Standard 3-6.5 Opening Statement at Trial

(a) The prosecutor should give an opening statement before the presentation of evidence begins.

(b) The prosecutor's opening statement at trial should be confined to a fair statement of the case from the prosecutor's perspective, and discussion of evidence that the prosecutor reasonably believes will be available, offered and admitted to support the prosecution case. The prosecutor's opening should avoid speculating about what defenses might be raised by the defense unless the prosecutor knows they will be raised.

(c) The prosecutor's opening statement should be made without expressions of personal opinion, vouching for witnesses, inappropriate appeals to emotion or personal attacks on opposing counsel. The prosecutor should scrupulously avoid any comment on a defendant's right to remain silent.

(d) When the prosecutor has reason to believe that a portion of the opening statement may be objectionable, the prosecutor should raise that point with defense counsel and, if necessary, the court, in advance. Similarly, visual aids or exhibits that the prosecutor intends to use during opening statement should be shown to defense counsel in advance.

Standard 3-6.6 Presentation of Evidence

(a) The prosecutor should not offer evidence that the prosecutor does not reasonably believe to be true, whether by documents, tangible evidence, or the testimony of witnesses. When a prosecutor has reason to doubt the truth or accuracy of particular evidence, the prosecutor should take reasonable steps to determine that the evidence is reliable, or not present it.

(b) If the prosecutor reasonably believes there has been misconduct by opposing counsel, a witness, the court or other persons that affects the fair presentation of the evidence, the prosecutor should challenge the perceived misconduct by appealing or objecting to the court

or through other appropriate avenues, and not by engaging in retaliatory conduct that the prosecutor knows to be improper.

(c) During the trial, if the prosecutor discovers that false evidence or testimony has been introduced by the prosecution, the prosecutor should take reasonable remedial steps. If the witness is still on the stand, the prosecutor should attempt to correct the error through further examination. If the falsity remains uncorrected or is not discovered until the witness is off the stand, the prosecutor should notify the court and opposing counsel for determination of an appropriate remedy.

(d) The prosecutor should not bring to the attention of the trier of fact matters that the prosecutor knows to be inadmissible, whether by offering or displaying inadmissible evidence, asking legally objectionable questions, or making impermissible comments or arguments. If the prosecutor is uncertain about the admissibility of evidence, the prosecutor should seek and obtain resolution from the court before the hearing or trial if possible, and reasonably in advance of the time for proffering the evidence before a jury.

(e) The prosecutor should exercise strategic judgment regarding whether to object or take exception to evidentiary rulings that are materially adverse to the prosecution, and not make every possible objection. The prosecutor should not make objections without a reasonable basis, or for improper reasons such as to harass or to break the flow of opposing counsel's presentation. The prosecutor should make an adequate record for appeal, and consider the possibility of an interlocutory appeal regarding significant adverse rulings if available.

(f) The prosecutor should not display tangible evidence (and should object to such display by the defense) until it is admitted into evidence, except insofar as its display is necessarily incidental to its tender, although the prosecutor may seek permission to display admissible evidence during opening statement. The prosecutor should avoid displaying even admitted evidence in a manner that is unduly prejudicial.

Standard 3-6.7 Examination of Witnesses in Court

(a) The prosecutor should conduct the examination of witnesses fairly and with due regard for dignity and legitimate privacy concerns, and without seeking to intimidate or humiliate a witness unnecessarily.

(b) The prosecutor should not use cross-examination to discredit or undermine a witness's testimony, if the prosecutor knows the testimony to be truthful and accurate.

(c) The prosecutor should not call a witness to testify in the presence of the jury, or require the defense to do so, when the prosecutor knows the witness will claim a valid privilege not to testify. If the prosecutor is unsure whether a particular witness will claim a privilege to not testify, the prosecutor should alert the court and defense counsel in advance and outside the presence of the jury.

(d) The prosecutor should not ask a question that implies the existence of a factual predicate for which a good faith belief is lacking.

Standard 3-6.8 Closing Arguments to the Trier of Fact

(a) In closing argument to a jury (or to a judge sitting as trier of fact), the prosecutor should present arguments and a fair summary of the evidence that proves the defendant guilty beyond reasonable doubt. The prosecutor may argue all reasonable inferences from the evidence in the record, unless the prosecutor knows an inference to be false. The prosecutor should, to the extent time permits, review the evidence in the record before presenting closing argument. The prosecutor should not knowingly misstate the evidence in the record, or argue inferences that the prosecutor knows have no good-faith support in the record. The prosecutor should scrupulously avoid any reference to a defendant's decision not to testify.

(b) The prosecutor should not argue in terms of counsel's personal opinion, and should not imply special or secret knowledge of the truth or of witness credibility.

(c) The prosecutor should not make arguments calculated to appeal to improper prejudices of the trier of fact. The prosecutor should make only those arguments that are consistent with the trier's duty to decide the case on the evidence, and should not seek to divert the trier from that duty.

(d) If the prosecutor presents rebuttal argument, the prosecutor may respond fairly to arguments made in the defense closing argument, but should not present or raise new issues. If the prosecutor believes the defense closing argument is or was improper, the prosecutor should timely object and request relief from the court, rather than respond with arguments that the prosecutor knows are improper.

Standard 3-6.9 Facts Outside the Record

When before a jury, the prosecutor should not knowingly refer to, or argue on the basis of, facts outside the record, unless such facts are matters of common public knowledge based on ordinary human experience, or are matters of which a court clearly may take judicial notice, or are facts the prosecutor reasonably believes will be entered into the record at that proceeding. In a nonjury context the prosecutor may refer to extra-record facts relevant to issues about which the court specifically inquires, but should note that they are outside the record.

Standard 3-6.10 Comments by Prosecutor After Verdict or Ruling

(a) The prosecutor should respectfully accept acquittals. Regarding other adverse rulings (including the rare acquittal by a judge that is appealable), while the prosecutor may publicly express respectful disagreement and an intention to pursue lawful options for review, the

prosecutor should refrain from public criticism of any participant. Public comments after a verdict or ruling should be respectful of the legal system and process.

(b) The prosecutor may publicly praise a jury verdict or court ruling, compliment government agents or others who aided in the matter, and note the social value of the ruling or event. The prosecutor should not publicly gloat or seek personal aggrandizement regarding a verdict or ruling.

PART VII: POST-TRIAL MOTIONS AND SENTENCING

Standard 3-7.1 Post-trial Motions

The prosecutor should conduct a fair evaluation of post-trial motions, determine their merit, and respond accordingly and respectfully. The prosecutor should not oppose motions at any stage without a reasonable basis for doing so.

Standard 3-7.2 Sentencing

(a) The severity of sentences imposed should not be used as a measure of a prosecutor's effectiveness.

(b) The prosecutor should be familiar with relevant sentencing laws, rules, consequences and options, including alternative non-imprisonment sentences. Before or soon after charges are filed, and throughout the pendency of the case, the prosecutor should evaluate potential consequences of the prosecution and available sentencing options, such as forfeiture, restitution, and immigration effects, and be prepared to actively advise the court in sentencing.

(c) The prosecutor should seek to assure that a fair and informed sentencing judgment is made, and to avoid unfair sentences and disparities.

(d) In the interests of uniformity, the prosecutor's office should develop consistent policies for evaluating and making sentencing recommendations, and not leave complete discretion for sentencing policy to individual prosecutors.

(e) The prosecutor should know the relevant laws and rules regarding victims' rights, and facilitate victim participation in the sentencing process as the law requires or permits.

Standard 3-7.3 Information Relevant to Sentencing

(a) The prosecutor should assist the court in obtaining complete and accurate information for use in sentencing, and should cooperate fully with the court's and staff's presentence investigations. The prosecutor should provide any information that the prosecution believes

is relevant to the sentencing to the court and to defense counsel. A record of such information provided to the court and counsel should be made, so that it may be reviewed later if necessary. If material incompleteness or inaccuracy in a presentence report comes to the prosecutor's attention, the prosecutor should take steps to present the complete and correct information to the court and defense counsel.

(b) The prosecutor should disclose to the defense and to the court, at or before the sentencing proceeding, all information that tends to mitigate the sentence and is known to the prosecutor, unless the prosecutor is relieved of this responsibility by a court order.

(c) Prior to sentencing, the prosecutor should disclose to the defense any evidence or information it provides, whether by document or orally, to the court or presentence investigator in aid of sentencing, unless contrary to law or rule in the jurisdiction or a protective order has been sought.

PART VIII: APPEALS AND OTHER CONVICTION CHALLENGES

Standard 3-8.1 Duty To Defend Conviction Not Absolute

The prosecutor has a duty to defend convictions obtained after fair process. This duty is not absolute, however, and the prosecutor should temper the duty to defend with independent professional judgment and discretion. The prosecutor should not defend a conviction if the prosecutor believes the defendant is innocent or was wrongfully convicted, or that a miscarriage of justice associated with the conviction has occurred.

Standard 3-8.2 Appeals -- General Principles

(a) All prosecutors should be sufficiently knowledgeable about appellate practice to be able to make a record sufficient to preserve issues and arguments for appeal, and should make such a record at the trial court level.

(b) When the prosecutor receives an adverse ruling, the prosecutor should consider whether it may be appealed. If the ruling may be appealed, the prosecutor should consider whether an appeal should be filed, and refer it to an appellate prosecutor if appropriate for decision.

(c) When considering whether an adverse ruling should be appealed, the prosecutor should evaluate not only the legal merits, but also whether it is in the interests of justice to pursue such an appeal, taking into account the benefits to the prosecution, the judicial system, and the public, as well as the costs of the appellate process and of delay to the prosecution, defendant, victims and witnesses.

(d) A prosecutor handling a criminal appeal should know the specific rules, practices and procedures that govern appeals in the jurisdiction.

(e) The prosecutor's office should designate one or more prosecutors in the office to develop expertise regarding appellate law and procedure, and should develop contacts with other offices' prosecutors who have such expertise. The prosecutor's office should develop consistent policies and positions regarding issues that are common or recurring in the appellate process or court. The prosecutor's office should regularly notify its prosecutors and law enforcement agents about new developments in the law or judicial decisions, and should provide regular training to such personnel on such topics.

(f) A prosecutor handling a criminal appeal who was not counsel in the trial court should consult with the trial prosecutor, but should exercise independent judgment in reviewing the record and the defense arguments. The appellate prosecutor should not make or oppose arguments in an appeal without a reasonable legal basis.

Standard 3-8.3 Responses to New or Newly-Discovered Evidence or Law

If a prosecutor learns of credible and material information creating a reasonable likelihood that a defendant was wrongfully convicted or sentenced or is actually innocent, the prosecutor should comply with ABA Model Rules of Professional Conduct 3.8(g) and (h). The prosecutor's office should develop policies and procedures to address such information, and take actions that are consistent with applicable law, rules, and the duty to pursue justice.

Standard 3-8.4 Challenges to the Effectiveness of Defense Counsel

(a) In any post-conviction challenge to the effectiveness of defense counsel, the prosecutor should be cognizant of the defendant's potential attorney-client privilege with former defense counsel as well as former defense counsel's other ethical or legal obligations, and not seek to abrogate such privileges or obligations without an unambiguous legal basis, or court order.

(b) If a prosecutor observes, at any stage of a criminal proceeding, defense counsel conduct or omission that might reasonably constitute ineffective assistance of counsel, the prosecutor should take reasonable steps to preserve the defendant's right to effective assistance as well as the public's interest in obtaining a valid conviction, while not intruding on a defendant's constitutional right to counsel. During an ongoing defense representation, the prosecutor should not express concerns regarding possible ineffective assistance on the public record without an unambiguous legal basis or court order, and should not communicate any such concerns directly to the defendant.

Standard 3-8.5 Collateral Attacks on Conviction

If required to respond to a collateral attack on a conviction, the prosecutor should consider all lawful responses, including applicable procedural or other defenses. The prosecutor need not, however, invoke every possible defense to a collateral attack, and should consider potential negotiated dispositions or other remedies, if the prosecutor and the prosecutor's office reasonably conclude that the interests of justice are thereby served.

EXHIBIT 53

JUSTICE MANUAL

Title 9: Criminal

9-27.000 - Principles of Federal Prosecution

9-27.001 - Preface

These principles of federal prosecution provide federal prosecutors a statement of prosecutorial policies and practices. As such, they should promote the reasoned exercise of prosecutorial authority and contribute to the fair, evenhanded administration of the federal criminal laws.

A determination to prosecute represents a policy judgment that the fundamental interests of society require the application of federal criminal law to a particular set of circumstances — recognizing both that serious violations of federal law must be prosecuted, and that prosecution entails profound consequences for the accused, crime victims, and their families whether or not a conviction ultimately results. Other prosecutorial decisions can be equally significant. Decisions, for example, regarding the specific charges to be brought, or

concerning plea dispositions, effectively determine the range of sanctions or other measures that may be imposed for criminal conduct. The rare decision to consent to pleas of nolo contendere may affect the success of related civil suits for recovery of damages. And the government's position during the sentencing process will help ensure that the court imposes a sentence consistent with 18 U.S.C. § 3553(a).

These principles of federal prosecution have been designed to assist in structuring the decision-making process of attorneys for the government. For the most part, they have been cast in general terms with a view to providing guidance rather than to mandating results. The intent is to assure regularity without regimentation, and to prevent unwarranted disparity without sacrificing necessary flexibility.

The availability of this statement of principles to federal law enforcement officials and to the public serves two important purposes: ensuring the fair and effective exercise of prosecutorial discretion and responsibility by attorneys for the government, and promoting confidence on the part of the public and individual defendants that important prosecutorial decisions will be made rationally and objectively based on an individualized assessment of the facts and circumstances of each case. The principles provide convenient reference points for the process of making prosecutorial decisions; they facilitate the task of training new attorneys in the proper discharge of their duties; they contribute to more effective management of the government's limited prosecutorial resources by promoting greater consistency among the prosecutorial activities of all United States Attorney's offices and between their activities and the Department's law enforcement priorities; they make possible better coordination of investigative and prosecutorial activity by enhancing the understanding of investigating departments and agencies of the considerations underlying prosecutorial decisions by the Department; and they inform the public of the careful process by which prosecutorial decisions are made.

Important though these principles are to the proper operation of our federal prosecutorial system, the success of that system must rely ultimately on the character, integrity, sensitivity, and competence of those men and women who are selected to represent the public interest in the federal criminal justice process. It is with their help that these principles have been prepared, and it is with their efforts that the purposes of these principles will be achieved.

[updated June 2023]

9-27.110 - Purpose

The principles of federal prosecution set forth herein are intended to promote the reasoned exercise of prosecutorial discretion by attorneys for the government with respect to:

1. Initiating and declining prosecution;
2. Selecting charges;
3. Taking a position on detention or release pending judicial proceedings;
4. Entering into plea agreements;
5. Opposing offers to plead nolo contendere;
6. Entering into non-prosecution agreements in return for cooperation; and
7. Participating in sentencing.

Comment. Under the federal criminal justice system, the prosecutor has wide latitude in determining when, whom, how, and even whether to prosecute for apparent violations of federal criminal law. The prosecutor's broad discretion in such areas as initiating or foregoing prosecutions, selecting or recommending specific charges, and terminating prosecutions by accepting guilty pleas has been recognized on numerous occasions by the courts. *See, e.g., United States v. LaBonte,* 520 U.S. 751, 762 (1997)*; Oyler v. Boles*, 368 U.S. 448 (1962); *United States v. Fokker Services B.V.,* 818 F.3d 733, 741 (D.C. Cir. 2016); *Newman v. United States*, 382 F.2d 479 (D.C. Cir. 1967); *Powell v. Ratzenbach*, 359 F.2d 234 (D.C. Cir. 1965). This discretion exists by virtue of the prosecutor's status as a member of the Executive Branch, and the President's responsibility under the Constitution to ensure that the laws of the United States be "faithfully executed." U.S. Const. Art. II § 3. *See Nader v. Saxbe*, 497 F.2d 676, 679 n. 18 (D.C. Cir. 1974).

Since federal prosecutors have great latitude in making crucial decisions concerning enforcement of a nationwide system of criminal justice, it is desirable, in the interest of the fair and effective administration of justice, that all federal prosecutors be guided by a general statement of principles that summarizes appropriate considerations to be weighed, and desirable practices to be followed, in discharging their prosecutorial responsibilities.

Although these principles deal with the specific situations indicated, they should be read in the broader context of the basic responsibilities of federal attorneys: making certain that the general purposes of the criminal law—assurance of warranted punishment, deterrence of further criminal conduct, protection of the public from offenders, and rehabilitation of offenders—are adequately met, while making certain also that the rights of individuals are scrupulously protected.

[cited in JM 9-2.031, JM 9-6.100]

[updated January 2023]

9-27.120 - Application

In carrying out criminal law enforcement responsibilities, each Department of Justice attorney should be guided by these principles, and each United States Attorney and each Assistant Attorney General should ensure that such principles are communicated to the attorneys who exercise prosecutorial responsibility within his/her office or under his/her direction or supervision. Prosecutors should further refer to the Attorney General's memoranda — *General Department Policies Regarding Charging, Pleas, and Sentencing* and *Additional Department Policies Regarding Charging, Pleas, and Sentencing in Drug Cases* — for additional background and guidance.

Comment. It is expected that each federal prosecutor will be guided by these principles in carrying out his/her criminal law enforcement responsibilities unless a modification of, or departure from, these principles has been authorized pursuant to JM 9-27.140. However, it is not intended that reference to these principles will require a particular prosecutorial decision in any given case. Rather, these principles are set forth solely for the purpose of assisting attorneys for the government in determining how best to exercise their authority in the performance of their duties.

[updated June 2023]

9-27.130 - Implementation

Each United States Attorney and responsible Assistant Attorney General should establish internal office procedures to ensure:

1. That prosecutorial decisions are made at an appropriate level of responsibility, and are made consistent with these principles; and
2. That serious, unjustified departures from the principles set forth herein are followed by such remedial action, including the imposition of disciplinary sanctions or other measures, when warranted, as deemed appropriate.

Comment. One purpose of such procedures should be to ensure consistency in the decisions within each office by regularizing the decision-making process so that decisions are made at the appropriate level of responsibility. A second purpose, equally important, is to provide appropriate remedies for serious, unjustified departures from sound prosecutorial principles. The United States Attorney or Assistant Attorney General may also wish to establish internal procedures for appropriate review and documentation of decisions.

[updated June 2023]

9-27.140 - Modifications or Departures

United States Attorneys may modify or depart from the principles set forth herein as necessary in the interests of fair and effective law enforcement within the district. Any modification or departure contemplated as a matter of policy or regular practice must be approved by the appropriate Assistant Attorney General where required, *see* JM 9-2.400 (prior approvals chart), and the Deputy Attorney General. Similarly, Assistant Attorneys General overseeing prosecuting components may modify or depart from the principles set forth herein in the interests of fair and effective law enforcement, and any modification or departure contemplated by an Assistant Attorney General as a matter of policy or regular practice must be approved by the Deputy Attorney General.

Comment. Although these materials are designed to promote consistency in the application of federal criminal laws, they are not intended to produce rigid uniformity among federal prosecutors in all areas of the country at the expense of the fair administration of justice. Different offices face different conditions and have different requirements. In recognition of these realities, and in order to maintain the flexibility necessary to respond fairly and effectively to local conditions, each United States Attorney and Assistant Attorney General overseeing prosecuting components is authorized to modify or depart from these principles, as necessary in the interests of fair and effective law enforcement within the district. In situations in which any modification or departure is contemplated as a matter of policy or regular practice, the appropriate U.S. Attorney and/or Assistant Attorney General and the Deputy Attorney General must approve the action before it is adopted.

[cited in JM 9-27.120]

[updated June 2023]

9-27.150 - Non-Litigability

These principles, and internal office procedures adopted pursuant to them, are intended solely for the guidance of attorneys for the government. They are not intended to create a substantive or procedural right or benefit, enforceable at law , and may not be relied upon by a party to litigation with the United States.

Comment. The Principles of Federal Prosecution have been developed purely as matter of internal Departmental policy and are being provided to federal prosecutors solely for their own guidance in performing their duties. Neither this statement of principles nor any internal procedures adopted by individual offices create any rights or benefits. By setting forth this fact explicitly, JM 9-27.150 is intended to foreclose efforts to litigate the validity of prosecutorial actions alleged to be at variance with these principles or not in compliance with internal office procedures. In the event that an attempt is made to litigate any aspect of these principles, to litigate any internal office procedures, or to litigate the applicability of such principles or procedures to a particular case, the attorney for the government should oppose the attempt. The attorney for the government should also notify the Department of the litigation if there is a reasonable possibility the government may face an adverse decision on the litigation or if a court renders an adverse decision.

[updated February 2018]

9-27.200 - Initiating and Declining Prosecution — Probable Cause Requirement

If the attorney for the government concludes that there is probable cause to believe that a person has committed a federal offense within his/her jurisdiction, he/she should consider whether to:

1. Request or conduct further investigation;
2. Commence or recommend prosecution;
3. Decline prosecution and refer the matter for prosecutorial consideration in another jurisdiction;
4. Decline prosecution and commence or recommend pretrial diversion or other non-criminal disposition; or
5. Decline prosecution without taking other action.

Comment. JM 9-27.200 sets forth the courses of action available to the attorney for the government once he/she concludes that there is probable cause to believe that a person has committed a federal offense within his/her jurisdiction. The probable cause standard is the same standard required for the issuance of an arrest warrant or a summons upon a complaint (*see* Fed. R. Crim. P. 4(a)), and for a magistrate's decision to hold a defendant to answer in the district court (*see* Fed. R. Crim. P. 5.1(a)), and is the minimal requirement for indictment by a grand jury. *See Branzburg v. Hayes*, 408 U.S. 665, 686 (1972). This is, of course, a threshold consideration only. Merely because this requirement can be met in a given case does not automatically warrant prosecution; further investigation may instead be warranted, and the prosecutor should still take into account all relevant considerations, including those described in the following provisions, in deciding upon his/her course of action. On the other hand, failure to meet the minimal requirement of probable cause is an absolute bar to initiating a federal prosecution, and in some circumstances may preclude reference to other prosecuting authorities or recourse to non-criminal sanctions or other measures as well.

[cited in JM 9-10.060; JM 9-2.031]

[updated February 2018]

9-27.220 - Grounds for Commencing or Declining Prosecution

The attorney for the government should commence or recommend federal prosecution if he/she believes that the person's conduct constitutes a federal offense, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless (1) the prosecution would serve no substantial federal interest; (2) the person is subject to effective prosecution in another jurisdiction; or (3) there exists an adequate non-criminal alternative to prosecution.

Comment. JM 9-27.220 sets forth the longstanding threshold requirement from the *Principles of Federal Prosecution* that a prosecutor may commence or recommend federal prosecution only if he/she believes that the person will more likely than not be found guilty beyond a reasonable doubt by an unbiased trier of fact and that the conviction will be upheld on appeal. Evidence sufficient to sustain a conviction is required under Rule 29(a) of the Federal Rules of Criminal Procedure, to avoid a judgment of acquittal. Moreover, both as a matter of fundamental fairness and in the interest of the efficient administration of justice, no prosecution should be initiated against any person unless the attorney for the government believes that the admissible

evidence is sufficient to obtain and sustain a guilty verdict by an unbiased trier of fact. In this connection, it should be noted that, when deciding whether to prosecute, the government attorney need not have in hand, at that time, all of the evidence upon which he/she intends to rely at trial, if he/she has a reasonable and good faith belief that such evidence will be available and admissible at the time of trial. Thus, for example, it would be proper to commence or recommend a prosecution even though a key witness may be out of the country, so long as there is a good faith basis to believe that the witness's presence at trial could reasonably be expected.

Where the law and the facts create a sound, prosecutable case, the likelihood of an acquittal due to unpopularity of some aspect of the prosecution or because of the overwhelming popularity of the defendant or his/her cause is not a factor prohibiting prosecution. For example, in a civil rights case or a case involving an extremely popular political figure, it might be clear that the evidence of guilt — viewed objectively by an unbiased factfinder — would be sufficient to obtain and sustain a conviction, yet the prosecutor might reasonably doubt, based on the circumstances, that the jury would convict. In such a case, despite his/her negative assessment of the likelihood of a guilty verdict (based on factors extraneous to an objective view of the law and the facts), the prosecutor may properly conclude that it is necessary and appropriate to commence or recommend prosecution and allow the criminal process to operate in accordance with the principles set forth here.

However, the attorney for the government's belief that a person's conduct constitutes a federal offense and that the admissible evidence will probably be sufficient to obtain and sustain a conviction is not sufficient standing by itself to commence or recommend prosecution. The prosecution must also serve a substantial federal interest, and the prosecutor must assess whether, in his/her judgment, the person is subject to effective prosecution in another jurisdiction; and whether there exists an adequate non-criminal alternative to prosecution. It is left to the judgment of the attorney for the government to determine whether these circumstances exist. In exercising that judgment, the attorney for the government should consult JM 9-27.230, 9-27.240, 9-27.250, and 9-27.260.

[cited in JM 6-4.210; JM 9-10.060; JM 9-27.200; JM 9-28.300]

[updated June 2023]

9-27.230 - Initiating and Declining Charges — Substantial Federal Interest

In determining whether a prosecution would serve a substantial federal interest, the attorney for the government should weigh all relevant considerations, including:

1. Federal law enforcement priorities, including any federal law enforcement initiatives or operations aimed at accomplishing those priorities;
2. The nature and seriousness of the offense;
3. The deterrent effect of prosecution;
4. The person's culpability in connection with the offense;
5. The person's history with respect to criminal activity;
6. The person's willingness to cooperate in the investigation or prosecution of others;
7. The person's personal circumstances;
8. The interests of any victims; and
9. The probable sentence or other consequences if the person is convicted.

Comment. The list of relevant considerations is not intended to be all-inclusive. Moreover, not all of the factors will be applicable to every case, and in any particular case one factor may deserve more weight than it might in another case.

1. **Federal Law Enforcement Priorities.** Federal law enforcement resources are not sufficient to permit prosecution of every alleged offense over which federal jurisdiction exists. Accordingly, in the interest of allocating its limited resources so as to achieve an effective nationwide law enforcement program, from time to time the Attorney General may establish national investigative and prosecutorial priorities. These priorities are designed to focus federal law enforcement efforts on those matters within the federal jurisdiction that are most deserving of federal attention and are most likely to be handled effectively at the federal level, rather than state or local level. As just one example, prosecution of offenses within the exclusive territorial jurisdiction of the United States, where no other avenue of prosecution exists, serves a particular and important federal interest. In addition, individual United States Attorneys are required to establish their own priorities (in consultation with law enforcement authorities), within the national priorities, in order to concentrate their resources on problems of particular local or regional significance. The Attorney General and individual United States Attorneys may implement specific federal law enforcement initiatives and operations designed at accomplishing those priorities. In weighing the federal interest in a particular prosecution, the attorney for the government should give careful consideration to the extent to which prosecution would accord with these national and local priorities, as well as federal law enforcement initiatives or operations designed to accomplish them, whether on a national level or by important impact on local law enforcement needs. The fact that a particular prosecution is part of a larger federal law enforcement initiative that serves a substantial federal interest is an appropriate and relevant consideration in determining whether that individual prosecution also serves such a federal interest.

2. **Nature and Seriousness of Offense.** It is important that limited federal resources not be wasted in prosecuting inconsequential cases or cases in which the violation is only technical. Thus, in determining whether a substantial federal interest exists that requires prosecution, the attorney for the government should consider the nature and seriousness of the offense involved. A number of factors may be relevant to this consideration. One factor that is obviously of primary importance is the actual or potential impact of the offense on the community and on the victim(s). The nature and seriousness of the offense may also include a consideration of national security interests.

   The impact of an offense on the community in which it is committed can be measured in several ways: in terms of economic harm done to community interests; in terms of physical danger to the citizens or damage to public property; and in terms of erosion of the inhabitants' peace of mind and sense of security. In assessing the seriousness of the offense in these terms, the prosecutor may properly weigh such questions as whether the violation is technical or relatively inconsequential in nature and what the public attitude may be toward prosecution under the circumstances of the case. The public may be indifferent, or even opposed, to enforcement of the controlling statute whether on substantive grounds, or because of a history of non-enforcement, or because the offense involves essentially a minor matter of private concern and the victim is not interested in having it pursued. On the other hand, the nature and circumstances of the offense, the identity of the offender or the victim, or the attendant publicity, may be such as to create strong public sentiment in favor of prosecution. While public interest, or lack thereof, deserves the prosecutor's careful attention, it should not be used to justify a decision to prosecute, or to take other action, that is not supported on other grounds. Public and professional responsibility sometimes will require the choosing of a particularly unpopular course.

3. **Deterrent Effect of Prosecution.** Deterrence of criminal conduct, whether it be criminal activity generally or a specific type of criminal conduct, is one of the primary goals of the criminal law. This purpose should be kept in mind, particularly when deciding whether a prosecution is warranted for an offense that appears to be relatively minor; some offenses, although seemingly not of great importance by themselves, if commonly committed would have a substantial cumulative impact on the community.
4. **The Person's Culpability.** Although a prosecutor may have sufficient evidence of guilt, it is nevertheless appropriate for him/her to give consideration to the degree of the person's culpability in connection with the offense, both in the abstract and in comparison with any others involved in the offense. If, for example, the person was a relatively minor participant in a criminal enterprise conducted by others, or his/her motive was non-criminal, and no other factors require prosecution, the prosecutor might reasonably conclude that some course other than prosecution would be appropriate.
5. **The Person's Criminal History.** If a person is known to have a prior conviction or is reasonably believed to have engaged in criminal activity at an earlier time, this should be

considered in determining whether to commence or recommend federal prosecution. In this connection, particular attention should be given to the nature of the person's prior criminal involvement, when it occurred, its relationship, if any, to the present offense, and whether he/she previously avoided prosecution as a result of an agreement not to prosecute in return for cooperation or as a result of an order compelling his/her testimony. By the same token, a person's lack of prior criminal involvement or his/her previous cooperation with the law enforcement officials should be given due consideration in appropriate cases.

6. **The Person's Willingness to Cooperate.** A person's willingness to cooperate in the investigation or prosecution of others is another appropriate consideration in the determination whether a federal prosecution should be undertaken. Generally speaking, a willingness to cooperate should not by itself relieve a person of criminal liability. There may be some cases, however, in which the value of a person's cooperation clearly outweighs the federal interest in prosecuting him/her. These matters are discussed more fully below, in connection with plea agreements and non-prosecution agreements in return for cooperation.

7. **The Person's Personal Circumstances.** In some cases, the personal circumstances of an accused may be relevant in determining whether to prosecute or to take other action. Some circumstances particular to the accused, such as extreme youth, advanced age, or mental or physical impairment, may suggest that prosecution is not the most appropriate response to his/her offense; other circumstances, such as the fact that the accused occupied a position of trust or responsibility which he/she violated in committing the offense, might weigh in favor of prosecution.

8. **The Interests of Any Victims.** It is important to consider the economic, physical, and psychological impact of the offense, and subsequent prosecution, on any victims. It is appropriate for the prosecutor to take into account such matters as the seriousness of the harm inflicted and the victim's desire for prosecution. Prosecutors may solicit the victim's views on the filing of charges through a general conversation without reference to any particular defendant or charges. For more information regarding the Department's obligations to victims, see the Crime Victims' Rights Act, 18 U.S.C. § 3771, the Victims' Rights and Restitution Act, 34 U.S.C. § 20141, and the Attorney General Guidelines for Victim and Witness Assistance. When considering whether to initiate a prosecution or pursue an alternative resolution, such as a deferred or non-prosecution agreement, prosecutors should be aware of the possible effect the decision may have on the Department's ability to compensate victims of the underlying crimes and on the Crime Victims Fund (CVF). The CVF is a statutorily created fund that is financed by fines and penalties paid by convicted federal offenders. *See* 34 U.S.C. § 20101. Money from the CVF is used to support federal, tribal, state, territorial, and local crime victim assistance programs and to help compensate crime victims across the country. Pursuant to statute, almost all criminal fines collected following conviction are deposited into the CVF, along with all Special Assessments. *See* 34 U.S.C. § 20101(b)(1).

9. **The Probable Sentence or Other Consequence**. In assessing the strength of the federal interest in prosecution, the attorney for the government should consider the sentence, or other consequence, that is likely to be imposed if prosecution is successful, and whether such a sentence or other consequence would justify the time and effort of prosecution. If the offender is already subject to a substantial sentence, or is already incarcerated, as a result

of a conviction for another offense, the prosecutor should weigh the likelihood that another conviction will result in a meaningful addition to his/her sentence, might otherwise have a deterrent effect, or is necessary to ensure that the offender's record accurately reflects the extent of his/her criminal conduct. For example, it might be desirable to commence a bail-jumping prosecution against a person who already has been convicted of another offense so that law enforcement personnel and judicial officers who encounter him/her in the future will be aware of the risk of releasing him/her on bail. On the other hand, if the person is on probation or parole as a result of an earlier conviction, the prosecutor should consider whether the public interest might better be served by instituting a proceeding for violation of probation or revocation of parole, than by commencing a new prosecution. The prosecutor should also be alert to the desirability of instituting prosecution to prevent the running of the statute of limitations and to preserve the availability of a basis for an adequate sentence if there appears to be a chance that an offender's prior conviction may be reversed on appeal or collateral attack. Finally, if a person previously has been prosecuted in another jurisdiction for the same offense or a closely related offense, the attorney for the government should consult existing departmental policy statements on the subject of "successive prosecution" or "dual prosecution," depending on whether the earlier prosecution was federal or nonfederal. *See* JM 9-2.031 (Petite Policy).

There are also considerations that deserve no weight and should not influence the decision, such as the time and resources already expended in federal investigation of the case. No amount of investigative effort warrants commencing a federal prosecution that is not fully justified on other grounds.

[cited in JM 9-2.031; JM 9-27.220; JM 9-27.250; JM 9-27.620]

[updated June 2023]

9-27.240 - Initiating and Declining Charges — Prosecution in Another Jurisdiction

In determining whether prosecution should be declined because the person is subject to effective prosecution in another jurisdiction, the attorney for the government should weigh all relevant considerations, including:

1. The strength of the other jurisdiction's interest in prosecution;
2. The other jurisdiction's ability and willingness to prosecute effectively; and
3. The probable sentence or other consequences if the person is convicted in the other jurisdiction.

When declining prosecution, or reviewing whether federal prosecution should be initiated, the attorney for the government should: (1) consider whether to discuss the matter under review with state, local, territorial, or tribal law enforcement authorities for further investigation or prosecution; and (2) coordinate with those authorities as appropriate. The attorney for the government should be especially aware of the need to coordinate with state, local, territorial, and tribal law enforcement authorities, and shall do so as permitted by law, when declining a matter that involves an ongoing threat or relates to acts of violence or abuse against vulnerable victims, including minors. The attorney for the government should document these coordination efforts, where undertaken, when federal prosecution is declined.

Comment. In many instances, it may be possible to prosecute criminal conduct in more than one jurisdiction. Although there may be instances in which a federal prosecutor may wish to consider deferring to prosecution in another federal district, or to another government, in most instances the choice will probably be between federal prosecution and prosecution by state or local authorities. The factors listed in JM 9-27.240 are illustrative only, and the attorney for the government should also consider any others that appear relevant to his/her particular case.

1. **The Strength of the Jurisdiction's Interest.** The attorney for the government should consider the relative international, federal, state, territorial, and tribal interests with regard to the alleged criminal conduct. Some offenses, even though in violation of federal law, are of particularly strong interest to the authorities of the jurisdiction in which they occur (*e.g.*, local, state, or foreign), either because of the nature of the offense, the identity of the offender or victim, the fact that the investigation was conducted primarily by foreign, state, or local investigators, or some other circumstance. Whatever the reason, when it appears that the federal interest in prosecution is less substantial than the interest of local, state, or foreign authorities, consideration should be given to referring the case to those authorities rather than commencing or recommending a federal prosecution.

2. **Ability and Willingness to Prosecute Effectively.**In assessing the likelihood of effective prosecution in another jurisdiction, the attorney for the government should also consider the intent of the authorities in that jurisdiction and whether that jurisdiction has the prosecutorial and judicial resources that are necessary to undertake prosecution promptly and effectively. Other relevant factors might be legal or evidentiary problems that might attend prosecution in the other jurisdiction. In addition, the federal prosecutor should be alert to any local conditions, attitudes, relationships, or other circumstances that might cast doubt on the likelihood of the other authorities conducting a thorough and successful prosecution.

3. **Probable Sentence Upon Conviction.** The ultimate measure of the potential for effective prosecution in another jurisdiction is the sentence, or other consequence, that is likely to be imposed if the person is convicted. In considering this factor, the attorney for the government should bear in mind not only the statutory penalties in the jurisdiction and

sentencing patterns in similar cases, but also, the particular characteristics of the offense or of the offender that might be relevant to sentencing. He/she should also be alert to the possibility that a conviction under another jurisdiction's laws may, in some cases, result in collateral consequences for the defendant, such as disbarment, that might not follow upon a conviction under federal law.

[cited in JM 5-11.113; JM 9-27.220; JM 9-28.1100]

[updated June 2023]

9-27.250 - Non-Criminal Alternatives to Prosecution

In determining whether there exists an adequate, non-criminal alternative to prosecution, the attorney for the government should consider all relevant factors, including:

1. The sanctions or other measures available under the alternative means of disposition;
2. The likelihood that an effective sanction will be imposed;
3. The effect of non-criminal disposition on federal law enforcement interests; and
4. The interests of any victims.

Comment. When a person has committed a federal offense, it is important that the law respond promptly, fairly, and effectively. This does not mean, however, that a criminal prosecution must be commenced. In recognition of the fact that resort to the criminal process is not necessarily the only appropriate response to serious forms of antisocial activity, Congress and state legislatures have provided civil and administrative remedies for many types of conduct that may also be subject to criminal sanction. Examples of such non-criminal approaches include civil tax proceedings; civil actions under the False Claims Act or other statutory causes of action for false or fraudulent claims; civil actions under the securities, customs, antitrust, or other regulatory laws; administrative suspension and debarment or exclusion proceedings; civil judicial and administrative forfeiture; and reference of complaints to licensing authorities or to professional organizations such as bar associations. Another potentially useful alternative to prosecution in some cases is pretrial diversion. *See* JM 9-22.000 (1) requiring every United States Attorney's Office to develop and implement a pretrial diversion policy (2).

Attorneys for the government should familiarize themselves with these alternatives and should consider pursuing them if they are available in a particular case. Although on some occasions

they should be pursued in addition to criminal prosecution, on other occasions these alternatives can be expected to provide an effective substitute for criminal prosecution. In weighing the adequacy of such an alternative in a particular case, the prosecutor should consider the nature and impact of the sanctions or other measures that could be imposed, the likelihood that an effective sanction or other measure would in fact be imposed, and the effect of such a non-criminal disposition on federal law enforcement and community interests.

When considering whether to pursue a non-criminal disposition, prosecutors should also consider the interests of any victims. In evaluating victim interests and determining whether to pursue a non-criminal disposition, the prosecutor should be available to confer with the victim in furtherance of the Crime Victims' Rights Act (CVRA) and in accordance with the Attorney General Guidelines for Victim and Witness Assistance. For more information regarding the Department's obligations to victims, see the Crime Victims' Rights Act, 18 U.S.C. § 3771, the Victims' Rights and Restitution Act, 34 U.S.C. § 20141, and the Attorney General Guidelines for Victim and Witness Assistance.

It should be noted that referrals for non-criminal disposition may not include the transfer of grand jury material unless an order under Rule 6(e) of the Federal Rules of Criminal Procedure, is obtained. See United States v. Sells Engineering, Inc., 463 U.S. 418 (1983).

[cited in JM 9-27.220; JM 9-28.1100]

[updated June 2023]

9-27.260 - Initiating and Declining Charges — Impermissible Considerations

In determining whether to commence or recommend prosecution or take other action against a person, the attorney for the government may not be influenced by:

1. The person's race, religion, gender, ethnicity, national origin, sexual orientation, or political association, activities, or beliefs;
2. The attorney's own personal feelings concerning the person, the person's associates, or the victim; or
3. The possible effect of the decision on the attorney's own professional or personal circumstances.

Charges or statutory sentencing enhancements may not be filed, nor the option of filing charges or enhancements raised, simply to exert leverage to induce a plea or because the defendant elected to exercise the right to trial.

In addition, federal prosecutors and agents may never make a decision regarding an investigation or prosecution, or select the timing of investigative steps or criminal charges, for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party. *See* § 9-85.500.

[updated June 2023]

9-27.270 - Records of Prosecutions Declined

Whenever an attorney for the government declines to commence or recommend federal prosecution, he/she should ensure that his/her decision and the reasons therefore are communicated to the investigating agency involved and to any other interested agency, and are also reflected in the office files to ensure an adequate record of disposition of matters that are brought to the attention of the government attorney for possible criminal prosecution, but that do not result in federal prosecution. When prosecution is declined in serious cases on the understanding that action will be taken by other authorities, appropriate steps should be taken to ensure that the matter receives their attention.

[updated February 2018]

9-27.300 - Selecting Charges — Conducting an Individualized Assessment

Once a determination has been made that prosecution would satisfy the requirements set forth in JM 9-27.220 – 9-27.250, the prosecutor must select the most appropriate charges. Ordinarily, those charges will include the most serious offense that is encompassed by the defendant's conduct and that is likely to result in a sustainable conviction. In selecting the appropriate charges, however, prosecutors should consider whether the consequences of those charges for sentencing would yield a result that is proportional to the seriousness of the defendant's conduct, and whether the charge achieves such purposes of the criminal law as punishment,

protection of the public, specific and general deterrence, and rehabilitation. Such decisions should be informed by an individualized assessment of all the facts and circumstances of each particular case. The goal in any prosecution is a sanction that is "sufficient, but not greater than necessary," 18 U.S.C. § 3553(a), to satisfy these considerations.

To ensure consistency and accountability, charging and plea agreement decisions must be reviewed by a supervisory attorney. All but the most routine indictments should be accompanied by a prosecution memorandum that identifies the charging options supported by the evidence and the law and explains the charging decision therein. Each United States Attorney's Office and litigating division of the Department is required to promulgate written guidance describing its internal indictment review process.

Prosecutors have an ongoing obligation to evaluate a case and the provable evidence, even after offenses have been charged. If a prosecutor determines that, as a result of a change in the evidence or for another reason, a charge is no longer readily provable or appropriate, the prosecutor should dismiss those charges, consistent with the written policies of the district or litigating division and the *Principles of Federal Prosecution*.

Comment. Once it has been determined to commence prosecution, either by filing a complaint or an information, or by seeking an indictment from the grand jury, the attorney for the government must determine what charges to file or recommend. When the conduct in question consists of a single criminal act, or when there is only one applicable statute, this is not a difficult task. Typically, however, a defendant will have committed more than one criminal act and his/her conduct may be prosecuted under more than one statute. Moreover, the selection of charges may be complicated further by the fact that different statutes have different proof requirements and provide substantially different penalties. In such cases, considerable care is required to ensure selection of the proper charge or charges. In addition to reviewing the concerns that prompted the decision to prosecute in the first instance, particular attention should be given to the need to ensure that the prosecution will be both fair and effective.

At the outset, the attorney for the government should bear in mind that he/she will have to introduce at trial admissible evidence sufficient to obtain and sustain a conviction, or else the government will suffer a dismissal, or a reversal on appeal. For this reason, he/she should not include in an information, or recommend in an indictment, charges that he/she cannot reasonably expect to prove beyond a reasonable doubt by legally sufficient and admissible evidence at trial.

In connection with the evidentiary basis for the charges selected, the prosecutor should also be particularly mindful of the different requirements of proof under different statutes covering similar conduct. For example, the bribe provisions of 18 U.S.C. § 201 require proof of "corrupt intent," while the '"gratuity" provisions do not. Similarly, the "two witness" rule applies to perjury prosecutions under 18 U.S.C. § 1621 but not under 18 U.S.C. § 1623.

[cited in JM 9-27.400; JM 9-28.1200; JM 9-100.020]

[updated June 2023]

9-27.310 - Charges Triggering Mandatory Minimum Sentences and Statutory Enhancements

Charges that subject a defendant to a mandatory minimum sentence should ordinarily be reserved for instances in which the remaining charges (*i.e.*, those for which the elements are also satisfied by the defendant's conduct, and do not carry mandatory minimum terms of imprisonment) would not sufficiently reflect the seriousness of the defendant's criminal conduct, danger to the community, harm to victims, or such purposes of the criminal law as punishment, protection of the public, specific and general deterrence, and rehabilitation. Prosecutors, in the exercise of their discretion and through discussions with their supervisors, should determine whether the remaining charges would, in fact, capture the gravamen of the defendant's conduct and danger to the community and yield a sanction "sufficient" to satisfy the considerations outlined above. 18 U.S.C. § 3553(a) (mandating sentences that are "sufficient but not greater than necessary").

In some cases, the Department's duty to ensure that the laws are faithfully executed will require that prosecutors charge offenses that impose a mandatory minimum sentence, particularly where other charges do not sufficiently reflect the seriousness of the defendant's conduct, the danger the defendant poses to the community, or other important federal interests. This may well be the case, for example, for defendants who have committed or threatened violent crimes, or who have directed others to do so. For example, a defendant who commits a federal crime of violence, such as a Hobbs Act robbery or hate crime, or a federal drug-trafficking crime, and who also uses or carries a firearm in furtherance of that crime, may appropriately be charged under 18 U.S.C. § 924(c) even if the prosecutor could potentially proceed by charging the substantive offense alone and seek a firearm enhancement at sentencing, if the latter would not sufficiently account for the defendant's conduct or danger to the community.

As a general matter, the decision whether to seek a statutory sentencing enhancement should be guided by these same principles.

Department policy requires that prosecutors always be candid with the court, the probation office, and the public as to the full extent of the defendant's conduct and culpability, regardless

of whether the charging document includes such specificity.

Any decision to include a mandatory minimum charge in a charging document or plea agreement must also obtain supervisory approval. Each United States Attorney and Assistant Attorney General for a litigating division must determine, and designate, the appropriate level of supervisory review of charging documents and plea agreements containing mandatory minimum charges, which must be no lower than section chief or equivalent.

Until such time that the Department has developed and implemented a software program that enables real-time, trackable reporting by districts and litigating divisions of all charges brought by the Department, each United States Attorney's Office and litigating division must report semi-annually to the Executive Office for United States Attorneys the number and percentage of charging documents and plea agreements in which it has included mandatory minimum charges.

[updated June 2023]

9-27.311 - Charges Triggering Mandatory Minimum Sentences and Statutory Enhancements in Certain Drug Cases

The principles set forth in JM 9-27.310 regarding careful use of mandatory minimum charges apply with particular force in drug cases brought under Title 21 of the United States Code, where mandatory minimum sentences based on drug type and quantity have resulted in disproportionately severe sentences for certain defendants and perceived and actual racial disparities in the criminal justice system.

Accordingly, in cases where Title 21 mandatory minimum sentences are applicable based on drug type and quantity, prosecutors should decline to charge the quantity necessary to trigger a mandatory minimum sentence if the defendant satisfies all of the following criteria:

1. The defendant's relevant conduct does not involve: the use of violence, the direction to another to use violence, the credible threat of violence, the possession of a weapon, the trafficking of drugs to or with minors, or the death or serious bodily injury of any person;
2. The defendant does not have a significant managerial role in the trafficking of significant quantities of drugs;

3. The defendant does not have significant ties to a large-scale criminal organization or cartel, or to a violent gang; and
4. The defendant does not have a significant history of criminal activity that involved the use or threat of violence, personal involvement on multiple occasions in the distribution of significant quantities of illegal drugs, or possession of illegal firearms.

In making the above assessment, prosecutors should consider whether the above criteria are satisfied without regard to whether the defendant would be eligible for a sentence below a mandatory minimum term based on application of the safety valve, 18 U.S.C. § 3553(f), or on substantial assistance under 18 U.S.C. § 3553(e).

In cases in which prosecutors determine that some but not all of the criteria are satisfied, prosecutors should not automatically charge the quantity necessary to trigger the mandatory minimum, but rather weigh the considerations set forth in this subsection and JM 9-27.310 to carefully determine, through the exercise of their discretion and in consultation with their supervisors, whether a Title 21 charge with a mandatory minimum sentence is appropriate. For example, in a case involving a defendant who serves only as a "drug mule," but who arguably does not satisfy all of the criteria discussed above, the balance of considerations may still weigh against the filing of a Title 21 charge carrying a mandatory minimum sentence.

As set forth in JM 9-27.310, any decision to include a mandatory minimum charge in a charging document or plea agreement must be approved by a supervisory attorney as designated by the United States Attorney or Assistant Attorney General for the relevant litigating division.

In deciding whether to file an information under 21 U.S.C. § 851 requiring imposition of enhanced statutory penalties, prosecutors in drug cases should be guided by the same criteria discussed above for charging mandatory minimum offenses, as well as whether the filing would create a significant and unwarranted sentencing disparity with equally or more culpable codefendants. Prosecutors are encouraged to make the Section 851 determination, and to file any such notice, at the time the case is charged or as soon as possible thereafter. As with any filing, a Section 851 enhancement should not be filed simply to exert leverage to induce a plea or because the defendant elected to exercise the right to trial. JM 9-27.400.

If information sufficient to determine that all of the criteria listed above in this subsection are satisfied is available at the time initial charges are filed, prosecutors should decline to pursue Title 21 charges triggering a mandatory minimum sentence. If this information is not yet available, prosecutors may file charges involving these mandatory minimum statutes pending further information. If information that the criteria are satisfied is subsequently obtained, prosecutors should pursue a disposition that does not require a Title 21 mandatory minimum sentence. For example, a prosecutor could ask the grand jury to supersede the indictment with charges that do not carry mandatory minimum sentences; a defendant could plead guilty to a lesser included offense that does not carry the mandatory minimum; or a defendant could waive

indictment and plead guilty to an information that does not charge the quantity necessary to trigger the mandatory minimum.

If charging a mandatory minimum term of imprisonment under Title 21 for a drug offense involving crack cocaine is deemed warranted under JM 9-27.310 and this provision, prosecutors should charge the pertinent statutory quantities that apply to powder cocaine offenses. Prosecutors should consult guidance from the Criminal Division and the Executive Office for U.S. Attorneys as to how to structure such charges.

[added June 2023]

9-27.320 - Additional Charges

Except as hereafter provided, the attorney for the government should also charge, or recommend that the grand jury charge, other offenses only when, in his/her judgment, such additional charges:

1. Are necessary to ensure that the information or indictment adequately reflects the nature and extent of the criminal conduct involved, and provides the basis for an appropriate sentence under all of the facts and circumstances of the case;
2. Provide the basis for an appropriate sentence under all of the facts and circumstances of the case; or
3. Will significantly enhance the strength of the government's case against the defendant or a codefendant.

Comment. It is important to the fair and efficient administration of justice in the federal system that the government bring as few charges as are necessary to ensure that justice is done. JM 9-27.320 outlines three general situations in which additional charges may be brought: (1) when necessary adequately to reflect the nature and full extent of the criminal conduct involved; (2) when necessary to provide the basis for an appropriate sentence under all the circumstances of the case; or (3) when an additional charge or charges would significantly strengthen the case against the defendant or a codefendant.

1. **Nature and Full Extent of Criminal Conduct.** The prosecutor's initial concern should be to recommend charges that adequately reflect the nature and full extent of the criminal conduct involved. This means that the charges should fairly describe both the kind and scope of unlawful activity; should be legally sufficient; should provide notice to the public of

the seriousness of the conduct involved; and should negate any impression that, after committing one offense, an offender can commit others with impunity.

2. **Basis for Sentencing.** Proper charging also requires consideration of the end result of successful prosecution — the imposition of an appropriate sentence under all of the facts and circumstances of the case. In order to achieve this result, it may not be necessary to charge a person with every offense for which he/she, may be liable. What is important is that the person be charged in such a manner that, if he/she is convicted, the court may impose an appropriate sentence, in light of all of the relevant facts and circumstances.
3. **Effect on the Government's Case.** When considering whether to include a particular charge in a proposed indictment or information, the attorney for the government should consider the possible effects of inclusion or exclusion of the charge on the government's case against the defendant or a codefendant. It is proper to consider the evidentiary consequences of failing to seek certain charges. For example, in a case in which a substantive offense was committed pursuant to an unlawful agreement, inclusion of a conspiracy count is permissible and may be desirable to ensure the introduction of all relevant evidence at trial. Similarly, it might be important to include a perjury or false statement count in an indictment charging other offenses, in order to give the jury a complete picture of the defendant's criminal conduct. Failure to include appropriate charges for which the proof is sufficient may not only result in the exclusion, of relevant evidence, but also may impair the prosecutor's ability to prove a coherent case, and lead to jury confusion. In this connection, it is important to remember that, in multi-defendant cases, the presence or absence of a particular charge against one defendant may affect the strength of the case against another defendant. In short, when the evidence exists, the charges should be structured so as to permit proof of the strongest case possible without undue burden on the administration of justice.

[cited in JM 6-4.210; JM 9-27.300]

[updated June 2023]

9-27.330 - Pre-Charge Plea Agreements

Before filing or recommending charges pursuant to a precharge plea agreement, the attorney for the government should consult the plea agreement provisions of JM 9-27.430, relating to the selection of charges to which a defendant should be required to plead guilty.

[cited in JM 9-27.300]

[updated February 2017]

9-27.400 - Plea Agreements Generally

The attorney for the government may, in an appropriate case, enter into an agreement with a defendant that, upon the defendant's plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, he/she will not bring or will move for dismissal of other charges, take a certain position with respect to the sentence to be imposed, or take other action. *See* JM 9-27.300 (discussing the individualized assessment by prosecutors of the extent to which particular charges fit the specific circumstances of the case, are consistent with the purposes of the federal criminal code, and maximize the impact of federal resources on crime); *see also* JM 9-27.310 (Charges Triggering Mandatory Minimum Sentences and Statutory Enhancements); JM 9-27.311 (Charges Triggering Mandatory Minimum Sentences and Statutory Enhancements in Certain Drug Cases).

Each United States Attorney's Office and litigating division must promulgate written guidance regarding the standard elements required in its plea agreements, including any waiver of defendants' rights.

Comment. JM 9-27.400 permits the disposition of federal criminal charges pursuant to plea agreements between defendants and government attorneys. Such negotiated dispositions should be distinguished from situations in which a defendant pleads guilty or nolo contendere to fewer than all counts of an information or indictment in the absence of any agreement with the government. Only the former type of disposition is covered by the provisions of JM 9-27.400 *et seq*.

Negotiated plea dispositions are explicitly sanctioned by Rule 11(c)(1) of the Federal Rules of Criminal Procedure, which provides that:

> An attorney for the government and the defendant's attorney, or the defendant when acting *pro se*, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

A. Not bring, or will move to dismiss, other charges;

B. Recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or

C. Agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or

sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

Three types of plea agreements are encompassed by the language of JM 9-27.400: 1) agreements whereby in return for the defendant's plea to a charged offense or to a lesser or related offense, other charges are not sought or are dismissed ("charge agreements"); 2) agreements pursuant to which the government takes a certain position regarding the sentence to be imposed ("sentence agreements"); and 3) agreements that combine a plea with a dismissal of charges and an undertaking by the prosecutor concerning the government's position at sentencing ("mixed agreements").

Plea agreements should reflect the totality of a defendant's conduct. These agreements are governed by the same fundamental principles as are charging decisions: prosecutors will generally seek a plea to the most serious offense that is consistent with the nature and full extent of the defendant's conduct and likely to result in a sustainable conviction and proportional sentence, informed by an individualized assessment of all of the facts and circumstances of each particular case. Charges should not be filed simply to exert leverage to induce a plea; nor should charges be abandoned to arrive at a plea bargain that does not reflect the seriousness of the defendant's conduct.

1. **Charge Agreements.** Charge agreements envision dismissal of counts in exchange for a plea. Should a prosecutor determine in good faith after indictment that, as a result of a change in the evidence or for another reason (*e.g.*, a need has arisen to protect sources and methods, including the identity of a particular witness until he or she testifies against a more significant defendant), a charge is not readily provable or that an indictment exaggerates the seriousness of an offense or offenses, a plea bargain may reflect the prosecutor's reassessment. There should be documentation, however, in any case in which the charges originally brought are dismissed. Moreover, a decision not to prosecute a violation of federal law pursuant to Section 12(a) of the Classified Information Procedures Act would trigger a reporting requirement to the Congress, and may not take place without the approval of the Assistant Attorney General for National Security.

2. **Sentencing Agreements.** There are only two types of sentence bargains. Both are permissible, but one is more complicated than the other. First, prosecutors may bargain for a sentence that is within the specified United States Sentencing Commission's guideline range. This means that when a guideline range is 18 to 24 months, the prosecutor has discretion to agree to recommend a sentence of, for example, 18 to 20 months rather than to argue for a sentence at the top of the range. Such a plea does not require that the actual sentence range be determined in advance. The plea agreement may have wording to the effect that once the range is determined by the court, the United States will recommend a certain point in that range. Similarly, the prosecutor may agree to recommend a downward adjustment for acceptance of responsibility if he or she concludes in good faith that the defendant is entitled to the

adjustment. Second, the prosecutor may seek to depart or vary from the guidelines. This is more complicated than a bargain involving a sentence within a guideline range. Departures and variances are discussed more generally below.

Department policy requires transparency and honesty in sentencing; federal prosecutors are expected to identify for the court departures or variances when they agree to support them. For example, it would be improper for a prosecutor to agree that a departure or variance is in order, but to conceal the agreement in a charge bargain that is presented to a court as a *fait accompli* so that there is neither a record of nor judicial review of the departure or variance.

The language of JM 9-27.400 with respect to sentence agreements is intended to cover the entire range of positions that the government might wish to take at the time of sentencing. Among the options are: taking no position regarding the sentence; not opposing the defendant's request; requesting a specific type of sentence (*e.g.*, a fine or probation), a specific fine or term of imprisonment, or not more than a specific fine or term of imprisonment; and requesting concurrent rather than consecutive sentences. Agreement to any such option must be consistent with the sentencing guidelines.

3. **Mixed Agreements**. Plea bargaining, both charge bargaining and sentence bargaining, must reflect the totality and seriousness of the defendant's conduct and any departure or variance to which the prosecutor is agreeing, and must be accomplished through appropriate application of sentencing guidelines provisions.

The basic policy is that charges are not to be bargained away or dropped in ways that represent a significant departure from the principles set forth herein unless the prosecutor has a good faith doubt as to the government's ability readily to prove a charge for legal or evidentiary reasons. There are, however, two common circumstances in which charges may be dropped consistent with these principles.

First, if the applicable guideline range from which a sentence may be imposed would be unaffected, readily provable charges may be dismissed or dropped as part of a plea bargain. It is important to know whether dropping a charge may affect a sentence, including monetary penalties such as restitution or forfeiture. For example, the multiple offense rules in Part D of Chapter 3 of the guidelines and the relevant conduct standard set forth in Sentencing Guideline § 1B1.3(a)(2) will mean that certain dropped charges will be counted for purposes of determining the sentence, subject to the statutory maximum for the offense or offenses of conviction. It is vital that federal prosecutors understand when conduct that is not charged in an indictment or conduct that is alleged in counts that are to be dismissed pursuant to a bargain may be counted for sentencing purposes and when it may not be. For example, in the case of a defendant who could be charged with five bank robberies, a decision to charge only one or to dismiss four counts pursuant to a bargain precludes any consideration of the four uncharged or dismissed robberies in determining a guideline range, unless the plea agreement included a stipulation as

to the other robberies. By contrast, in the case of a defendant who could be charged with five counts of fraud, the total amount of money involved in a fraudulent scheme will be considered in determining a guideline range even if the defendant pleads guilty to a single count and there is no stipulation as to the other counts.

Second, federal prosecutors may drop readily provable charges with the specific approval of the United States Attorney, appropriate Assistant Attorney General, or designated supervisory level official for reasons set forth in the file of the case. This exception recognizes that the aims of the Sentencing Reform Act must be sought without ignoring other, critical aspects of the federal criminal justice system. For example, approvals to drop charges in a particular case might be given because the United States Attorney's office is particularly over-burdened, the case would be time-consuming to try, and proceeding to trial would significantly reduce the total number of cases disposed of by the office.

The Sentencing Guidelines, including Chapter 5, Part K, list departures that may be considered by a court in imposing a sentence. Moreover, Guideline § 5K2.0 recognizes that a sentencing court may consider a ground for departure that has not been adequately considered by the Commission. Likewise, district courts always retain discretion to vary from the Sentencing Guidelines. Prosecutors should consult JM 9-27.730 in determining whether agreement to a departure or variance may be appropriate.

A departure or variance requires approval by the court. To the extent a prosecutor enters into a plea bargain which is based upon an agreement that a departure or variance is warranted, prosecutors should inform the court of that agreement and thereby afford the court an opportunity to reject it.

The concession required by the government as part of a plea agreement, whether it be a "charge agreement," a "sentence agreement," or a "mixed agreement," should be weighed by the responsible government attorney in the light of the probable advantages and disadvantages of the plea disposition proposed in the particular case. Particular care should be exercised in considering whether to enter into a plea agreement pursuant to which the defendant will enter a nolo contendere plea. As discussed in JM 9-27.500 and JM 9-16.000, there are serious objections to such pleas, and they should be opposed unless the appropriate United States Attorney and/or Assistant Attorney General concludes that the circumstances are so unusual that acceptance of such a plea would be in the public interest.

[updated June 2023] [cited in JM 9-16.300; JM 9-16.320; JM 9-27.300; JM 9-28.1300]

9-27.410 - Plea Agreements - Cooperation

Section 5K1.1 of the Sentencing Guidelines allows the United States to file a pleading with the sentencing court, which permits the court to depart below the indicated guideline, on the basis that the defendant provided substantial assistance in the investigation or prosecution of another. Authority to approve such pleadings is limited to the United States Attorney, the Chief Assistant United States Attorney, and supervisory criminal Assistant United States Attorneys, or a committee including at least one of these individuals. Similarly, for Department of Justice attorneys, approval authority should be vested in a Section Chief or Office Director, or such official's deputy, or in a committee that includes at least one of these individuals.

Every United States Attorney or Department of Justice Section Chief (or Assistant Chief) or Office Director shall maintain documentation of the facts behind and justification for each substantial assistance pleading in the official file. Freedom of Information Act or other considerations may suggest that the final decision be memorialized on a separate form rather than on the recommendation itself.

The procedures described above shall also apply to Motions filed pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, where the sentence of a cooperating defendant is reduced after sentencing on motion of the United States. Such a filing is deemed for sentencing purposes to be the equivalent of a substantial assistance pleading.

[updated June 2023]

9-27.420 - Plea Agreements — Considerations to be Weighed

In determining whether it would be appropriate to enter into a plea agreement, the attorney for the government should weigh all relevant considerations, including:

1. The defendant's willingness to cooperate in the investigation or prosecution of others;
2. The defendant's history with respect to criminal activity;
3. The nature and seriousness of the offense or offenses charged;
4. The defendant's remorse or contrition and his/her willingness to assume responsibility for his/her conduct;
5. The desirability of prompt and certain disposition of the case;
6. The likelihood of obtaining a conviction at trial;
7. The probable effect on witnesses;

8. The probable sentence or other consequences if the defendant is convicted;
9. The public interest in having the case tried rather than disposed of by a guilty plea;
10. The expense of trial and appeal;
11. The need to avoid delay in the disposition of other pending cases; and
12. The interests of the victim, including any effect upon the victim's right to restitution.

Comment. JM 9-27.420 sets forth some of the appropriate considerations to be weighed by the attorney for the government in deciding whether to enter into a plea agreement with a defendant pursuant to the provisions of Rule 11 of the Federal Rules of Criminal Procedure. The provision is not intended to suggest the desirability or lack of desirability of a plea agreement in any particular case or to be construed as a reflection on the merits of any plea agreement that actually may be reached; its purpose is solely to assist attorneys for the government in exercising their prosecutorial discretion as to whether a plea agreement would be appropriate in a particular case. Government attorneys should consult with the investigating agency involved and the victim, if appropriate or required by law.

1. **Defendant's Cooperation.** The defendant's willingness to provide timely and useful cooperation as part of his/her plea agreement should be given serious consideration. The weight it deserves will vary, of course, depending on the nature and value of the cooperation offered and whether the same benefit can be obtained without having to make the charge or sentence concession that would be involved in a plea agreement. In many situations, for example, all necessary cooperation in the form of testimony can be obtained through a compulsion order under 18 U.S.C. §§ 6001-6003. In such cases, that approach should be attempted unless, under the circumstances, it would seriously interfere with securing the person's conviction. If the defendant's cooperation is sufficiently substantial to justify the filing of a 5K1.1 Motion for a downward departure, the procedures set out in JM 9-27.410 shall be followed.
2. **Defendant's Criminal History.** One of the principal arguments against the practice of plea bargaining is that it results in leniency that reduces the deterrent impact of the law and leads to recidivism on the part of some offenders. Although this concern is probably most relevant in non-federal jurisdictions that must dispose of large volumes of routine cases with inadequate resources, it should nevertheless be kept in mind by federal prosecutors, especially when dealing with repeat offenders or "career criminals." Particular care should be taken in the case of a defendant with a prior criminal record to ensure that society's need for protection is not sacrificed in the process of arriving at a plea disposition. In this connection, it is proper for the government attorney to consider not only the defendant's past, but also facts of other criminal involvement not resulting in conviction. By the same token, of course, it is also proper to consider a defendant's absence of past criminal involvement and his/her past cooperation with law enforcement officials. Note that 18 U.S.C. § 924(e), as well as Sentencing Guidelines §§ 4B1.1 and 4B1.4 address "career criminals" and "armed career criminals." 18 U.S.C. § 3559(c) — the so-called "three strikes" statute — addresses serious violent recidivist offenders. The application of these provisions to a particular case may affect the plea negotiation posture of the parties.

3. **Nature and Seriousness of Offense Charged.** Important considerations in determining whether to enter into a plea agreement include the nature and seriousness of the offense or offenses charged. In weighing those factors, the attorney for the government should bear in mind the interests sought to be protected by the statute defining the offense (e.g., national security, constitutional rights, the governmental process, personal safety, public welfare, or property), as well as nature and degree of harm caused or threatened to those interests and any attendant circumstances that aggravate or mitigate the seriousness of the offense in the particular case.
4. **Defendant's Attitude.** A defendant may demonstrate apparently genuine remorse or contrition, and a willingness to take responsibility for his/her criminal conduct by, for example, efforts to compensate the victim for injury or loss, or otherwise to ameliorate the consequences of his/her acts. These are factors that bear upon the likelihood of his/her repetition of the conduct involved and that may properly be considered in deciding whether a plea agreement would be appropriate. Sentencing Guideline § 3E1.1 allows for a downward adjustment upon acceptance of responsibility by the defendant. It is permissible for a prosecutor to enter a plea agreement which approves such an adjustment if the defendant otherwise meets the requirements of the section.

It is particularly important that the defendant not be permitted to enter a guilty plea under circumstances that will allow him/her later to proclaim lack of culpability or even complete innocence. Such consequences can be avoided only if the court and the public are adequately informed of the nature and scope of the illegal activity and of the defendant's complicity and culpability. To this end, the attorney for the government is strongly encouraged to enter into a plea agreement only with the defendant's assurance that he/she will admit, the facts of the offense and of his/her culpable participation therein. A plea agreement may be entered into in the absence of such an assurance, but only if the defendant is willing to accept without contest a statement by the government in open court of the facts it could prove to demonstrate his/her guilt beyond a reasonable doubt. Except as provided in JM 9-27.440, the attorney for the government should not enter into a plea agreement with a defendant who admits his/her guilt but disputes an essential element of the government's case.

When negotiating a plea agreement, the attorney for the government should also not seek to have a defendant waive claims of ineffective assistance of counsel whether those claims are made on collateral attack or, when permitted by circuit law, made on direct appeal. As long as prosecutors exempt ineffective-assistance claims from their waiver provisions, they may request waivers of appeal and of post-conviction remedies to the full extent permitted by law as a component of plea discussions and agreements.

E. **Prompt Disposition.** In assessing the value of prompt disposition of a criminal case, the attorney for the government should consider the timing of a proffered plea. A plea offer by a defendant on the eve of trial after the case has been fully prepared is hardly as advantageous from the standpoint of reducing public expense as one offered months or weeks earlier. In addition, a last minute plea adds to the difficulty of scheduling cases efficiently and may even result in wasting the prosecutorial and judicial time reserved for

the aborted trial. For these reasons, governmental attorneys should make clear to defense counsel at an early stage in the proceedings that, if there are to be any plea discussions, they must be concluded prior to a certain date, and well in advance of the trial date. *See* USSG § 3E1.1(b)(1). However, avoidance of unnecessary trial preparation and scheduling disruptions are not the only benefits to be gained from prompt disposition of a case by means of a guilty plea. Such a disposition also saves the government and the court the time and expense of trial and appeal. In addition, a plea agreement facilitates prompt imposition of sentence, thereby promoting the overall goals of the criminal justice system. Thus, occasionally it may be appropriate to enter into a plea agreement even after the usual time for making such agreements has passed.

F. **Likelihood of Conviction.** The trial of a criminal case inevitably involves risks and uncertainties, both for the prosecution and for the defense. Many factors, not all of which can be anticipated, can affect the outcome. To the extent that these factors can be identified, they should be considered in deciding whether to accept a plea or go to trial. In this connection, the prosecutor should weigh the strength of the government's case relative to the anticipated defense case, bearing in mind legal and evidentiary problems that might be expected, as well as the importance of the credibility of witnesses. However, although it is proper to consider factors bearing upon the likelihood of conviction in deciding whether to enter into a plea agreement, it obviously is improper for the prosecutor to attempt to dispose of a case by means of a plea agreement if he/she is not satisfied that the legal standards for guilt are met.

G. **Effect on Witnesses.** Attorneys for the government should bear in mind that it is often burdensome for witnesses to appear at trial and that sometimes to do so may cause them serious embarrassment or even place them in jeopardy of physical or economic retaliation. The possibility of such adverse consequences to witnesses should not be overlooked in determining whether to go to trial or attempt to reach a plea agreement. Another possibility that may have to be considered is revealing sources and methods, such as the identity of informants. For example, when an informant testifies at trial, his/her identity and relationship to the government become matters of public record. As a result, in addition to possible adverse consequences to the informant, there is a strong likelihood that the informant's usefulness in other investigations will be seriously diminished or destroyed. These are considerations that should be discussed with the investigating agency involved, as well as with any other agencies known to have an interest in using the informant in their investigations.

H. **Probable Sentence.** In determining whether to enter into a plea agreement, the attorney for the government may properly consider the probable outcome of the prosecution in terms of the sentence or other consequences for the defendant in the event that a plea agreement is reached. If the proposed agreement is a "sentence agreement" or a "mixed agreement," the prosecutor should realize that the position he/she agrees to take with respect to sentencing may have a significant effect on the sentence that is actually imposed. If the proposed agreement is a "charge agreement," the prosecutor should bear in mind the extent to which a plea to fewer or lesser offenses may reduce the sentence that otherwise could be imposed. In either event, it is important that the attorney for the government be aware of the need to preserve the basis for an appropriate sentence under all the circumstances of the case. Thorough knowledge of the Sentencing Guidelines, any applicable statutory minimum

sentences, and any applicable sentence enhancements is clearly necessary to allow the prosecutor to accurately and adequately evaluate the effect of any plea agreement.

I. **Trial Rather Than Plea.** There may be situations in which the public interest might better be served by having a case tried rather than by having it disposed of by means of a guilty plea. These include situations in which it is particularly important to permit a clear public understanding that "justice is done" through exposing the exact nature of the defendant's wrongdoing at trial, or in which a plea agreement might be misconstrued to the detriment of public confidence in the criminal justice system. For this reason, the prosecutor should be careful not to place undue emphasis in certain cases on factors that favor disposition of a case pursuant to a plea agreement over a trial.

J. **Expense of Trial and Appeal.** In assessing the expense of trial and appeal that would be saved by a plea disposition, the attorney for the government should consider not only such monetary costs as juror and witness fees, but also the time spent by judges, prosecutors, and law enforcement personnel who may be needed to testify or provide other assistance at trial. In this connection, the prosecutor should bear in mind the complexity of the case, the number of trial days and witnesses required, and any extraordinary expenses that might be incurred such as the cost of sequestering the jury.

K. **Prompt Disposition of Other Cases.** A plea disposition in one case may facilitate the prompt disposition of other cases, including cases in which prosecution might otherwise be declined. This may occur simply because prosecutorial, judicial, or defense resources will become available for use in other cases, or because a plea by one of several defendants may have a "domino effect," leading to pleas by other defendants. In weighing the importance of these possible consequences, the attorney for the government should consider the state of the criminal docket and the speedy trial requirements in the district, the desirability of handling a larger volume of criminal cases, and the workloads of prosecutors, judges, and defense attorneys in the district.

L. **The Interests of the Victim.** Some victims may view a plea as denying them the opportunity to see the defendant answer for his crimes, while others may be grateful for a faster resolution of a difficult phase in their lives. In any event, it is useful for the prosecutor to understand the victim's desires with regard to a plea, and to explain to the victim the impact of any plea on the victim and on the defendant. For instance, in a plea, the defendant may agree to provide restitution to victims beyond those charged in the indictment, while those individuals would not receive restitution following a trial. In these discussions, prosecutors are advised to remember that victims are not subject to any rules governing nondisclosure of information, and so may wish to focus on soliciting the victim's views and to limit information provided to the victim to that which is publicly available.

M. **Other Considerations.** The Attorney General or the Deputy Attorney General may periodically issue guidance that includes other considerations that should be evaluated by a prosecutor.

[cited in JM 9-28.1300]

[updated February 2018]

9-27.430 - Selecting Plea Agreement Charges

If a prosecution is to be concluded pursuant to a plea agreement, the defendant should be required to plead to a charge or charges:

1. That ordinarily include the most serious readily provable offense consistent with the nature and extent of his/her criminal conduct;
2. That have an adequate factual basis;
3. That make likely the imposition of an appropriate sentence and order of restitution, if appropriate, under all the circumstances of the case; and
4. That do not adversely affect the investigation or prosecution of others.

Comment. JM 9-27.430 sets forth the considerations that should be taken into account in selecting the charge or charges to which a defendant should be required to plead guilty once it has been decided to dispose of the case pursuant to a plea agreement. The considerations are essentially the same as those governing the selection of charges to be included in the original indictment or information. *See* JM 9-27.300; JM 9-27.310 (Charges Triggering Mandatory Minimum Sentences and Statutory Enhancements); JM 9-27.311 (Charges Triggering Mandatory Minimum Sentences and Statutory Enhancements in Certain Drug Cases).

1. **Relationship to Criminal Conduct.** The charge or charges to which a defendant pleads guilty should be consistent with the defendant's criminal conduct, both in nature and in scope. This charge ordinarily will be the most serious one, as defined in JM 9-27.300; *but see* JM 9-27.310; JM 9-27.311. This principle governs the number of counts to which a plea should be required in cases involving different offenses, or in cases involving a series of familiar offenses. Therefore the prosecutor must be familiar with the Sentencing Guideline rules applicable to grouping offenses (*see* USSG § 3D) and to relevant conduct (*see* USSG § 1B1.3) among others. In regard to the seriousness of the offense, the guilty plea should assure that the public record of conviction provides an adequate indication of the defendant's conduct. With respect to the number of counts, the prosecutor should take care to assure that no impression is given that multiple offenses are likely to result in no greater a potential penalty than is a single offense. The requirement that a defendant plead to a charge, that is consistent with the nature and extent of his/her criminal conduct is not inflexible. Although cooperation is usually acknowledged through a Sentencing Guideline § 5K1.1 filing, there may be situations involving cooperating defendants in which considerations such as those discussed in JM 9-27.600, take precedence. Such situations should be approached cautiously, however. Unless the government has strong corroboration for the cooperating defendant's testimony, his/her credibility may be subject to successful impeachment if he/she is permitted to plead to an offense that appears unrelated in seriousness or scope to the charges against the defendants on trial. It is also doubly important in such situations for

the prosecutor to ensure that the public record of the plea demonstrates, the full extent of the defendant's involvement in the criminal activity, giving rise to the prosecution.

2. **Factual Basis.** The attorney for the government should also bear in mind the legal requirement that there be a factual basis for the charge or charges to which a guilty plea is entered. This requirement is intended to assure against conviction after a guilty plea of a person who is not in fact guilty. Moreover, under Rule 11(b)(3) of the Federal Rules of Criminal Procedure, a court may not enter a judgment upon a guilty plea without "determin[ing] that, there is a factual basis for the plea." For this reason, it is essential that the charge or charges selected as the subject of a plea agreement be such as could be prosecuted independently of the plea under these principles. However, as noted, in cases in which Alford or nolo contendere pleas are tendered, the attorney for the government may wish to make a stronger factual showing. In such cases there may remain some doubt as to the defendant's guilt even after the entry of his/her plea. Consequently, in order to avoid creating a misleading impression, the government should ask leave of the court to make a proffer of the facts available to it that show the defendant's guilt beyond a reasonable doubt.
In addition, the Department's policy is only to stipulate to facts that accurately reflect the defendant's conduct. If a prosecutor wishes to support a departure from the guidelines, he or she should candidly do so and not stipulate to facts that are untrue. Stipulations to untrue facts are unethical. If a prosecutor has insufficient facts to contest a defendant's effort to seek a downward departure or to claim an adjustment, the prosecutor can say so. If the presentence report states facts that are inconsistent with a stipulation in which a prosecutor has joined, the prosecutor should object to the report or add a statement explaining the prosecutor's understanding of the facts or the reason for the stipulation.

   Recounting the true nature of the defendant's involvement in a case will not always lead to a higher sentence. Where a defendant agrees to cooperate with the government by providing information concerning unlawful activities of others and the government agrees that self-incriminating information so provided will not be used against the defendant, Sentencing Guideline § 1B1.8 provides that the information shall not be used in determining the applicable guideline range, except to the extent provided in the agreement. The existence of an agreement not to use information should be clearly reflected in the case file, the applicability of Sentencing Guideline § 1B1.8 should be documented, and the incriminating information must be disclosed to the court or the probation officer, even though it may not be used in determining a guideline sentence. Note that such information may still be used by the court in determining whether to depart from the guidelines and the extent of the departure. *See* USSG § 1B1.8.

3. **Basis for Sentencing.** In order to guard against inappropriate restriction of the court's sentencing options, the plea agreement should provide adequate scope for sentencing under all the circumstances of the case. To the extent that the plea agreement requires the government to take a position with respect to the sentence to be imposed, there should be little danger since the court will not be bound by the government's position. When a "charge agreement" is involved, however, the court will be limited to imposing the maximum term authorized by the statute to which the guilty plea is entered, with attention to the Sentencing Guidelines range for the offense. Thus, as noted in JM 9-27.320 above, the prosecutor should take care to avoid a charge agreement that would unduly restrict the

court's sentencing authority. In this connection, as in the initial selection of charges, the prosecutor should take into account the purposes of sentencing, the penalties provided in the applicable statutes (including mandatory minimum penalties), the gravity of the offense, any aggravating or mitigating factors, and any post-conviction consequences to which the defendant may be subject. In addition, if restitution is appropriate under the circumstances of the case, the plea agreement should specify the amount of restitution and require a defendant to agree that any restitution ordered by the Court shall be due and payable immediately. Plea agreements should also specify that any payment schedule set by the court represents a minimum payment obligation and does not preclude the government from pursuing any other means by which to satisfy the defendant's full and immediately enforceable financial obligation under applicable federal and/or state law. Additionally, defendants who have the ability to pay some or all of their restitution shall be required as part of the plea to pay what they reasonably can by the date of sentencing. *See* Attorney General Guidelines for Victim and Witness Assistance Art. V.H.1.d (2022); JM 9-16.320.

4. **Effect on Other Cases.** In a multiple-defendant case, care must be taken to ensure that the disposition of the charges against one defendant does not adversely affect the investigation or prosecution of co-defendants. Among the possible adverse consequences to be avoided are the negative jury appeal that may result when relatively less culpable defendants are tried in the absence of a more culpable defendant, or when a principal prosecution witness appears to be equally culpable as the defendants but has been permitted to plead to a significantly less serious offense; the possibility that one defendant's absence from the case will render useful evidence inadmissible at the trial of co-defendants; and the giving of false exculpatory testimony on behalf of the other defendants by the defendant who has pled guilty.

[updated June 2023]

9-27.440 - Plea Agreements When Defendant Denies Guilt

The attorney for the government should not, except with the approval of the United States Attorney and the appropriate Assistant Attorney General, enter into a plea agreement if the defendant maintains his/her innocence with respect to the charge or charges to which he/she offers to plead guilty. In a case in which the defendant tenders a plea of guilty but denies committing the offense to which he/she offers to plead guilty, the attorney for the government should make an offer of proof of all facts known to the government to support the conclusion that the defendant is in fact guilty. See also JM 9-16.015, which discusses the approval requirement.

Comment. JM 9-27.440 concerns plea agreements involving "Alford" pleas — guilty pleas entered by defendants who nevertheless claim to be innocent. In *North Carolina v. Alford*, 400 U.S. 25 (1970), the Supreme Court held that the Constitution does not prohibit a court from accepting a guilty plea from a defendant who simultaneously maintains his/her innocence, so long as the plea is entered voluntarily and intelligently and there is a strong factual basis for it. The Court reasoned that there is no material difference between a plea of *nolo contendere*, where the defendant does not expressly admit his/her guilt, and a plea of guilty by a defendant who affirmatively denies his/her guilt.

Despite the constitutional validity of *Alford* pleas, such pleas should be avoided except in the most unusual circumstances, even if no plea agreement is involved and the plea would cover all pending charges. As one court put it, "the public might well not understand or accept the fact that a defendant who denied his guilt was nonetheless placed in a position of pleading guilty and going to jail." *See United States v. Bednarski*, 445 F.2d 364, 366 (1st Cir. 1971). Consequently, it is often preferable to have a jury resolve the factual and legal dispute between the government and the defendant, rather than have government attorneys encourage defendants to plead guilty under circumstances that the public might regard as questionable or unfair. For this reason, government attorneys should not enter into *Alford* plea agreements, without the approval of the United States Attorney and the appropriate Assistant Attorney General. Apart from refusing to enter into a plea agreement, however, the degree to which the Department can express its opposition to *Alford* pleas may be limited. Although a court may accept a proffered plea of *nolo contendere* after considering "the parties' views and the public interest in the effective administration of justice," Fed. R. Crim. P. Rule 11 (a)(3), at least one court has concluded that it is an abuse of discretion to refuse to accept a guilty plea "solely because the defendant does not admit the alleged facts of the crime." *United States v. Gaskins*, 485 F.2d 1046, 1048 (D.C. Cir. 1973); *see also United States v. Bednarski*, *supra*; *United States v. Boscoe*, 518 F.2d 95 (1st Cir. 1975). Nevertheless, government attorneys can and should discourage *Alford* pleas by refusing to agree to terminate prosecutions where an *Alford* plea is proffered to fewer than all of the charges pending. As is the case with guilty pleas generally, if such a plea to fewer than all the charges is tendered and accepted over the government's objection, the attorney for the government should proceed to trial on any remaining charges not barred on double jeopardy grounds unless the United States Attorney, or in cases handled by Departmental attorneys, the appropriate Assistant Attorney General, approves dismissal of those charges.

Government attorneys should also take full advantage of the opportunity afforded by Rule 11(b)(3) in an *Alford* case to thwart the defendant's efforts to project a public image of innocence. Under Rule 11(b)(3), the court must be satisfied that there is "a factual basis" for a guilty plea. However, the Rule does not require that the factual basis for the plea be provided only by the defendant. *See United States v. Navedo*, 516 F.2d 29 (2d Cir. 1975); *Irizarry v. United States*, 508 F.2d 960 (2d Cir. 1974); *United States v. Davis*, 516 F.2d 574 (7th Cir. 1975). Accordingly,

attorneys for the government in *Alford* cases should endeavor to establish as strong a factual basis for the plea as possible not only to satisfy the requirement of Rule 11(b)(3), but also to minimize the adverse effects of *Alford* pleas on public perceptions of the administration of justice.

[updated February 2018] [cited in JM 6-4.330; JM 9-28.1300]

9-27.450 - Records of Plea Agreements

All negotiated plea agreements to felonies or to misdemeanors negotiated from felonies shall be in writing and filed with the court.

Comment. JM 9-27.450 is intended to facilitate compliance with Rule 11 of the Federal Rules of Criminal Procedure and to provide a safeguard against misunderstandings that might arise concerning the terms of a plea agreement. Rule 11(c)(2) requires that a plea agreement be disclosed in open court (except upon a showing of good cause in which case disclosure may be made in camera), while Rule 11(c)(4) requires that the disposition provided for in the agreement be embodied in the judgment. Compliance with these requirements will be facilitated if the agreement has been reduced to writing in advance. Any time a defendant enters into a negotiated plea, that fact and the conditions of the agreement should also be maintained in the office case file. Written agreements will facilitate efforts by the Department to monitor compliance by prosecutors with Department policies and the guidelines. Documentation may include a copy of the court transcript at the time the plea is taken in open court.

There shall be within each office a formal system for approval of negotiated pleas. The approval authority shall be vested in at least a supervisory criminal Assistant United States Attorney, or a supervisory attorney of a litigating division in the Department of Justice, who will have the responsibility of assessing the appropriateness of the plea agreement under the policies of the Department of Justice pertaining to pleas. Where certain predictable fact situations arise with great frequency and are given identical treatment, the approval requirement may be met by a written instruction from the appropriate supervisor which describes with particularity the standard plea procedure to be followed, so long as that procedure is otherwise within Departmental guidelines. An example would be a border district that routinely deals with a high volume of illegal alien cases daily.

[updated February 2018]

9-27.500 -Offers to Plead Nolo Contendere — Opposition Except in Unusual Circumstances

The attorney for the government should oppose the acceptance of a plea of *nolo contendere* unless the United States Attorney and the appropriate Assistant Attorney General conclude that the circumstances of the case are so unusual that acceptance of such a plea would be in the public interest. *See* JM 9-16.010 (discussing the approval requirement).

Comment. Rule 11(a)(3) of the Federal Rules of Criminal Procedure, requires the court to consider "the parties' views and the public interest in the effective administration of justice" before it accepts a plea of *nolo contendere*. Thus, it is clear that a criminal defendant has no absolute right to enter a *nolo contendere* ("nolo") plea. The Department has long attempted to discourage the disposition of criminal cases by means of nolo pleas.

Government attorneys have been instructed for many years not to consent to nolo pleas except in the most unusual circumstances, and to do so then only with Departmental approval. Federal prosecutors should oppose the acceptance of a nolo plea, unless the United States Attorney and the appropriate Assistant Attorney General concludes that the circumstances are so unusual that acceptance of the plea would be in the public interest.

[updated February 2018] [cited in JM 6-2.000; JM 6-4.320; JM 9-28.1300]

9-27.520 - Offers to Plead Nolo Contendere — Offer of Proof

In any case in which a defendant seeks to enter a plea of *nolo contendere*, the attorney for the government should make an offer of proof in open court of facts known to the government that support the conclusion that the defendant has in fact committed the offense charged. *See also* JM 9-16.010.

Comment. If a defendant seeks to avoid admitting guilt by offering to plead *nolo contendere*, the attorney for the government should, in open court, make an offer of proof of facts known to the government that support the conclusion that the defendant has, in fact, committed the offense charged. This should be done in open court even in the rare case in which the government does not oppose the entry of a nolo plea. In addition, as is the case with respect to guilty pleas, the attorney for the government should urge the court to require the defendant to admit publicly

the facts underlying the criminal charges. These precautions should minimize the effectiveness of any subsequent efforts by the defendant to portray himself/herself as technically liable, but not seriously culpable.

[updated February 2018]

9-27.530 - Argument in Opposition of Nolo Contendere Plea

If a plea of *nolo contendere* is offered over the government's objection, the attorney for the government should state for the record why acceptance of the plea would not be in the public interest; and he/she should also oppose the dismissal of any charges to which the defendant does not plead *nolo contendere*.

Comment. When a plea of *nolo contendere* is offered over the government's objection, the prosecutor should take full advantage of Rule 11(a)(3) of the Federal Rules of Criminal Procedure, to state for the record why acceptance of the plea would not be in the public interest. In addition to reciting facts that could be proved to show the defendant's guilt, the prosecutor should bring to the court's attention whatever arguments exist for rejecting the plea. At the very least, a forceful presentation should make it clear to the public that the government is unwilling to condone the entry of a special plea that may help the defendant avoid legitimate consequences of his/her guilt. If the nolo plea is offered to fewer than all charges, the prosecutor should also oppose the dismissal of the remaining charges.

[cited in JM 6-4.320]

[updated February 2018]

9-27.600 - Entering into Non-prosecution Agreements in Return for Cooperation — Generally

Except as hereafter provided, the attorney for the government may, with supervisory approval, enter into a non-prosecution agreement in exchange for a person's cooperation when, in his/her judgment, the person's timely cooperation appears to be necessary to the public interest and other means of obtaining the desired cooperation are unavailable or would not be effective.

Comment.

1. **Fifth Amendment Privileges.** In many cases, it may be important to the success of an investigation or prosecution to obtain the testimony or other cooperation of a person who is himself/herself implicated in the criminal conduct being investigated or prosecuted. However, because of his/her involvement, the person may refuse to cooperate because of a desire not to incriminate himself or herself, including, for example, by invoking his/her Fifth Amendment privilege against compulsory self-incrimination. In this situation, there are several possible approaches the prosecutor can take to render the privilege inapplicable, induce its waiver, or otherwise obtain the testimony or cooperation.

    a. First, if time permits, the person may be charged, tried, and convicted before his/her cooperation is sought in the investigation or prosecution of others.

    b. Second, the person may be willing to cooperate if the charges or potential charge against him/her are reduced in number or degree in return for his/her cooperation and his/her entry of a guilty plea to the remaining charges. An agreement to file a motion pursuant to Sentencing Guideline § 5K1.1 or Rule 35 of the Federal Rules of Criminal Procedure after the defendant gives full and complete cooperation is the preferred method for securing such cooperation. Usually such a concession by the government will be all that is necessary, or warranted, to secure the cooperation sought. Since it is certainly desirable as a matter of policy that an offender be required to incur at least some liability for his/her criminal conduct, government attorneys should attempt to secure this result in all appropriate cases, following the principles set forth in JM 9-27.430 to the extent practicable.

    c. The third method for securing the cooperation of a potential defendant is by means of a court order under 18 U.S.C. §§ 6001-6003. Those statutory provisions govern the conditions under which uncooperative witnesses may be compelled to testify or provide information notwithstanding their invocation of the privilege against compulsory self-incrimination. In brief, under the so-called "use immunity" provisions of those statutes, the court may order the person to testify or provide other information, but neither his/her testimony nor the information he/she provides may be used against him/her, directly or indirectly, in any criminal case except a prosecution for perjury or other failure to comply with the order. Ordinarily, these "use immunity" provisions should be relied on in cases in which attorneys for the government need to obtain sworn testimony or the production of information before a grand jury or at trial, and in which there is reason to believe that the person will refuse to testify or provide the information on the basis of his/her privilege against compulsory self-incrimination. Consideration should be given to documenting the evidence available prior to the immunity offer. For more information on the process for obtaining a court order for immunity, see JM 9-23.000 *et seq*.

d. Finally, there may be cases in which it is impossible or impractical to employ the methods described above to secure the necessary information or other assistance, and in which the person is willing to cooperate only in return for an agreement that he/she will not be prosecuted at all for what he/she has done. The provisions set forth hereafter describe the conditions that should be met before such an agreement is made, as well as the procedures recommended for such cases

   It is important to note that these provisions apply only if the case involves an agreement with a person who might otherwise be prosecuted. If the person reasonably is viewed only as a potential witness rather than a potential defendant, and the person is willing to cooperate, there is no need to consult these provisions.

   JM 9-27.600 describes three circumstances that should exist before government attorneys enter into non-prosecution agreements in return for cooperation: (1)the unavailability or ineffectiveness of other means of obtaining the desired cooperation; (2)the apparent necessity of the cooperation to the public interest; and (3) the approval of such a course of action by an appropriate supervisory official.

2. **Unavailability or Ineffectiveness of Other Means.** As indicated above, non-prosecution agreements are only one of several methods by which the prosecutor can obtain the cooperation of a person whose criminal involvement makes him/her a potential subject of prosecution. Other methods - such as seeking cooperation after trial and conviction, bargaining for cooperation as part of a plea agreement, and compelling cooperation under a "use immunity" order - involve prosecuting the person or at least leaving open the possibility of prosecuting him/her on the basis of independently obtained evidence. Since these outcomes are clearly preferable to permitting an offender to avoid any liability for his/her conduct, the possible use of an alternative to a non-prosecution agreement should be given serious consideration in the first instance.

   Another reason for using an alternative to a non-prosecution agreement to obtain cooperation concerns the practical advantage in terms of the person's credibility if he/she testifies at trial. If the person already has been convicted, either after trial or upon a guilty plea, for participating in the events about which he/she testifies, his/her testimony is apt to be far more credible than if it appears to the trier of fact that he/she is getting off "scot free." Similarly, if his/her testimony is compelled by a court order, he/she cannot properly be portrayed by the defense as a person who has made a "deal" with the government and whose testimony is, therefore, suspect; his/her testimony will have been forced from him/her, not bargained for.

   In some cases, however, there may be no effective means of obtaining the person's timely cooperation short of entering into a non-prosecution agreement. The person may be unwilling to cooperate fully in return for a reduction of charges, the delay involved in bringing him/her to trial might prejudice the investigation or prosecution in connection with which his/her cooperation is sought and it may be impossible or impractical to rely on the statutory provisions for compulsion of testimony or production of evidence. One example of the latter situation is a case in which the cooperation needed does not consist of testimony under oath or the production of information before a grand jury or at trial. Other examples

are cases in which time is critical, or where use of the procedures of 18 U.S.C. § 6001-6003 would unreasonably disrupt the presentation of evidence to the grand jury or the expeditious development of an investigation, or where compliance with the statute of limitations or the Speedy Trial Act precludes timely application for a court order.

Only when it appears that the person's timely cooperation cannot be obtained by other means, or cannot be obtained effectively, should the attorney for the government consider entering into a non-prosecution agreement.

3. **Public Interest.** If he/she concludes that a non-prosecution agreement would be the only effective method for obtaining cooperation, the attorney for the government should consider whether, balancing the cost of foregoing prosecution against the potential benefit of the person's cooperation, the cooperation sought appears necessary to the public interest. This "public interest" determination is one of the conditions precedent to an application under 18 U.S.C. § 6003 for a court order compelling testimony. Like a compulsion order, a non-prosecution agreement limits the government's ability to undertake a subsequent prosecution of the witness. Accordingly, the same "public interest" test should be applied in this situation as well. Some of the considerations that may be relevant to the application of this test are set forth in JM 9-27.620.
4. **Supervisory Approval.** Finally, the prosecutor should secure supervisory approval before entering into a non-prosecution agreement. Prosecutors working under the direction of a United States Attorney must seek the approval of the United States Attorney or a supervisory Assistant United States Attorney. Departmental attorneys not supervised by a United States Attorney should obtain the approval of the appropriate Assistant Attorney General, and should notify the United States Attorney or Attorneys concerned. The requirement of approval by a superior is designed to provide review by an attorney experienced in such matters, and to ensure uniformity of policy and practice with respect to such agreements. This section should be read in conjunction with JM 9-27.640, concerning particular types of cases in which an appropriate Assistant Attorney General must concur in or approve an agreement not to prosecute in return for cooperation.

[updated June 2023]

9-27.620 - Entering into Non-prosecution Agreements in Return for Cooperation — Considerations to be Weighed

In determining whether a person's cooperation may be necessary to the public interest, the attorney for the government, and those whose approval is necessary, should weigh all relevant considerations, including:

1. The importance of the investigation or prosecution to an effective program of law enforcement, or consideration of other national security or governmental interests;
2. The value of the person's cooperation to the investigation or prosecution;
3. The person's relative culpability in connection with the offense or offenses being investigated or prosecuted and his/her history with respect to criminal activity; and
4. The interests of any victims.

Comment. This section is intended to assist federal prosecutors, and those whose approval they must secure, in deciding whether a person's cooperation appears to be necessary to the public interest. The considerations listed here are not intended to be an exhaustive list or to require a particular decision in a particular case. Rather they are meant to focus the decision-maker's attention on factors that probably will be controlling in the majority of cases.

1. **Importance of Case.** Since the primary function of a federal prosecution in ordinary criminal cases is to enforce the criminal law, a federal prosecutor should not routinely or indiscriminately enter into non-prosecution agreements, which are, in essence, agreements not to enforce the law under particular conditions. Rather, he/she should reserve the use of such agreements for cases in which the cooperation sought concerns the commission of a serious offense, or prosecution is important in achieving effective enforcement of the criminal laws, including national security-related enforcement and prevention efforts. The relative importance or unimportance of the contemplated case is therefore a significant threshold consideration.
2. **Value of Cooperation.** An agreement not to prosecute in return for a person's cooperation binds the government to the extent that the person carries out his/her part of the bargain. *See Santobello v. New York* 404 U.S. 257 (1971); *Wade v. United States*, 504 U.S. 181 (1992). Since such an agreement forecloses enforcement of the criminal law against a person who otherwise may be liable to prosecution, it should not be entered into without a clear understanding of the nature of the quid pro quo and a careful assessment of its probable value to the government. In order to be in a position adequately to assess the potential value of a person's cooperation, the prosecutor should insist on an "offer of proof" or its equivalent from the person or his/her attorney. The prosecutor can then weigh the offer in terms of the investigation or prosecution in connection with which cooperation is sought. In doing so, he/she should consider such questions as whether the cooperation will in fact be forthcoming, whether the testimony or other information provided will be credible, whether it can be corroborated by other evidence, whether it will materially assist the investigation or prosecution, and whether substantially the same benefit can be obtained from someone else without an agreement not to prosecute. After assessing all of these factors, together with any others that may be relevant, the prosecutor can judge the strength of his/her case with and without the person's cooperation, and determine whether it may be in the public interest to agree to forego prosecution under the circumstances.
3. **Relative Culpability and Criminal History.** In determining whether it may be necessary to the public interest to agree to forego prosecution of a person who may have violated the law in return for that person's cooperation, it is also important to consider the degree of his/her

apparent culpability relative to others who are subjects of the investigation or prosecution as well as his/her history of criminal involvement. Of course, ordinarily it would not be in the public interest to forego prosecution of a high-ranking member of a criminal enterprise in exchange for his/her cooperation against one of his/her subordinates, nor would the public interest be served by bargaining away the opportunity to prosecute a person with a long history of serious criminal involvement in order to obtain the conviction of someone else on less serious charges. These are matters with regard to which the attorney for the government may find it helpful to consult with the investigating agency or with other prosecuting authorities who may have an interest in the person or his/her associates.

4. **The Interests of Any Victims.** When considering whether it is in the public interest to forego prosecution, it is also important to consider the economic, physical, and psychological impact of the offense on any victims. In this connection, it is appropriate for the prosecutor to take into account such matters as the victim's desire for prosecution, the victim's age or health, and whether full or partial restitution has been made. In evaluating victim interests and determining whether to pursue a non-prosecution agreement, the prosecutor should be available to confer with the victim in furtherance of the Crime Victims' Rights Act (CVRA) and in accordance with the Attorney General Guidelines for Victim and Witness Assistance. The prosecutor should also be aware of any effect on the Department's ability to directly compensate victims of the underlying crimes and on the Crime Victims Fund. *See* Comment to JM 9-27.230. For more information regarding the Department's obligations to victims, see the Crime Victims' Rights Act, 18 U.S.C. § 3771, the Victims' Rights and Restitution Act, 34 U.S.C. § 20141, and the Attorney General Guidelines for Victim and Witness Assistance.

It is also important to consider whether the person has a background of cooperation with law enforcement officials, either as a witness or an informant, and whether he/she has previously been the subject of a compulsion order under 18 U.S.C. §§ 6001-6003 or has escaped prosecution by virtue of an agreement not to prosecute. Such information regarding compulsion orders may be available by telephone from the Policy and Statutory Enforcement Unit in the Office of Enforcement Operations of the Criminal Division.

[updated November 2022]

9-27.630 - Entering into Non-prosecution Agreements in Return for Cooperation — Limiting the Scope of Commitment

In entering into a non-prosecution agreement, the attorney for the government should, if practicable, explicitly limit the scope of the government's commitment to:

1. Non-prosecution based directly or indirectly on the testimony or other information or cooperation that has been or will be provided; or
2. Non-prosecution within his/her district with respect to a pending charge, or to a specific offense then known to have been committed by the person.

Comment. The attorney for the government should exercise extreme caution to ensure that his/her non-prosecution agreement does not confer "blanket" immunity on the witness. Thus, for example, he/she should attempt to limit his/her agreement to non-prosecution based on the testimony or information provided. Such an "informal use immunity" agreement has two advantages over an agreement not to prosecute the person in connection with a particular transaction: first, it preserves the prosecutor's option to prosecute on the basis of independently obtained evidence if it later appears that the person's criminal involvement was more serious than it originally appeared to be; and second, it encourages the witness to be as forthright as possible since the more he/she reveals the more protection he/she will have against a future prosecution. To further encourage full disclosure by the witness, it should be made clear in the agreement that the government's forbearance from prosecution is conditioned upon the witness's testimony or production of information being complete and truthful, and that failure to testify truthfully may result in a perjury prosecution.

Even if it is not practicable to obtain the desired cooperation pursuant to an "informal use immunity" agreement, the attorney for the government should attempt to limit the scope of the agreement in terms of the testimony and transactions covered, bearing in mind the possible effect of his/her agreement on prosecutions in other districts.

It is important that non-prosecution agreements be drawn in terms that will not bind other federal prosecutors or agencies without their consent. Thus, if practicable, the attorney for the government should explicitly limit the scope of his/her agreement to non-prosecution within his/her district. If such a limitation is not practicable and it can reasonably be anticipated that the agreement may affect prosecution of the person in other districts, the attorney for the government contemplating such an agreement shall communicate the relevant facts to the appropriate United States Attorney and/or Assistant Attorney General. United States Attorneys may not make agreements that prejudice other litigating divisions, without the agreement of all affected divisions. *See also* JM 9-16.000 et seq. for more information regarding plea agreements.

Finally, the attorney for the government should make it clear that his/her agreement relates only to non-prosecution and that he/she has no independent authority to promise that the witness will be admitted into the Department's Witness Security program or that the Marshal's Service will provide any benefits to the witness in exchange for his/her cooperation. This does not mean, of course, that the prosecutor should not cooperate in making arrangements with the Marshal's Service necessary for the protection of the witness in appropriate cases. The procedures to be followed in such cases are set forth in JM 9-21.000.

[updated February 2018]

9-27.640 - Agreements Requiring Assistant Attorney General Approval

The attorney for the government should not enter into a non-prosecution agreement in exchange for a person's cooperation without first obtaining the approval of the appropriate Assistant Attorney General when:

1. Prior consultation or approval would be required by a statute or by Departmental policy for a declination of prosecution or dismissal of a charge with regard to which the agreement is to be made; or
2. The person is:
    a. A high-level federal, state, or local official;
    b. An official or agent of a federal investigative or law enforcement agency; or
    c. A person who otherwise is, or is expected to become, of major public interest.

Comment. JM 9-27.640 sets forth special cases that require approval of non-prosecution agreements by the appropriate Assistant Attorney General. Subparagraph (1) covers cases in which existing statutory provisions and departmental policies require that, with respect to certain types of offenses, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General be consulted or give his/her approval before prosecution is declined or charges are dismissed. *See e.g.*, JM 6-4.245 (tax offenses); JM 9-41.010 (bankruptcy frauds); JM 9-90.020 (national security-related offenses); JM 9-2.400 (for a complete listing of all prior approval and consultation requirements). An agreement not to prosecute resembles a declination of prosecution or the dismissal of a charge in that the end result in each case is similar: a person who has engaged in criminal activity is not prosecuted or is not prosecuted fully for his/her offense. Accordingly, attorneys for the government should obtain the approval of the appropriate Assistant Attorney General before agreeing not to prosecute in any case in which consultation or approval would be required for a declination of prosecution or dismissal of a charge.

Subparagraph (2) sets forth other situations in which the attorney for the government should obtain the approval of an Assistant Attorney General, of a proposed agreement not to prosecute in exchange for cooperation. Generally speaking, the situations described will be cases of an exceptional or extremely sensitive nature, or cases involving individuals or matters of major

public interest. In a case covered by this provision that appears to be of an especially sensitive nature, the Assistant Attorney General should, in turn, consider whether it would be appropriate to notify the Attorney General or the Deputy Attorney General.

[updated February 2018]

9-27.641 - Multi-District (Global) Agreement Requests

No district or division shall make any agreement, including any agreement not to prosecute, which purports to bind any other district(s) or division without the approval of the United States Attorney(s) in each affected district and/or the appropriate Assistant Attorney General .

The requesting district/division shall make known to each affected district/division the following information:

1. The specific crimes allegedly committed in the affected district(s) as disclosed by the defendant. (No agreement should be made as to any crime(s) not disclosed by the defendant.)
2. Identification of victims of crimes committed by the defendant in any affected district, insofar as possible.
3. The proposed agreement to be made with the defendant and the applicable Sentencing Guideline range.

See JM 16.030 for a discussion of the requirement for consultation with investigative agencies and victims regarding pleas.

[cited in JM 9-28.1000]

[updated February 2018]

9-27.650 - Records of Non-Prosecution Agreements

In a case in which a non-prosecution agreement is reached in return for a person's cooperation, the attorney for the government should ensure that the case file contains a memorandum or other written record setting forth the terms of the agreement. The memorandum or record should be signed or initialed by the person with whom the agreement is made or his/her attorney.

Comment. The provisions of this section are intended to serve two purposes. First, it is important to have a written record in the event that questions arise concerning the nature or scope of the agreement. Such questions are certain to arise during cross-examination of the witness, particularly since the existence of the agreement should be disclosed to defense counsel pursuant to the requirements of *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972). The exact terms of the agreement may also become relevant if the government attempts to prosecute the witness for some offense in the future. Second, such a record will facilitate identification by government attorneys (in the course of weighing future agreements not to prosecute, plea agreements, pre-trial diversion, and other discretionary actions) of persons whom the government has agreed not to prosecute.

The principal requirements of the written record are that it be sufficiently detailed that it leaves no doubt as to the obligations of the parties to the agreement, and that it be signed or initialed by the person with whom the agreement is made and his/her attorney, or at least by one of them.

[updated February 2018]

9-27.710 - Participation in Sentencing — Generally

During the sentencing phase of a federal criminal case, the attorney for the government should assist the sentencing court by:

1. Attempting to ensure that the relevant facts and sentencing factors, as applied to the facts, are brought to the court's attention fully and accurately; and
2. Making sentencing recommendations in appropriate cases.

Comment. Sentencing is a critical stage in a case, and prosecutors play an indispensable role in advocating for just sentences. A prosecutor must be familiar with the guidelines generally and with the specific guideline provisions applicable to the case. A prosecutor should, as provided in JM 9-27.720 and 9-27.750, endeavor to ensure the accuracy and completeness of the

information upon which the sentencing decisions will be based. Department policy requires that prosecutors always be candid with the court, the probation office, and the public as to the full extent of the defendant's conduct and culpability, regardless of whether the charging document includes such specificity. In addition, as provided in JM 9-27.730, a prosecutor should offer recommendations with respect to the sentence to be imposed.

[updated June 2023]

9-27.720 - Establishing Factual Basis for Sentence

In order to ensure that the relevant facts are brought to the attention of the sentencing court fully and accurately, the attorney for the government should:

1. Cooperate with the Probation Service in its preparation of the presentence investigation report;
2. Review the presentence investigation report;
3. Highlight critical facts and sentencing considerations in a way that accurately and compellingly supports the government's recommended sentence;
4. Make a factual presentation to the court when:
    a. Sentence is imposed without a presentence investigation and report;
    b. It is necessary to supplement or correct the presentence investigation report;
    c. It is necessary in light of the defense presentation to the court; or
    d. It is requested by the court;
5. Be prepared to substantiate significant factual allegations disputed by the defense; and
6. Provide an opportunity for victim allocution.

Comment.

1. **Cooperation with Probation Service.** The prosecutor should cooperate with the Probation Service in its preparation of the presentence report for the court. Under Rule 32 of the Federal Rules of Criminal Procedure, the report should contain information about the history and characteristics of the defendant, including any prior criminal record, financial condition, and any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in the correctional treatment of the defendant. While much of this information may be available to the Probation Service from sources other than the government, some of

it may be obtainable only from prosecutorial or investigative files to which probation officers do not have access. For this reason, it is important that the attorney for the government respond promptly to Probation Service requests by providing the requested information whenever possible. The attorney for the government should also recognize the occasional desirability of volunteering information to the Probation Service especially in a district where the Probation Office is overburdened. Doing so may be the best way to ensure that important facts about the defendant come to its attention. In addition, the prosecutor should be particularly alert to the need to volunteer relevant information to the Probation Service in complex cases, since it cannot be expected that probation officers will obtain a full understanding of the facts of such cases simply by questioning the prosecutor or examining his/her files.

The relevant information can be communicated orally, or by making portions of the case file available to the probation officer, or by submitting a sentencing memorandum or other written presentation for inclusion in the presentence report. Whatever method he/she uses, however, the attorney for the government should bear in mind that since the report will be shown to the defendant and defense counsel, care should be taken to prevent disclosures that might be harmful to law enforcement interests.

2. **Review of Presentence Report.** Before the sentencing hearing, the prosecutor should always review the presentence report, which is prepared pursuant to Rule 32 of the Federal Rules of Criminal Procedure. Not only must the prosecutor be satisfied that the report is factually accurate, he or she must also pay attention to the initial determination of the base offense level. Further, the prosecutor must also consider all adjustments reflected in the report, as well as any recommendations for departure made by the probation office. These adjustments and potential departures can have a profound effect on the defendant's sentence. As advocates for the United States, prosecutors should be prepared to argue concerning those adjustments (and, if necessary, departures allowed by the guidelines) in order to arrive at a final result which adequately and accurately describes the defendant's conduct of offense, criminal history, and other factors related to sentencing.

3. **Emphasize Critical Facts and Arguments.** The attorney for the government should apply relevant sentencing factors to the facts in a way that most accurately and convincingly supports the government’s recommended sentence. Judges are often presented with a substantial amount of information at sentencing. Justice is best served when prosecutors distill that information to its most salient points and provide judges with a persuasive framework through which to understand the significance of the case, the impact on the victims, the importance of general and specific deterrence, and the need for the requested punishment and rehabilitation plan to achieve a just result.

4. **Factual Presentation to Court.** In addition to assisting the Probation Service with its presentence investigation, the attorney for the government may find it necessary to make a factual presentation directly to the court. Such a presentation is authorized by Rule 32(i) of the Federal Rules of Criminal Procedure, which requires the court to "allow the parties' attorneys to comment on the probation officer's determinations and other matters relating to

an appropriate sentence."

Ordinarily, the need to address the court concerning the facts relevant to sentencing may arise in four situations: (a) when sentence is imposed without a presentence investigation and report; (b) when necessary to correct, supplement, or highlight portions of the presentence report; (c) when necessary in light of the defense presentation to the court; and (d) when requested by the court.

a. **Furnishing Information in Absence of Presentence Report.** Rule 32(c) of the Federal Rules of Criminal Procedure authorizes the imposition of sentence without a presentence investigation and report, if the court finds that the record contains sufficient information to permit the meaningful exercise of sentencing authority under 18 U.S.C. § 3553. Imposition of sentence pursuant to this provision usually occurs when the defendant has been found guilty by the court after a non-jury trial, when the case is relatively simple and straightforward, when the defendant has taken the stand and has been cross-examined, and when it is the court's intention not to impose a prison sentence. In such cases, and any others in which sentence is to be imposed without benefit of a presentence investigation and report (such as when a report on the defendant has recently been prepared in connection with another case), it may be particularly important that the attorney for the government take advantage of the opportunity afforded by Rule 32(i) of the Federal Rules of Criminal Procedure, to address the court, since there will be no later opportunity to correct or supplement the record. Moreover, even if government counsel is satisfied that all facts relevant to the sentencing decision are already before the court, he/she may wish to make a factual presentation for the record that makes clear the government's view of the defendant, the offense, or both.

b. **Correcting, Supplementing, or Highlighting Portions of the Presentence Report.** The attorney for the government should bring any significant inaccuracies or omissions to the Court's attention at the sentencing hearing, together with the correct or complete information. The attorney may also wish to highlight certain factual findings in making a sentencing recommendation to the court.

c. **Responding to Defense Assertions.** Having read the presentence report before the sentencing hearing, the defendant or his/her attorney may dispute specific factual statements made therein. More likely, without directly challenging the accuracy of the report, the defense presentation at the hearing may omit reference to the derogatory information in the report while stressing any favorable information and drawing all inferences beneficial to the defendant. Some degree of selectivity in the defense presentation can reasonably be expected, and will be recognized by the court. There may be instances, however, in which the defense presentation, if not challenged, will leave the court with a mistaken view of the defendant or of the offense, because it is significantly different from that appearing in the presentence report. If this happens, the attorney for the government may respond by correcting factual errors in the defense presentation, pointing out facts and inferences ignored by the defense, and generally reinforcing the objective view of the defendant and his/her offense as expressed in the presentence report.

d. **Responding to Court's Requests.** The court will request specific information from government counsel at the sentencing hearing. When this occurs, the attorney for the government should, of course, furnish the requested information if it is readily available and no prejudice to law enforcement interests will result from its disclosure.

5. **Substantiation of Disputed Facts.** In addition to providing the court with relevant factual material at the sentencing hearing, the attorney for the government should be prepared to substantiate significant factual allegations disputed by the defense. This can be done by making the source of the information available for cross examination or if there is good cause for nondisclosure of his/her identity, by presenting the information as hearsay and providing other guarantees of its reliability, such as corroborating testimony by others. *See United States v. Fatico*, 579 F.2d 707, 713 (2d Cir. 1978).

6. **Provide an Opportunity for Victim Allocution.** Pursuant to the Crime Victims' Rights Act of 2004, 18 U.S.C. § 3771(a)(4), a victim is entitled to address the court at sentencing regarding the impact of the crime on the victim. Prosecutors should notify victims of this opportunity in advance of sentencing with sufficient time for the victim to prepare a statement, and should notify the court of any victims wishing to make a statement.

[updated February 2018]

9-27.730 - Making Sentencing Recommendations

The attorney for the government should make sentencing recommendations based on an individualized assessment of the nature and circumstances of the offense and the history and characteristics of the defendant, without improper consideration of the defendant's race, religion, gender, ethnicity, national origin, sexual orientation, or political association, activities, or beliefs.

When making a sentencing recommendation, the attorney for the government should seek a sentence that is sufficient, but not greater than necessary, to:

1. Reflect the seriousness of the offense;
2. Promote respect for the law;
3. Provide just punishment;
4. Afford deterrence to future criminal conduct by the defendant and others;

5. Protect the public from further crimes of the defendant;
6. Avoid unwarranted sentencing disparities among offenders with similar records who have been found guilty of similar conduct;
7. Offer the defendant an opportunity for effective rehabilitation and provide the defendent with needed correctional treatment; and
8. Take into account the need for the defendant to provide restitution to any victims of the offense.

In many cases, the appropriate balance among these factors will lead to a recommendation for a sentence within the advisory range resulting from application of the Sentencing Guidelines, and prosecutors should generally continue to advocate for a sentence within that range. Prosecutors should consider whether the departure provisions under the guidelines are appropriate, and, if so, should advocate for their application accordingly. When advocating at sentencing, prosecutors must fully and accurately alert the court to all known relevant facts and criminal history and explain why the interests of justice warrant their sentencing recommendations. Before recommending a sentence that reflects an upward departure or variance from the advisory guideline range, the attorney for the government must obtain supervisory approval.

Comment. Congress has identified the factors courts must consider when imposing sentence. These factors are set forth in 18 U.S.C. § 3553, and are listed above. Absent a specific provision in a plea agreement, the attorney for the government is not legally obligated to make a recommendation at sentencing. However, the interests of justice and the public interest often will be best served if the prosecutor handling the matter makes a recommendation as to an appropriate sentence.

1. Sentences Above or Below the Guidelines. Although consistent application of the guidelines encourages uniformity throughout the federal system, it is appropriate for prosecutors to consider whether the penalty yielded by the advisory guideline range is proportional to the seriousness of the defendant's conduct and would achieve the purposes of criminal sentencing articulated in § 3553(a). Based on an individualized assessment of the facts and circumstances of a particular case, a prosecutor may conclude that a sentence request for a departure or variance above or below the advisory guidelines is warranted. All prosecutorial recommendations for departures or variances — upward or downward — must be supported by specific and articulable factors and documented in the case file. Recommendations for upward departures and variances should also be approved by a supervisor.

2. Balancing Sentencing Factors. The attorney for the government should recognize that not all of the factors set forth in § 3553 may be relevant or of equal importance in every case and

that, for a particular offense committed by a particular offender, one of the purposes, or a combination of purposes, may be of overriding importance.

3. Conveying Sentencing Recommendations to the Court. The attorney for the government should be guided by the practice of the court concerning the manner and form in which sentencing recommendations are made. If the government's position with respect to the sentence to be imposed is related to a plea agreement, that position must be made known to the court at the time the plea is entered. In other situations, the government's position might be conveyed to the probation officer during the presentence investigation; to the court in the form of a sentencing memorandum filed in advance of the sentencing hearing; or to the court orally at the time of the hearing. Courts often find it helpful when federal prosecutors, in addition to their oral advocacy at the sentencing hearing, file with the court in advance of sentencing a memorandum setting forth the recommended sentence with supporting reasons.

4. Recommendations Required by Plea Agreements. As set forth in JM 9-27.400, prosecutors may enter into plea agreements that require the government to make – or not make – particular recommendations at sentencing. If the prosecutor has entered into a plea agreement calling for the government to take a certain position with respect to the sentence to be imposed, and the defendant has entered a guilty plea in accordance with the terms of the agreement, the prosecutor must perform his/her part of the bargain or risk having the plea invalidated. *Machibroda v. United States*, 368 U.S. 487, 493 (1962); *Santobello v. United States*, 404 U.S. 257, 262 (1971).

5. Substantial Assistance. When making a sentencing recommendation, the attorney for the government may consider whether, and to what extent, the defendant has provided substantial assistance in the investigation or prosecution of others. The attorney for the government must obtain supervisory approval before filing any substantial assistance motion pursuant to section 5K.1.1 of the Sentencing Guidelines or Federal Rule of Criminal Procedure 35. This requirement is addressed in JM 9-27.400.

[updated June 2023]

9-27.731 - Making Sentencing Recommendations in Certain Drug Cases

As set forth in JM 9-27.730, although in many cases the appropriate balance among the 18 U.S.C. § 3553(a) factors will lead to a recommendation for a sentence within the advisory range

resulting from the application of the Sentencing Guidelines, there are cases in which such a sentence may not be proportional to the seriousness of the defendant's conduct or achieve the purposes of criminal sentencing as articulated in 18 U.S.C. § 3553(a). In such cases, prosecutors may conclude that a request for a departure or variance above or below the guidelines range is warranted.

In the context of drug cases, requests for departures or variances may be particularly justified in the following circumstances:

- **Certain cases in which the guidelines range does not adequately reflect the defendant's crime and culpability:** At times, a low-level seller in a large-scale drug organization may be held responsible under the relevant conduct provisions of the Sentencing Guidelines for a large quantity of drugs that produces an advisory range near the top of the sentencing table. In such cases, prosecutors should consider supporting a downward departure or variance, particularly where all or most of the criteria listed in JM 9-27.311 are satisfied. Conversely, where the criteria are satisfied and yet the penalty yielded by the advisory guidelines range is not proportional to the seriousness of the defendant's conduct, prosecutors may consider seeking an upward departure or variance.
- **Certain cases in which the career offender guidelines range does not adequately reflect the defendant's crime and culpability:** Similar consideration should be given in a case in which the defendant is subject to sentencing under the career offender guideline, *see* U.S.S.G. § 4B1.1, which is designed to trigger guideline ranges at or near statutory maximum sentences. In a case in which all or most of the listed criteria are present, and the defendant's status as a career offender is predicated only on the current and previous commission of nonviolent controlled substance offenses, prosecutors should consider supporting a downward variance to the guidelines range that would apply in the absence of career offender status. (For purposes of this subsection, nonviolent offenses are those that do not involve the actual or threatened use of a weapon or other means of violence.) Conversely, if the defendant's prior convictions involved the actual or threatened use of violence, but the crimes do not qualify as career offender predicates under the "categorical approach," if appropriate prosecutors may consider advocating for an upward variance, including toward the career offender range.

In crack cocaine cases, prosecutors should advocate for a sentence consistent with the guidelines for powder cocaine rather than crack cocaine. Where a court concludes that the crack cocaine guidelines apply, prosecutors should generally support a variance to the guidelines range that would apply to the comparable quantity of powder cocaine.

Whatever the ultimate sentencing recommendation, prosecutors must always be candid with the court, the probation office, and the public as to the full extent of the defendant's conduct and culpability, including the type and quantity of drugs involved in the offense and the quantity attributable to the defendant's role in the offense, even if the charging document lacks such specificity.

[added June 2023]

9-27.745 - Unreasonable or Illegal Sentences

The attorney for the government should oppose attempts by the court to impose any sentence that is: (1) not supported by the law or the evidence; (2) unreasonable in light of 18 U.S.C. § 3553(a); (3) below the statutory minimum; (4) above the statutory maximum; or (5) based on a prohibited factor, such as race, religion, gender, ethnicity, national origin, sexual orientation, or political association, activities, or beliefs.

Comment. The prosecutor, with Departmental approval, may appeal a sentence which is unreasonable, unlawful or based on a prohibited factor. The requirements for reporting and seeking approval to appeal adverse sentencing decisions are set forth in JM 9-2.170.

[updated February 2018]

9-27.750 - Disclosing Factual Material to Defense

A. The attorney for the government should disclose to defense counsel, reasonably in advance of the sentencing hearing, any factual material not reflected in the presentence investigation report that he/she intends to bring to the attention of the court.

B. Comment. Due process requires that the sentence in a criminal case be based on accurate information. *See, e.g.*, *Moore v. United States*, 571 F.2d 179, 182-84 (3d Cir. 1978). Accordingly, the defense should have access to all material relied upon by the sentencing judge, including memoranda from the prosecution (to the extent that considerations of informant safety permit), as well as sufficient time to review such material and an opportunity to present any refutation that can be mustered. *See, e.g.*, *United States v. Perri*, 513 F.2d 572, 575 (9th Cir. 1975); *United States v. Rosner*, 485 F.2d 1213, 1229-30 (2d Cir. 1973), *cert. denied*, 417 U.S. 950 (1974); *United States v. Robin*, 545 F.2d 775 (2d Cir. 1976). JM 9-27.750 is intended to facilitate satisfaction of these requirements by providing the defendant with notice of information not contained in the presentence report that the government plans to bring to the attention of the sentencing court.

[updated February 2018]

9-27.760 - Limitation on Identifying Uncharged Parties Publicly

In all public filings and proceedings, federal prosecutors should remain sensitive to the privacy and reputation interests of uncharged parties. In the context of public plea and sentencing proceedings, this means that, in the absence of some significant justification, it is not appropriate to identify (either by name or unnecessarily specific description), or cause a defendant to identify, a party unless that party has been publicly charged with the misconduct at issue. In the unusual instance where identification of an uncharged party during a plea or sentencing hearing is justified, and absent exigent circumstances, prosecutors should obtain the approval of the appropriate United States Attorney or Assistant Attorney General prior to the hearing. *See* JM 9-16.500. In other less predictable contexts, prosecutors should strive to avoid unnecessary public references to wrongdoing by uncharged parties. With respect to bills of particulars that identify unindicted co-conspirators, prosecutors generally should seek leave to file such documents under seal. Prosecutors shall comply, however, with any court order directing the public filing of a bill of particulars.

As a series of cases makes clear, there is ordinarily "no legitimate governmental interest served" by the government's public allegation of wrongdoing by an uncharged party, and this is true "[r]egardless of what criminal charges may . . . b[e] contemplated by the Assistant United States Attorney against the [third party] for the future." *In re Smith*, 656 F.2d 1101, 1106-07 (5th Cir. 1981). Courts have applied this reasoning to preclude the public identification of unindicted parties in plea hearings, sentencing memoranda, and other government pleadings. *See Finn v. Schiller*, 72 F.3d 1182 (4th Cir. 1996); *United States v. Briggs*, 514 F.2d 794 (5th Cir. 1975); *United States. v Anderson*, 55 F. Supp. 2d 1163 (D. Kan 1999); *United States v. Smith*, 992 F. Supp. 743 (D.N.J. 1998); *see also* JM 9-11.130.

In most cases, any legitimate governmental interest in referring to uncharged parties can be advanced through means other than those condemned in this line of cases. For example, in those cases where the offense to which a defendant is pleading guilty requires as an element that a third party have a particular status (*e.g.*, 18 U.S.C. § 203(a)(2), Unlawful Compensation to Members of Congress), the third party can usually be referred to generically ("a Member of Congress"), rather than identified specifically ("Senator X"). Similarly, when the defendant engaged in joint criminal conduct with others, generic references ("another individual") to the uncharged parties are typically sufficient for purposes of a guilty plea.

For the same reasons, following the conclusion of a case (whether by closing of an investigation or conclusion of a prosecution), DOJ personnel should not publicly disclose the identity (either by name or unnecessarily specific description) of uncharged parties absent approval of the United States Attorney or Assistant Attorney General, or their designee. When evaluating

whether to grant approval, the United States Attorney or Assistant Attorney General, or their designee, may consider factors such as:

- The privacy, safety, and reputational interests of uncharged parties;
- The potential effect of any statements on ongoing criminal investigations or prosecutions, *see* JM 1-7.600, 1-7.610;
- Whether public disclosure may advance significant law enforcement interests, such as where release of information is necessary to protect public safety or uphold the integrity of the law enforcement investigation; and
- Other legitimate and compelling governmental interests, including whether the public has a significant need to know the information.

Public statements concerning the identity of uncharged parties following the conclusion of a case are permissible only if the legitimate and compelling government interests served, including law enforcement interests, substantially outweigh the privacy and reputational interests of the uncharged parties. To the extent a public statement regarding uncharged parties meets this standard and is otherwise permitted by law, such disclosure must be limited to the extent necessary to advance the government interests served by the disclosure.

Significant justification for identifying uncharged parties commonly exists where it is ordered by the Court, is necessary to protect the integrity of the case, or assists the government in meeting its burden of proof. In these instances, the use of generalized terms or descriptions may be unfeasible or insufficient or may create confusion or false impressions for the judge or jury. For example, in conspiracy trials, the identity and conduct of uncharged parties are often highly relevant to the government's case, and it is not feasible to shield that individual's identity in proving the case. In such instances where significant justification exists relating to court proceedings and pleadings, prior approval by the appropriate United States Attorney or Assistant Attorney General is not necessary.

[updated February 2024]

9-24.000 - Requests For Special Confinement Conditions

9-28.000 - Principles of Federal Prosecution Of Business Organizations

Washington DC 20530

Contact the Department

Phone: 202-514-2000

TTY/TDD: 800-877-8339

EXHIBIT 54

9-27.150 - Non-Litigability

These principles, and internal office procedures adopted pursuant to them, are intended solely for the guidance of attorneys for the government. They are not intended to create a substantive or procedural right or benefit, enforceable at law , and may not be relied upon by a party to litigation with the United States.

Comment. The Principles of Federal Prosecution have been developed purely as matter of internal Departmental policy and are being provided to federal prosecutors solely for their own guidance in performing their duties. Neither this statement of principles nor any internal procedures adopted by individual offices create any rights or benefits. By setting forth this fact explicitly, JM 9-27.150 is intended to foreclose efforts to litigate the validity of prosecutorial actions alleged to be at variance with these principles or not in compliance with internal office procedures. In the event that an attempt is made to litigate any aspect of these principles, to litigate any internal office procedures, or to litigate the applicability of such principles or procedures to a particular case, the attorney for the government should oppose the attempt. The attorney for the government should also notify the Department of the litigation if there is a reasonable possibility the government may face an adverse decision on the litigation or if a court renders an adverse decision.

[updated February 2018]

9-27.200 - Initiating and Declining Prosecution — Probable Cause Requirement

If the attorney for the government concludes that there is probable cause to believe that a person has committed a federal offense within his/her jurisdiction, he/she should consider whether to:

1. Request or conduct further investigation;
2. Commence or recommend prosecution;
3. Decline prosecution and refer the matter for prosecutorial consideration in another jurisdiction;
4. Decline prosecution and commence or recommend pretrial diversion or other non-criminal disposition; or
5. Decline prosecution without taking other action.

Comment. JM 9-27.200 sets forth the courses of action available to the attorney for the government once he/she concludes that there is probable cause to believe that a person has committed a federal offense within his/her jurisdiction. The probable cause standard is the same standard required for the issuance of an arrest warrant or a summons upon a complaint (*see* Fed. R. Crim. P. 4(a)), and for a magistrate's decision to hold a defendant to answer in the district court (*see* Fed. R. Crim. P. 5.1(a)), and is the minimal requirement for indictment by a grand jury. *See Branzburg v. Hayes*, 408 U.S. 665, 686 (1972). This is, of course, a threshold consideration only. Merely because this requirement can be met in a given case does not automatically warrant prosecution; further investigation may instead be warranted, and the prosecutor should still take into account all relevant considerations, including those described in the following provisions, in deciding upon his/her course of action. On the other hand, failure to meet the minimal requirement of probable cause is an absolute bar to initiating a federal prosecution, and in some circumstances may preclude reference to other prosecuting authorities or recourse to non-criminal sanctions or other measures as well.

[cited in JM 9-10.060; JM 9-2.031]

[updated February 2018]

9-27.220 - Grounds for Commencing or Declining Prosecution

The attorney for the government should commence or recommend federal prosecution if he/she believes that the person's conduct constitutes a federal offense, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless (1) the prosecution would serve no substantial federal interest; (2) the person is subject to effective prosecution in another jurisdiction; or (3) there exists an adequate non-criminal alternative to prosecution.

Comment. JM 9-27.220 sets forth the longstanding threshold requirement from the *Principles of Federal Prosecution* that a prosecutor may commence or recommend federal prosecution only if he/she believes that the person will more likely than not be found guilty beyond a reasonable doubt by an unbiased trier of fact and that the conviction will be upheld on appeal. Evidence sufficient to sustain a conviction is required under Rule 29(a) of the Federal Rules of Criminal Procedure, to avoid a judgment of acquittal. Moreover, both as a matter of fundamental fairness and in the interest of the efficient administration of justice, no prosecution should be initiated against any person unless the attorney for the government believes that the admissible

evidence is sufficient to obtain and sustain a guilty verdict by an unbiased trier of fact. In this connection, it should be noted that, when deciding whether to prosecute, the government attorney need not have in hand, at that time, all of the evidence upon which he/she intends to rely at trial, if he/she has a reasonable and good faith belief that such evidence will be available and admissible at the time of trial. Thus, for example, it would be proper to commence or recommend a prosecution even though a key witness may be out of the country, so long as there is a good faith basis to believe that the witness's presence at trial could reasonably be expected.

Where the law and the facts create a sound, prosecutable case, the likelihood of an acquittal due to unpopularity of some aspect of the prosecution or because of the overwhelming popularity of the defendant or his/her cause is not a factor prohibiting prosecution. For example, in a civil rights case or a case involving an extremely popular political figure, it might be clear that the evidence of guilt — viewed objectively by an unbiased factfinder — would be sufficient to obtain and sustain a conviction, yet the prosecutor might reasonably doubt, based on the circumstances, that the jury would convict. In such a case, despite his/her negative assessment of the likelihood of a guilty verdict (based on factors extraneous to an objective view of the law and the facts), the prosecutor may properly conclude that it is necessary and appropriate to commence or recommend prosecution and allow the criminal process to operate in accordance with the principles set forth here.

However, the attorney for the government's belief that a person's conduct constitutes a federal offense and that the admissible evidence will probably be sufficient to obtain and sustain a conviction is not sufficient standing by itself to commence or recommend prosecution. The prosecution must also serve a substantial federal interest, and the prosecutor must assess whether, in his/her judgment, the person is subject to effective prosecution in another jurisdiction; and whether there exists an adequate non-criminal alternative to prosecution. It is left to the judgment of the attorney for the government to determine whether these circumstances exist. In exercising that judgment, the attorney for the government should consult JM 9-27.230, 9-27.240, 9-27.250, and 9-27.260.

[cited in JM 6-4.210; JM 9-10.060; JM 9-27.200; JM 9-28.300]

[updated June 2023]

9-27.230 - Initiating and Declining Charges — Substantial Federal Interest

EXHIBIT 55

National District Attorneys Association

National Prosecution Standards

Third Edition

with Revised Commentary

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National District Attorneys Association

National Prosecution Standards

Third Edition

with Revised Commentary

Introduction

These standards are intended to be an aspirational guide to professional conduct in the performance of the prosecutorial function. Unless otherwise indicated, they are intended to apply to the chief prosecutor (by whatever title) in any office, as well as to deputy and assistant prosecutors.

These standards are intended to supplement rather than replace the existing rules of ethical conduct that apply in a jurisdiction. Generally, these standards should be construed in such a way that they are consistent with existing law and applicable rules of ethical conduct. These standards are intended to be guides for prosecutors in the day-to-day performance of the prosecution function, but the problems of professionalism and ethics are too varied to be subject to unvarying rules. Thus, the decision whether or not to follow one or more of these standards may or may not constitute an unacceptable lack of professionalism, depending on the attendant circumstances. These standards are not intended to: (a) be used by the judiciary in determining whether a prosecutor committed error or engaged in improper conduct; (b) be used by disciplinary agencies when passing upon allegations of violations of rules of ethical conduct; (c) create any right of action in any person; or (d) alter existing law in any respect.

The accompanying commentary is intended to help prosecutors understand and interpret these standards, but is not an official part of the standards. If the commentary appears inconsistent with the text of the standard, the text should guide the prosecutor's actions.

Definitions

"Jurisdiction"—Means the political area over which the prosecutor's authority extends. However, in the context of applicable laws and rules of ethical conduct, "jurisdiction" includes a state as well.

"Knows," "Has Knowledge," or "Within the Knowledge of"—Means actual knowledge.

"Misconduct"—Conduct defined as misconduct by the relevant Rules of Ethical Conduct.

"Prosecutor"—Unless otherwise specifically indicated, means any person performing the prosecution function.

"Rules of Ethical Conduct"—Refers to rules of professional conduct, rules of attorney conduct, rules of professional responsibility, or codes of attorney conduct as adopted by the various states or jurisdictions to regulate attorney conduct. The term does not refer to the ABA Model Rules of Professional Conduct.

"Special Prosecutor"—Means any person who performs the prosecution function in a jurisdiction who is not the chief prosecutor elected or appointed in the jurisdiction, or an assistant or deputy prosecutor in the jurisdiction.

Part I. General Standards

1. The Prosecutor's Responsibilities
2. Professionalism
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4. Selection, Compensation, and Removal
5. Staffing and Training
6. Prosecutorial Immunity

1. The Prosecutor's Responsibilities

1-1.1 Primary Responsibility

The prosecutor is an independent administrator of justice. The primary responsibility of a prosecutor is to seek justice, which can only be achieved by the representation and presentation of the truth. This responsibility includes, but is not limited to, ensuring that the guilty are held accountable, that the innocent are protected from unwarranted harm, and that the rights of all participants, particularly victims of crime, are respected.

1-1.2 Societal and Individual Rights and Interests

A prosecutor should zealously protect the rights of individuals, but without representing any individual as a client. A prosecutor should put the rights and interests of society in a paramount position in exercising prosecutorial discretion in individual cases. A prosecutor should seek to reform criminal laws whenever it is appropriate and necessary to do so. Societal interests rather than individual or group interests should also be paramount in a prosecutor's efforts to seek reform of criminal laws.

1-1.3 Full-Time/Part-Time

The chief prosecutor in a jurisdiction should be a full-time position. A full-time prosecutor, whether the chief prosecutor or otherwise, should neither maintain nor profit from a private legal practice. A chief prosecutor may serve part-time in those jurisdictions that are unable or unwilling to fund a full-time prosecutor, but while serving as a part-time prosecutor may not engage in professional conduct that is inconsistent with the need for prosecutorial independence.

1-1.4 Rules of Conduct
A prosecutor shall abide by all applicable provisions of the rules of ethical conduct in his or her jurisdiction.

1-1.5 Inconsistency in Rules of Conduct
To the extent prosecutors are bound by his or her jurisdiction's rules of ethical conduct that are inconsistent with these standards, they shall comply with the rules but endeavor to seek modification of those rules to make them consistent with these standards.

1-1.6 Duty to Respond to Misconduct
A prosecutor is obligated to respond to professional misconduct that has, will, or has the potential to interfere with the proper administration of justice:

a. Where the prosecutor knows that another person associated with the prosecutor's office has engaged, or intends to engage in professional misconduct that could interfere with the proper administration of justice, the prosecutor should address the matter in accordance with internal office procedures.
b. If the office lacks adequate internal procedures to address allegations of professional misconduct, a prosecutor who learns of the misconduct may, in the first instance, request that the person desist from engaging in the misconduct. If such a request is, or is likely to be, futile or if the misconduct is of a sufficiently serious nature, a prosecutor should report the misconduct to a higher authority within the prosecutor's office.
c. If, despite a prosecutor's best efforts, no action is taken in accordance with the prior procedures to remedy the misconduct, a prosecutor should report the misconduct to appropriate officials outside the prosecutor's office (to the extent permitted by the law and rules of ethical conduct of the state).
d. A prosecutor's failure to report known misconduct may itself constitute a violation of the prosecutor's professional duties.

Commentary

A prosecutor is the only one in a criminal action who is responsible for the presentation of the truth. Justice is not complete without the truth always being the primary goal in all criminal proceedings. A prosecutor is not a mere advocate and unlike other lawyers, a prosecutor does not represent individuals or entities, but society as a whole. In that capacity, a prosecutor must exercise independent judgment in reaching decisions while taking into account the interest of victims, witnesses, law enforcement officers, suspects, defendants and those members of society who have no direct interest in a particular case, but who are nonetheless affected by its outcome.

As a representative of society as a whole, a prosecutor should take an active role in the legislative process when proposals dealing with the criminal justice system are being considered. In that role, the prosecutor once again should exercise his or her independent judgment in supporting legislation in the best interest of society.

A full-time chief prosecutor confers many advantages on his or her jurisdiction. Among other advantages, the prosecutor is not distracted by a private law practice; is readily available for consultation with law enforcement officers; is more accountable to society for his or her decisions and performance; and, is not vulnerable to the various potential conflicts of interest that can plague a part-time prosecutor.

Despite those advantages, there are many part-time prosecutors in the United States. This situation is generally created by the societal preference for local accountability and control in locations where the sparse population, geographic size of the jurisdiction, budget and caseload do not warrant that the position be approached as a full-time one. The position of the standard is that the office be approached on a full-time basis insofar as that is possible in any given jurisdiction.

Whether full-time or part-time, the position should be approached as a career and not as a steppingstone or sideline. This means that the prosecutor is prepared to bring to his public duties an orientation of primacy. No matter what other activities the prosecutor is involved in, his public duties come first. Part-time prosecutors should not represent persons in criminal matters in other jurisdictions. This is because of the potential for conflicts with his or her duties as a prosecutor and because of the perception that such representation would decrease his or her dedication to the performance of prosecutorial functions.

Nearly all jurisdictions have now adopted, in some form, the ABA Model Rules of Professional Conduct. While these and other rules adopted by a minority of states have not fully addressed the special concerns of prosecutors in carrying out their public responsibilities, they are the law and rules prosecutors must follow. Therefore, it is important for prosecutors to become involved in the rule making process and to be involved in local jurisdiction processes in adopting the rules.

Using appropriate procedures and in appropriate fora, a prosecutor may challenge such code provisions believed in good faith to be unjust or inapplicable. The existence of a code or rule does not eliminate the duty of the prosecutor to seek justice and serve the public interest. In this sense, the role of the prosecutor is not always the same as other members of the bar. If a prosecutor chooses to disregard a code or rule because of a belief that his or her duty to seek justice requires the same, it should be done with the awareness that the licensing authority in the jurisdiction may well disagree with that determination.

Because the responsibility to seek justice is one borne by each individual prosecutor, one cannot turn a blind eye or a deaf ear to misconduct by another prosecutor that will or has the potential to interfere with that responsibility. To prepare for such a situation, a chief prosecutor should establish an internal office procedure to be used when necessary. In the absence of such a procedure, a prosecutor should report the misconduct to a higher authority inside the prosecutor's office.

If, despite a prosecutor's best efforts, no action is taken in accordance with the prior procedures to address the misconduct, a prosecutor should report the misconduct to

appropriate officials outside the prosecutor's office to the extent permitted by the law and rules of ethical conduct of the state. In the event that the prosecutor believes that action taken by a higher authority in the office is inadequate, the prosecutor should consider discussing the matter with a designated ethical advisor or a statewide ethical adviser before deciding what other action should be taken.

2. Professionalism

1-2.1 Standard of Conduct

A prosecutor should conduct himself or herself with a high level of dignity and integrity in all professional relationships, both in and out of court. Appropriate behavior includes, but is not limited to, the following:

a. A prosecutor should act with candor, good faith, and courtesy in all professional relations.

b. A prosecutor should act with integrity in all communications, interactions, and agreements with opposing counsel. A prosecutor should not express personal animosity toward opposing counsel, regardless of personal opinion.

c. A prosecutor should at all times display proper respect and consideration for the judiciary, without foregoing the right to justifiably criticize individual members of the judiciary at appropriate times and in appropriate circumstances.

d. A prosecutor should be punctual for all court appearances. When absence or tardiness is unavoidable, prompt notice should be given to the court and opposing counsel.

e. A prosecutor should conduct himself or herself with proper restraint and dignity throughout the course of proceedings. Disruptive conduct or excessive argument is always improper.

f. A prosecutor should treat witnesses fairly and professionally and with due consideration. In questioning the testimony of a witness, a prosecutor should not engage in a line of questioning intended solely to abuse, insult or degrade the witness. Examination of a witness's credibility should be limited to legally permitted impeachment techniques.

g. A prosecutor should avoid obstructive and improper tactics. Examples of such tactics include, but are not limited to, knowingly:

- Making frivolous objections, or making objections for the sole purpose of disrupting opposing counsel;
- Attempting to proceed in a manner that is obviously inconsistent with a prior ruling by the court;
- Attempting to ask clearly improper questions or to introduce clearly inadmissible evidence;
- Engaging in dilatory actions or tactics; and
- Creating or taking unlawful advantage of prejudicial or inflammatory arguments or publicity.

Commentary

A prosecutor's obligation to comply with the rules of ethical conduct of his or her jurisdiction is a fundamental and minimal requirement. When a prosecutor falls below that standard, he or she may expect sanctions impacting on a particular case or on the individual prosecutor.

The dignity and honor of the profession call for compliance with a higher standard of conduct—one of professionalism. This standard requires the prosecutor to bring integrity, fairness, and courtesy into all interactions, whether they are with victims, witnesses, law enforcement officers, opposing counsel, the court, jurors, or defendants.

This standard follows the lead of many state and local bar associations that have created codes of professionalism. It should used to inspire and invigorate all prosecutors, from the recently admitted to the very experienced, as all can be affected by the stress of the situations encountered by prosecutors. This especially applies in litigation, where emotions run highest, and the adversary setting generates a competitive orientation. While professionalism is a word of elusive definition, the standard lists a number of types of conduct that must be considered. It is strongly recommended that wherever prosecution adopts and abides by a code of professionalism, the defense bar should reciprocate.

3. Conflicts of Interest

1-3.1 Conflict Avoidance

A prosecutor should not hold an interest or engage in activities, financial or otherwise, that conflict, have a significant potential to conflict, or are likely to create a reasonable appearance of conflict with the duties and responsibilities of the prosecutor's office.

1-3.2 Conflicts with Private Practice

In jurisdictions that do not prohibit private practice by a prosecutor:

a. The prosecutor in his private practice should not represent clients in any criminal or quasi-criminal related matters, regardless of the jurisdiction where the case is pending;

b. The prosecutor should avoid representing to private clients or prospective clients that the status of a prosecutor could be an advantage in the private representation;

c. The prosecutor should not indicate his or her status as a prosecutor on any letterhead, announcement, advertising, or other communication involved in the private practice, and should not in any manner use the resources of the prosecutor's office for the purpose of such non-prosecutorial activities;

d. The prosecutor should excuse himself or herself from the investigation and prosecution of any current client of the prosecutor and should withdraw from any further representation of that client.

1-3.3 Specific Conflicts

In all jurisdictions, including those prohibiting private practice by prosecutors:

a. The prosecutor should excuse himself or herself from the investigation and prosecution of any former client involving or substantially related to the subject matter of the former representation, unless, after full disclosure, the former client gives informed written consent permitting the prosecutor's involvement in the investigation or prosecution.

b. The prosecutor should excuse himself or herself from the investigation and prosecution of any matter where information known to the prosecutor by virtue of a prior representation and subject to the attorney-client privilege would be pertinent to the criminal matter, unless, after full disclosure, the former client gives informed written consent permitting the prosecutor's involvement in the investigation or prosecution.

c. The prosecutor should excuse himself or herself from the investigation and prosecution of any person who is represented by a lawyer related to the prosecutor as a parent, child, sibling, spouse, or domestic partner, or who has a significant financial relationship with the prosecutor.

d. The prosecutor should excuse himself or herself from any investigation, prosecution, or other matter where personal interests of the prosecutor would cause a fair-minded, objective observer to conclude that the prosecutor's neutrality, judgment, or ability to administer the law in an objective manner may be compromised.

e. If an assistant or deputy prosecutor learns of the potential of a specific conflict, he or she should immediately report the matter to the chief prosecutor or a designee thereof.

1-3.4 Conflict Handling

Each prosecutor's office should establish procedures for handling actual or potential conflicts of interest. These procedures should include, but are not limited to:

a. The creation of firewalls and taint or filter teams to ensure that prosecutors with a conflict are not improperly exposed to information or improperly disclose information; and

b. Methods to accurately document the manner in which conflicts were handled to ensure public trust and confidence in the prosecutor's office.

1-3.5 Special Prosecutors

Where an actual or potential conflict of interest exists that would prevent the prosecutor's office from investigating or prosecuting a criminal matter, the prosecutor's office should appoint, or seek the appointment of a "special prosecutor," or refer the matter to the appropriate governmental authority as required by law. Under those circumstances where a special prosecutor is appointed:

a. The special prosecutor should be a member of the state bar in good standing, with appropriate experience in the subject matter of the appointment, and should be perceived as having sufficient detachment from the prosecutor's office so as not to be influenced by any actual or potential conflict;

b. The special prosecutor should have the authority only over the case or cases for which he or she is appointed; and
c. Subject to the need to avoid the appearance of a conflict, a chief prosecutor and his or her assistants and staff should give all appropriate assistance, cooperation, and support to a special prosecutor.

Commentary

There are few topics of ethical orientation more pervasive than conflicts of interest. Conflicts may arise not only from relationships with current or former clients, but also with a prosecutor's other activities—financial or otherwise.

Conflicts of interest problems are founded on the premise of the inability to serve two masters with foreseeable different interests that compete or contend.

Conflicts present themselves differently to the prosecutor, compared to the private practitioner, because the prosecutor does not initially select those subject to prosecution. Nor is there usually a choice of which prosecution office should proceed.

The standards recognize potential conflicts in all jurisdictions involving former clients or information obtained by virtue of former representation, and allow the prosecutor to proceed on the case only if the individual makes a counseled waiver permitting the prosecutor's involvement.

The extent to which firewalls and filters may be used depend upon the size of the office and jurisdiction, the media coverage of the matter, the type of matter concerned, and the position of the conflicted prosecutor in the office. If such methods are or are likely to be ineffective, the chief prosecutor should seek a qualified special prosecutor and offer appropriate assistance.

4. Selection, Compensation, and Removal

1-4.1 Qualifications

At the time of filing for election, appointment, or hiring, and for the duration of the term of office or employment, a prosecutor shall be a member in good standing of the state's bar, except as otherwise provided by law. Chief prosecutors should be residents of the jurisdiction that they serve.

1-4.2 Compensation; Responsibilities of the Chief Prosecutor

Chief prosecutors should be compensated commensurate with their responsibilities. The salary of the full-time chief prosecutor should be at least that of the salary of the chief judge of general trial jurisdiction in the chief prosecutor's district and should not be lowered during a term of office. Factors that should be considered in determining compensation include, but are not limited to:

a. The benefits to the jurisdiction of encouraging highly competent people to seek a position of prosecutor with a career orientation; and

b. The level of compensation of people with analogous responsibilities in the private practice of law, in private industry, and in public service.

1-4.3 Compensation of Assistant and Deputy Prosecutors

The compensation of the chief prosecutor should not serve as a basis for the highest compensation of assistant prosecutors. Factors that should be considered in determining compensation include, but are not limited to:

a. The benefits to the jurisdiction of encouraging highly competent people to seek a position of prosecutor with a career orientation; and

b. The level of compensation of people with analogous responsibilities in the private practice of law, in private industry, and in public service.

In addition, factors that may not be considered in setting compensation include, but are not limited to:

a. Characteristics of the prosecutor that are irrelevant to their ability to perform the job and historically have been the basis of invidious discrimination, including race, gender, religion, national origin, and sexual orientation;

b. Partisan political affiliation or activity; and

c. Revenues generated by the prosecution function—such as asset forfeitures or collection of fees.

1-4.4 Benefits

A chief prosecutor should seek to ensure that all assistant attorneys have access to a benefits program commensurate with their responsibilities. These benefits should include indemnification or insurance to pay all costs of defense against, and judgments rendered in, civil lawsuits arising from the prosecutor's performance of his or her official duties.

1-4.5 Workload

Except in extraordinary circumstances, a prosecutor should not maintain, and should not be asked to maintain, a workload that is inconsistent with the prosecutor's duty to ensure that justice is done in each case.

1-4.6 Removal

A chief prosecutor shall hold office during his or her term of office and shall only be removed by procedures consistent with due process and governing law. Factors that may not be taken into account in the removal of a prosecutor include, but are not limited to, the following:

a. Characteristics of the prosecutor that are irrelevant to his or her ability to perform the job and historically have been the basis of invidious discrimination, including race, gender, religion, national origin, and sexual orientation.

b. Partisan activities that are legal and ethical unless those activities interfere with the efficient administration of the office.

c. The refusal to participate in partisan activities.

1-4.7 Discharge of Assistant and Deputy Prosecutors

Assistant and deputy prosecutors are subject to removal according to the laws of their jurisdictions and the procedures in their offices. Factors that may not be taken into account in the removal of a prosecutor include, but are not limited to, the following:

a. Characteristics of the prosecutor that are irrelevant to his or her ability to perform the job and historically have been the basis of invidious discrimination, including race, gender, religion, national origin, and sexual orientation.

b. Partisan activities that are legal and ethical unless those activities interfere with the efficient administration of the office.

c. The refusal to participate in partisan activities.

Commentary

Given the preference for involvement with the represented community, the need to be available for consultation with law enforcement personnel, and the need to be available in the event of an emergency or unusual situation, the chief prosecutor should be a resident of his or her jurisdiction. Even though, in some jurisdictions, disbarment of the prosecutor would not disqualify him or her from holding the office, the public interest would dictate resignation in that situation.

Provision of an adequate salary is an absolute necessity if the office of prosecutor is to function at maximum efficiency. An adequate salary is essential for attracting capable candidates to the position of prosecutor. Without such compensation, capable persons who might otherwise be attracted to the prosecutor's office are diverted to private practice of law or other endeavors.

The salary provided the prosecutor should be at least that of the salary of the judge of general trial jurisdiction in the district of the prosecutor. As noted by the National Advisory Commission on Criminal Justice Standards and Goals, Courts 230 (1973):

> For purposes of salary, the prosecutor should be considered to be on the same level as the chief judge of the highest trial court of the local criminal justice system. Both positions require the exercise of broad professional discretion in the discharge of the duties of the offices. It is therefore reasonable that the compensation for the holders of these offices have the same base.

Provision for an adequate salary level is also essential to reduce the rapid turnover of local prosecutors. The skills and judgment required by a prosecutor are developed with time and experience. To retain the best representatives of the people, the salary and benefits exchanged for services must be commensurate with the salary and benefits available in other areas for the expertise developed. Without the ability to earn a salary sufficient to justify remaining in the prosecutor's office, the office becomes a training ground for private practitioners and the people are denied the best representation.

A prosecutor has the responsibility to seek justice in every case. Ensuring that a matter has been properly investigated and evaluating how it should be handled are time

consuming. In those cases that go to trial, the preparation required to proceed effectively is filled, in many instances, with education regarding experts in various fields and creation of technological presentations and exhibits which are increasingly necessary to effectively explain the prosecution's theory of the case.

Because of the need to thoroughly investigate, evaluate, prepare and try a variety of cases, prosecutors should not be overwhelmed by large numbers of cases needing disposition. If they are, the quality of representation afforded the people suffers and the difficulty in retaining good, experienced prosecutors increases.

Without addressing specific reasons for the removal from office of the chief prosecutor or assistant prosecutors, the standard requires that such actions be subject to procedural due process. Equally important is the necessity that such removals not be undertaken because of prejudice against the prosecutor's race, gender, religion, national origin or sexual orientation.

Engaging in partisan political activities, or the refusal to engage in the same should not be a basis for removal unless the activity interferes with the efficient operation of the office.

Prosecutors should be mindful of their responsibility to seek justice. Should a prosecutor find himself or herself in a situation in which the public trust in the office has diminished to the extent that he or she can no longer fulfill that primary responsibility, resignation should be considered.

Given the litigious nature of some persons involved in the criminal justice system, a program providing indemnification or insurance to pay all costs incurred by the prosecutor in defending against civil lawsuits and in paying judgments arising from the performance of his or her official duties is essential. That benefit will enable a prosecutor to seek justice despite the threats of civil litigation that, even if totally unfounded, can consume time and resources to defend.

5. Staffing and Training

1-5.1 Transitional Cooperation

When an individual has been elected or appointed prosecutor, the incumbent prosecutor should, when practicable, fully cooperate in an in-house orientation of the incoming prosecutor to allow for an effective transition consistent with the principles of professional courtesy. This cooperation may include, when possible, designating the incoming prosecutor a special assistant prior to the time the incoming prosecutor assumes office, so that the incoming prosecutor may be briefed on significant ongoing proceedings and deliberations within the office, including grand jury or other investigations.

1-5.2 Assistant and Deputy Prosecutors

Assistant and deputy prosecutors, by whatever title, should be selected by the chief prosecutor and should serve at the chief prosecutor's pleasure, unless otherwise provided by law or contract.

a. Assistant and deputy prosecutors should be active members of the state bar in good standing, except as otherwise provided by law.

b. Assistant and deputy prosecutors should be selected on the basis of their achievements, experience, and personal qualifications related to their ability to successfully perform the work of the prosecutor's office. Personal or political considerations that have no legitimate bearing on the ability to perform the required work should not play a role in the hiring, retention, or promotion of assistant and deputy prosecutors.

c. Absent unusual circumstances, a chief prosecutor should seek a commitment for a minimum number of years of employment at the time of hiring or promoting assistant or deputy prosecutors, conditioned upon continuing good performance.

1-5.3 Orientation and Continuing Legal Education

At the time they commence their duties and at regular intervals thereafter, prosecutors should participate in formal training and education programs. Prosecutors should seek out continuing legal education opportunities that focus specifically on the prosecution function and:

a. Chief prosecutors should ensure that all prosecutors under his or her direction participate in appropriate training and education programs. Chief prosecutors should also be knowledgeable of and make use of appropriate national training programs for both orientation and continuing legal education for both himself or herself and the prosecutors in his or her office.

b. Chief prosecutors should participate in training programs sponsored by a state or national association or organization.

c. Prosecutors with supervisory responsibilities should include in their continuing training the study of management issues, such as staff relations and budget preparation.

d. The chief prosecutor should ensure that each new prosecutor becomes familiar with these standards, as well as rules of ethical conduct and professionalism that have been adopted in the jurisdiction.

e. Chief prosecutors should identify one or more sources, both within and outside the office, to which the prosecutors can turn for guidance on questions related to ethical conduct and professionalism.

f. Prosecutors should be diligent in meeting or exceeding requirements for continuing legal education in those jurisdictions where the requirements are mandatory.

g. Adequate funds should be allocated in the prosecutor's budget to allow for both internal training programs and attendance at external training events.

1-5.4 Office Policies and Procedures
Each prosecutor's office should develop written and/or electronically retrievable statements of policies and procedures that guide the exercise of prosecutorial discretion and that assist in the performance of those who work in the prosecutor's office.

Commentary

Criminal investigations, trial preparation, trials, and the day-to-day operation of the prosecutor's office do not coincide with election cycles. Therefore it is important for the efficient representation of the people that the transition from one prosecutor's term to another's be as seamless as possible. Because of the confidential character of much of the activity in a prosecutor's office, it may be that the most appropriate manner in which to orient an incoming chief prosecutor is through his or her appointment as a special prosecutor, so that briefings on confidential matters can be accomplished. It is important for both the outgoing and incoming prosecutors to remember that his or her responsibility to seek justice for the people of the community may require the setting aside of campaign differences in a professional manner.

In selecting assistant or deputy prosecutors, the chief prosecutor, in addition to confirming that the prospective prosecutors are members in good standing of the bar of the jurisdiction, when appropriate, should carefully examine the assets they would bring to the office. An assessment of their educational background, work experience, judgment, written and oral communication skills, trial advocacy skills and other personal qualifications without regard to who they know should form the basis for hiring, promotion and retention decisions.

It is desirable for the chief prosecutor to require a minimum commitment from all assistant or deputy prosecutors. This period may be lengthened or shortened within the discretion of the chief prosecutor. Because many prosecutors are hired immediately after law school they require an extended period of training and experience before they can deliver their best work for their client. Therefore the time commitment assures that the prosecutor's office receives some benefit for the time and resources spent on the training process. Even for those prosecutors entering the office with some other relevant experience, the transition from another type of practice to prosecution takes some time. In addition, in some instances the time required for potential conflicts of interest to lessen and allow for the new prosecutor to function fully will justify the commitment requirement.

It is the responsibility of the prosecutor to hire staff that reflects the composition of the community, where possible. The recruitment of qualified minorities is an essential aspect of this goal and should be incorporated into the hiring practices and procedures of all prosecution offices. While it is not the responsibility of the prosecutor to meet predetermined quotas, the office benefits by strong representation that reflects the community that is served.

Conceptually, staff training can be divided into two broad categories. The first, which might be termed "orientation," would seek to provide new assistants or deputies, as well as chief prosecutors, with an understanding of their responsibilities in the criminal justice system, and with the technical skills they will be required to utilize. Orientation for the chief prosecutor should center on office management skills, especially for larger jurisdictions. A basic orientation package for assistants could include familiarization with office structure, procedures, and polices; the local court system; the operation of local police agencies; and training in ethics, professional conduct, courtroom decorum, and relations with the court and the defense bar.

A second aspect of training which should be included in each prosecutor's training program is continuing education. First and foremost, the prosecutor must abide by any continuing legal education requirements of his or her jurisdiction. The content of the training should be relevant to the duties of the prosecutor. For the chief prosecutor and other prosecutors in management positions, training on personnel, management and budget issues would be appropriate. For other prosecutors, concentration on substantive law, rules of evidence, forensic evidence, trial advocacy, and other matters relevant to their duties should be sought. While some of the largest offices have training divisions which can provide much of the training needed, the chief prosecutor should be cognizant that it is important to have exposure to what is going on throughout the national criminal justice community. Prosecutors benefit from this exposure because it allows them to stay current regarding new defenses, jointly address concerns confronting prosecutors, and learn techniques that can improve their ability to seek justice for their communities.

In addition to providing opportunities for prosecutors to learn the information and skills required to perform their duties, the chief prosecutor must be diligent in requiring his or her prosecutors to be thoroughly familiar with his or her rules of ethical conduct and professional responsibilities. At an absolute minimum, the chief prosecutor must ensure that all prosecutors in his or her office have a working knowledge of the ethical rules and professional codes applicable to the jurisdiction as well as these standards. In addition, the chief prosecutor should work to create an atmosphere in which the discussion of ethical and professional considerations is encouraged. The chief prosecutor should also make known persons and procedures that can be utilized if more private consultation is desired.

By calling for the allocation of funds in the prosecutor's budget, this standard may help to emphasize the essential role of training in assuring efficient and effective performance of prosecutorial duties while disabusing the notion that training is a frill or an extra to be cut at the first sign of any pressure on the budget.

A primary benefit of drafting written policies and procedures is uniformity. The prosecutorial discretion that has been recognized in many of the standards most correctly belongs to the chief prosecutor only, being the elected official ultimately responsible to the community for the performance of the prosecution function. In promoting uniformity, the emphasis is on assuring that assistant prosecutors and other personnel perform in a manner consistent with the policy of the chief prosecutor. Given that the individual

assistants must be delegated the authority to apply their best judgment to the facts of particular cases, achieving the goal of uniformity protects a victim or accused from receiving substantially different treatment because the case was assigned to one individual in the office and not to another.

It is recognized that a distinction exists between the operation of a small office and a large office. In a small office, the long personal association of a prosecutor's staff will have created a completely shared understanding of the tenets of each prosecutor's individual policies. In those cases, the written policy may serve as no more than a cross-reference and as a guard against any misunderstanding. Thus, it may not always be necessary for the statement of policies and procedures of a small office to be as detailed as that of a large office. However, in a larger office, where there is frequent staff turnover and a variety of staff positions, or where assistants serve part-time and operate in widely separated locales within the jurisdiction, the office statement of policies and procedures should represent an enormous stride toward uniformity and continuity in the execution of prosecutorial discretion.

Another benefit in the adoption of office policies and procedures will be a more effective orientation and training of new staff. A new attorney, paralegal, clerical employee, or intern may bring to the job little or no experience in the operations of a prosecutor's office. No matter what the size of the office, existing staff may already be overburdened, with little or no time to devote to thorough training of new employees. Even taking the time to explain to an individual his duties may not adequately convey them, given the amount of information to be assimilated. Written explanation of policy and office procedure can serve as an extremely valuable reinforcement to oral instruction and as a constant guide and reference to an individual during employment in the office.

An additional benefit to be derived from the adoption of written office policies and procedures can be improvement of the knowledge and technical proficiency of staff members in performing the various tasks required in the prosecutor's office. A portion aimed at clerical staff could explain how and when various office forms are to be utilized, and give instruction on the operation of office filing and statistical systems. Items of more relevance to professional legal personnel could detail the steps to be followed in approving a warrant, interviewing a witness, filing a motion, etc. Other sections might even give precise directions as to how to conduct a voir dire, jury trial, grand jury proceeding, or preliminary hearing. Even where information is already available in one format in the office, such as state criminal codes or reported court decisions, this information can be reorganized or restructured for easier access and practical use.

Because of the confidential character of the prosecutor's office work, the prosecutor may conclude that not all portions of the written policies and procedures should be accessible to the public, or that separate works be available—one for internal management and another for public information.

Prosecutors without statements of policies and procedures should consult with their local, state, and national associations and other prosecution offices to lessen the burden of the initial development.

6. Prosecutorial Immunity

1-6.1 Scope of Immunity

When acting within the scope of his or her prosecutorial duties, a prosecutor should enjoy the fullest extent of immunity from civil liability. The chief prosecutor should take steps to see that all costs, including attorneys' fees and judgments, associated with suits claiming civil liability against any prosecutor within the office arising from the performance of their duties should be borne by the prosecutor's funding entity.

Commentary

In *Imbler v. Pachtman*, 424 U.S. 408 (1976), the U.S. Supreme Court ruled that prosecutors enjoy absolute immunity from Civil Rights Actions brought under Section 1983, 42 U.S.C., when acting within the scope of their duties in initiating and pursuing a criminal prosecution and in presenting the state's case. The Court noted that although such immunity leaves the genuinely wronged criminal defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty, the alternative of qualifying a prosecutor's immunity would outweigh the broader public interest in that it would prevent the vigorous and fearless performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system.

The Court did not extend such absolute immunity to actions taken by a prosecutor outside of the scope of his or her duties as aforesaid. Thus, *Imbler* did not change pre-existing law with respect to the performance of duties that traditionally are viewed as investigative duties falling primarily within the police function.

Although there has been a multitude of case law subsequent to *Imbler* discussing the prosecutor's immunity for "administrative" and "investigative" duties, no bright line rule has been established.

In order to ensure that prosecutors are free to vigorously and fearlessly perform their essential duties, the prosecutor's funding source should provide the costs, including attorney fees and judgments associated with civil suits against the prosecutor and his or her staff. No prosecutor should be expected to function without full coverage for actions arising out of the performance of his or her duties.

Part II. Relations

1. Relations with Local Organizations

2-1.1 Chief Prosecutor's Involvement

The chief prosecutor should be involved in local entities established and maintained in his or her jurisdiction for the purpose of enhancing the effectiveness, efficiency, and fairness of the administration of criminal justice, to the extent practicable and to the extent the prosecutor reasonably believes such entities are legitimately committed to protecting public safety. The obligations a prosecutor undertakes on behalf of community organizations should extend only to those that he or she can fulfill in a diligent and competent manner.

2-1.2 Information Input

To the extent permitted by law, the chief prosecutor should provide such criminal justice entities with information, advice, and data pertinent to the solution of problems identified in the jurisdiction, and should consider the implementation of appropriate proposals designed to address and resolve such problems.

2-1.3 Organization Establishment

In those jurisdictions where there are no local inter-agency entities established for the enhancement of the effective, efficient, and fair administration of criminal justice, the chief prosecutor should determine the potential benefits of such organizations and, if deemed beneficial, provide leadership in their establishment.

2-1.4 Community Prosecution
The chief prosecutor should be mindful of opportunities to engage school officials, community youth organizations, social service agencies, neighborhood crime watch groups, and other such organizations with law enforcement agencies, including the prosecutor's office, in efforts to prevent and detect crime.

2-1.5 Enhancing Prosecution
The chief prosecutor should participate in state and local bar associations for the purpose of enhancing and advancing the goals of the prosecution function in the legal community.

2. Relations with State Criminal Justice Organizations

2-2.1 Need for State Association
Each state should have a professional association of prosecuting attorneys for the purpose of serving and responding to the needs of its membership and enhancing the prosecution function. The chief prosecutor should be an active member of his or her state association and should allow his or her assistants and deputies to be members of and participate in the state association. Each state association should provide services that are most conducive to development at the statewide level, including, but not limited to, the following:

a. Continuing legal education;
b. Training of newly-elected prosecutors and their staffs;
c. Management training;
d. Support for in-house training programs;
e. Information dissemination (newsletters, bulletins, etc.);
f. Sharing transcripts of testimony of defense experts for purposes of cross-examination;
g. Technical assistance in planning, management, litigation, and appeals, including the maintenance of data and brief banks;
h. Promulgating model office policies and procedures;
i. Coordinating resources not otherwise available or frequently used;
j. Monitoring legislative developments and drafting model legislation;
k. Maintaining liaisons between the offices of various prosecutors;
l. Developing innovative programs; and
m. Developing and monitoring computer systems.

2-2.2 Enhancing Prosecution
The chief prosecutor should participate, to the extent possible, in statewide committees, task forces and other entities for the purpose of enhancing and advancing the goals of the prosecution function. The obligations a prosecutor undertakes in statewide entities should extend only to those that he or she believes can be fulfilled in a diligent and competent manner.

3. Relations with National Criminal Justice Organizations

2-3.1 Enhancing Prosecution
The chief prosecutor should take an active role, to the extent possible, in national criminal justice organizations that exist for the purpose of enhancing and advancing the goals of the prosecution function. The obligations a prosecutor undertakes in national organizations should extend only to those that he or she believes can be fulfilled in a diligent and competent manner.

2-3.2 Prosecutorial Input
The chief prosecutor should seek to ensure that national criminal justice organizations undertake all reasonable measures to include the substantial involvement and views of incumbent state and local prosecutors in the research and studies and promulgation of standards, rules, and protocols that impact on the prosecutor and the prosecution function.

Commentary

The prosecutor should participate in local, state, and national affairs for the improvement of the criminal justice system. Activities that the prosecutor might undertake include provisions of information and advice to governmental bodies and citizens' groups, review and consideration of pending state and national legislation, and participation in criminal justice-related programs or projects. A good prosecutor is a good attorney and would be expected to be active in his local and state bar associations.

The standards recognize the rapid growth in community organizations in the last 20 years devoted to specific interests, such as DUI enforcement, rape prevention/counseling programs, spousal and child abuse prevention, drug education programs, and neighborhood watch programs, to name just a few. An interested and informed citizenry can be a valuable partner in law enforcement. The standards encourage prosecutors in communities lacking such grass-roots organizations to consider appropriate ways and means whereby citizen interest in their formation can be stimulated.

Because the office of the prosecutor is a local one, the responsibilities placed on this office are probably more diverse than those at any other level of government which may have the capacities for specialization. For example, citizen complaints may range from how to cope with a neighbor's children to how to collect on a bad check. Expectations from law enforcement agencies and the courts are equally diverse and more demanding. In many jurisdictions, the prosecutor is also the attorney for his county. This responsibility may demand an expertise in taxation, school law, zoning, property law, employee disciplinary law, health law, environmental law, and labor relations.

If every prosecutor's office were designed on a level of specialization necessary to address each area it is responsible for, it would not only be a tremendous (and no doubt prohibitive) financial burden, but also an enormous duplication of effort on a county-by-county or district-by-district basis. On the other hand, local initiative, flexibility, and

accountability are essential factors that must be maintained in prosecution. Thus, one method of alleviating this problem is through a statewide association of prosecuting attorneys, a concept that NDAA has long fostered.

Such an association should be made up of all local prosecutors in a state and should have a full-time staff. This organization must be responsive to the needs of its members. As a result, the various functions will differ. However, those areas of concentration may include those items set forth in the standard.

Because the purpose of such an association is to serve prosecutors, it is imperative that they be involved and support the operation of the association. Membership should be the responsibility of all prosecuting attorneys, and dues should be paid through the prosecutor's budget. Membership should not be limited to chief prosecutors but should be open to assistants as well.

In addition, prosecutors who recognize the value of the functions of their state bar associations and prosecutors' associations should be willing to commit time in volunteer support, such as serving on committees.

Likewise, the locally-elected prosecutor and his staff should participate in and support their national organization for the advancement of the interests of effective law enforcement. The organization provides a forum for the local prosecutor that no other organization can and an effective voice in national legislative and policy-making activities. The programs of training, publications, technical assistance, and focused activities (such a drug enforcement, child abuse enforcement, environmental law enforcement, etc.), provide the local prosecutor with a perspective that reaches beyond the state level. The failure of local prosecution to be active in local, state, and national associations will result in the advancement of competing entities. At the same time, it is important that prosecutors not volunteer their time unrealistically and are able to meet the demands of their undertakings.

4. Relations with Other Prosecutorial Entities

2-4.1 Prosecutorial Cooperation

In recognition of their mutual goal of serving the interests of justice, the prosecutor should cooperate with other federal, state, military, tribal and local prosecutorial entities in the investigation, charging, dismissal, or prosecution of cases that may be of common concern to their respective offices.

2-4.2 Coordinated Prosecutions

The prosecutor should establish procedures for ascertaining, to the extent possible, the likelihood that the defendant will be investigated and/or prosecuted by other jurisdictions for similar conduct, and coordinate prosecutions with the relevant prosecutorial agencies, in order to avoid unnecessarily duplicative investigations and/or prosecutions and to avoid impediments to prosecution such as defense claims of double jeopardy or grants of immunity.

2-4.3 Resource Sharing
The prosecutor should share resources and investigative information with other prosecutorial entities, when permitted by law and to the extent necessary, to ensure the fullest attainment of the interests of justice, without regard to political affiliation or partisan interest.

2-4.4 Duty to Report Misconduct
When a prosecutor has knowledge of misconduct or incompetence by another prosecutor, he or she should report that information in accordance with Standard 1-1.6. When the misconduct or incompetence involves the conduct of a prosecutor from another prosecutorial entity and it has the potential to interfere with the proper administration of justice, the chief prosecutor should report such conduct to the supervisor of the other prosecutorial entity. When the chief prosecutor has direct knowledge of a violation of the rules of ethical conduct by a prosecutor in another office, he or she shall also report such ethical misconduct to the appropriate bar disciplinary authority in the relevant jurisdiction, provided such misconduct raises a substantial question as to the prosecutor's fitness to practice law.

2-4.5 Furtherance of Justice
The office of the prosecutor and the office of the state attorney general, where separate and distinct entities, should cooperate whenever practicable in the furtherance of justice.

2-4.6 Attorney General Assistance
In those states where the attorney general has criminal law responsibilities, the state attorney general may assist in local prosecutions at the request of the local prosecutor or otherwise as authorized by law. The state attorney general may also, when requested, play a role in mediating between local prosecutors when the possibility arises of prosecution in multiple jurisdictions, if such mediation is necessary to avoid injustice or the inefficient use of law enforcement resources.

Commentary

Every prosecutor, regardless of jurisdiction, has the responsibility to seek justice. Given our highly mobile society and the increasing methods by which crimes are committed, the quest for justice must sometimes cross jurisdictional lines. For that reason and to fully comply with their primary responsibility, prosecutors at all levels should cooperate to the fullest extent possible. Such cooperation can result in more efficient and effective investigations, the avoidance of double jeopardy claims, and a fuller awareness of the consequences of grants of immunity.

With increased cooperation, there is the increased possibility of a prosecutor gaining knowledge of another prosecutor's misconduct or incompetency. Just as one cannot turn a blind eye or deaf ear to such conduct in one's own jurisdiction, a prosecutor cannot ignore misconduct in another. The standard outlines the required course of action.

Intervention by the attorney general that is not requested is not likely to foster necessary, positive working relations. The standard recommends that intervention by the state attorney general be only at the request of the local prosecutor. The major burden of law enforcement in America falls upon local law enforcement, and it is to the local chief prosecutor that such agencies turn for the prosecution of their cases and the initiation of investigations.

5. Relations with Law Enforcement

2-5.1 Communications
The chief prosecutor should actively seek to improve communications between his or her office and other law enforcement agencies. The prosecutor should prepare and encourage the use of uniform information sharing systems by all criminal investigative agencies within his or her jurisdiction.

2-5.2 Case Status Advisements
When it is practical to do so, the chief prosecutor should keep local law enforcement agencies informed of cases in which they were involved and provide information on those cases in order to aid law enforcement officers in the performance of their duties.

2-5.3 Law Enforcement Training
The chief prosecutor should encourage, cooperate with and, where possible, assist in law enforcement training. The prosecutor should also urge local law enforcement officers to participate in national, state, and regional training courses available to them.

2-5.4 Prosecution Assistance in Training
The chief prosecutor should assist in the on-going training of law enforcement officers by conducting periodic classes, discussions, or seminars to acquaint law enforcement agencies within their jurisdiction with recent court decisions, legislation, and changes in the rules of criminal procedure.

2-5.5 Liaison Officer
The chief prosecutor should request that each major law enforcement agency within his or her jurisdiction assign at least one officer specifically to the prosecutor's office. That officer should serve as a liaison between offices, and should be available to perform the duty of informing concerned officers within the officer's agency of the progress and disposition of criminal cases.

2-5.6 Legal Advice
Although law enforcement agencies or individual law enforcement officers are not clients in criminal cases or employees of the prosecutor's office, the prosecutor may provide independent legal advice to local law enforcement agencies concerning specific prosecutions. This advice may include the proper interpretation of the criminal laws, the sufficiency of evidence to commence criminal charges or arrest, the requirements for obtaining search warrants for physical evidence and electronic surveillance, and similar matters relating to the investigation of criminal cases. The prosecutor should serve in

such an advisory capacity to promote lawful investigatory methods that will withstand later judicial inquiry. The prosecutor should encourage law enforcement officers to seek legal advice as early as possible in the investigation of a criminal case. Where possible, the prosecutor should identify a primary point of contact within the prosecutor's office to receive and refer legal inquiries from particular law enforcement agencies.

Commentary

The maintenance of good relations between the prosecuting attorney and the law enforcement agencies within the community is essential for the smooth functioning of the criminal justice system. Both parties have the burden of fostering, maintaining, and improving their working relationship and developing an atmosphere conducive to a positive exchange of ideas and information.

The criminal justice system, of which the police are only one element, is a structure of law. Many times this structure suffers from seemingly contradictory court decisions, public pressure, and the problems that arise in trying to balance effective law enforcement and the protection of the rights of individuals. The police face many of these problems. To alleviate these problems, the prosecutor could educate the police in the area of pre-trial criminal procedure, including search and seizure law, the arrest process, the use of force, and interrogation. In particular, with respect to the various exclusionary rules pertaining to the admissibility of evidence, the prosecutor has a responsibility to educate the police on the effect of court decisions in general and their application in specific cases where evidence was suppressed by a trial court. In performing such a function, the prosecutor must be aware of and follow the constraints imposed by duties of candor and restrictions on communication with represented persons or parties that may be included in ethical and professional codes to which they are subject.

The prosecutor has a large stake in the training and professionalization of local law enforcement. Its handling of a case is often crucial to the prosecutor's success. Therefore, the prosecutor should encourage the local police to participate to the fullest extent possible in training programs operated on state, regional, and national levels. If such a program does not exist or is not available to police in the jurisdiction, it is in the prosecutor's best interest to promote the development of such a program. Such training should result in more successful prosecutions. Besides the face value effectiveness of police training, it is an excellent opportunity to establish personal rapport and communications with individual police officers.

The prosecutor should advise the police on the legal aspects of criminal investigations. This advisory function pertains only to criminal matters and should not be confused with the function of police in-house counsel. Assuming the role of an advisor to any member of the police department on civil or personal matters is beyond the scope of the duties of the office of prosecuting attorney. In many cases, such a role would place the prosecutor in a position of possible conflict of interest with other duties prosecution is obliged to perform.

Furthermore, the prosecuting attorney may be restricted from any active participation in the police function by the threatened loss of immunity to civil damages in instances where participation is beyond the scope of advisor and, therefore, not an integral part of the judicial process. The prosecutor must always be cognizant that his quasi-judicial immunity afforded by the courts in civil liability suits is limited to actions taken in advancement of the traditional prosecution function.

The responsibility for sound communications between the prosecutor and law enforcement agencies is mutual. It is a goal of the prosecutor to keep police informed of developments in investigations, trials, and related matters. Both entities must seek to develop and implement systems and procedures that facilitate and enhance communications. One method of providing a consistent flow of information about all criminal matters is the development and use of a uniform information sharing system. Such systems ensure that all information necessary for successful investigations and prosecutions is available to all concerned parties in a timely manner.

6. Relations with the Court

2-6.1 Judicial Respect
A prosecutor shall display proper respect for the judicial system and the court at all times.

2-6.2 Respect in the Courtroom
A prosecutor should vigorously pursue all proper avenues of argument. However, such action must be undertaken in a fashion that does not undermine respect for the judicial function.

2-6.3 Improper Influence
A prosecutor should not seek to unfairly influence the proper course of justice by taking advantage of any personal relationship with a judge, or by engaging in any ex parte communication with a judge on the subject matter of the proceedings other than as authorized by law or court order.

2-6.4 Suspicion of Criminal Misconduct
When a chief prosecutor has a reasonable suspicion of criminal conduct by a member of the judiciary, the prosecutor should take all lawful investigatory steps necessary to substantiate or dispel such suspicions and, if substantiated, should initiate prosecution or refer the case to another prosecutor's office for review or appoint a special prosecutor in the case.

2-6.5 Responsibility to Report Misconduct
When a prosecutor has knowledge of conduct by a member of the judiciary that may violate the applicable code of judicial conduct and/or that raises a substantial question as to the judge's fitness for office, the prosecutor has the responsibility to report that knowledge to his or her supervisor or if the chief prosecutor, directly to the relevant judicial conduct authority in his or her jurisdiction.

2-6.6 Application for Recusal
When a prosecutor reasonably believes that it is warranted by the facts, circumstances, law, or rules of judicial conduct, the prosecutor may properly seek that judge's recusal from the matter.

Commentary

The prosecutor is an officer of the court, a public official accountable to those of his jurisdiction, and a hub of the criminal justice system. All of these dimensions influence the prosecutor's relations with the court.

The standard recognizes that judges, like all figures in the criminal justice system, are individuals of diverse talents, skills, and temperaments. While some are of superior character, others suffer from human frailties not uncommon in our society. Thus, while the prosecutor needs to have proper respect for the institution of the judiciary, at the same time, he has a responsibility to guard against the infrequent abuses from those who fail to honor their responsibilities while serving on the bench.

While this approach may require a delicate balance, it is necessary both inside and out of the courtroom. As is true of all National Prosecution Standards, effective justice is the paramount issue. Therefore, the prosecutor should neither undermine respect for the judicial function nor in any manner attempt to unfairly influence the court.

When judicial scandals are uncovered, they become an indictment of the entire criminal justice system, creating a public perception that all those involved in the system are corrupt. The prosecutor must assume the role of guardian against injustice and corruption. It is unacceptable to turn a deaf ear to suspicions of criminal activity or misconduct. The standard places a duty on the prosecutor to follow through with a thorough investigation when there is reasonable suspicion of criminal activity by a member of the judiciary. If the investigation dictates prosecution, the prosecutor must take the appropriate steps to see that it is commenced.

The standards make it clear that the prosecutor has responsibilities not only when misconduct is at the level of criminal activity, but also when a judge demonstrates the inability to carry out his duties with a minimal level of competence.

7. Relations with Suspects and Defendants

2-7.1 Communications with Represented Persons
A prosecutor should respect a suspect's and defendant's constitutional right to the assistance of counsel. A prosecutor should also take steps to ensure that those persons working at his or her direction respect a suspect's and defendant's constitutional right to the assistance of counsel. Notwithstanding the foregoing:

a. A prosecutor may communicate with a defendant or suspect in the absence of his counsel when either (1) counsel has consented to the communication or (2) the communication is authorized by law or court rule or order.

b. A prosecutor may communicate with a witness who is also charged as a defendant in an unrelated criminal matter about the witness's upcoming testimony without the advance permission of the witness's attorney so long as the prosecutor does not discuss the criminal charges pending against the witness.

2-7.2 Communication with Unrepresented Defendants

When a prosecutor communicates with a defendant charged with a crime who is not represented by counsel, the prosecutor should make certain that the defendant is treated with honesty, fairness, and with full disclosure of his or her potential criminal liability in the matter under discussion.

a. A prosecutor should identify himself or herself to the defendant as a prosecutor and make clear that he or she does not represent the defendant. If legally required under the circumstances, the prosecutor should advise the defendant of his or her rights.

b. If a prosecutor is engaged in communications with a charged defendant who is not represented by counsel and the defendant changes his or her mind and expresses a desire to obtain counsel, the prosecutor should terminate the communication to allow the defendant to obtain counsel or to secure the presence of counsel. When appropriate, the prosecutor should advise the defendant on the procedures for obtaining appointed counsel.

2-7.3 Unsolicited Communications

A prosecutor may receive, accept and use unsolicited written correspondence from defendants, regardless of whether the defendant is represented by counsel. If the prosecutor does not know that the defendant is represented by counsel, a prosecutor may receive unsolicited oral communications from defendants, of which he or she has no advance notice, without any duty of first ascertaining whether or not there is a valid reason for the communication or whether or not the defendant is represented by counsel. However, the situation may arise where a defendant who has been charged with a crime is represented by counsel, but requests to communicate with a prosecutor on the subject of the representation out of the presence of his or her counsel. Before engaging in such communication, the prosecutor should first ascertain whether the defendant has expressed a valid reason to communicate with the prosecutor without the presence of his or her attorney, and if so should thereafter communicate with the defendant only if authorized by law or court order.

2-7.4 Plea Negotiations

If a prosecutor enters into a plea negotiation with a defendant who is not represented by counsel, he or she should seek to ensure that the defendant understands his or her rights, duties, and liabilities under the agreement. When possible, the agreement should be reduced to writing and a copy provided to the defendant. The prosecutor should never take unfair advantage of an unrepresented defendant. The prosecutor should not give legal advice to a defendant who is not represented by counsel, other than the advice to secure counsel.

2-7.5 Right to Counsel
If a prosecutor is engaged in communications with a defendant who is not represented by counsel or whose counsel is not present, and the defendant changes his mind and expresses a desire to obtain counsel or to have counsel present, the prosecutor should terminate the communication in order to allow the defendant to obtain counsel or to secure the presence of his or her counsel. When appropriate, the prosecutor should advise the defendant on the procedures for obtaining appointed counsel.

2-7.6 Communications with Represented Persons During Investigations
A prosecutor performing his or her duty to investigate criminal activity should neither be intimidated nor discouraged from communicating with a defendant or suspect in the absence of his or her counsel when the communication is authorized by law or court rule or order. A prosecutor may advise or authorize a law enforcement officer to engage in undercover communications with an uncharged, represented suspect in the absence of the suspect's counsel, provided such a communication is authorized by law or court order.

Commentary

Relations with defendants is a sensitive area of a prosecutor's function. There must be a balancing of the general desirability to have defendants represented by counsel in their dealings with prosecutors and the right of defendants to represent themselves in traffic cases and minor misdemeanors, and even in felonies or serious misdemeanors under certain circumstances.

The standard recognizes that prosecutors are sometimes contacted by defendants without the knowledge of their counsel and give good reasons for their direct communications with the prosecutor. For example, a defendant may express that his attorney was hired by another person with an interest in keeping him quiet, to his legal detriment. In drug cases where couriers are caught transporting large amounts of drugs or cash, defendants may have attorneys appear, bail them out, and begin representation without the express authority of the defendant. Defendants complain that these attorneys are working for other interests, but they are afraid to discharge them because of actual or assumed danger. Similarly, a defendant may be the officer, employee, or agent of a corporation and face individual charges in addition to those against the corporation, where counsel for the corporation represents that he is also counsel for the individual. This situation may exist without the individual's knowledge or without the individual's knowledge of an inherent conflict of interest in the representation.

Prosecutors must be aware that in dealing with represented defendants, there are not only constitutional limitations on their communications, but also, in most jurisdictions, there are limitations imposed by ethical rules, which generally cannot be waived by the represented defendant. That being said, prosecutors may have the right under some uncommon circumstances to communicate with a represented defendant without prior knowledge or presence of his or her attorney. In these and other circumstances, prosecutors might be advised to seek authority from the court or the appointment of "shadow counsel" to interview the defendant and report to the court concerning what

action might be appropriate. Some jurisdictions may provide other legal avenues that a prosecutor might use in such circumstances.

Prosecutors also often receive unsolicited letters from defendants. They should have the right to receive them and use them in any legal manner.

The standard provides that prosecutors communicating with unrepresented defendants should be certain that they are treated fairly and that defendants be made aware of what could happen to them as the result of whatever actions are taken. For example, suppose a defendant wishes to become a witness for the state in return for a recommendation by the prosecutor that he receive a suspended sentence. The prosecutor must make it known that he cannot guarantee the desired sentence but can only make a recommendation (if that be the case) and that the defendant might indeed be sentenced to a jail term, even with his cooperation on behalf of the state. If local rules or the legal circumstances require *Miranda*-type warnings be given, the prosecutor should so advise the defendant before any conversation. The standard assumes that a prosecutor will tell a defendant if he intends to use the communications against him. There are circumstances in which a prosecutor will agree to receive information from a defendant but not use it against him. However, to ensure fairness to an unrepresented defendant, he should not be subjected to the liability of incriminating statements without a prior warning and waiver of rights.

The standard recognizes that many defendants wish to negotiate a plea with the prosecutor without representation. Many such defendants are experienced with the system or do not wish the expense of representation. In these circumstances, the prosecutor is held to full disclosure of the defendant's liabilities and a standard of fairness. The prosecutor should make certain that a defendant receives as favorable a disposition as he would have had had he been represented in the circumstances. The desirability of written plea agreements is also noted. The standard recognizes the general legal requirement of fulfilling a defendant's desire for counsel—even if he originally expressed a desire not to be represented or to have counsel present and assisting him—or to obtain counsel if he cannot afford to pay for representation. The defendant's wishes in this regard are recognized as paramount. The prosecutor should make a record of any communications with represented defendants that take place in the absence of counsel.

Prosecutors have a duty to investigate criminal activity. This may involve communicating with witnesses who are also defendants or suspects in unrelated cases. Ordinarily such communications must be made with the approval of the witness/defendant's counsel because the witness is seeking some benefits in the "subject matter of the representation." Whenever a witness/defendant seeks any benefit in his own case, the communication does involve the "subject matter of the representation," and counsel must be included. In circumstances that remain completely unrelated to the witness/defendant's case (the subject of the representation), a communication may be "authorized by law" even though counsel was not consulted. In circumstances involving "undercover" investigations of an uncharged but represented suspect, a prosecutor can advise police officers to communicate with the suspect so long as the communication is specifically "authorized by law."

In some jurisdictions, these standards may be inconsistent with case precedent and/or rules of professional conduct. The prosecutor must proceed with caution and seek to avoid any action that would jeopardize the case or result in misconduct under applicable rules.

8. Relations with Defense Counsel

2-8.1 Standards of Professionalism
The prosecutor should comply with the provisions of professionalism as identified in Standard 1-2.1 in his or her relations with defense counsel, regardless of prior relations with or animosity toward the attorney. The prosecutor should attempt to maintain a uniformity of fair dealing among different defense counsel.

2-8.2 Propriety of Relations
In all contacts with members of the defense bar, the prosecutor should strive to preserve proper relations.

2-8.3 Cooperation to Assure Justice
The prosecutor should cooperate with defense counsel at all stages of the criminal process to ensure the attainment of justice and the most appropriate disposition of each case. The prosecutor need not cooperate with defense demands that are abusive, frivolous, or made solely for the purpose of harassment or delay.

2-8.4 Disclosure of Exculpatory Evidence
The prosecutor shall make timely disclosure of exculpatory or mitigating evidence, as required by law and/or applicable rules of ethical conduct.

2-8.5 Suspicion of Criminal Conduct
When a prosecutor has reasonable suspicion of criminal conduct by defense counsel, the prosecutor has a responsibility to take such action necessary to substantiate or dispel such suspicion.

2-8.6 Responsibility to Report Ethical Misconduct
When an assistant or deputy prosecutor has knowledge of ethical misconduct by defense counsel that raises a substantial question as to the attorney's fitness to practice law, the prosecutor should report such conduct to his or her supervisor. A chief prosecutor who has knowledge of ethical misconduct by defense counsel which raises a substantial question as to the attorney's fitness to practice law should report such conduct directly to the appropriate bar disciplinary authority in his or her jurisdiction. When such misconduct occurs during the course of litigation, the prosecutor should also report it to the judge presiding over the case or to his or her supervisor, if required by office policy, and may seek sanctions as appropriate.

2-8.7 Avoiding Prejudice to Client

When the prosecutor believes that the defense counsel has engaged in misconduct, remedial efforts should be directed at the attorney and not at his or her client. The prosecutor should at all times make efforts to ensure that a defendant who is not involved in misconduct is not prejudiced by the unlawful or unethical behavior of his or her attorney.

Commentary

As with the judiciary, appropriate professional consideration is due opposing counsel. All actions directed at opposing counsel and all deliberations with opposing counsel should be conducted with candor and fairness and should be presented without any express or implied animosity or disrespect. The prosecutor should strive to maintain uniformity of fair dealing with all defense counsel and should endeavor to not allow any prior animosity or bad feelings toward a particular defense attorney to work to the detriment of that attorney's client.

In the spirit of seeking justice in all cases, the prosecutor should cooperate with defense counsel in providing information and other assistance as volunteered by the prosecutor or reasonably requested by defense counsel. In the event defense counsel makes demands that are abusive, frivolous or made solely for the purpose of delay, the prosecutor need not cooperate with such demands and may seek court guidance on what must be provided. The prosecutor must be mindful that at all times, even when defense counsel is not acting in a professional manner, there are discovery obligations dictated by law and ethical codes that must be fulfilled.

If at any time during his or her association with defense counsel a prosecutor suspects the attorney of involvement in criminal activity, the prosecutor has the responsibility to investigate and take whatever additional action is dictated by the result of the investigation.

The standard requires that an assistant or deputy prosecutor who has knowledge of ethical misconduct by defense counsel which raises substantial question as to the attorney's fitness to practice law report such conduct to his or her supervisor. The assistant or deputy prosecutor needs to be aware that in some jurisdictions, such action may not be sufficient to comply with the ethical rules, and failure to report the defense attorney's misconduct, if the chief prosecutor does not, may, in itself, be misconduct by the assistant prosecutor. The timing of such report should be coordinated so as not to prejudice the defendant.

One continuing myth that pervades the judicial process is the misconception that the defense attorney should be allowed greater leeway in the presentation of his case than the prosecutor. This leeway is often sought to be justified on the grounds that it is necessary to counter-balance the more prolific resources of the state brought to bear upon a single individual. Such reasoning is fallacious, however, when viewed in relation to the purpose of the adversary proceeding and the safeguards already provided therein. The courtroom

is not a stage but a forum, and uniformity of trial decorum by defense and prosecuting attorneys should be maintained by the court to prevent undue influence on judge and jury that might result from theatrical behavior. The prosecutor should be able to bring to the court's attention the failure to maintain such uniformity and should maintain the high standards of conduct befitting a professional advocate in public service.

9. Relations with Victims

2-9.1 Information Conveyed to Victims

Victims of violent crimes, serious felonies, or any actions where it is likely the victim may be the object of physical or other forms of retaliation should be informed of all important stages of the criminal justice proceedings to the extent feasible, upon request or if required by law, including, but not limited to, the following:

a. Acceptance or rejection of a case by the prosecutor's office, the return of an indictment, or the filing of criminal charges;
b. A determination of pre-trial release of the defendant;
c. Any pre-trial disposition;
d. The date and results of trial;
e. The date and results of sentencing;
f. Any proceeding within the knowledge of the prosecutor which does or may result in the defendant no longer being incarcerated, including appellate reversal, parole, release, and escape, unless a legal obligation to inform the victim of such proceeding is imposed by law on another governmental entity; and
g. Any other event within the knowledge of the prosecutor that may put the victim at risk of harm or harassment.

2-9.2 Victim Orientation

To the extent feasible and when it is deemed appropriate by the chief prosecutor, the prosecutor's office should provide an orientation to the criminal justice process for victims of crime and should explain prosecutorial decisions, including the rationale used to reach such decisions. Special orientation should be given to child and spousal abuse victims and their families, whenever practicable.

2-9.3 Victim Assistance

To the extent feasible and unless a legal obligation to provide such assistance is imposed by law on another governmental entity, the chief prosecutor should develop policies and procedures for providing services to victims of crimes, including, but not limited to the following:

a. Assistance in obtaining the return of property held in evidence;
b. Assistance in applying for witness fees and compensation if provided for by law or local rule;
c. Assistance in obtaining restitution orders at the sentencing;
d. Assistance in appropriate employer intervention concerning required court appearance;
e. Assistance with necessary transportation and lodging arrangements;

f. Assistance in reducing the time the victim has to wait for any court appearance to a minimum; and
g. Assistance in reducing overall inconvenience whenever possible and appropriate.

The prosecutor should be aware of any obligations imposed by victims' rights legislation in his or her particular jurisdiction.

2-9.4 Cooperative Assistance
The prosecutor should work with other law enforcement agencies to:

a. Cooperate with victim advocates for the benefit of providing direct and referral services to victims of crime; and
b. Assist in the protection of a victim's right to privacy regarding a victim's Social Security number, birth date, address, telephone number, place of employment, name (when the victim is a minor or a victim of sexual assault,) or any other personal information unless either a court finds it necessary to that proceeding or disclosure is required by law.

2-9.5. Facilities
Whenever possible, the chief prosecutor should take steps to ensure that victims have a secure and comfortable waiting area that avoids the possibility of making contact with the defendants or friends and families of the defendants.

2-9.6 Victim Compensation Program
The prosecutor should be knowledgeable of the criteria for victim compensation under state law, and should inform victims with potential compensable claims of the existence and requirements of victim compensation programs within the jurisdiction.

2-9.7 Victim Assistance Program
To the extent feasible, the chief prosecutor should develop and maintain a victim assistance program within the staffing structure of the office to provide services and give assistance to victims of crime.

2-9.8 Victim Protection
The prosecutor should be mindful of the possibility of intimidation and harm arising from a victim's cooperation with law enforcement. The prosecutor should be aware of programs available in his or her jurisdiction to protect witnesses to crime, and should make referrals and recommendations for program participation where appropriate.

10. Relations with Witnesses

2-10.1 Information Conveyed to Witnesses
The prosecutor should keep witnesses informed of:

a. All pre-trial hearings which the witnesses may be required to attend; and
b. Trial dates and the scheduling of that witness's appearance.

2-10.2 Contacts by Defense with Witnesses
The prosecutor shall not advise a witness (including victims) to decline to meet with or give information to the defense. The prosecutor may advise a witness that they are not required to provide information to the defense outside of court and the prosecutor may also inform a witness of the implications and possible consequences of providing information to the defense.

2-10.3 Represented Witnesses
When the prosecutor is informed that a witness has obtained legal representation with respect to the criminal proceeding, the prosecutor should arrange all out-of- court contacts with the witness regarding the subject of that proceeding through the witness's counsel.

2-10.4 Witness Interviewing and Preparation
The prosecutor shall not advise or assist a witness to testify falsely. The prosecutor may discuss the content, style, and manner of the witness's testimony, but should at all times make efforts to ensure that the witness understands his or her obligation to testify truthfully.

2-10.5 Expert Witnesses
When a prosecutor determines that the testimony of an expert witness is necessary, the independence of the expert should be respected and if it is determined that a fee be paid to an expert witness, the fee should be reasonable and should not depend upon a contingency related to the outcome of the case.

2-10.6 Witness Assistance
To the extent feasible and unless a legal obligation to provide such assistance is imposed by law on another governmental entity, the chief prosecutor should develop policies and procedures for providing the services to witnesses of crimes including, but not limited to, the following:

a. Assistance in applying for witness fees, if available, and appropriate compensation if provided for by law or local rule;
b. Assistance in appropriate employer intervention concerning required court appearance(s);
c. Assistance in necessary transportation and lodging arrangements, if appropriate;
d. Assistance in minimizing the time the witness has to wait for any court appearance; and
e. Assistance in reducing overall inconvenience whenever possible and appropriate.

2-10.7 Witness Protection
The prosecutor should be mindful of the possibility of intimidation and harm arising from a witness's cooperation with law enforcement. The prosecutor should be aware of programs available in his or her jurisdiction to protect witnesses to crime and should make referrals and recommendations for program participation where appropriate.

2-10.8 Facilities
Whenever possible, the chief prosecutor should take steps to ensure that witnesses have a secure and comfortable waiting area that avoids the possibility of the witnesses making contact with defendants or the families and friends of defendants.

2-10.9 Enforcement of Crimes Against Witnesses
The prosecutor, working with other law enforcement agencies, should assign a high priority to the investigation and prosecution of any type of witness intimidation, harassment, coercion, or retaliation, including any such conduct or threatened conduct against family members or friends.

2-10.10 Witness Assistance Program
To the extent feasible, the chief prosecutor should develop and maintain a witness assistance program within the staffing structure of the office to provide services and give assistance to witnesses.

Commentary

Effective prosecution includes a sound understanding of the value of victims and witnesses within the criminal justice system. The necessity of individuals reporting crimes and following through with identifications, statements, and testimony is self-evident. The standard, however, identifies obligations of the prosecutor and others to facilitate the relationship with victims and witnesses.

Both victims and witnesses need notice of developments in criminal cases. Witnesses need to make arrangements in order to be available to testify, while victims may be more concerned with release decisions in apprehension of their personal safety and the safety of their families.

Prosecution should not assume that victims or witnesses are familiar with the terminology, procedures, or even location of the courts. At a minimum, prosecutors should be sensitive to this. Ideally, there should be a formal orientation program available to all victims and witnesses.

Such an orientation program should be part of a number of services provided. Prosecutors should have a leading role in the development and maintenance of victim/witness assistance programs. The standard suggests the type of assistance that should be available, such as employer intervention and reduction in inconvenience.

In addition to a program of assistance, the standard calls for appropriate facilities for victims and witnesses. They should avoid the possibility of contact with the defendant or his friends and family.

As central a figure as the prosecutor is to relations with victims and witnesses, he is certainly not the sole source to accommodate the needs of victims and witnesses. These

needs should be a cooperative effort. For example, one of the greatest needs of victims and witnesses is the assurance of their safety. They are most vulnerable to threats, harassment, and intimidation. Their protection is primarily a law enforcement function. While prosecution should work with the police to minimize this, it is essentially a cooperative effort.

11. Community-Based Programs

2-11.1 Knowledge of Programs

Prosecutors should be cognizant of and familiar with all community-based programs to which offenders may be sentenced, referred as a condition of probation, or referred as a diversionary disposition.

2-11.2 Need for Programs

In jurisdictions where community agencies providing services such as employment, education, family counseling, and substance abuse counseling are needed but not provided by community agencies, the chief prosecutor should encourage the agencies to provide such services. The prosecutor's office should be available as a source of public information for such community-based agencies.

2-11.3. Notice

The prosecutor's office should take steps to ensure that the prosecutor's office and appropriate law enforcement agencies are notified of individuals participating in work-release programs in their jurisdiction.

12. Prisons

2-12.1 Knowledge of Facilities

Prosecutors should be cognizant of, and familiar with, all penal facilities located within the jurisdiction to which offenders prosecuted in the jurisdiction may be sentenced. Where practicable, the chief prosecutor should attempt to ensure that new prosecutors hired by his or her office have an opportunity, as part of their initial training, to tour the penal institutions in their jurisdictions to which defendants may be sentenced.

2-12.2 Improvement of Institutions

The chief prosecutor should work with prison officials and the legislature to upgrade correctional institutions within the state, including the avoidance of prison over-crowding. Additional facilities, new construction or renovation of existing facilities, improved training of staff, and the expansion of existing programs and educational/behavioral services for inmates should be the primary goals of such upgrading.

2-12.3 Prosecutor as Resource

The prosecutor's office should be available as a source of information for prisons and jails and their intake divisions.

2-12.4 Career Offender Identification
The prosecutor's office should assist in the identification of multiple and career offenders.

2-12.5 Appropriate Sentencing
The prosecutor's office should cooperate with the prison system to assure that realistic sentences are carried out.

2-12.6 Innovative Improvements
The chief prosecutor should support innovative programs which would improve the penal system, provided that such programs do not adversely impact justice and appropriate offender accountability.

2-12.7 Notice
The chief prosecutor should take steps to ensure that any institution holding an offender should notify both the prosecutor and law enforcement agencies at the time of an escape, prior to any temporary or final release, and prior to parole consideration.

2-12.8 Corrections Advisory Committee
To the extent practicable, the chief prosecutor should encourage the establishment of and participate in a statewide correctional advisory committee involving representatives from all components of the criminal justice system and responsible members of the public.

13. Parole and Early Release

2-13.1 Prosecution as Resource
To the extent permitted by law, the prosecutor's office should be available as a source of information for the parole board, the department of corrections, or other supervisory agency considering or monitoring an offender's release from custody.

2-13.2 Information System
When the chief prosecutor deems it appropriate, he or she should assist in the development and maintenance of an information system to keep the prosecutor's office informed of parole decisions concerning individuals from, or planning to reside in, the jurisdiction.

2-13.3 Parole Board and Release Discretion
The chief prosecutor should be cognizant of the discretion vested in parole boards and in other entities or agencies authorized by law to make release from custody decisions, and he or she should address abuses of this discretion that come to his or her attention.

2-13.4 Right to Appear
The chief prosecutor should advocate that prosecutors and victims have the opportunity to receive sufficient advance notice of and appear at hearings for parole, pardon, commutation, and grant of executive clemency, or be permitted to otherwise provide information at such hearings. Upon receipt of such notice, the prosecutor should

endeavor, to the extent possible, to notify the victims of such crimes residing within the prosecutor's jurisdiction and local law enforcement agencies of this information.

2-13.5 Early Release
The chief prosecutor should oppose the early release of offenders where the release decision is made by correctional authorities solely or primarily on the basis of overcrowding of the correctional facility, unless such release is mandated by court order.

2-13.6 Notice of Release
The prosecutor should seek to have the prosecutor's office, law enforcement agencies, and victims notified of all releases from confinement or commitment of individuals from facilities within the jurisdiction, or releases from confinement or commitment of individuals outside the jurisdiction who plan to reside in the jurisdiction. For purposes of this standard, "release from confinement or commitment" includes changes in a convicted person's custody status due to parole, pardon, commutation, grant of executive clemency, service of sentence, or release from court-ordered commitment to a mental health facility.

2-13.7 Sexually Dangerous Persons
Where the prosecutor is entitled to petition the court for civil commitment or continued detention of a prisoner after the term of the prisoner's sentence has expired based on a finding of sexually dangerous person status, the prosecutor should take steps to ensure that the board of prisons and parole notify the prosecutor's office of the prisoner's upcoming release date sufficiently in advance of that date to enable the prosecutor to file such a petition in a timely manner.

Commentary

It is recognized that community-based programs represent viable alternatives to traditional institutions for less-serious offenders. In addition, the concept of supplementing incarceration with community-based services has been advanced in recent years. The responsibilities placed upon community-based agencies mandates an increasing need for coordination and communication with the prosecutor. The degree of the prosecutor's input into such agencies may have as wide a spectrum, as those programs do themselves. At the most basic level, the prosecutor must be cognizant of all community services which offenders in the jurisdiction may be sentenced to, referred to as a condition of probation, or referred to as part of a diversionary program. In addition, it is important for the prosecutor to be available as a resource to these services. Prosecution should be in a position to supply these agencies with information concerning clients whom the prosecutor has had contact with.

Some prosecutors have chosen to play an active role in community-based operations. Developing and implementing programs under the auspices of the office has been initiated on a wide scale in recent years. Diversionary and citizen volunteer programs are examples of the input the prosecutor's office may have. In addition, prosecutors are active in local, regional, and statewide planning boards with an emphasis on developing such programs. Where basic community services such as employment, adult education,

family counseling, and substance abuse counseling are not provided or are inadequate, the prosecutor should consider having input in their development or upgrading. The prosecutor's involvement in such planning and advisory boards is important because of his or her position as the chief local law enforcement official.

It must be recognized that there is a need for the prosecutor's involvement in the prisons and their programs. At the most basic level, the prosecutor must be cognizant of detention facilities and the services they offer to which offenders in the jurisdiction may be sentenced. Also, just as for probation and community agencies, the prosecutor's insight into the background and behavior of individuals should be viewed as a resource by officials in this area. Correctional systems may employ an elaborate intake formula without utilizing all previously developed background information concerning offenders. In this situation, prosecution must make itself available as a resource both to offer initial information and to verify facts derived from other sources.

There are other areas where prosecutors could profitably have input into the prison system, if not because of their positions as prosecutors, then because of their positions as concerned leaders in the criminal justice system. In general, correctional institutions in America need upgrading. The prosecutor should strive for better facilities and services within the prison setting, as well as better trained staff. Since prison overcrowding is a problem that affects the entire criminal justice system, it is natural to expect that the prosecutor will be involved in legislative efforts to build new facilities and enlarge existing ones. The ability of the prosecutor to have valid input on upgrading facilities, as well as pre-sentence information, is dependent on his knowledge of the prison facilities within his state. The prosecutor, therefore, must be knowledgeable about the conditions of such facilities.

At a basic level, the prosecutor can also assist in the identification of multiple offenders. The prosecutor should also cooperate with prison systems to assure that realistic prison sentences are carried out. The prosecutor should encourage and support experimental efforts in regard to sentencing practices. Concepts such as mandatory prison sentences for multiple offenders of certain crimes should be closely examined.

As with all the other components discussed here, the prosecutor must urge cooperation. The prosecutor must be considered as a resource to both parole boards and supervisory personnel. In addition, the prosecutor should receive information concerning individuals who have been approved for release from institutions and who are planning to reside in the jurisdiction. And fundamental to the protective function of the prosecutor, he must have an opportunity to oppose parole release decisions that are not in the best interest of the community.

A phenomenon that has arisen in times of budgetary constraints is that of early release programs that have as their primary motivation the alleviation of overcrowding in detention facilities. Often such programs are a reaction to jail litigation attacking conditions of confinement. Such litigation has greatly proliferated in the 1980s and 1990s. Conditions of incarceration, however, are an improper basis for release of

offenders and the standard takes an unequivocal position against it. The solution for prison overcrowding and related problems lies with the appropriate legislative bodies but is not to be found in simply releasing offenders. The prosecutor should support legislative proposals that solve this problem in the appropriate manner by allocating additional public funds for the construction and maintenance of needed facilities. Likewise, the prosecutor should oppose every program of early release based primarily on the problems facing our correctional system. Inappropriate release of offenders undermines every advance achieved in improving the criminal justice system.

Those prosecutors charged with the commitment of sexually dangerous persons should develop procedures with the prisons from which release of such persons will occur to ensure that the prosecutor has sufficient time to prepare the petition for commitment prior to release.

14. Prosecutors and the Media

2-14.1 Media Relations

The prosecutor should seek to maintain a relationship with the media that will facilitate the appropriate flow of information to and from the public. An appropriate and professional relationship with the media is necessary to promote public accountability and transparency in government.

2-14.2 Balancing Interests

The prosecutor should strive to protect both the rights of the individual accused of a crime and the needs of citizens to be informed about public dangers and the conduct of their government. The prosecutor may provide sufficient information to the public so that citizens may be aware that the alleged perpetrator of a crime has been arrested and that there exists sufficient competent evidence with which to proceed with prosecution. Subject to Standard 2-14.4 and applicable rules of ethical conduct, information may be released by the prosecution if such release will aid the law enforcement process, promote public safety, dispel widespread concern or unrest, or promote confidence in the criminal justice system. The prosecutor should refrain from making extrajudicial comments before or during trial that promote no legitimate law enforcement purpose and that serve solely to heighten public condemnation of the accused.

2-14.3 Information Appropriate for Media Dissemination by Prosecutors

Prior to and during a criminal trial the prosecutor may comment on the following matters:

a. The accused's name, age, residence, occupation, family status, and citizenship;
b. The substance or text of the charge such as the complaint, indictment, information, and, where appropriate, the identity of the complainant;
c. The existence of probable cause to believe that the accused committed the offense charged;
d. The identity of the investigating and arresting agency, the length and scope of the investigation, the thoroughness of the investigative procedures, and the diligence and professionalism of the law enforcement personnel in identifying and apprehending the accused;

e. The circumstances immediately surrounding the arrest, including the time and place of arrest, the identity of the arresting officer or agency, resistance, pursuit, possession and use of weapons, and a description of items seized at the time of arrest or pursuant to a search warrant; and
f. Information contained in a public record, the disclosure of which would serve the public interest.

2-14.4 Restraints on Information
Prior to and during a criminal trial the prosecutor should not make any public, extrajudicial statement that has a substantial likelihood of materially prejudicing a judicial proceeding. In particular, from the commencement of a criminal investigation until the conclusion of trial, the prosecutor should not make any public, extrajudicial statements about the following matters, unless the information is part of the public record of the criminal proceeding:

a. The character, reputation, or prior criminal conduct of a suspect, accused person or prospective witness;
b. Admissions, confessions, or the contents of a statement or alibi attributable to a suspect or accused person;
c. The performance or results of any scientific tests or the refusal of the suspect or accused to take a test;
d. Statements concerning the credibility or anticipated testimony of prospective witnesses;
e. The possibility of a plea of guilty to the offense charged or to a lesser offense, or the contents of any plea agreement.

2-14.5 Public Responses
The prosecutor may make a reasonable and fair reply to comments of defense counsel or others. A public comment made by a prosecutor pursuant to this paragraph shall be limited to statements reasonably necessary to mitigate the effect of undue prejudice created by the public statement of another. In no event should a prosecutor make statements prohibited by Standard 2-14.4 or applicable rules of ethical conduct.

2-14.6 Law Enforcement Policy on Information
The prosecutor should assist law enforcement and other investigative agencies in understanding their statutory responsibilities with respect to the release of criminal justice information. The prosecutor should also assist in the training of law enforcement agencies within his or her jurisdiction on subject matters to avoid when discussing pending criminal investigations or prosecutions with the media.

2-14.7 Judicial Decisions
The prosecutor may inform the public of judicial decisions that are contrary to law, fact, or public interest, but a prosecutor should not make any public statement that he or she knows to be false, or with reckless disregard for its truth or falsity, as to the integrity or qualifications of a judge.

2-14.8 Verdicts
A prosecutor should not make any public statement after trial that is critical of jurors, but may express disagreement with or disappointment in the jury verdict.

Commentary

A primary requirement for the proper functioning of the prosecutor's office is the establishment of public trust in the ability of the prosecutor to effectively represent the public in seeking to attain justice. In order to maintain that public trust, the prosecutor must be accountable for his or her actions. The media is a primary player in testing that accountability. The media reports information regarding: events leading up to criminal investigations and charges; the progress of the case thorough the court system; the performance of the law enforcement officers and prosecutors in the conduct of the investigation and the court proceedings; and, the results of court proceedings.

Because of the prosecutor's unique role as a representative of all of the people in the quest for justice, it would be unfair for him or her to diminish the rights of a defendant to a trial by an unprejudiced jury of his or her peers by broadcasting information through the media where it would go untested by the time-tested procedures incorporated into our criminal justice system.

At the same time, as a representative of the people with the duty to assure that justice is achieved, the prosecutor must be allowed to provide sufficient information to assure the public that community safety is being maintained and that the criminal justice system is operating properly. Maintaining such a balance is the purpose behind these standards.

The prosecutor should take an active role in training law enforcement agencies in his or her jurisdiction on the limitations on public statements. By conducting such advance training, the prosecutor proactively reduces the possibility of comments by law enforcement personnel that are in conflict with the law and legal rules. By that means, the prosecutor also reduces the incidents of challenges to venue and other matters relating to the ability of a defendant to receive a fair trial. The content and extent of a prosecutor's comments regarding judicial decisions are some of the most litigated ethical provisions. At a minimum, a prosecutor cannot knowingly make false or reckless statements about the integrity or qualifications of a judge and jury verdicts. Further, a prosecutor may not engage in conduct with a juror designed to alter that jurors conduct in future jury service.

15. Relations with Funding Entity

2-15.1 Assessment of Need
The chief prosecutor should cooperate with his or her funding entity by providing an assessment of resources needed to effectively administer the duties of the office.

2-15.2 Independent Revenue
The budget for prosecution should be independent of and unrelated to revenues resulting from law enforcement and criminal justice activities, such as fines, forfeitures and

program fees. The prosecutor may expend revenues from forfeited assets only in accordance with statute or court order.

Commentary

The basic premise of this standard is adequate funding. Little can happen in the way of system improvements in general, and the prosecutor's office in particular, without adequate funding.

An expectation persists among funding bodies that funds for law enforcement can be generated from fines and forfeitures. The latter aspect, in particular, is the result of misconceptions concerning the potential for revenue generation that have grown up along with the relatively recent state and federal forfeiture statutes. Such remedies were never intended to be primary sources of revenue, and the notion that they can be "budgeted" into criminal justice agencies is totally misguided. To the extent that such remedies provide some funds for law enforcement agencies, this benefit is at best collateral to their primary purpose. Such revenues are not predictable and, therefore, it is doubly wrong for funding sources to rely upon them when considering budget requests from prosecutors.

16. Relations with the Public

2-16.1 Community Organizations
The prosecutor should encourage the formation and growth of community-based organizations interested in criminal justice, crime prevention, and the punishment and rehabilitation of offenders.

2-16.2 Staff Liaison
With respect to such organizations and to the extent that the prosecutor has the resources to do so, the chief prosecutor should assign an appropriate staff member(s) to act as liaison to such organizations and provide qualified speakers from the prosecutor's office to address and appear before such groups on matters of common interest.

2-16.3 Public Education
The chief prosecutor should use all available resources to encourage citizen involvement in the support of law enforcement and prosecution programs and issues. The chief prosecutor should educate the public about the programs, policies, and goals of his or her office and alert the public to the ways in which the public may be involved and benefit from those programs, policies, and goals.

2-16.4 Advisory Role
Because the prosecutor has the responsibility of exercising discretion and making ultimate decisions, the role of public interest and citizen groups must be understood to be advisory only.

Commentary

Since the prosecutor's work is intimately involved with crime in the community, the prosecutor can contribute significantly to crime prevention by lending personal support and the support of the prosecutor's office to existing community crime prevention programs. Further, the prosecutor can lend expertise to criminologists, city planners, and others as they make plans for the growth and development of the community in a way best suited to deter criminal activity. The standard has been developed to serve as a guide to prosecutors in implementing their role in community crime prevention. It recognizes the need for the prosecutor to not only interact with community crime prevention and social service organizations that are community-based, but also to take a hand in the formation of such citizen groups where they presently do not exist.

17. Relations with Non-Governmental Entities

2-17.1 Generally

In all dealings with a non-governmental entity, the chief prosecutor should place the public interest above all other considerations.

2-17.2 Financial and Resource Assistance

a. Where permitted by law, a prosecutor's office may accept financial or resource assistance from a non-governmental source when such assistance is specifically approved by the chief prosecutor;

b. When determining whether to accept assistance from a non-governmental source, the chief prosecutor should give priority consideration to the public interest over the private interests of a non-governmental source, especially when the assistance relates to a specific case or cases rather than office-wide assistance;

c. The chief prosecutor should consider whether accepting assistance from a non-governmental source will create the appearance of undue influence;

d. The chief prosecutor should have office procedures in place that protect the independent exercise of discretion of the office from the undue influence of a non-governmental resource that has provided assistance to the office during the investigation and prosecution of specific cases or types of cases. These procedures should include requirements for strict bookkeeping and accounting of any assistance received, whether financial or resource assistance, and if required by law, disclosure procedures.

Commentary

In times of strained budgets and inadequate resources, an offer of assistance from a non-government funding source is a temptation. Such arrangements need to be carefully examined to make certain that no illegal or unethical strings are attached. If the prosecutor should decide to accept the assistance, he or she must be diligent in keeping track of the funds or equipment provided. In addition, the prosecutor must be vigilant to not allow the assistance to interfere with his or her independent exercise of prosecutorial discretion.

Part III. Investigations

1. Investigations Generally

3-1.1 Authority to Investigate

A prosecutor should have the discretionary authority to initiate investigations of criminal activity in his or her jurisdiction. The exercise of this authority will depend upon many factors, including, but not limited to, available resources, adequacy of law enforcement agencies' investigation in a matter, office priorities, and potential civil liability.

3-1.2 Fairness in Investigations

A criminal investigation should not begin or be continued if it is motivated in whole or part by the victim or perpetrator's race, ethnicity, religion, sexual orientation, or political affiliation unless these factors are an element of a crime or relevant to the perpetrator's motive. Nor should an investigation be motivated, in whole or significant part, by partisan political pressure or professional ambition or improper personal considerations.

3-1.3 Prosecutor's Responsibility for Evidence

A prosecutor is ultimately responsible for evidence that will be used in a criminal case. A prosecutor who knows or who is aware of a substantial risk that an investigation has been conducted in an improper manner, or that evidence has been illegally obtained by law enforcement, must take affirmative steps to investigate and remediate such problems.

3-1.4 Illegally Obtained Evidence

A prosecutor should not knowingly obtain evidence through illegal means, nor should the prosecutor instruct or encourage others to obtain evidence through illegal means.

3-1.5 Undercover Investigations

Although prosecutors may not normally make false statements or engage in conduct involving deception, a prosecutor may, to the extent permitted by law, engage in or direct law enforcement investigations that involve such conduct. A prosecutor should take all reasonable steps to ensure that any such investigations do not create an unnecessary risk of harm to innocent parties, perpetuate a fraud on the court, or interfere with a defendant's constitutionally protected right to counsel or right to a fair trial. Nothing in this standard precludes a prosecutor from engaging in a duly authorized investigation of judicial or court officers, or members of the bar.

3-1.6 Prosecutorial Investigators

Chief prosecutors should employ properly trained investigators to assist with case preparation, supplement law enforcement investigations, conduct original investigations,

and carry out other duties as assigned by the prosecutor. The chief prosecutor should seek investigative resources from appropriate funding authorities.

Commentary

While the vast majority of criminal investigations are undertaken by law enforcement agencies, there are times when the prosecutor must use his or her authority to initiate or continue an investigation. Some instances where such action by the prosecutor would be appropriate are: where the law enforcement agency that would normally conduct the investigation has a conflict of interest; where the investigation has been handled improperly and is in need of re-investigation; where the investigation calls for expertise that is available in the prosecutor's office; and, where the law enforcement agencies do not have sufficient resources to conduct the investigation.

Given the prosecutor's responsibility to seek justice for all the people, there are axioms regarding investigations that follow. A prosecutor should not conduct an investigation motivated by any characteristics of the victim or perpetrator that are categories irrelevant to the elements of the crime or the motive therefore. The prosecutor should not conduct an investigation in an illegal or improper manner, nor should he or she allow his or her agents to do so.

Undercover investigations are at times the only effective way of obtaining evidence by which to prosecute criminal conduct. Because of the importance of these investigations, prosecutors should make reasonable efforts to see that prosecutors are not precluded from conducting such investigations. Those efforts might include seeking a clarification or modification of rules of ethical conduct.

To avoid duplicative investigations, it is important that each governmental entity with investigative responsibilities, be they local law enforcement or others, advise the prosecutor of investigations in the jurisdiction.

2. Warrant Review

3-2.1 Search and Arrest Warrant Review

The prosecutor's office should develop and maintain a system for providing law enforcement with the opportunity for a prompt legal review of search and arrest warrant applications before the applications are submitted to a judicial officer.

3-2.2 Electronic Surveillance Review

The prosecutor's office should review and approve the use of all electronic surveillance by law enforcement entities that are within the prosecutor's jurisdiction.

3-2.3 Law Enforcement Training

The prosecutor's office should assist in training law enforcement personnel within the prosecutor's jurisdiction on the law applicable to the issuance and execution of search and arrest warrants.

Commentary

Given the number and nature of requirements for the issuance of arrest, search and surveillance warrants that will withstand motions to suppress and other legal attacks, the role of the prosecutor in providing legal assistance to law enforcement agencies is essential. The standard suggests the prosecutor's review of warrants and applications for the same, whenever practical. This review would assure propriety that will enhance the probability of the conviction of the guilty.

In addition to the review, the prosecutor's involvement in police training on the technical requirements and the design of uniform forms would also increase the probability that the resulting warrants would withstand defense challenges.

3. Grand Jury Investigations

3-3.1 Scope of Grand Jury Investigations

Unless the law of the jurisdiction specifically permits otherwise, a prosecutor should not use a grand jury investigation to:

a. Assist solely in a non-criminal matter; or

b. Gather evidence solely for the use at trial against a defendant who already has been charged by indictment or information.

3-3.2 Counsel for Witnesses

In jurisdictions where counsel for a witness is not permitted in the grand jury room but is permitted to consult with the witness outside the room, the prosecutor should grant a witness's reasonable requests to consult with counsel during questioning. If the decision whether to allow such consultation rests with the grand jury, the prosecutor should recommend to the grand jury that the witness be given reasonable opportunities to consult with counsel.

3-3.3 Subpoenaing the Target of an Investigation

In jurisdictions where it is permissible to call a person to testify before the grand jury even though the person is the target of the investigation, the following procedures should apply:

a. The chief prosecutor or his or her designee should approve all efforts to have a target of the investigation testify before a grand jury;

b. The target should be informed in writing of his or her status before any grand jury appearance and advised in writing to obtain legal advice as to his or her rights;

c. To avoid the appearance of unfairness, the prosecutor should make reasonable efforts to secure the target's grand jury appearance voluntarily rather than through a subpoena; and

d. At the outset of his or her appearance before the grand jury, the target should be informed of his or her rights as provided in Standard 3- 3.4.

3-3.4 Grand Jury Warnings

Before questioning a grand jury witness who is the target or subject of the investigation, a prosecutor should warn the witness as follows:

a. If the truthful answer to a question would tend to incriminate you in criminal activity, you may refuse to answer the question;

b. Anything you say may be used against you by the grand jury or in a later legal proceeding;

c. If you have retained counsel with you, the grand jury will grant your reasonable requests to consult with your counsel before answering a question.

These warnings should be given on the record, and the prosecutor should obtain from the witness an affirmation that he or she understands the warnings given.

3-3.5 Evidence Before the Grand Jury

Unless otherwise required by the law or applicable rules of ethical conduct of the jurisdiction, the following should apply to evidence presented to the grand jury:

a. A prosecutor should disclose any credible evidence of actual innocence known to the prosecutor or other credible evidence that tends to negate guilt, as required by law or applicable rules of ethical conduct;

b. A prosecutor should not present evidence to the grand jury that the prosecutor knows was obtained illegally by law enforcement;

c. In the absence of a valid waiver, a prosecutor should not seek information from a witness that the prosecutor knows or believes is covered by a valid claim of attorney-client privilege;

d. A prosecutor should not take any action that could improperly influence the testimony of a grand jury witness;

e. If the prosecutor is convinced in advance of a grand jury appearance that any witness will invoke his or her Fifth Amendment privilege against self incrimination rather than provide any relevant information, the prosecutor should not present the witness to the grand jury unless the prosecutor plans to challenge the assertion of the privilege or to seek a grant of immunity. The grand jury may be informed of the reason the witness will not appear;

f. The prosecutor should inform the grand jury that it has the right to hear in person any available witness or subpoena pertinent records;

g. A prosecutor should not present evidence to the grand jury that the prosecutor knows to be false;

h. A prosecutor should not knowingly make a false statement of fact or law to the grand jury.

3-3.6 Request by a Target to Testify

Except as otherwise governed by the law of the jurisdiction, the prosecutor should grant requests by the target of an investigation to testify before the grand jury unless such a request:

a. Would unduly burden or delay the grand jury proceedings;

b. Would clearly provide information that is irrelevant to the investigation;

c. Would be inconsistent with the need to preserve the secrecy of the investigation;
d. Is made for an improper purpose.

Before a request to testify is granted, the target should be required to waive on the record his or her Fifth Amendment privilege against self incrimination.

3-3.7 Grand Jury Subpoenas
While a prosecutor should zealously pursue all relevant information that is within the scope of a criminal investigation, reasonable efforts should be made to minimize the burden of investigation on third party witnesses. A prosecutor should consider in good faith requests to limit or otherwise modify the scope of subpoenas that are claimed to impose an undue burden on the recipients.

3-3.8 Termination of Target Status
If a person has previously been notified or made aware that he or she was the target of a grand jury investigation and the prosecutor elects not to seek an indictment or the grand jury fails to return a true bill and no further investigation against the target is contemplated, the prosecutor should notify the person he or she is no longer a target, unless doing so is inconsistent with the effective enforcement of the criminal law.

Commentary

In those jurisdictions that may use grand juries to investigate criminal activity and initiate charges, the procedures for the activities of the jurors, prosecutors, law enforcement officers, and witnesses are generally set forth in considerable detail in the statutes and case law of the jurisdiction.

As a result, the standards addressing the grand jury investigation are intended to encourage prosecutors to conduct the grand jury investigations with a sense of fairness. In order for the criminal justice system to remain viable, a large majority of the people must believe in its fairness and effectiveness. Provisions such as allowing a witness to consult with counsel, notification of target status, warning regarding the use of testimony, and allowing a target to testify allow the prosecutor to describe and defend the system by arguing that those provisions show it to be an effective tool in the pursuit of justice.

4. Grants of Immunity

3-4.1 Immunity Generally
A prosecutor should not grant or request immunity for a witness without the prior approval by the chief prosecutor or his or her designee. Approval should be granted only after careful consideration of the public interest. A grant of immunity should be in writing and should describe the scope and character of the immunity granted.

3-4.2 Granting or Requesting Immunity—The Public Interest

Factors that should be considered before deciding whether to grant or request immunity from prosecution for a witness include, but are not limited to:

a. The likelihood that a grant of immunity will produce truthful information from the witness;

b. The value of the witness's testimony or information to the investigation or prosecution;

c. The impact on the witness's perceived credibility if he or she testifies before a grand jury or trial jury pursuant to a grant of immunity;

d. The likelihood of prompt and full compliance with a compulsion order, and the effectiveness of available sanctions if there is no such compliance;

e. The witness's relative culpability in connection with the offenses being investigated or prosecuted, and his or her criminal history;

f. The possibility of successfully prosecuting the witness prior to compelling his or her testimony; and

g. The likelihood of future physical harm to the witness if he or she testifies under a compulsion order.

3-4.3 Prosecution After Grants of Immunity

Any prosecution of a witness who has previously been immunized should be approved by the chief prosecutor or his or her designee. The prosecutor's office should take reasonable steps to ensure that any decision to pursue a subsequent prosecution of an immunized witness is not perceived as a breach of a prosecutorial commitment.

3-4.4 Grants of Immunity to Compel Testimony on Behalf of a Defendant

Except as otherwise required by law, a prosecutor is not obligated to grant or seek immunity to compel information on behalf of a defendant. A prosecutor may immunize or seek to immunize a defense witness if the prosecutor believes that it is necessary for a just prosecution.

Commentary

There are some prosecutions, usually those in which more than one person carried out the criminal act or acts, where the cooperation and testimony of one or more of the wrong doers is required for the successful prosecution of the most culpable. In those situations in which the person whose testimony is needed cannot be persuaded to cooperate in any other way, a grant of immunity may be required.

Because the grant of immunity carries with it very serious implications, only the chief prosecutor, the person most directly accountable to the people, should exercise the authority to grant immunity. Again, keeping in mind the need to maintain public trust in the criminal justice system, the chief prosecutor should carefully examine the factors set forth in the standards before exercising his or her discretion.

Part IV. Pre-Trial Considerations

1. Screening
2. Charging
3. Diversion
4. Pretrial Release
5. First Appearance
6. Preliminary Hearing
7. Forfeiture
8. The Grand Jury Charging Function
9. Discovery
10. Case Scheduling and Priority
11. Juvenile Justice

1. Screening

4-1.1 Prosecutorial Responsibility
The decision to initiate a criminal prosecution should be made by the prosecutor's office. Where state law allows criminal charges to be initiated by law enforcement or by other persons or means, prosecutors should, at the earliest practical time, decide whether the charges should be pursued.

4-1.2 Prosecutorial Discretion
The chief prosecutor should recognize and emphasize the importance of the initial charging decision and should provide appropriate training and guidance to prosecutors regarding the exercise of their discretion.

4-1.3 Factors to Consider
Prosecutors should screen potential charges to eliminate from the criminal justice system those cases where prosecution is not justified or not in the public interest. Factors that may be considered in this decision include:

a. Doubt about the accused's guilt;
b. Insufficiency of admissible evidence to support a conviction;
c. The negative impact of a prosecution on a victim;
d. The availability of adequate civil remedies;
e. The availability of suitable diversion and rehabilitative programs;
f. Provisions for restitution;
g. Likelihood of prosecution by another criminal justice authority;
h. Whether non-prosecution would assist in achieving other legitimate goals, such as the investigation or prosecution of more serious offenses;
i. The charging decisions made for similarly-situated defendants;
j. The attitude and mental status of the accused;
k. Undue hardship that would be caused to the accused by the prosecution;
l. A history of non-enforcement of the applicable law;
m. Failure of law enforcement to perform necessary duties or investigations;

n. The expressed desire of an accused to release potential civil claims against victims, witnesses, law enforcement agencies and their personnel, or the prosecutor and his personnel, where such desire is expressed after having the opportunity to obtain advice of counsel and is knowing and voluntary;
o. Whether the alleged crime represents a substantial departure from the accused's history of living a law-abiding life;
p. Whether the accused has already suffered substantial loss in connection with the alleged crime;
q. Whether the size of the loss or the extent of the harm caused by the alleged crime is too small to warrant a criminal sanction;

4-1.4 Factors Not to Consider

Factors that should not be considered in the screening decision include the following:

a. The prosecutor's individual or the prosecutor's office rate of conviction;
b. Personal advantages or disadvantages that a prosecution might bring to the prosecutor or others in the prosecutor's office;
c. Political advantages or disadvantages that a prosecution might bring to the prosecutor;
d. Characteristics of the accused that have been recognized as the basis for invidious discrimination, insofar as those factors are not pertinent to the elements or motive of the crime;
e. The impact of any potential asset forfeiture to the extent described in Standard 4-7.4.

4-1.5 Information Sharing

The prosecutor should attempt to gather all relevant information that would aid in rendering a sound screening decision. The prosecutor's office should take steps to ensure that other government and law enforcement agencies cooperate in providing the prosecutor with such information.

4-1.6 Continuing Duty to Evaluate

In the event that the prosecutor learns of previously unknown information that could affect a screening decision previously made, the prosecutor should reevaluate that earlier decision in light of the new information.

4-1.7. Record of Declinations

Where permitted by law, a prosecutor's office should retain a record of the reasons for declining a prosecution.

4-1.8 Explanation of Declinations

The prosecutor should promptly respond to inquiries from those who are directly affected by a declination of charges.

Commentary

It could be argued that screening decisions are the most important made by prosecutors in the exercise of their discretion in the search for justice. The screening decision determines whether or not a matter will be absorbed into the criminal justice system. While the decision may be very easy at times, at others it will require an examination of the prosecutor's beliefs regarding the criminal justice system, the goals of prosecution, and a broad assortment of other factors. These standards set forth some of the considerations that may be relevant to an informed screening decision as well as some that should not be used in making the determination. The prosecutor should take care to recognize any of the listed factors that are not appropriate for use in his or her jurisdiction.

2. Charging

4-2.1 Prosecutorial Responsibility

It is the ultimate responsibility of the prosecutor's office to determine which criminal charges should be prosecuted and against whom.

4-2.2 Propriety of Charges

A prosecutor should file charges that he or she believes adequately encompass the accused's criminal activity and which he or she reasonably believes can be substantiated by admissible evidence at trial.

4-2.3 Improper Leveraging

The prosecutor should not file charges where the sole purpose is to obtain from the accused a release of potential civil claims.

4-2.4 Factors to Consider

The prosecutor should only file those charges that are consistent with the interests of justice. Factors that may be relevant to this decision include:

a. The nature of the offense, including whether the crime involves violence or bodily injury;
b. The probability of conviction;
c. The characteristics of the accused that are relevant to his or her blameworthiness or responsibility, including the accused's criminal history;
d. Potential deterrent value of a prosecution to the offender and to society at large;
e. The value to society of incapacitating the accused in the event of a conviction;
f. The willingness of the offender to cooperate with law enforcement;
g. The defendant's relative level of culpability in the criminal activity;
h. The status of the victim, including the victim's age or special vulnerability;
i. Whether the accused held a position of trust at the time of the offense;
j. Excessive costs of prosecution in relation to the seriousness of the offense;
k. Recommendation of the involved law enforcement personnel;
l. The impact of the crime on the community;
m. Any other aggravating or mitigating circumstances.

Commentary

Following an initial screening decision that prosecution should be initiated, the charging decision is the prerogative and responsibility of the prosecutor. The charging decision entails determination of the following issues:

- What possible charges are appropriate to the offense or offenses; and
- What charge or charges would best serve the interests of justice?

In making a charging decision, the prosecutor should keep in mind the power he or she is exercising at that point in time. The prosecutor is making a decision that will have a profound effect on the lives of the person being charged, the person's family, the victim, the victim's family, and the community as a whole. The magnitude of the charging decision does not dictate that it be made timidly, but it does dictate that it should be made wisely with the exercise of sound professional judgment.

There will be times when information not known at the time of charging will influence future actions in a case. While it is advisable to gather all information possible prior to charging, that is simply an unrealistic expectation. The prosecutor must balance the importance of gathering information and the importance of public safety interests when determining when he or she has sufficient information to make a charging decision.

While commencing a prosecution is permitted by most ethical standards upon a determination that probable cause exists to believe that a crime has been committed and that the defendant has committed it, the standard prescribes a higher standard for filing a criminal charge. To suggest that the charging standard should be the prosecutor's reasonable belief that the charges can be substantiated by admissible evidence at trial is recognition of the powerful effects of the initiation of criminal charges. Pursuant to the prosecution's duty to seek justice, the protection of the rights of all (even the prospective defendant) is required.

The means by which a prosecutor elects to implement charging decisions is closely related to the mechanism utilized in reaching screening decisions; indeed, the two functions may be appropriately combined in a single individual or office division.

Diversion participation should only be done at the prosecutor's discretion, and the prosecutor should not yield to external pressures in either selecting a charge or deciding if diversion alternatives are a proper course of action. Diversion may be done at any stage of the proceeding, but with the option of continued prosecution. That does not preclude diversion alternatives after a formal charge. At that stage, the threat of criminal prosecution is even greater to the accused, and thus positive participation in diversion alternatives and favorable results may be more likely.

Initial standards or guidelines for charging will be established by the chief prosecutor only. In the one-person office, the chief prosecutor will also act as the agent for implementing these guidelines. Larger offices may find it convenient, particularly in

respect to minor offenses, to delegate much of the responsibility for charging to selected individuals or to establish a separate office division for intake procedures. The designated individuals or office division should be responsible for reaching initial charging decisions, subject to review and approval by the chief prosecutor.

The chief prosecutor should establish guidelines by which charging decisions may be implemented. For the one-person office this formulation process will provide consistency of operation and an incentive to develop and articulate specific policies. The same holds true for other size offices.

Some prosecution offices employ vertical prosecution with great success, making the use of guidelines important for consistent application.

3. Diversion

4-3.1 Prosecutorial Responsibility
The decision to divert cases from the criminal justice system should be the responsibility of the prosecutor. The prosecutor should, within the exercise of his or her discretion, determine whether diversion of an offender to a treatment alternative best serves the interests of justice.

4-3.2 Diversion Alternatives
A prosecutor should be aware and informed of the scope and availability of all alternative diversion programs. The prosecutor's office should take steps to help ensure that all diversion programs are credible and effective.

4-3.3 Need for Programs
In jurisdictions in which diversion programs are deemed insufficient by the chief prosecutor, the prosecutor's office should urge the establishment, maintenance, and enhancement of such programs as may be necessary.

4-3.4 Information Gathering
The prosecutor should have all relevant investigative information, personal data, case records, and criminal history information necessary to render sound and reasonable decisions on diversion of individuals from the criminal justice system. The chief prosecutor should take steps to ensure the enactment of appropriate legislation and court rules to enable the prosecutor to obtain such information from appropriate agencies.

4-3.5 Factors to Consider
The prosecutor may divert individuals from the criminal justice system when he or she considers it to be in the interest of justice and beneficial both to the community and to the individual. Factors which may be considered in this decision include:

a. The nature, severity, or class of the offense;
b. Any special characteristics or difficulties of the offender;
c. Whether the defendant is a first-time offender;

d. The likelihood that the defendant will cooperate with and benefit from the diversion program;
e. Whether an available program is appropriate to the needs of the offender;
f. The impact of diversion and the crime on the community;
g. Recommendations of the relevant law enforcement agency;
h. The likelihood that the defendant will recidivate;
i. The extent to which diversion will enable the defendant to maintain employment or remain in school;
j. The opinion of the victim;
k. Provisions for restitution;
l. The impact of the crime on the victim; and
m. Diversion decisions with respect to similarly situated defendants.

4-3.6 Diversion Procedures

The process of diverting a defendant should include the following procedures:

a. A signed agreement or court record specifying all requirements for the accused;
b. A signed waiver of speedy trial requirements, where applicable;
c. The right of the prosecutor, for a designated time period, to proceed with the criminal case when, in the prosecutor's judgment, such action would be in the interest of justice;
d. Appropriate mechanisms to safeguard the prosecution of the case, such as admissions of guilt, stipulations of facts, and depositions of witnesses.

4-3.7 Record of Diversion

A record of the defendant's participation in a diversion program, including the reasons for the diversion, should be created for each case and maintained by the prosecutor's office for subsequent use by law enforcement, unless prohibited by law.

4-3.8 Explanation of Diversion Decision

Upon request, the prosecutor should provide adequate explanations of diversion decisions to victims, witnesses, law enforcement officials, the court, and statewide diversionary program(s) and, when deemed appropriate, to other interested parties.

Commentary

An alternative available to prosecutors in the processing of a criminal complaint is that of diversion - the channeling of criminal defendants and even potential defendants, into programs that may not result in a criminal conviction. The purposes of diversion programs include:

- Unburdening court dockets and conserving judicial resources for more serious cases;
- Reducing the incidence of offender recidivism by providing community-based rehabilitation that would be more effective and less costly than the alternatives available in continued criminal prosecution.

Determination of the appropriateness of diversion in a specified case will involve a subjective determination that, after consideration of all circumstances, the offender and the community will both benefit more by diversion than by prosecution.

The chief prosecutor should promulgate guidelines outlining the approach and criteria under which he wishes diversion determinations to be made. These guidelines will aid in providing a policy that is both uniform and in accordance with the intentions of the prosecutor.

Equally important as protecting the rights of the individual is the necessity to protect the interests of society. It must be remembered that the individual involved in the diversion process is accused of having committed a criminal act and is avoiding prosecution only because an alternative procedure is thought to be more appropriate and more beneficial.

4. Pretrial Release

4-4.1 Prosecutorial Responsibility

A prosecutor should request that bail be set at an appropriate amount to ensure that the defendant appears at all required court proceedings, and, where allowed by law, does not pose a danger to others or to the community. Where permitted by law, a prosecutor should request that the defendant be held without bail if the prosecutor reasonably believes the accused:

a. Would present a danger to others or the community if he or she were released prior to trial;
b. Is likely to tamper with evidence, attempt to improperly influence witnesses, or otherwise interfere with the orderly resolution of the criminal case; or
c. Is a substantial flight risk.

4-4.2 Bail Amount Request

A prosecutor should take steps to gather adequate information about the defendant's circumstances and history to request an appropriate bail amount. Among the factors a prosecutor may consider in determining the proper amount to request are:

a. The defendant's employment status and history;
b. The defendant's financial condition, ability to raise funds and source of funds;
c. The defendant's length and character of residence in the community, and the nature and extent of the accused's family ties to the community;
d. The nature and severity of the crime, the strength of the evidence, and the severity of the sentence that could be imposed on conviction, to the extent these factors are relevant to the risk of non-appearance and the commission of other crimes while awaiting trial;
e. The defendant's criminal record, including any record of appearance or non-appearance on other criminal charges;
f. The likelihood of the defendant attempting to intimidate witnesses or victims, or to tamper with the evidence;

g. Identification of responsible members of the community who would vouch for the accused's reliability;
h. Any other factors indicating the defendant's ties to the community.

A prosecutor should not seek a bail amount or other release conditions that are greater than necessary to ensure the safety of others and the community and to ensure the appearance of the defendant at trial.

4-4.3 Continuing Obligation
If, after the initial bail determination is made, the prosecutor learns of new information that makes the original bail decision inappropriate, the prosecutor should take steps to modify the accused's bail status or conditions.

4-4.4 Alternatives to Pretrial Incarceration
Prosecutors should recommend bail decisions that facilitate pretrial release rather than detention to the extent such release is consistent with the prosecutor's responsibilities set forth in Section 4-4.1.

4-4.5 Periodic Reports
A prosecutor should request periodic reports on detained defendants to determine if continued detention under the current conditions is appropriate. The prosecutor's office should be informed of any violations of pretrial release conditions of a defendant released pending trial, and should seek revocation of release status, higher bail and/or appropriate sanctions as deemed necessary, in accordance with applicable law or court rules.

Commentary

The prosecutor's recommendation regarding bail amounts and conditions will be shaped to some extent by the laws and procedures in his or her jurisdiction. The procedures may range from the use of a summons to arrest and a request to hold the defendant without bail under appropriate conditions.

These provisions recognize a respect for the presumption of innocence, and therefore state a clear preference for release of defendants pending trial. However, because a prosecutor must represent the public interest, the standards also recognize that in some circumstances in which the defendant is a significant flight risk, or where there is a threat to harm or intimidate witnesses or victims or to destroy or manipulate evidence, setting no bail or setting bail in an amount where the defendant will not be able to meet the conditions is appropriate.

Once the conditions for pre-trial release have been established, the person or agency responsible for monitoring the defendant's compliance should keep the prosecutor apprised of the defendant's performance. The prosecutor should continue to exercise reasonable discretion in determining whether modification of the conditions, either to lessen the requirements or to seek sanctions or incarceration, should be sought.

5. First Appearance

4-5.1 Prosecutorial Responsibility
The prosecutor should work with law enforcement and the courts to see that the accused is brought before a judicial officer without unnecessary delay.

4-5.2 Prosecutor's Role
A prosecutor need not be present at the first appearance unless required by statute, rule, or court order. When the prosecutor is present at the first appearance, he or she should, to the extent practicable, ensure that:

a. Bond is set commensurate with the offense charged;
b. The charges are correct and appropriate;
c. Any schedule of future proceedings that the court sets avoids unnecessary delay.

If the accused is not represented by counsel at the first appearance, a prosecutor should not seek a waiver from the accused of a preliminary hearing or other pretrial right.

Commentary

Although prosecutors usually do not control when a first appearance occurs, they should work very closely with law enforcement and the courts to establish standard procedures to assure the filing of accurate charges without unnecessary delay, but with sufficient time for prosecutor input.

6. Preliminary Hearing

4-6.1 Prosecutor's Role
The prosecutor should appear at the preliminary hearing and present such reliable information as is required for a judicial officer to make the probable cause determination.

4-6.2 Waiver
Before accepting a waiver by the defendant of a probable cause determination, the prosecutor should be satisfied that the defendant's decision was knowing and voluntary. A defendant's opportunity to consult with counsel prior to the waiver is prima facie evidence of a valid waiver.

Commentary

Requirements for preliminary hearings vary considerably from jurisdiction to jurisdiction. These standards recognize the importance of a preliminary hearing when held and the responsibility of the prosecutor with the court to assure the fairness in the conduct of such a hearing.

7. Forfeiture

4-7.1 Prosecutor's Role

The prosecutor should support the enactment and enforcement of statutes that permit the forfeiture of property used in or obtained as a result of criminal activity.

4-7.2 Impact on Private Counsel

The ability of defendants to secure private legal counsel of their choice should not be a consideration in the prosecutor's enforcement of forfeiture statutes.

4-7.3 Factors in Mitigation

A prosecutor may, in the exercise of his or her sound professional judgment, decide to remit, mitigate, or forgo the forfeiture of property to an owner or interest holder other than the wrongdoer. Factors a prosecutor may consider in making such a decision include whether an owner or interest holder has, to the prosecutor's satisfaction, established that:

a. The interest was acquired and maintained in good faith without knowledge or substantial reason to know of the conduct that gave rise to the forfeiture;

b. That the forfeiture would work a severe hardship on an otherwise innocent owner or interest holder; and

c. That the property will not be used in furtherance of future criminal activity or benefit the one whose conduct subjected the property to forfeiture.

4-7.4 Impermissible Considerations

The fact that forfeited assets might be available to fund law enforcement efforts should not unduly influence the proper exercise of the prosecutor's discretion in the enforcement of forfeiture statutes or the criminal law, nor should forfeiture be improperly used as a substitute for criminal prosecution.

Commentary

The concept that a person should not be allowed to profit from his or her wrongdoing is the underlying principle of forfeiture. In addition to the restitutional aspect, the possibility of deterrence to others is also important.

Frequently, ownership interests in property are mixed and forfeiture would have adverse results for others. The prosecutor, in his discretion, may determine when extenuating circumstances exist such that foregoing, remitting, or mitigating forfeiture is appropriate. These standards provide guidance in exercising that discretion.

The purpose of forfeiture is to deter conduct giving rise to forfeiture and to remove the instrumentalities and proceeds of such conduct.

8. The Grand Jury Charging Function

4-8.1 Prosecutorial Responsibility

To the extent permitted by the jurisdiction's law or rules, a prosecutor appearing before a grand jury:

a. May explain the law and express his or her opinion on the legal significance of the evidence;

b. Should assist the grand jury with procedural and administrative matters appropriate to its work;

c. May recommend that specific charges be returned;

d. Should recommend that a grand jury not indict if the prosecutor believes that the evidence presented does not warrant an indictment under governing law, and he or she should encourage members of the grand jury to consider the fact that sufficient evidence must exist to enable the prosecutor to meet the state's burden of proof at trial;

e. Should take all necessary steps to preserve the secrecy of the grand jury proceedings.

4-8.2 Evidence Before the Grand Jury

Unless otherwise required by the law or applicable rules of ethical conduct of the jurisdiction, the following should apply to evidence presented to the grand jury:

a. A prosecutor should present to the grand jury any credible evidence or information of actual innocence or other credible evidence that a prosecutor reasonably believes tends to negate guilt, as required by law and applicable rules of ethical conduct;

b. A prosecutor should not present evidence to the grand jury that the prosecutor knows was obtained illegally by law enforcement;

c. In the absence of a valid waiver, a prosecutor should not seek information from a witness that the prosecutor knows or believes is covered by a valid claim of attorney-client privilege;

d. A prosecutor should not take any action that could improperly influence the testimony of a grand jury witness;

e. If the prosecutor is convinced in advance of a grand jury appearance that any witness will invoke his or her Fifth Amendment privilege against self incrimination rather than provide any relevant information, the prosecutor should not present the witness to the grand jury unless the prosecutor plans to challenge the assertion of the privilege or to seek a grant of immunity. The grand jury may be informed of the reason the witness will not appear;

f. The prosecutor should inform the grand jury that it has the right to hear in person any available witness or subpoena pertinent records;

g. A prosecutor should not present evidence to the grand jury that the prosecutor knows to be false; and

h. A prosecutor should not knowingly make a false statement of fact or law to the grand jury.

4-8.3 Impermissible Conduct
A prosecutor should take no action and should make no statements that have the potential to improperly undermine the grand jury's independence.

4-8.4 Hearsay Evidence
The prosecutor may present reliable hearsay evidence to a grand jury in accordance with applicable law or court rule. However, when hearsay evidence is presented, the grand jury should be informed that it is hearsay evidence.

4-8.5 Statements of Record
In jurisdictions where grand jury proceedings are recorded, a prosecutor's advice, recommendations, and other communications with the grand jurors should be of record except as otherwise provided by law.

Commentary

The standard outlines what action a prosecutor may be permitted without compromising the independence of the grand jury. Given the need to respect the independence of the grand jury, these standards impose a duty upon the prosecutor to conduct himself or herself with the same candor as is required before a court.

9. Discovery

4-9.1 Prosecutorial Responsibility
A prosecutor should, at all times, carry out his or her discovery obligations in good faith and in a manner that furthers the goals of discovery, namely, to minimize surprise, afford the opportunity for effective cross-examination, expedite trials, and meet the requirements of due process. To further these objectives, the prosecutor should pursue the discovery of material information, and fully and promptly comply with lawful discovery requests from defense counsel.

4-9.2 Continuing Duty
If at any point in the pretrial or trial proceedings the prosecutor discovers additional witnesses, information, or other material previously requested or ordered which is subject to disclosure or inspection, the prosecutor should promptly notify defense counsel and provide the required information.

4-9.3 Access to Evidence Not to Be Impeded
Unless permitted by law or court order, a prosecutor should not impede opposing counsel's investigation or preparation of the case.

4-9.4 Deception as to Identity
Except as permitted by law or court order, a prosecutor should not deceive the defendant or a witness as to his or her identity or affiliation.

4-9.5 Redacting Evidence
When portions of certain materials are discoverable and other portions are not, a prosecutor should make good faith efforts to redact the non-discoverable portions in a way that does not cause confusion or prejudice the accused.

4-9.6 Reciprocal Discovery
A prosecutor should take steps to ensure that the defense complies with any obligation to provide discovery to the prosecution.

Commentary

Rules of Discovery vary significantly from jurisdiction to jurisdiction, including differences in interpretation of the legal requirements by various state and federal prosecutors. Therefore these standards set out to discuss fairness and responsibility without direct reference to specific interpretations of the laws or rules of the various jurisdictions.

While it is well established that any doubt about whether something is subject to disclosure should be resolved in favor of the defendant, and that disclosure of material exculpatory and impeachment evidence is required, further disclosures may be required by statute, case law, and rules of ethical conduct in some jurisdictions.

Consistent with the duty to disclose imposed by the Constitution, other laws, and rules of ethical conduct, if information becomes known to the prosecutor after initial disclosures have been made, that information should be turned over promptly.

Caution in discovery is required in a few areas. First, the prosecutor should educate and inform law enforcement agencies in his or her jurisdiction that the prosecutor, not the law enforcement officer or agency, is the arbiter of what information is disclosed to the defense. The law enforcement community should be encouraged to provide all information in its possession to the prosecutor so that he or she can make a disclosure decision.

Second, the prosecutor's relationship with defense counsel or his or her opinion regarding the defendant is not a factor in the discovery process.

Third, while work product of a prosecutor is typically exempt from disclosure, care must be taken in assigning the "work product" label.

Fourth, when a question regarding the necessity for disclosure is not resolved amicably among the parties, consideration should be given to obtaining guidance from the court.

10. Case Scheduling and Priority

4-10.1 Prosecutorial Responsibility

A prosecutor should not seek or cause delays because of a lack of diligent preparation, nor should the prosecutor seek or cause delays for the purpose of disadvantaging the defendant or his or her counsel.

4-10.2 Factors to Consider in Setting Priorities

In setting case priority, the prosecutor should consider the following factors:

a. Criminal cases should normally be given priority over civil cases;
b. Whether the defendant is in pre-trial custody;
c. Whether the defendant represents a significant threat of violence to others;
d. Whether the victim is a child or family member of the defendant;
e. Whether the defendant is a repeat offender;
f. Whether the defendant is charged with a heinous crime;
g. Whether the defendant is a public official;
h. The age of the case;
i. The availability of witnesses or other evidence;
j. Any significant problems or interests of particular concern to the community;
k. The need for and availability of scientific testing of evidence;
l. The age, health and circumstances of victims and witnesses.

4-10.3 Trial Scheduling

A prosecutor shall exercise due diligence in preparing for trial and not cause or accede to any unreasonable delay. Some factors to be considered in deciding whether or not a delay is reasonable are:

a. Whether the case is criminal or civil;
b. Whether the defendant is in pre-trial custody;
c. Whether the defendant constitutes a significant threat of violence to others;
d. Whether the victim is a child or a family member of the defendant;
e. The need for and availability of scientific testing of evidence;
f. The age, health and circumstances of the victims and witnesses;
g. Whether the defendant is a repeat offender;
h. The seriousness of the crime(s);
i. Whether the defendant is a public official;
j. The age of the case;
k. The availability of witnesses; and
l. The existence of any other significant factor that requires or justifies a delay at the request of either party.

Commentary

In the pursuit of his or her duty to seek justice, the prosecutor needs to be mindful of the expression, “justice delayed is justice denied.” From the view of society, delays in disposition of violation of criminal laws create uncertainty regarding the reliability and efficiency of the criminal justice system. Victims and families of victims are left without

a necessary ingredient for closure. Defendants are kept in a state of limbo about their future. In short, delay does not serve anyone's best interests.

With that being said, the reality is that due to case loads and the necessity for complete investigations by both the prosecution and defense, case disposition often takes longer than those involved would like. These standards set forth guidelines for keeping delay as short as reasonably possible.

11. Juvenile Justice

4-11.1 Prosecutorial Responsibility

A prosecutor should appear at all hearings concerning a juvenile accused of an act that would constitute a crime if he or she were an adult. The primary duty of the prosecutor is to seek justice while fully and faithfully representing the interests of the state. While the safety and welfare of the community, including the victim, is their primary concern, prosecutors should consider the special interests and needs of the juvenile to the extent they can do so without unduly compromising their primary concern. Formal charging documents for all cases referred to juvenile or adult court should be prepared or reviewed by a prosecutor.

4-11.2 Personnel and Resources

The prosecutor's office should devote specific personnel and resources to fulfill its responsibilities with respect to juvenile delinquency proceedings, and all prosecutors' offices should have an identified juvenile unit or attorney responsible for representing the state in juvenile matters.

4-11.3 Qualification of Prosecutors in Juvenile Court

Specialized training and experience should be required for prosecutors assigned to juvenile delinquency cases. Chief prosecutors should select prosecutors for juvenile court on the basis of their skill and competence, including knowledge of juvenile law, interest in children and youth, education, and experience. Entry-level attorneys in the juvenile unit should be as qualified as any entry-level attorney, and receive special training regarding juvenile matters.

4-11.4 Screening Juvenile Cases

The prosecutor or a designee should review all cases for which some action is required to decide whether a case will be transferred to adult court, filed as a formal petition with the juvenile court, or diverted. If the facts are not legally sufficient to warrant the current action, the matter should be terminated or returned to the referral source pending further investigation or receipt of additional reports.

4-11.5 Transfer or Certification to Adult Court

When making a discretionary decision whether to transfer a juvenile to adult court, a prosecutor should consider, among other factors, whether the gravity of the current alleged offense or the record of previous delinquent behavior reasonably indicates that the treatment services and dispositional alternatives available in the juvenile court are:

a. Adequate to protect the safety and welfare of the community; and
b. Adequate for dealing with the juvenile's delinquent behavior.

4-11.6 Criteria for Deciding Formal Adjudication Versus Diversion

The prosecutor or a designee must further review legally sufficient cases not appropriate for transfer to adult court to determine whether they should be filed formally with the juvenile court or diverted for treatment, services, or probation. In determining whether to file formally or, where allowed by law, divert, the prosecutor or designated case reviewer should consider the following factors in deciding what disposition best serves the interests of the community and the juvenile:

a. The seriousness of the alleged offense, including whether the conduct involved violence or bodily injury to others;
b. The role of the juvenile in that offense;
c. The nature and number of previous cases presented by law enforcement or others against the juvenile, and the disposition of those cases;
d. The juvenile's age, maturity, and mental status;
e. The existence of appropriate treatment or services available through the juvenile court or through diversion;
f. Whether the juvenile admits guilt or involvement in the offense charged, and whether he or she accepts responsibility for the conduct;
g. The dangerousness or threat posed by the juvenile to the person or property of others;
h. The decision made with respect to similarly-situated juveniles;
i. The provision of financial restitution to victims; and
j. Recommendations of the referring agency, victim, law enforcement and advocates for the juvenile.

4-11.7 Diversion

The prosecutor should be responsible for recommending which cases should be diverted from formal adjudication. Treatment, restitution, or public service programs developed in his or her office may be utilized, or the case can be referred to existing probation or community service agencies. No case should be diverted unless the prosecutor reasonably believes that he or she could substantiate the criminal or delinquency charge against the juvenile by admissible evidence at a trial.

4-11.8 Disposition Agreements

The decision to enter into a disposition agreement should be governed by both the interests of the state and those of the juvenile, although the primary concern of the prosecutor should be protection of the public interest as determined in the exercise of traditional prosecutorial discretion.

4-11.9 Prosecutor's Role in Adjudication

At the adjudicatory hearing, the prosecutor should assume the traditional adversarial role of a prosecutor.

4-11.10 Dispositions
The prosecutor should take an active role in the dispositional hearing and make a recommendation to the court after reviewing reports prepared by prosecutorial staff, the probation department, and others. In making a recommendation, the prosecutor should consider those dispositions that most closely meet the interests and needs of the juvenile offender, provided that they are consistent with community safety and welfare.

4-11.11 Victim Impact
At the dispositional hearing, the prosecutor should make the court aware of the impact of the juvenile's conduct on the victim and the community.

4-11.12 Evaluation of Programs
The prosecutor should periodically review diversion and dispositional programs, both within and outside the prosecutor's office, to ensure that they provide appropriate supervision, treatment, restitution requirements, or services for the juvenile. The prosecutor should maintain a working relationship with all outside agencies providing diversion and dispositional services to ensure that the prosecutor's decisions are consistent and appropriate. If the prosecutor discovers that a juvenile or class of juveniles is not receiving the care and treatment envisioned in disposition or diversion decisions, the prosecutor should inform the court of this fact.

4-11.13 Duty to Report
If the prosecutor becomes aware that the sanctions imposed by the court are not being administered by an agency to which the court assigned the juvenile or that the manner in which the sanctions are being carried out is inappropriate, the prosecutor should take all reasonable steps to ensure agency supervisors are informed and appropriate measures are taken. If the situation is not remedied, it is the duty of the prosecutor to report this concern to the agency and, if necessary, to the dispositional court.

Commentary

The prosecutor is charged to seek justice just as he does in adult prosecutions. The prosecutor in the juvenile system, however, is further charged to give special attention to the interest and needs of the accused juvenile to the extent that it does not conflict with the duty to fully and faithfully represent the interests of the state. This call for special attention reflects the philosophy that the safety and welfare of the community is enhanced when juveniles, through counseling, restitution, or more extensive rehabilitative efforts and sanctions, are dissuaded from further criminal activity.

To efficiently carry out his or her duties, it is desirable that the prosecutor appear at all stages of the proceedings. In so doing, the prosecutor maintains a focus on the safety and well-being of the community at each decision-making level. Further, because the juvenile system is increasingly adversarial, the prosecutor fulfills an important role in addressing the arguments of other juvenile and social service advocates. The prosecutor's presence guarantees the opportunity to exercise continuous monitoring at each stage and broad discretion to ensure fair and just results.

The standards further emphasize professionalism in juvenile court work. It provides that attorneys in juvenile court should be experienced, competent, and interested. Because of the increased adversarial nature of juvenile proceedings, the prosecutor should be responsible for screening to determine whether there is sufficient evidence to believe that a crime was committed and that the juvenile committed it. A case should only be further processed if it is legally sufficient. "Legally sufficient" means a case in which the prosecutor believes that he can reasonably substantiate the charges against the juvenile by admissible evidence at trial. These determinations should be made by the prosecutor.

After a determination of legal sufficiency, the next decision to be made is whether the case should be transferred to the adult court, diverted informally, or referred to the juvenile court. This decision has both legal and social implications. It should be made either by an experienced prosecutor who has an interest in juveniles or by other case screeners under the guidance of a prosecutor. The prosecutor, in exercising this function, should try to accommodate the needs of the juvenile while upholding the safety and welfare of the community. As in situations involving adults, these decisions should be made without unreasonable delay. Prompt determinations generally promote confidence in the system and fairness to the victim, the community, and the juvenile. Further, prompt decisions are more likely to result in rehabilitation of the juvenile by providing more immediate attention.

In many jurisdictions, transfer of juveniles to adult court is controlled by statute or practice. This standard simply provides guidance for prosecutors in using discretion to the extent that they participate in this process.

Diversion of cases in juvenile court from the formal charging, adjudication and disposition procedure has become common in less serious offenses. The impetus for such a procedure is that because most juveniles are in the process of developing their behavior and values, there is a unique opportunity presented at the juvenile court level to dissuade them from criminal activity. The prosecutor should seriously consider involvement in this process. For all the pessimism that abounds in the system, it is nevertheless undoubtedly true that many first-time or minor offenders will never enter the justice system again if their cases are handled properly. Treatment, restitution, or service programs often are viable alternatives to court processing. These standards describe the opportunity for prosecutors to be involved either in diversion programs based in their offices or through referral to existing probation or community service agencies.

These standards reflect the consensus that plea agreements are appropriate in a juvenile court to the extent that they are appropriate in the adult court. The appropriateness and extent to which plea agreements are used are matters of office policy to be determined by the chief prosecutor. The prosecutor should always take steps to ensure that the resulting disposition is in the interest of the public with due regard being given the needs of the juvenile.

A plea agreement should only be entered into when there is sufficient admissible evidence to demonstrate a prima facie case that the juvenile has committed the acts alleged in the petition to which he is pleading guilty.

In those matters that are not diverted or disposed of without trial the prosecutor should assume the traditional prosecution role in the adversarial process with respect to determination of guilt or innocence. This standard, therefore, suggests that the same rules of evidence employed in adult criminal cases in the jurisdiction should be applied to juvenile court cases. Prosecutors should strive in the juvenile court setting to maintain a distinction between a factual determination of innocence or guilt and a determination of disposition. This approach promotes fairness to both the victim and the community and enhances the integrity of juvenile court findings.

Prosecutors should offer dispositional appropriate alternatives to the court. When a juvenile presents a danger to the safety and welfare of the community, the prosecutor should voice this concern. On the other hand, when appropriate, the prosecutor may offer a dispositional recommendation that is less restrictive than what the juvenile court judge may contemplate imposing.

This standard also suggests that the prosecutor should take a leadership role in the community in assuring that a wide range of appropriate dispositional alternatives are available for youth who are adjudicated delinquents. In addition, the prosecutor is encouraged to follow up on cases to ensure that dispositions are upheld, court ordered sanctions are administered, and treatment is provided.

Part V. Propriety of Plea Negotiation and Plea Agreements

1. General

5-1.1 Propriety
The prosecutor is under no obligation to enter into a plea agreement that has the effect of disposing of criminal charges in lieu of trial. However, where it appears that it is in the public interest, the prosecution may engage in negotiations for the purpose of reaching an appropriate plea agreement. When agreement is reached, it should be reduced to writing, if practicable.

5-1.2 Types of Plea Negotiations
The prosecution, in reaching a plea agreement, may agree to a disposition of the case that includes, but is not limited to, one or more of the following commitments from the prosecution in exchange for a plea of guilty:

a. To make certain recommendations concerning the sentence which may be imposed by the court if the defendant enters a plea of guilty or *nolo contendere*;
b. To agree not to oppose sentencing requests made by the defense; or
c. To dismiss, seek dismissal, or not oppose dismissal of an offense or offenses charged if the defendant enters a plea of guilty or *nolo contendere* to another offense or other offenses supported by the defendant's conduct;
d. To dismiss, seek dismissal, or not oppose dismissal of the offense charged, or not to file potential charges, if the accused agrees not to pursue potential civil causes of action against the victim, witnesses, law enforcement agencies or personnel, or the prosecutor or his staff or agents;
e. To agree to forego an ongoing investigation into other criminal activity of the defendant if the defendant enters a plea of guilty or *nolo contendere* to a presently charged offense or offenses; and/or
f. To agree that the defendant and prosecution will jointly recommend a particular sentence to the court and that the prosecution will support the defendant's motion to withdraw his plea of guilty if the court exceeds this agreed upon sentencing recommendation.

5-1.3 Conditional Offer
Prior to reaching a plea agreement and subject to the standards herein and the law of the jurisdiction, the prosecutor may set conditions on a plea agreement offer, such as:

a. The defendant's acceptance of the offer within a specified time period that would obviate the need for extensive trial preparation;
b. The defendant's waiver of certain pre-trial rights, such as the right to discovery;
c. The defendant's waiver of certain pre-trial motions such as a motion to suppress or dismiss; or
d. The defendant's waiver of certain trial or post-trial rights, such as the right to pursue an appeal.

5-1.4 Uniform Plea Opportunities
Similarly situated defendants should be afforded substantially equal plea agreement opportunities. In considering whether to offer a plea agreement to a defendant, the prosecutor should not take into account the defendant's race, religion, sex, sexual orientation, national origin, or political association or belief, unless legally relevant to the criminal conduct charged.

2. Availability for Plea Negotiation

5-2.1 Willingness to Negotiate
The prosecutor should make known a policy of willingness to consult with the defense concerning disposition of charges by plea and should set aside times and places for plea negotiations, in addition to pre-trial hearings.

5-2.2 Presence of Defense Counsel
The prosecutor should not negotiate a plea agreement directly with a defendant who is represented by counsel in the matter, unless defense counsel is either present or has given his or her express permission for the prosecutor to negotiate directly with the defendant.

3. Factors for Determining Availability and Acceptance of Guilty Plea

5-3.1 Factors to Consider
Prior to negotiating a plea agreement, the prosecution should consider the following factors:

a. The nature of the offense(s);
b. The degree of the offense(s) charged;
c. Any possible mitigating circumstances;
d. The age, background, and criminal history of the defendant;
e. The expressed remorse or contrition of the defendant, and his or her willingness to accept responsibility for the crime;
f. Sufficiency of admissible evidence to support a verdict;
g. Undue hardship caused to the defendant;
h. Possible deterrent value of trial;
i. Aid to other prosecution goals through non-prosecution;
j. A history of non-enforcement of the statute violated;
k. The potential effect of legal rulings to be made in the case;
l. The probable sentence if the defendant is convicted;
m. Society's interest in having the case tried in a public forum;
n. The defendant's willingness to cooperate in the investigation and prosecution of others;
o. The likelihood of prosecution in another jurisdiction;
p. The availability of civil avenues of relief for the victim, or restitution through criminal proceedings;
q. The willingness of the defendant to waive his or her right to appeal;
r. The willingness of the defendant to waive (release) his or her right to pursue potential civil causes of action arising from his or her arrest, against the victim, witnesses, law enforcement agencies or personnel, or the prosecutor or his or her staff or agents;
s. With respect to witnesses, the prosecution should consider the following:
    1. The availability and willingness of witnesses to testify;
    2. Any physical or mental impairment of witnesses;
    3. The certainty of their identification of the defendant;
    4. The credibility of the witness;
    5. The witness's relationship with the defendant;
    6. Any possible improper motive of the witness;
    7. The age of the witness;
    8. Any undue hardship to the witness caused by testifying.
t. With respect to victims, the prosecution should consider those factors identified above and the following:

1. The existence and extent of physical injury and emotional trauma suffered by the victim;
2. Economic loss suffered by the victim;
3. Any undue hardship to the victim caused by testifying.

5-3.2 Innocent Defendants
The prosecutor should always be vigilant for the case where the accused may be innocent of the offense charged. The prosecutor must satisfy himself or herself that there is a sound factual basis for all crimes to which the defendant will plead guilty under any proposed plea agreement.

5-3.3 Candor
The prosecutor should not knowingly make any false or misleading statements of law or fact to the defense during plea negotiations.

4. Fulfillment of Plea Agreements

5-4.1 Limits of Authority
The prosecutor should not make any guarantee concerning the sentence that will be imposed by the court or concerning a suspension of sentence. The prosecutor may advise the defense of the position the prosecutor will take concerning disposition of the case, including a sentence that the prosecutor is prepared to recommend to the court based upon present knowledge of the facts of the case and the offender, including his or her criminal history.

5-4.2 Implication of Authority
The prosecutor should not make any promise or commitment assuring a defendant that the court will impose a specific sentence or disposition in the case. The prosecutor should avoid implying a greater power to influence the disposition of a case than the prosecutor actually possesses.

5-4.3 Inability to Fulfill Agreement
The prosecutor should not fail to comply with a plea agreement that has been accepted and acted upon by the defendant to his or her detriment, unless the defendant fails to comply with any of his or her obligations under the same agreement or unless the prosecutor is authorized to do so by law. If the prosecutor is unable to fulfill an understanding previously agreed upon in plea negotiations, the prosecutor should give prompt notice to the defendant and cooperate in securing leave of court for the defendant to withdraw any plea and take such other steps as would be appropriate to restore the defendant and the prosecution to the position they were in before the understanding was reached or plea made.

5-4.4 Rights of Others to Address the Court
The prosecutor should not commit, as part of any plea agreement, to limit or curtail the legal right of any victim or other person authorized by law to address the court at the time

of plea or sentencing. The prosecutor should honor the legal rights of victims and other persons authorized by law to address the court.

5-4.5 Notification of Media
Prior to the entry of a plea of guilty by the defendant in open court, the prosecutor should not make any extrajudicial comments to the media about either the possibility or existence of a plea agreement with the defendant, or of the nature or contents of any such agreement.

5. Record of Plea Agreement

5-5.1 Record of Agreement
Whenever the disposition of a charged criminal case is the result of a plea agreement, the prosecutor should make the existence and terms of the agreement part of the record. The prosecutor should also maintain the reasons for the disposition in the case file.

5-5.2 Reasons for *Nolle Prosequi*
Whenever felony criminal charges are dismissed by way of a *nolle prosequi* or its equivalent, the prosecutor should make a record of the reasons for his or her action.

Commentary

In the prosecutor's quest for justice, it may become necessary and desirable to dispose of criminal cases without going to trial. There are few prosecutors who have the resources that would be required to try every case. Given that reality, most prosecutors actively engage in negotiations to reach appropriate dispositions in most cases.

Like other agreements between parties, most plea negotiations require some action by both the prosecutor and the defendant. Also, like most other agreements, plea negotiations should be conducted in an honest and forthright manner in which the prosecution is guided by representing the best interest of society while being mindful of duties of candor and to avoid overreaching in dealing with the defendant. The prosecutor should be careful not to agree to an action that he or she cannot perform. Likewise, the defendant should be aware that his or her failure to perform his or her part of the agreement might well result in the prosecutor's withdrawal from the agreement.

In the event that the prosecutor is for some reason unable to fulfill a portion of the agreement, he or she should do everything possible to help restore the defendant and the prosecution to their respective positions prior to the agreement.

Further, like in other agreements between adverse parties, it is best that the deal be in writing and placed on the record in the plea hearing.

A concern that is not common to other agreements is the possibility that an innocent defendant would be interested in a negotiated guilty plea in order to avoid exposure to a

greater sentence. A prosecutor who considers all of the factors in these standards is in the best position to avoid such a miscarriage of justice.

Part VI: Trial

1. Candor with the Court
2. Selection of Jurors
3. Relations with Jury
4. Opening Statements
5. Presentation of Evidence
6. Examination of Witnesses
7. Objections and Motions
8. Arguments to the Jury

1. Candor With The Court

6-1.1 False Statement
A prosecutor shall not knowingly make a false statement of fact or law to a court. If a prosecutor learns that a previous statement of material fact or law made to the court by the prosecutor is incorrect, the prosecutor shall correct such misstatement in a timely manner.

6-1.2 Legal Authority
A prosecutor shall inform the court of legal authority in the controlling jurisdiction known to the prosecutor to be directly adverse to his or her position.

6-1.3 False Evidence
A prosecutor shall not offer evidence that the prosecutor knows to be false. If a prosecutor learns that material evidence previously presented by the prosecutor is false, the prosecutor shall take reasonable remedial measures to prevent prejudice caused by the false evidence.

6-1.4 Ex Parte Proceeding
A prosecutor, in an ex parte proceeding authorized by law, shall inform the court of all material facts known to the prosecutor which he or she reasonably believes are necessary to an informed decision by the court.

Commentary

In order to make just, informed decisions, the court must have the most accurate information available regarding the facts and the law. A prosecutor, in his or her role as a minister of justice, must provide information to the court in an honest and forthright manner.

2. Selection of Jurors

6-2.1 Investigation

A prosecutor may conduct a pre-voir dire investigation of any prospective juror, but any such investigation shall not harass or intimidate prospective jurors. Prosecutors may conduct criminal history record checks of prospective jurors and, to the extent required by law or court order, share any conviction information with the court or defense for use in conducting the voir dire examination.

6-2.2 Voir dire Examination

A prosecutor should not (a) conduct voir dire examination in such a manner as to cause any prospective juror unnecessary embarrassment; or (b) intentionally use the voir dire process to present information that he or she knows will not be admissible at trial.

6-2.3 Peremptory Challenges

A prosecutor should not exercise a peremptory challenge in an unconstitutional manner based on group membership or in a manner that is otherwise prohibited by law.

6-2.4 Duration

A prosecutor should conduct selection of the jury without unnecessary delay.

6-2.5 Identity of Jurors

In cases where probable cause exists to believe that jurors may be subjected to threats of physical or emotional harm, the prosecutor may request the trial court to keep their identities from the defendant or the public in general.

Commentary

The primary purpose of the jury selection process is to empanel a jury that is representative of the community and does not have personal interests or prejudices for or against a party to the extent that they cannot render a verdict based upon the law and the facts. The standards set forth principles to be followed by prosecutors in conducting their part of the selection process.

In the permitted voir dire examination, consideration might be given to the court approved use of a questionnaire to gather basic information and serve as a time saving device.

In exercising peremptory challenges, the prosecutor should be mindful that as a representative of all of the people of his or her jurisdiction, it is important that none of those people be obstructed from serving on a jury because of their status as a member of a particular group.

The standard recognizes that in recent years jurors have sometimes been subjected to threats of violence. It recognizes the need to protect such jurors and adopts a probable

cause test for cases in which the prosecution may request the court to keep their identity from the defendant and the public.

3. Relations with Jury

6-3.1 Direct Communication

A prosecutor should not intentionally speak to or communicate with any juror or prospective juror prior to or during the trial of a case, except while in the courtroom with all parties and the judge present and on the record.

6-3.2 After Discharge

After the jury is discharged, the prosecutor may, unless otherwise prohibited by law, communicate with the jury as a whole or with any members of the jury to discuss the verdict and the evidence. In jurisdictions where permitted, the prosecutor may ask the court to inform jurors that it is not improper to discuss the case with the lawyers in the case after verdict, if the juror decides to do so. The prosecutor should not criticize the verdict, harass any juror, or intentionally seek to influence future jury service during such communication. A prosecutor should cease communication upon a juror's request.

Commentary

The prosecutor has a large responsibility in seeing that the criminal justice system is respected and improved. In that regard he or she must be careful to avoid any appearance of taking unfair advantage of a juror or jury. In post trial contact, the prosecutor should not criticize the verdict or jurors' actions, as such might be seen as an attempt to influence the behavior of a juror or a person with whom the juror confides in any future instance of jury service.

4. Opening Statements

6-4.1 Purpose

When permitted by law, a prosecutor may give an opening statement for the purpose of explaining the legal and factual issues, the evidence, and the procedures of the particular trial.

6-4.2 Limits

A prosecutor should not allude to evidence unless he or she believes, in good faith, that such evidence will be available and admitted into evidence at the trial.

Commentary

The prosecutor should be guided by the principle that the opening statement should be confined to assertions of fact that he or she intends or, in good faith, expects to prove. Although it may be acceptable for the prosecuting attorney to state facts that are expected to be proved, such assertions should be founded upon the prosecutor's good faith and reasonable basis for believing that such evidence will be tendered and admitted into

evidence. The prosecutor should be zealous in maintaining the propriety and fairness which should characterize his or her conduct as an officer of the court whose duty it is to competently represent the citizenry of the state in seeking justice. So long as the prosecutor's remarks are guided by good faith and a reasonable belief that such assertions will ultimately be supported by the admissible evidence, the prosecution will have fulfilled the basic requirements of an opening statement.

5. Presentation of Evidence

6-5.1 Admissibility
A prosecutor should not mention or display, in the presence of the jury, any testimony or exhibit which the prosecutor does not have a good faith belief will be admitted into evidence.

6-5.2 Questionable Admissibility
A prosecutor, when anticipating the use of testimony or exhibits of questionable admissibility, should endeavor to obtain a ruling on the admissibility of the testimony or exhibit prior to mentioning or displaying the same before the jury.

Commentary

Consistent with the concepts of fairness that should be embraced by the prosecutor, he or she should not expose the jury to evidence of questionable admissibility without first seeking a ruling from the court.

6. Examination of Witnesses

6-6.1 Fair Examination
A prosecutor should conduct the examination of all witnesses fairly and with due regard for their reasonable privacy.

6-6.2 Improper Questioning
A prosecutor should not ask a question that implies the existence of a factual predicate that the prosecutor either knows to be untrue or has no reasonable objective basis for believing is true.

6-6.3 Purpose of Cross-Examination
A prosecutor should use cross-examination as a good faith quest for the ascertainment of the truth.

6-6.4 Impeachment and Credibility
A prosecutor should not misuse the power of cross-examination or impeachment to ridicule, discredit, undermine, or hold a fact witness up to contempt, if the prosecutor knows the witness is testifying truthfully.

Commentary

If the criminal justice system is to retain credibility with the public, it must furnish a tribunal into which people can come to give information without the fear of being harassed or having their privacy unduly invaded. Our system requires that all witnesses, those brought in by both the prosecution and defense, be treated fairly. To ask a question that implies the existence of a factual predicate that is not true or for which the prosecutor has no reasonable objective basis for believing, is not fair and therefore not proper. Without such limitations, the overzealous prosecutor could use the examination of a witness to imply the existence of whatever evidence might be needed in the hope that the jury would not consider too closely the fact that it was never really introduced.

Because cross-examination is to be used as a good faith quest for the truth, a prosecutor who knows the witness is testifying truthfully should not attempt to ridicule, discredit, or undermine said witness. That does not mean that the prosecutor cannot cross-examine. The use of proactive techniques can elicit other information that is useful in establishing the prosecution's theory of the case.

In the end, if a prosecutor keeps in mind that his or her responsibility is to seek justice for all of the people of the community, then following the directives of these standards is simply a matter of common sense.

7. Objections and Motions

6-7.1 Procedure

When making an objection during the course of a trial, a prosecutor should formally state the objection in the presence of the jury along with a short and plain statement of the grounds for the objection. Unless otherwise directed by the court, further argument should usually be made outside the hearing of the jury.

6-7.2 Motions in Limine

A prosecutor should attempt to resolve issues relating to the admissibility of evidence prior to the swearing of the jury or, in non-jury adjudications, prior to the swearing of the first witness. Where permitted, this may be accomplished by the filing of and a hearing on a Motion in Limine. A prosecutor should also request the court to similarly resolve questions as to the admissibility of any defense evidence.

Commentary

The admissibility of evidence, exhibits, demonstrations, or argument is left to the court for determination. Prosecutors should be sufficiently acquainted with the rules of evidence so they are able to predict the admissibility of evidence to a high degree of probability.

When the prosecutor has a good faith belief that the evidence, exhibit, demonstration, or argument being offered is not admissible, he or she should object and give a short

statement of the basis for the objection. Since most, if not all, objections involve questions of law to be ruled upon by the trial court, the legal arguments are of little or no concern to the jury. Such argument may also refer to factual matters that have not, up to that point in the proceedings, been brought out by sworn testimony and which, additionally, may not be brought out and/or may be inadmissible. This should not, however, preclude the trial court from giving the jury an explanation of the basis for the objection and/or its ruling sufficient to dispel the questions that could normally arise in the minds of the jurors, so that no unfavorable inferences will be drawn by them reflecting upon a party.

In order to conserve the time of the jury, witnesses and other interested parties, the prosecutor should attempt to have questions regarding the admissibility of evidence resolved prior to trial. In addition to the savings of court time, the pre-trial rulings will also allow for more efficient pre-trial preparation and, where permitted, the appeal of adverse rulings.

8. Arguments to the Jury

6-8.1 Characterizations
In closing argument, a prosecutor should be fair and accurate in the discussion of the law, the facts, and the reasonable inferences that may be drawn from the facts.

6-8.2 Personal Opinion
In closing argument, a prosecutor should not express personal opinion regarding the justness of the cause, the credibility of a witness or the guilt of the accused, assert personal knowledge of facts in issue, or allude to any matter not admitted into evidence during the trial.

Commentary

Faced with closing argument, the final opportunity to espouse the people's theory of the case, prosecutors need to be keenly aware of the limitations on the methods available to them for that use. Closing arguments have been the ticket back to the trial court from many appellate courts that have uttered the words "prosecutorial misconduct" in relation to words uttered by the prosecutor.

These standards set forth the basic rules for guidance in constructing and delivering a closing argument. Prosecutors should become intimately familiar with his or her jurisdiction's ethical rules and appellate opinions on proper closings.

Part VII: Sentencing

1. Sentencing
2. Probation
3. Community Based Programs
4. Parole/Early Release

1. Sentencing

7-1.1 Fair Sentencing

To the extent that the prosecutor becomes involved in the sentencing process, he or she should seek to assure that a fair and fully informed judgment is made and that unfair sentences and unfair sentence disparities are avoided.

7-1.2 Sentencing Input

The prosecutor may take advantage of the opportunity to address the sentencing body, whether it is the jury or the court, and may offer a sentencing recommendation where appropriate. The prosecution should also take steps to see that the victim is not denied his or her rights to address the sentencing body.

7-1.3 Mitigating Evidence

The prosecutor should disclose to the defense prior to sentencing any known evidence that would mitigate the sentence to be imposed. This obligation to disclose does not carry with it additional obligations to investigate for mitigating evidence beyond what is otherwise required by law.

7-1.4 Pre-Sentencing Reports

The prosecutor should take steps to ensure that sentencing is based upon complete and accurate information drawn from the pre-sentence report and any other information the prosecution possesses.

a. The prosecutor should disclose to the court or probation officer any information in its files relevant to the sentencing process.

b. Upon noticing any material information within a pre-sentence report which conflicts with information known to the prosecutor, it is the duty of the prosecutor to notify the appropriate parties of such conflicting information.

Commentary

Participation in the sentencing process provides the prosecutor the opportunity to continue his or her quest for justice. The prosecutor should be the person most familiar with the defendant, the facts surrounding the commission of the crime, and the procedures that brought the defendant to the sentencing stage. It is also the prosecutor who, from prior experience, will be aware of the sentences received by persons in similar situations so as to steer the court away from unfair sentences and unfair sentence disparities.

Sentencing participation also provides the prosecutor with an opportunity to assure that the victims of crimes are allowed to voice their thoughts and opinions regarding the sentence to be imposed. Sentencing further provides the means for the prosecutor to make sure the defendant is treated fairly by making mitigating evidence in his or her possession available to the defense and to ensure that the information provided to the court in the form of a pre-sentence investigation report is accurate.

2. Probation

7-2.1 Role in Pre-Sentence Report
The prosecutor should take an active role in the development and submission of the pre-sentence report, including the following:

a. The office of the prosecutor should be available as a source of information to the probation department concerning a defendant's background when developing pre-sentence reports;
b. The office of the prosecutor should review pre-sentence reports prior to or upon submission of such reports to the court; and
c. Upon noticing any material information within a pre-sentence report which conflicts with information known to the prosecutor, it is the duty of the prosecutor to notify the appropriate parties of such conflicting information.

7-2.2 Prosecutor as a Resource
The office of the prosecutor should be available as a source of information for the probation department for offenders under supervision.

7-2.3 Notice
The office of the prosecutor should seek to be notified of and have the right to appear at probation revocation and termination hearings and be notified of the outcome of such proceedings within the jurisdiction.

3. Community-Based Programs

7-3.1 Knowledge of Programs
The prosecutor should be cognizant of and familiar with all community-based programs to which defendants may be sentenced or referred to as a condition of probation.

7-3.2 Prosecutor as a Resource
To the extent permitted by law, the prosecutor should be available as a source of information for community-based agencies that provide services to probationers.

Commentary

The prosecutor's relationship with the probation department must continue beyond the preparation of the pre-sentence report. If a defendant is placed under the supervision of the probation department or another community based program, the prosecutor, as a guardian of the public interest in seeing that the court's directives to the defendant are

followed, should share information and, where allowed, assist the probation office and other programs in bringing a non-complying person back before the court.

Part VIII: Post-Sentencing

1. Post-Sentencing

8-1.1 Cooperation of Trial and Appellate Counsel
To the extent the appellate prosecutor is not the trial prosecutor, the appellate prosecutor and trial prosecutor should cooperate with each other to ensure an adequate flow of information. When feasible, prior to confession of error, the appellate prosecutor should inform the trial prosecutor and obtain his or her input on any issue in question.

8-1.2 Duty of Prosecutor to Defend Conviction
Subject to Standards 8-1.4 and 8-1.8, the prosecutor should defend a legally-obtained conviction and a properly-assessed punishment. A prosecutor has the duty, consistent with the responsibility as a minister of justice, to require the convicted person to meet the applicable burden of proof to obtain relief on both appeal from or collateral attack of a conviction.

8-1.3 Prosecution Appeals
Subject to Standard 8-1.4, the prosecutor should appeal pre-trial and trial rulings when appropriate and when it is in the interests of justice to do so.

8-1.4 Argument on Appeal
The prosecutor shall not assert or contest an issue on appeal unless there is a basis in both law and fact for doing so. The basis should not be frivolous and may include good faith arguments for extension, modification or reversal of existing law.

8-1.5 Appeal Bonds
The prosecutor should defend against the efforts of convicted defendants to be released on appeal bond unless there is reason to believe that the conviction is no longer supported by the law or evidence or opposition to the bond would create a manifest injustice.

8-1.6 Collateral Review
The prosecutor shall not assert or contest an issue on collateral review unless there is a basis in law and fact for doing so. The basis should not be frivolous and may include good faith arguments for extension, modification or reversal of existing law.

8-1.7 Duty to Cooperate in Post-Conviction Discovery Proceedings
A prosecutor shall provide discovery to the defense attorney during post-conviction proceedings where (1) required to do so by law, court order or rule, (2) the evidence is constitutionally exculpatory, or (3) he or she reasonably believes that the convicted person's claim of actual innocence is supported by specific factual allegations which, if

true, would entitle the convicted person to relief under the legal standard applicable in the jurisdiction, and the evidence relates to that claim. A prosecutor may require a specific offer of proof to establish a claim of actual innocence before the prosecutor agrees to take any affirmative action in response to a post-conviction request for discovery.

8-1.8 Duty of Prosecutor in Cases of Actual Innocence

When the prosecutor is satisfied that a convicted person is actually innocent, the prosecutor should notify the appropriate court, unless the court authorizes a delay, in addition to the defense attorney or the defendant (if the defendant is not represented by counsel) and seek the release of the defendant if incarcerated. If the prosecutor becomes aware of material and credible evidence which leads him or her to reasonably believe a defendant may be innocent of a crime for which the defendant has been convicted, the prosecutor should disclose, within a reasonable period of time, as circumstances dictate, such evidence to the appropriate court and, unless the court authorizes a delay, to the defense attorney or to the defendant, if the defendant is not represented by counsel.

Commentary

Assuming that the prosecutor has been diligent in performing his or her duties in the quest for justice throughout the investigation, screening, charging, discovery, trial and sentencing, the continued quest for justice requires his or her continued best efforts in responding to the defendant's appeal or collateral attacks. Those best efforts require cooperation with trial counsel and examination of the record to determine whether any appeal on issues decided unfavorably to the prosecution should be addressed, where permitted.

As in all other dealing with the court, the prosecutor on appeal must base his or her arguments on the facts and the law. Because there is no longer a presumption of innocence, prosecutors should typically oppose an appeal bond unless there is an unusual circumstance that would indicate that a conviction is no longer supported by the law or the evidence.

In those extremely rare instances in which a prosecutor is presented with credible evidence that a convicted person may actually be innocent, these standards set forth his or her responsibilities that are consistent with the role of the prosecutor as a minister of justice. In fulfilling that role, the prosecutor must strike a balance between his or her responsibility to see that valid convictions are upheld and the duty to see that the innocent are protected from harm. Finding that balance will perhaps pose the greatest challenge a prosecutor will have to face, especially in a situation where the evidence, after being reasonably evaluated, indicates that a mistake has been made. In making the reasonable evaluation, the prosecutor must put aside concerns of personal embarrassment and pride, the possible embarrassment to law enforcement, and any other factors that would deter him or her from seeing that justice is accomplished.