

**DRAFT REPORT OF THE CITY OF
SPOKANE USE OF FORCE COMMISSION**

SUBMITTED FOR PUBLIC REVIEW AND COMMENT

December 20, 2012

I. INTRODUCTION

On March 18, 2006, Spokane Police Department (SPD) Officer Karl Thompson responded to a dispatch call of an attempted or actual robbery at an ATM near the Zip Trip convenience store at 1712 North Division Street. Arriving at the scene, Officer Thompson saw Otto Zehm entering the Zip Trip. Officer Thompson exited his car and followed Mr. Zehm into the store. Officer Thompson then rushed at Mr. Zehm and knocked him to the floor. Baton strikes, Taser™ charges and other forms of force were used by Officer Thompson and other SPD officers who responded to the scene to subdue Mr. Zehm. Less than two days later, Mr. Zehm died at Deaconess Medical Center. His death was ruled a homicide by the Spokane County Medical Examiner.

Officer Thompson was indicted by a federal grand jury on one count of violating Mr. Zehm's civil rights and one count of obstructing justice. On November 2, 2011, following a lengthy jury trial, Officer Thompson was convicted in the U.S. District Court for Eastern Washington on both counts. He was sentenced on November 15, 2012, to fifty-one months in federal prison.

On March 13, 2009, members of Mr. Zehm's family commenced a civil suit against the City of Spokane as a result of the actions at the Zip Trip and Mr. Zehm's death. On August 22, 2012, the City of Spokane and the Zehm family mediated and settled this civil action. Terms of the settlement included a \$1.67 million payment to the family and other commitments by the City, to include funds for Crisis Intervention training for Spokane Police officers, funds for implementing new policies regarding the use of force, and the creation of a permanent memorial to Mr. Zehm.

From Mr. Zehm's death to Officer Thompson's conviction and the settlement of the civil suit, the Spokane community has struggled to come to terms with what happened to Mr. Zehm and with the confines in which SPD officers use force in carrying out their duties. It is certainly the case that Mr. Zehm's death and its aftermath have shaken public trust in the police department and in those civilians tasked to oversee that department. It was against this background that the City of Spokane Use of Force Commission was established by Mayor David Condon on January 3, 2012.

While the Use of Force Commission would most likely not have come into existence but for the tragic events surrounding Otto Zehm's death, the Commission's task is broader than the unique circumstances of any specific case. The Commission has been charged to take an expansive view of the issue of the use of force by the Spokane Police Department. In doing so, as recounted in greater detail below, the Commission, with the assistance of legal counsel and expert consultants, has systematically and thoroughly examined SPD use of force policies, procedures, practices and customs, as well as explored the issues of civilian oversight and the role of the City's legal department in use of force cases. The totality of this work has involved numerous public meetings, private interviews, on-site visits, consultations with subject matter experts from around the country, and the review and analysis of a multitude of articles,

records, policies, cases, web pages, and reports. Throughout this work, notwithstanding that the body was not formed as the “Zehm Commission”, each member of the Commission has remained cognizant of the fact that a core purpose of our work is to help avoid future tragedies like what happened to Otto Zehm.

In presenting this report and the Commission’s recommendations, it is important to note at the outset that no one occurrence defines the Spokane Police Department, its members or its service to the citizens of Spokane. The Department is comprised of approximately 275 uniformed officers (with an authorized strength of 295) and nearly 100 civilian employees. Each of the department’s members is responsible to perform his or her role in the most professional and legally correct manner. Each is responsible for their personal contribution to the department’s public service mission and to the safety of the City and its citizens. And, each is responsible for the overall reputation and credibility of the department in the City of Spokane.

The Commission’s members thank the officers and civilian employees of the SPD for their service to this community. Their efforts, which are often not seen or recognized publicly, involve the ability to make difficult and fast decisions in challenging circumstances, the need to pay ever vigilant attention to fairness, and the resilience of spirit to not be bogged down by the conditions they encounter on a daily basis.

The SPD and those who serve the City in other capacities are part of ever changing institutions. At the time of Otto Zehm’s death, Jim Nicks was the Acting Chief of Police and Dennis Hession was the Mayor of Spokane. In July of 2007 Anne Kirkpatrick became the Chief of Police and she served in this role until the end of 2011, with most of that time occurring under the administration of Mayor Mary Verner. David Condon was sworn into the Mayor’s office on January 1, 2012, and, shortly thereafter, he appointed Scott Stephens as Interim Chief of Police. Major Stephens served in that role until Frank Straub was recently sworn as Spokane’s new Chief of Police. Across this same span of time, there have also been changes in the make-up of the Spokane City Council and in the Office of the City Attorney. Likewise, many new members have joined the uniformed services of the SPD and many have retired at the end of their careers.

The SPD’s leaders and its officers, along with the political and administrative leadership of the City of Spokane, are responsible for continuously furthering the interest of public safety through constructive change and improvement. This obligation remains constant notwithstanding who is serving this City as Mayor, as Councilperson, as Chief of Police or as a patrol officer. The recommendations that follow are offered in the spirit of helping those who carry this obligation, as a matter of office or function, to better serve the citizens of Spokane.

II. ESTABLISHING THE COMMISSION

The Use of Force Commission was formed on January 3, 2012, under City Charter provision Section 24(o) which grants the Mayor “the power to make investigation into the affairs of the City.” Mayor Condon charged the Commission to review and make recommendations to his office regarding the SPD’s use of force policies and practices, civilian oversight of the police department, and how city agencies respond to cases when it is claimed that a SPD officer has used excessive force. Mayor Condon explicitly affirmed that the Commission serves on behalf of the entire Spokane community free of influence by City administration, and that the Commission is at liberty to determine the specifics of what it includes in its recommendations. Acknowledging the role of the Otto Zehm case in the creation of the Use of Force Commission, Mayor Condon stated that the past must be considered in order to make meaningful change for the future and that public trust is not given - it must be earned.

Mayor Condon appointed the following individuals as members of the Commission:

- Earl F. Martin (Chair), Executive Vice President of Gonzaga University
- William D. Hyslop (Vice-Chair), principal in the Lukins & Annis, P.S., law firm
- Chief Justice (retired) Gerry L. Alexander, Washington State Supreme Court
- Ivan Bush, Equal Opportunity Officer (retired) for Spokane Public Schools
- Susan Hammond, RN, (former) Director of Outpatient and Psychology Services at Spokane Mental Health, a Division of Frontier Behavioral Health

(Complete bios of Commission members are at Appendix A)

On January 30, 2012, the Spokane City Council passed Resolution 2012-0013 in which it expressed support for the establishment of the Use of Force Commission.

III. COMMISSION ADMINISTRATION

The Commission held nine public meetings between February 29 and June 28 during which it explored various topics related to its charge. The Commission also met via phone conference and in person on numerous occasions to: coordinate future meetings; recap past meetings; discuss the current condition of the SPD and its many challenges and opportunities, and how it might be improved; and work on the Commission’s report. The Commission reviewed many publications relevant to its charge (Appendix B) and the four Spokane based Commission members participated in ride-alongs with SPD officers. Additionally, Commission members, both individually and in numbers less than the full membership, interviewed persons who have knowledge of, or an interest in, the use of force by police departments. Examples of the latter include conversations with Spokane County Sheriff Ozzie Knezovich and various members of his staff, former Seattle Chief of Police Norm Stamper, Director of Microsoft’s Office of Legal Compliance-Investigations Sam Pailca, Lexipol Chief Executive Officer Gordon

Graham, LEEDA –FBI Executive Director Tom Stone, Washington State Criminal Justice Training Commission Defensive Tactics/Firearms Program Manager Bob Bragg, ACLU Deputy Director for Washington Jennifer Shaw, former U.S. Attorney for the Eastern District of Washington James McDevitt, SPD Interim Chief Scott Stephens, and former SPD Chiefs of Police Anne Kirkpatrick and Roger Bragdon.

The Commission has been assisted in its work by three expert consultants, engaged through contracts with the City of Spokane. Stanley Schwartz, a principal in the law firm of Witherspoon – Kelley, served as the Commission's independent legal counsel. The Commission hired Mildred O'Linn, an expert in police civil liability and police training and tactics, to review the SPD use of force training program and Field Training Officer (FTO) program. Ms. O'Linn, a former police officer, is a partner in the law firm of Manning & Kass, Ellrod, Ramirez LLP in Los Angeles, California. The Commission also engaged Mike Gennaco to review the SPD use of force reporting program, the Internal Affairs protocols for investigating use of force cases, and the SPD Fatal Incident Protocols and Deadly Force Review Policy. Mr. Gennaco is a former U.S. Department of Justice attorney who now heads the Office of Independent Review (OIR) for Los Angeles County. The OIR is a civilian oversight group that was created by the LA County Board of Supervisors in 2001 to monitor the LA County Sheriff's Department and provide legal advice to ensure that allegations of officer misconduct involving the LASD are investigated in a thorough, fair, and effective manner. Mr. Gennaco was engaged through his consulting practice, OIR Group.

In the case of Ms. O'Linn and Mr. Gennaco, extensive reports have been filed on their respective areas of inquiry. See Exhibits C and D. In many instances, the material compiled by Ms. O'Linn and Mr. Gennaco is incorporated directly into this report. Prime examples of this include the recommendations regarding SPD training improvements, certifying defensive tactics instructors, reforming the use of force reporting system, and improving investigatory practices. In regards to other matters raised by these two experts, although the Commission has chosen not to repeat their recommendations in its own report, it does not intend to signal in any way that these recommendations are lacking in significance. To the contrary, the entirety of both reports, particularly their recommendations for improvement, are forwarded to the SPD for its serious review and consideration. See, e.g., Exhibit D at 20-23 (*Canine Cases*). Finally, the Commission notes that the engagement of the consultants has already resulted in positive operational changes within the SPD. Just a few examples of this include modifications to Pre-FTO training procedures (Exhibit C at 6), revisions to the annual in-service firearms training (*Id.* at 25), and efforts to create a more formalized annual training needs assessment consistent with SPD policy 208.5 (*Id.* at 32-33).

All of the Commission's public meetings were held in the Spokane City Council Chambers. Public notices were sent out prior to the meetings and time was reserved during each meeting for public comment. Every meeting was broadcast on Spokane City Channel 5 and the recordings of each were posted to the City Channel 5 web site. Appendix E – CD-Rom.

The following are brief summaries of the nine public meetings held by the Commission:

February 29, 3:00 to 5:30 p.m. – The meeting opened with remarks from Mayor David Condon. The Commission Chair, Earl Martin, invited all present to observe a moment of silence for Otto Zehm, and spoke to the administration of the Commission (budget, staff support, etc.), the scheduling and management of the public meetings, and the topics that the Commission planned to explore. With the exception of Ivan Bush, who was absent due to a medical issue, each of the Commission members introduced themselves. Commissioner Bush later viewed a recording of the session. The Commission received a briefing from its legal counsel, Stanley Schwartz, on the subjects of the Open Public Meetings Act, Public Records Act, Municipal Code of Ethics, and indemnity for Commission members. The Commission received a presentation from Gonzaga University School of Law Professor Jason Gillmer on the law regarding the use of force by police officers. The Commission received a presentation from SPD Interim Chief Scott Stephens on the SPD Manual and the department's Defensive Tactics Manual (use of force training materials). Four individuals commented during the public comment period.

March 15, 3:00 to 5:30 p.m. - Commissioner Gerry Alexander attended the meeting via phone conference. Commissioner Ivan Bush was absent due to medical issues, but later viewed a recording of the session. The Chair shared that the Commission's independent legal counsel, Stanley Schwartz, had provided a legal opinion stating that the Washington State Public Records Act governs the work of the Commission. The Commission explored how the SPD's canons and ethical standards inform the full scope of its use of force policies and practices. Interim Chief of Police Scott Stephens, Captain Brad Arleth (Uniform Operations Division Commander), Lieutenant Bill Drollinger (SPD Academy Director of Training), and Detective and Spokane Police Guild President Ernie Wuthrich all appeared before the Commission to address the topic. Two individuals commented during the public comment period.

March 29, 3:00 to 5:30 p.m. – All Commission members were present for the meeting. Commissioner Ivan Bush introduced himself at the invitation of the Chair. The Commission received presentations on the SPD's use of force training program from three members from the SPD Academy - Lieutenant Bill Drollinger (Director of Training), Officer Robert Booth (defensive tactics instructor), and Officer Terry Preuninger (patrol tactics instructor). Two individuals commented during the public comment period.

April 10, 3:00 to 5:30 p.m. – All Commission members were present. The Commission received a presentation on the SPD's Field Training Officer program from Captain Judi Carl (Administrative Services Division Commander). The Commission received a presentation on the SPD's use of force reporting protocols from Major Frank Scalise (Operations Bureau Commander). One individual commented during the public comment period.

April 26, 3:00 to 6:00 p.m. – All Commission members were present. The Commission received a presentation from Lieutenant Keith Cummings (Internal Affairs Commander) on the role of the Internal Affairs office in the administration of the use of force by SPD officers. Sergeant Mark Griffiths (Major Crimes Unit) presented on the SPD's Fatal Incident Protocol and its Deadly Force Review process. Three individuals commented during the public comment period.

May 8, 3:00 to 6:00 p.m. – All Commission members were present. The Chair announced that the Commission had engaged the services of two expert consultants. Mildred O'Linn, an expert in police civil liability and police training and tactics, was hired to review the SPD use of force training program and its Field Training Officer program. Mike Gennaco, a former U.S. Department of Justice attorney who now heads the Office of Independent Review for Los Angeles County, was hired to review the SPD use of force reporting program, the Internal Affairs protocols for investigating use of force cases, and the SPD Fatal Incident Protocols and Deadly Force Review policy. The Commission received multiple presentations on SPD use of force policies and practices with regard to citizens with mental illness or developmental disabilities. Specifically, the Commission heard from Sergeant Sam Yamada and Jan Dobbs (Director of Crisis Response Services at Frontier Behavioral Health) on the SPD Crisis Intervention Training program, and from Community Resource Officers Wayne Downing and Shaney Redmon on the impact of CIT on their work. One individual commented during the public comment period.

May 22, 3:00 to 6:00 p.m. – All Commission members were present. The Commission continued its exploration of the SPD's use of force policies and practices with regard to citizens with mental illness or developmental disabilities. Dr. Matt Layton (Washington State University – WWAMI Spokane), Jan Dobbs (Frontier Behavioral Health), and Lieutenant Keith Cummings presented on the subject of excited delirium. City of Spokane Police Ombudsman Tim Burns provided his perspective on the SPD's engagement with mentally ill and developmentally disabled citizens. Tamara Rossi and Dave Barrett from the Spokane House of Charity discussed the challenges associated with rendering services to special populations. Two individuals commented during the public comment period.

June 7, 3:00 to 6:00 p.m. – All Commission members were present, except Susan Hammond. Commissioner Hammond later viewed a recording of the session. The subject of the meeting was citizen/independent oversight of the SPD's use of force. Tim Burns, City of Spokane Police Ombudsman, presented on the history and functions of his office, and shared recommendations for improvement. Pierce Murphy, Community Ombudsman for the City of Boise, presented on how his office carries out its charge to oversee the work of the Boise Police Department. Five individuals commented during the public comment period.

June 28, 1:00 to 4:00 p.m. – All Commission members were present. The Commission received a presentation from Michael Painter, Director of Professional Services for the Washington Association of Sheriffs and Police Chiefs, on the subject of WASPC accreditation for the SPD. The Commission was addressed by Spokane City Attorney Nancy Isserlis on the recent settlement of the Otto Zehm civil suit against the City. The Commission then received a presentation from Assistant City Attorney Mary Muramatsu on the role of the City Attorney's Office in officer involved use of force incidents. Three individuals commented during the public comment period.

IV. RECOMMENDATIONS

The Commission's recommendations are organized under four headings – Culture, SPD Policies and Practices, Civilian Oversight, and City Administration. In each instance, a discussion follows the recommendation. The Commission's recommendations are the product of its independent research and review. In the case of the majority of the recommendations, the Commission does not comment on the budget implications of the proposed activity due to the fact that the Commission is not staffed to undertake this work.

The recommendations are not presented in ranked order of importance. Rather, the recommendations are presented in the order that follows how the issues presented themselves to the Commission. Each recommendation is expected, if implemented, to have a positive effect on making Spokane a safer community for both citizens and SPD officers.

A. Culture

An organization's culture is the sum total of its past and present assumptions, experiences, philosophy, and values. It is drawn from the collective attitudes, beliefs, customs, and values of its members. It can affect, among other things, the way the organization carries out its duties, how it treats its internal members and external constituencies, and how it reacts to changing circumstances. The health of this culture is critical to the performance and efficient operation of the organization. In light of the fact that police officers have the lawful authority to use force, including deadly force, against their fellow citizens, it is incredibly important that a police department's culture foster respect for the law, a commitment to public service, and respect for the rights and dignity of the citizenry.

Throughout the work of the Use of Force Commission many have shared, in public sessions and private conversation, the opinion that the SPD has a dysfunctional organizational culture. In many of these instances, the occasion of SPD officers (reported to be fifty in number) saluting Karl Thompson as he was taken into custody by federal marshals after his pre-sentencing hearing on November 4, 2011, was offered as

an example of an unhealthy SPD culture. Additionally, and understandably, the Otto Zehm case, including the circumstances of his death and the response of the SPD leadership, was also frequently mentioned.

The Commission is not in a position to draw any definitive conclusions regarding the health or lack thereof of the SPD organizational culture. However, the Commission is convinced that there is concern in this community that the current culture of the SPD does not promote transparency or an atmosphere of generous service and continuous quality improvement. Therefore, the Commission makes the following recommendations in the spirit of enhancing the culture of the Spokane Police Department.

Recommendation #1 – Conduct a culture audit of the SPD.

The City should retain qualified professionals to perform an institutional audit of the SPD's culture and its influence on employee behavior. This audit should enable the Mayor and the Chief of Police to determine whether officers and civilian employees think, feel and act the way leadership believes they should, and it can provide a baseline for future improvements.

The goal of the culture audit would be to secure a map of the formal and informal systems that permeate the work and the workplace. It should illuminate the SPD's overall working environment, identify unwritten norms and rules, and highlight possible barriers to effective work practices and communication. Without intending to limit other possible lines of inquiry, it would be helpful if the audit explored: the generally held beliefs among employees regarding the department's mission, values, goals and management practices; the department's informal motivational systems; the informal centers of power and influence within the SPD, to include alliances and coalitions; how critical information is shared across the department and with City administration; and, who the respected employees are at all levels within the SPD.

Recommendation #2 – Bring greater transparency to the City's negotiations with the Spokane Police Guild and the Spokane Police Lieutenants and Captains Association.

Many of the conversations that Commission members have experienced around the issue of the SPD's culture have included references to the Spokane Police Guild and the Spokane Police Lieutenants and Captains Association. An overwhelming majority of those references have blamed these collective bargaining units for what the speaker believes is an unhealthy culture within the SPD. Even if that opinion is inaccurate on one or both accounts, the perception still remains that the bargaining units within the SPD are having a negative influence on the department's operations, its reputation, and its credibility within the community.

The Commission encourages the City to be as open as legally possible regarding its negotiations with the Spokane Police Guild and the Spokane Police Lieutenants and

Captains Association. At a minimum, the Commission encourages City representatives to meet with the community to vet important issues that will be part of any negotiations prior to the commencement of collective bargaining and to hold public sessions after the negotiations to directly engage with the community regarding outcomes. It is critically important that City leadership and Spokane police officers fully understand, and feel the impact of, the reality that the SPD exists to serve and protect the citizens of Spokane within an economic framework that makes good fiscal sense for the community.

Related to this recommendation, the Commission believes that neither collective bargaining unit should use the bargaining process to extract additional compensation when confronted with the need to make work place condition changes that do not materially change their members' job responsibilities. The Commission realizes that many of its recommendations could be defined as a change in work place conditions (e.g., deployment of body cameras, empowering the Ombudsman with investigatory power, etc.). While the Commission would expect that officers from all ranks would have an interest in making sure that such changes are carried out in the best way possible, the Commission discounts any suggestion that either bargaining unit should receive additional compensation and benefits as a condition for the implementation of such changes. The Commission urges that its recommendations be accepted or rejected solely because they either serve or fail to serve the best interests of the public.

The above discussion should not be interpreted as a lack of support on the part of the Commission for SPD officers, their right to be fairly compensated for their work, or their right to collective bargaining. The Commission fully recognizes the challenges faced by police officers and appreciates that the SPD is populated with professional men and women trying to do their best under difficult circumstances.

Recommendation #3 – Rewrite the SPD Mission Statement.

The SPD's current Mission, Vision and Values statements declare:

Mission – Working together to build a safe community.

Vision – To become the safest city of our size in America.

Values of the Spokane Police Department:

Service - SPD strives to provide efficient, effective, and courteous service.

Pride - SPD is proud to serve the community through honorable and professional policing.

Dedication - SPD is dedicated to results through accountability and leadership.

Referring back to the idea that any police department should be supported by a culture that respects the rights and dignity of the citizens it serves, this sentiment should be explicitly reflected in the Mission Statement of the SPD. A Mission Statement is a declaration of the fundamental reason an organization exists, and in this instance it is to protect the citizens of Spokane from the criminal activity of others in a way that preserves constitutional rights and affirms human dignity. The current SPD Mission and

Vision Statements both speak only to the issue of security and not to the issues of liberty, and gaining the trust and confidence of the community. Additionally, although the Values Statements call upon SPD officers to professionally render services to the community, there is nothing in those statements that explicitly provides the necessary counterpoints to the overwhelming emphasis on security.

Recommendation #4 – The SPD should secure WASPC accreditation.

One of the best ways to create and maintain healthy organizational culture is to expose the organization to the regular review of external knowledgeable parties. This is what securing and holding accreditation from the Washington Association of Sheriffs and Police Chiefs (WASPC) would do for the SPD (which is not presently accredited). Having to satisfy 140 accreditation standards for both initial accreditation and reaccreditation, and having those efforts documented for public review would call on the SPD to place and keep itself in a space of continuous improvement. Most notably for present purposes, the department would have to embrace continuous improvement in areas that are directly relevant to the issue of the use of force.

WASPC (<http://www.waspc.org/index.php>) was founded in 1963 to lead collaboration among law enforcement executives to enhance public safety. In 1976 the Washington State Legislature directed WASPC to develop standards and goals for law enforcement agencies. The association has maintained an operational accreditation program since that time.

The current accreditation program was created in 2007 and is overseen by the WASPC Accreditation Committee, the Accreditation Commission and the organization's Board of Directors. The Committee is responsible for maintaining accreditation standards. The Commission is responsible for reviewing accreditation on-site reports and making recommendations to the Board of Directors. The Board is responsible for conferring accreditation.

The purpose of the WASPC accreditation program is to help professionalize the law enforcement community by providing a review process for agencies to be certified as operating under best practices and standards. The program includes standards covering twenty major law enforcement areas. Those areas that have particular relevance to the subject of the use of force include Chapters 3 (Use of Force), 10 (Recruitment and Selection), 11 (Training), 13 (Code of Conduct), 14 (Internal Affairs), 15 (Patrol Function), and 19 (Prisoner Security).

There are two types of fees associated with the WASPC Accreditation program, application and on-site fees. The application fee for agencies is \$100. On-site assessment fees are related to the accreditation inspection process once assessors arrive at an agency, and vary by department and availability of assessors. Agencies seeking accreditation agree to pay the travel costs associated with bringing in assessors from around the state and the WASPC employees staff time needed to

facilitate agency accreditation. It should also be anticipated that significant SPD staff time would need to be devoted to securing and maintaining accreditation.

Recommendation #5 – Ensure corporate ownership of the SPD Policy Manual.

In private conversations and public presentations, numerous SPD officers, including members of the department's command staff, referred to the SPD Policy Manual as the "Lexipol manual." Additionally, the link on the SPD's web page to its manual states, "Click here for the Lexipol Policy Manual." The continuing reference to Lexipol comes from the fact that the SPD engaged the services of Lexipol, a risk management company, in creating the current SPD Policy Manual and continues to subscribe to that service for updates.

Notwithstanding Lexipol's involvement in providing source material for the department's manual, it is important that the department both take full ownership of the manual and affirm that ownership in the way it refers to the same. The SPD Policy Manual contains the department's Canons and Ethical Standards, and its governing operating policies. These are the SPD's guiding principles, not boilerplate content from Lexipol. Every officer needs to understand and accept this distinction, and be committed to the entirety of the SPD Policy Manual.

In multiple locations in the remainder of this report the Commission notes instances where the department's actions are inconsistent with the dictates of the policies contained in its manual. Additionally, in her report, Ms. O'Linn concludes that the SPD needs to do a better job of expeditiously revising the SPD Policy Manual as updates are released by Lexipol and systematically tracking and complying with policy provisions across the entire force. Exhibit C at 30. The Commission is confident that such concerns would diminish if the department took full ownership of its manual.

Recommendation #6 – Explicitly link SPD Canons and Ethical Standards to hiring decisions and all force management actions.

While the SPD's Canons and Ethical Standards speak to how each officer is expected to conduct him or herself on a daily basis in carrying out the department's mission. Accordingly, it is imperative that these Canons and Ethical Standards be highly visible and concretely affirmed in the on-going life of the department. Of particular relevance to the work of the Commission, the SPD's Canons and Ethical Standards explicitly promote values and practices that are intended to ensure that SPD officers only use force when absolutely necessary and legally permissible.

The SPD should test and screen applicants for their willingness and ability to comply with the department's Canons and Ethical Standards. The Chief of Police should be personally responsible for ensuring that only those applicants are hired onto the force that possess characteristics that will enable them to internalize and practice the values expressed in the department's Canons and Ethical Standards.

The SPD should acknowledge and reward behavior that is consistent with the values expressed in the Canons and Ethical Standards. Progression through the Field Training Officer Program, moving from probationary to regular status, positive performance evaluations, promotions, and commendations should all be explicitly tied to compliance with the Canons and Ethical Standards. The department has policies and procedures governing all of these activities that draw attention to values and practices that can be found in the Canons and Ethical Standards. However, there is not sufficient intentional and comprehensive congruence between those policies and procedures and the content of the Canons and Ethical Standards (e.g., citation to the relevant Canon and Ethical Standard when awarding commendations). No one should be left with any doubt that in order to advance and be recognized within the SPD, one must embrace and live the values expressed in the department's Canons and Ethical Standards.

Correspondingly, the department should also connect instances of unfavorable behavior to the failure to practice the values articulated in the Canons and Ethical Standards. For example, citizen and internal complaints, whether processed through Internal Affairs or the Office of the Police Ombudsman, should associate the complained of behavior with the relevant Canon and Ethical Standard. Likewise, unsatisfactory performance evaluations and department disciplinary actions should be explicitly connected to the failure on the part of the officer receiving the negative outcome to uphold the dictates of the Canons and Ethical Standards.

The constant reinforcement of the critical importance of adherence to the SPD Canons and Ethical Standards will improve officer performance and improve the overall culture of the organization. These outcomes will, in turn, improve public safety and enhance the public's respect and confidence in the department.

B. SPD Policies and Practices

The Commission appreciates the cooperation extended to it and to its expert consultants by SPD officers throughout the organization. The members of the Commission have been impressed by the professionalism and courteousness of so many of the officers that have aided it in its work. The Commission's task would have been far more difficult without the assistance of these public servants.

Recommendation #7 – The Chief of Police and his command staff should actively engage the community in an ongoing dialogue about the department.

The Chief of Police is the face of the department as its main representative and advocate to the community. The Chief must seek out community leaders and forums where an ongoing dialogue about the department can occur. Members of the department's command staff should be expected to participate in this effort as well. The public must know that the department is approachable and accessible, and that its leadership will take seriously and respond to the public's concerns.

Recommendation #8 – Ensure complete understanding of the governing legal standards for the use of force.

The event of a police officer using force against a citizen unfolds against a constitutional backdrop designed to protect both the citizen and the officer. The use of excessive force in the course of an arrest, investigatory stop, or other seizure violates the Fourth Amendment to the United States Constitution. *Graham v. Connor*, 490 U.S. 386, 394-95 (1989). Courts analyze claims of excessive force under the objective reasonableness standard -- balancing the nature and quality of the intrusion of the individual's Fourth Amendment interests against the legitimate governmental interests at stake. *Id.* at 394-96; *Miller v. Clark Cnty.*, 340 F.3d 959, 964 (9th Cir. 2003). Assessing the reasonableness of an officer's use of force is a fact-dependent inquiry based on the "totality of the circumstances." *Graham*, 490 U.S. at 394-95. *Graham* framed the issue to be whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting him, without regard to his underlying intent or motivation. *Id.* at 396. In weighing the government's interest in the use of force, courts will examine, among other relevant factors, whether the subject posed an immediate threat to officer or public safety, the severity of the crime at issue, whether the suspect was actively resisting arrest or attempting to escape, and whether law enforcement could have used other methods to accomplish its purpose. *Id.*; *Davis v. City of Las Vegas*, 478 F.3d 1048, 1054-56 (9th Cir. 2007). The Commission is concerned that these legal rules are not as well understood across the SPD as they need to be.

At the beginning of its work in February, the SPD provided the Commission with a copy of what was purported to be the current version of the department's Defensive Tactics Manual (DTM). The DTM serves as a course reference for SPD Academy training, is used by officers for self-improvement, and is an important defensive tactics resource document for the entire department. The version of the DTM provided to the Commission included the following sentence in its introduction under the heading *Use of Force*: "If that evaluation (i.e., an assessment of threatening behavior by a suspect) leads the officer to believe that the application of deadly force is his only means of protecting himself or others, then he is authorized, pursuant to departmental policy, to employ such (i.e., deadly) force." (parentheticals and emphasis added) This sentence, in the context of the material that surrounds it, is an incorrect statement of the relevant legal standard. The sentence casts the evaluation of an officer using deadly force as being dependent upon that officer's subjective interpretation of the situation instead of such being dependent upon an objective interpretation as required by law.

It was discovered in October by one of the Commission's expert consultants that the DTM provided to the Commission in February was a version that was, in the words of one SPD officer, "decades old". The current version of the SPD DTM, adopted in 2007, does not include the language cited above. While this somewhat mitigates the concern raised in the previous paragraph, it does not eliminate it altogether. It is the case that the officers most intimately involved with training in the SPD affirmed to the Commission the validity of the DTM provided to it in February. The fact that this could occur raises

concerns regarding the attention the department is giving to this critical training and operational resource.

In multiple locations throughout her report, Ms. O'Linn identifies instances of SPD training materials containing out-of-date or incorrect information regarding the rules governing the use of force by police officers. For example, Ms. O'Linn identified deficiencies in the department's current DTM regarding the use of force against purely passive resistors (Exhibit C at 8), in the current DTM's force options scale (*Id.*), and in the case law that has been used in the SPD's use of force training presentations (*Id.* at 9). The culmination of these, and other similar findings, prompted Ms. O'Linn to comment that the department's use of force training materials require systematic attention to on-going policy and training updates. *Id.*

On more than one occasion, the Commission was addressed in the public comment section on the subject of SPD Officer Terry Preuninger's testimony at the Karl Thompson trial. Officer Preuninger, the patrol tactics instructor for the SPD Academy, testified for the defense at the Thompson trial on the subject of Officer Thompson's use of force in the encounter with Otto Zehm. While under cross examination by the prosecuting attorney, Officer Preuninger provided answers that suggest the proper standard of review is to focus on the subjective beliefs of an officer when assessing that officer's use of force. Again, the proper legal standard is the objective reasonableness standard.

The importance of SPD officers understanding and operating under the correct legal standard when it comes to the use of force is two-fold. First, the objective standard exercises a check on a police officer's ability to use force against a citizen that is not present under the subjective standard. This check creates a greater likelihood that force will only be used in those circumstances that truly demand its use. Second, as SPD officers will be held to account to the legally valid objective standard, they need to understand that standard and be prepared to follow it in their work. To not prepare them in such a fashion is a great disservice to their own interests and to the interest of public safety.

Recommendation #9 – Update and maintain certifications of the department's defensive tactics instructors.

The Washington State Criminal Justice Training Center (WSCJTC) is tasked by Washington State law to "[p]rovide programs and standards for the training of criminal justice personnel." RCW 43.101.020. As the main criminal justice training entity in the state, WSCJTC administers and manages approximately two hundred programs. Some of the more notable programs are the Basic Law Enforcement Academy, the Corrections Officers Academy, the Peace Officer Certification course, and the certification of law enforcement instructors in particular fields. Pursuant to the latter function, the WSCJTC is responsible for certifying defensive tactics instructors within the State of Washington. The SPD presently does not have any defensive tactics

instructors whose WSCJTC certification is current. In fact, no officers in the department have received instructor re-certification since 2007. Exhibit C at 12.

WSCJTC re-certification programs are in place to insure that instructors have access to up-to-date training materials and techniques, and to the current rules, including case law, governing the use of force by police officers. There is a significant need for the SPD to adopt a plan that enables its instructors to be re-certified in their respective areas and to then be able to consistently maintain that certification. Exhibit C at 11-12. Closely related to this need, the Commission endorses Ms. O'Linn's recommendation that the SPD invest in securing master level status for two of its instructors so as to maintain an appropriate level of internal expertise that can provide instructional updates and conduct re-certifications for the department's other defensive tactics instructors. *Id.*

Recommendation #10 – Review current officer staffing levels and practices to ensure that sufficient patrol officers are available to maintain public safety.

Providing precise recommendations for staffing a complex organization like a police department requires expertise, time, and support not possessed by the Commission. Nevertheless, over the course of its work, the Commission has become aware of two facts which raise concerns about the ability of the SPD to put adequate numbers of officers on the streets necessary to provide acceptable levels of safety for the public and members of the department. First, the SPD currently has a working force that is less than what it possessed in the mid-1990s despite the department having to work in an environment of greater challenge and complexity. Second, the current patrol shift configuration is constrained by an inability on the part of the SPD leadership to change shift configurations without negotiating with the Spokane Police Guild.

There is a direct correlation between the numbers of patrol officers on the street and the safety of the community and those officers. Inadequate staffing of officers compromises public safety in at least two ways. First, insufficient numbers of officers means delayed response times when citizens need assistance. Second, insufficient numbers of officers means that in some circumstances a single officer or small numbers of officers have to respond with force that would otherwise be unnecessary if greater numbers of officers were available to otherwise contain a volatile situation without resorting to force. SPD and City leadership are strongly encouraged to ensure that the department has the necessary number of officers and that it deploys those officers in a way that maximizes public safety.

Recommendation #11 – Improve training plans and practices.

The reports submitted by Ms. O'Linn and Mr. Gennaco contain numerous recommendations related to improving the SPD training program. As stated above, the Commission has chosen not to repeat all of those recommendations in its report. The Commission does, however, want to highlight themes that have emerged regarding the SPD training program.

Recommendation #5 calls on the SPD to take corporate ownership of the SPD Policy Manual. One way of furthering this goal would be to cross-reference the department's training materials to the applicable policy provisions contained in the department's manual. Such a practice would also consistently reaffirm the justifications and limitations that govern the right of SPD officers to use force in the course of their duties. One example of this would be to revise the department's DTM so that its various parts cite to the applicable use of force policy sections in the SPD Policy Manual. Exhibit C at 8. Another example would be to require reality based training (RBT) scenarios to include opportunities to test knowledge and understanding of the departmental policies governing the use of force. Exhibit C at 10-11; See *also* Exhibit D at 9.

Related to the practice of cross-referencing material, there is a need for the SPD to better reconcile training plans and practices with departmental policies. For example, SPD Policy Manual section 436.2.2 requires that Field Training Officers (FTO) engage in at least two hours of training per month. Ms. O'Linn's reports that this requirement is apparently not being met and she recommends that the discontinued once a month FTO meetings be reinstated as a forum for providing training updates and exchanging information regarding how trainees are progressing through the FTO program. Exhibit C at 27.

The Commission is concerned that helpful, even essential, use of force/defensive tactics training modules are not being delivered with appropriate frequency. For example, the department does not require annual re-recertification training on electronic control devices (ECD) (Exhibit C at 14), and the current ECD training is lacking in regards to the law governing the use of ECDs and the tactical deployment of the device in ways that mitigate the application of force (e.g., cuffing under power, three-point stunning, etc.) (*Id.* at 16). Additionally, the department's policy regarding firearms training was recently amended to reduce the number of firearms training and qualifications per officer from four times annually to two. *Id.* at 21-22. This reduction in training for such a basic defensive tactics weapon raises concerns regarding maintaining proficiency in marksmanship and decision-making (e.g., shoot, don't shoot), and in fostering understanding of the governing law and policy.

There is a need for the department to enhance its auditing of compliance with training requirements. Ms. O'Linn expresses concern in her report regarding the department keeping track of personnel who are out of compliance with defensive tactics training requirements due to those individuals coming off of leave or light duty status. Exhibit C at 24. As a specific remedy for this problem, and as a general good practice, Ms. O'Linn recommends an internal audit at the beginning of the last quarter of each year of officer training records to confirm compliance with all state, city and department training mandates. *Id.* at 7. Ms. O'Linn recommends that a follow-up review of those officers that have yet to meet these requirements be conducted every thirty days thereafter until all officers are up-to-date with training requirements. *Id.*

Recommendation #12 – Establish a continuing Crisis Intervention Training program and adopt protocols for the deployment of CIT officers.

Individuals who suffer from mental illness or who are under the influence of drugs or alcohol are relatively more vulnerable to the use of force by police officers due to the volatility of the encounters between those citizens and the police. In the absence of practices and strategies to de-escalate and control these encounters, they can escalate quickly to the detriment of the safety of both the citizen and the officers involved. In recognition of this reality, the law requires that police practices extend special consideration to individuals in mental health crisis. See *Bryan v. MacPherson*, 630 F.3d 805, 829 (9th Cir. 2010) (“The government has an important interest in providing assistance to a person in need of psychiatric care; thus, the use of force that may be justified by that interest necessarily differs both in degree and in kind from the use of force that would be justified against a person who has committed a crime or who poses a threat to the community.”); *Deorle v. Rutherford*, 272 F.3d 1272, 1282 (9th Cir. 2001) (officers must take into account the subject’s mental and emotional state before using force).

The Commission endorses that part of the Otto Zehm civil suit settlement that commits to all SPD officers undergoing Crisis Intervention Training (CIT). Such training for the officers, to include the department’s leadership, will increase public safety by providing SPD members with a better understanding of the conditions that often engender behavior which can be perceived as threatening and by providing officers with tactics to defuse or control such situations without having to resort to dangerous levels of force.

In order for a CIT program to have long-lasting positive effects on public safety, the program must ensure that SPD officers receive refresher CIT at appropriate intervals and that all officers coming into the department, whether as an entry level or lateral hire, receive CIT in close proximity to the start of their employment. Additionally, to promote a department-wide commitment to the CIT program, SPD leadership should market the value of the training within and outside the department (e.g., promote officer testimonials on how the application of CIT makes them more effective in their work, invite the media to attend training, etc.).

One component of an effective CIT program that deserves particular attention is the subject of Excited Delirium. Excited Delirium is a life-threatening medical emergency, typically in the context of stimulant drug abuse (e.g., cocaine, PCP, methamphetamine, etc.), characterized by an individual evidencing agitation, excitability, confusion, paranoia, and bizarre behavior. Officers are frequently called upon to make instantaneous decisions with regard to both recognizing the condition and in containing the chaos and danger its occurrence creates for the citizen and others. A coordinated response with paramedics and a “contain rather than restrain” approach with sufficient officer assistance is often imperative to prevent sudden death. Excited Delirium training, in the context of a CIT program, should, at a minimum, include instruction on: the signs and symptoms of the condition; the imperative to call for emergency medical assistance as soon as possible; the need to contain, if possible, rather than restrain an

individual suffering from Excited Delirium; the need to use communication tactics that calm rather than confront; the need to have sufficient officers available to control the situation; and, how to report and collect accurate data on the incidence of Excited Delirium.

Once a CIT program is in place, it is imperative that the SPD establish protocols that maximize the benefits of the training and which continuously assess the efficacy of the department's efforts in dealing with these at risk populations. The department should ensure that all shifts have adequate numbers of crisis intervention trained officers, create dispatch guidelines that properly deploy those officers, and establish the on-scene primacy of crisis intervention trained officers in situations that call for their expertise. The SPD should create a reporting system that comprehensively and accurately collects data on all contacts with citizens who are suffering from a mental illness or who are under the influence of drugs or alcohol. In turn, that data should be used to improve its CIT program and how the department uses crisis intervention trained officers.

While the Commission endorses CIT for all SPD officers, it anticipates that, as with the acquisition and deployment of any particular skill set, there will be variation in the competency and commitment levels of SPD officers to this program. This variety will undoubtedly make itself apparent over time. In light of this, the Commission encourages SPD leadership to be diligent about leveraging the talent and commitment of those officers who prove to be most adept at dealing with persons in crisis due to their deteriorating mental health and/or their use of alcohol or drugs. The Commission believes that the greatest possible positive effect on public safety would be achieved by creating a cadre of these officers who receive advanced and continuous CIT, are deployed in a way that provides maximum coverage across all shifts, are given the authority to use their skills on-scene to best effect, and whose work is publicly recognized and appropriately supported by SPD and City leadership.

Recommendation #13 – Affirm the de-escalation of potentially violent encounters as a primary goal of the department.

The Commission has been exposed to a variety of statements from members of the SPD to the effect that it is the citizen in an officer/citizen encounter who determines how much force the officer will use. This position was endorsed in private conversations with various SPD officers and in the public testimony presented by Operations Bureau Commander Major Frank Scalise during the April 10, 2012, Commission hearing. Additionally, Officer Terry Preuninger, the patrol tactics instructor for the SPD, expressed similar sentiments in his testimony in the Karl Thompson trial when he said that an officer should “come in at a level above the level of force that [a] person [is] going to direct at you.” Thompson Trans. at 2378. Finally, Mr. Gennaco noted in his report that the department's analysis of a November 2010 deadly force incident stated that the deceased subject created the situation that led to the use of deadly force against him. Exhibit D at 12.

Mr. Gennaco reports that it is not unusual for police officers to express that the citizen is the person who exercises greatest control over the amount of force used by an officer. *Id.* However, Mr. Gennaco goes on to state:

A progressive policing model equips officers with strategies that do not allow subjects to dictate the response. It is the peace officer that must effectuate an effective plan of detention that avoids the use of deadly force if at all possible and still safely takes a dangerous individual into custody. The police should dictate the situation; not the subject, and should approach any tactical situation with that mindset. Id.

During the Commission's May 22, 2012, public hearing Tamara Rossi and Dave Barrett of the Spokane House of Charity discussed the challenges associated with rendering services to special populations. That testimony included a discussion of the Management of Aggressive Behavior (MOAB) training program. MOAB is used by law enforcement, corrections, and mental health providers across the country and locally to reduce the need for restraint and force in dealing with high risk, agitated, and escalating behaviors in individuals. MOAB teaches how to let people burn out their verbal escalation without using force to stop behavior, and is founded on the understanding that individuals respond to personal space, voice tone, and affect even when in an extremely agitated condition.

On June 22nd of this year the Las Vegas Metropolitan Police Department adopted an extensive revision of its use of force policies. Part IX of that revision addressed the issue of de-escalation. As a basic principle, the new policy acknowledged that not every potential violent confrontation can be de-escalated, but it does affirm that "officers have the ability to impact the direction and the outcome of many situations they handle, based on their decision-making and the tactics they choose to employ." Las Vegas Metropolitan Police Department, General Order 021-21 at 7 (June 21, 2012). The policy directs officers to "use advisements, warnings, verbal persuasion, and other tactics and alternatives to higher levels of force" while performing their work "in a manner that avoids unduly jeopardizing their own safety or the safety of others through poor tactical decisions." *Id.* at 8.

The practices emphasized in the preceding two paragraphs stand in contrast to the expression that the citizen is the person who exercises greatest control over the amount of force used by an officer. It is critically important that SPD officers are prepared not just to win the conflict, but also to avoid such in the first place. The Commission strongly encourages the SPD to explore using the MOAB program for public safety officers to bring greater intentionality, rigor, and accountability to the SPD's de-escalation training outcomes. In the absence of using the MOAB program, the SPD should ensure that it adopts a certified de-escalation training program with measurable outcomes that both impresses upon its officers the obligation to do everything in their power to de-escalate potentially violent situations and prepares them to use de-escalation techniques, when appropriate and feasible, to reduce the need for force.

Recommendation #14 – Improve the use of force reporting system.

A police department's use of force reporting system should be designed to track compliance with legal and policy restrictions on the use of force against the citizenry and to provide information and insight that can be used to improve departmental training and communication. There is a strong correlation between the confidence a community has in its police department and that department's practice of ensuring that all use of force is consistently reported and monitored. A department's failure to meet reasonable expectations in this regard sends a message of indifferent institutional concern and oversight regarding the use of force. Alternatively, a department that proactively and effectively identifies and responds to inappropriate conduct not only is better situated to enhance officer performance and create a robust culture of reflection and improvement, it is also better situated to build public confidence and protect the agency from frivolous complaints and litigation.

Per SPD policies 300.4 and 300.5, an officer must complete a use of force report when his or her application of force appears to have caused physical injury, a subject has expressed a complaint of injury or been rendered unconscious, a level II lateral neck restraint or control device has been utilized, or there has been an intentional discharge of a firearm. In such instances, SPD policy 300.5 requires a supervisor to: respond to the scene (if needed); interview involved officers, witnesses, and other involved persons; collect evidence (when appropriate); and, prepare and submit a use of force report through the chain-of-command, to include completing the recommendation section on the report. In the event a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the policy's requirements as possible.

A fundamental element in a police department's use of force reporting system is the definition of what types of incidents trigger reporting requirements. The previous paragraph details those triggering events within the SPD. In his report, Mr. Gennaco recommends that the criteria for prompting a use of force report be expanded to include: "head strikes, knee strikes, elbow strikes, open and closed hand strikes; baton/flashlight strikes; all applications of less lethal devices (OC spray, foam or wood rounds, beanbag rounds, etc.); carotid neck restraint (Level I) ...; [and] all takedowns and prone handcuffing incidents that result in any head or facial injury." Exhibit D at 28. Mr. Gennaco advances this recommendation as a means of improving the department's ability to evaluate practices, policies, and individual officer actions, and to improve the tracking of the type and frequency of uses of force. *Id.*

The Commission endorses Mr. Gennaco's recommendation for expanding the criteria that trigger use of force reports within the SPD. Additionally, the Commission recommends adding the drawing and directing of a firearm at a subject as a triggering event for a use of force report. Such an action is a significant use of force by an officer to gain compliance over a subject and can be expected to generate great fear on the part of the subject. Accordingly, this use of force should be reported as such with a clear articulation as to why the firearm was pointed at a citizen.

As recounted above, SPD policy 300.5 requires a supervisor to respond to the scene of a reportable use of force “if needed”. Recognizing that staffing limitations preclude supervisors from responding to all scenes where reportable use of force occurs, the Commission recommends that, to the maximum extent possible, supervisors do respond to all scenes wherein an officer’s use of force has resulted in an injury to another. Once present at any use of force scene, consistent with SPD policy 300.5 and expanding upon the same, the supervisor should ensure that a full inquiry of the event is conducted, to include: identifying, separating, and interviewing all involved witness officers; interviewing those subjected to force; directing the canvassing for witnesses and the taking of statements from all witnesses; collecting evidence surrounding the use of force (e.g., photos of injuries, EMT and hospital reports, Taser™ downloads, diagrams, status of any charges against the subject, etc.); reviewing officers’ reports for completeness, accuracy, and quality; and, assessing whether further investigation is required. In the event a supervisor is not able to respond to a scene, it is critical that a supervisor conduct a thorough and timely review of the completed use of force report and all available evidence to ensure a full and accurate account of the incident consistent with the requirements just listed. Finally, in an effort to take full advantage of the valuable perspective that supervisors have on use of force incidents, SPD policy should require supervisors to document their observations about the force used and any related training, tactics, policy, or supervision issues. Exhibit D at 18 & 23.

Although it is included within the previous paragraph, one enhancement to the current SPD use of force reporting system that deserves highlighting is the need to expand the reporting policy so as to require that officers document all that they observe in reported use of force incidents. Mr. Gennaco details an instance in which two officers used force against a subject that was witnessed by a third officer. The two officers who used force did not report the use of force by one another and the witness officer did not file any report at all. Exhibit D at 17. Similarly, Mr. Gennaco documents an instance of a Spokane Police Guild attorney reminding an officer that the officer was instructed to report only what he did and not what other officers might have done. *Id.* A far better practice would be to require officers who are trained to be effective witnesses to use that skill to provide a more complete record of how a use of force incident unfolded.

Recommendation #15 – Improve investigation practices in use of force incidents.

An open, impartial, and effective process of receiving and investigating citizen and officer complaints regarding the inappropriate use of force serves several important purposes. An appropriate complaint procedure ensures officer accountability and supervision, deters misconduct, and helps maintain good community relations by increasing public confidence and respect in the department. Improving SPD investigative practices in use of force cases is an important element to accomplishing all of these positive outcomes.

Mr. Gennaco’s exploration of various departmental policies and practices surrounding the use of force required him to review multiple SPD investigative files associated with

the work of Internal Affairs and with the administration of Administrative Review Panels and Deadly Force Review Boards. Out of this review, Mr. Gennaco has advanced a number of recommendations that focus on improving various SPD investigative practices. While the Commission encourages the SPD to give serious consideration to all of the findings and recommendations contained in Mr. Gennaco's report, the Commission wishes to call particular attention to the following matters associated with the investigation of use of force cases:

- a. Recognizing the inherent seriousness and formality of the matters under review, the SPD should ensure that all investigations refer to those involved by their last names. Exhibit D at 3, 13 & 15.
- b. Ensure that investigators avoid the use of leading questions in the interest of objective fact gathering. Exhibit D at 4-5, 16, 25 & 27.
- c. Ensure that officers involved in use of force incidents are segregated from each other and from any others who might potentially contaminate their testimony until such time as their statements are taken. Exhibit D at 4 & 15.
- d. All officers involved in a use of force incident, both those exercising force and those witnessing the same, should be interviewed in detail (i.e., beyond a tactical briefing at the scene) on the date of the incident about their observations and actions. Exhibit D at 6 & 16. In the event an officer refuses to participate in that interview, they should be subject to a compelled administrative interview as close in time to the incident as possible. Exhibit D at 6 & 16.
- e. Ensure that all reasonable efforts are made to identify and interview potential witnesses to all use of force incidents. Exhibit D at 25 & 27.
- f. Ensure that all relevant evidence (e.g., status of charges sought against subjects, evidence of the presence or absence of injuries, etc.) is gathered and documented. Exhibit D at 25 & 27.
- g. Whenever possible, avoid collecting witness statements or even follow-up responses from witnesses through methods (e.g., email, voice mail, etc.) other than in-person interviews. Exhibit D at 25-27.

Recommendation #16 – Improve the administrative review of the use of deadly force by officers.

Policy 302.2 of the SPD Policy Manual requires an Administrative Review Panel (ARP) to review the completed investigative file in all cases of an officer using deadly force. The purpose of that panel's work is to make recommendations to the Chief of Police as to whether the use of force was consistent with departmental policy. In cases where the use of deadly force by an officer has resulted in injury or death to a person, the department will convene a Deadly Force Review Board (DFRB) to conduct an administrative review of the incident and make recommendations regarding tactical and training considerations, the quality of supervisor in the incident, equipment performance, and any other relevant observations or considerations. SPD Policy Manual 302.3 *et seq.*

In his review of a November 2010 deadly force incident that involved the discharge of a firearm by six different law enforcement officers, Mr. Gennaco noted that the ARP's report on the incident contained a single paragraph which concluded that all involved officers' use of force was in compliance with departmental policy. Exhibit D at 7. This

was done notwithstanding that the officers arrived on the scene at different times during the encounter with the subject, from different directions, witnessed different behavior by the subject, and offered various specific justifications for their individual use of deadly force. *Id.* A far better result would be for the ARP to carry out an exacting force analysis of each officer's actions and compare such to the department's training and policy expectations and requirements. *Id.* at 7 & 16.

A DFRB was also convened to review the November 2010 deadly force incident. Two issues that go directly to public and officer safety that were identified by Mr. Gennaco in connection with that review were the consideration of the twenty-four rounds fired by the officers (out of twenty-six total rounds) that failed to strike the subject and the existence of a cross-fire situation in the encounter. Exhibit D at 9-10. In regards to the expended rounds, Mr. Gennaco recommends that the DFRB examine each officer's use of deadly force individually and arrive at an assessment of whether the officer was tactically sound and proficient when he discharged his weapon. *Id.* at 9 & 16. Similarly, Mr. Gennaco considered the DFRB's review of the cross-fire issue to be incomplete due to its failure to sufficiently explore the question based upon the placement and actions of all of the officers involved in the incident. *Id.* at 10 & 16. Recognizing that a single instance does not necessarily represent a consistent pattern, the Commission nevertheless calls for the SPD to reflect upon Mr. Gennaco's findings and to ensure that DFRBs always thoroughly explore deadly force encounters for lessons learned that will enhance public and officer safety.

Recommendation #17 – Create and deploy a fully developed Early Intervention System.

Operating under the premise that small issues will lead to big problems if left unattended, an Early Intervention System (EIS) is a valuable administrative tool that can enhance accountability and integrity in a law enforcement agency. An EIS is a data-based management tool designed to identify officers whose behavior is problematic and to spur intervention to correct that performance before the situation escalates into a formal disciplinary action or worse. A department's EIS must be part of its larger efforts to support and improve officer performance. Frontline supervisors are key actors in the use of an EIS, but the Chief of Police and his command staff must be committed to the full deployment of the system.

The information collected as part of an EIS can be as expansive as a department desires. Of particular relevance to the issue of the use of force, an EIS should track all reported uses of force, searches and seizures, number of arrests, and any civilian or internal complaints, civil suits, or criminal charges regarding the use of force. Additionally, recognizing that aberrant behavior in a multitude of performance areas can be a precursor to a use of force problem, an EIS system should capture other information that could identify outliers in the department. This could include, for example, such things as unusual numbers of pedestrian stops, the failure to meet training obligations, disciplinary actions, negative performance evaluations, and any

civilian or internal complaints, civil suits, or criminal charges against an officer for matters other than the use of force.

It is important to make sure that EIS thresholds are set at an appropriate level so as to initiate relevant and effective intervention (i.e., not so high that intervention never occurs or occurs too late). For example, recognizing that the officers who are of particular concern are indeed the outliers on the force, thresholds for triggering intervention can be set to capture approximately 3-5% of the line officer population. Additionally, the criteria for the system should take into account the need to create single-event thresholds for occurrences that are so critical that they require immediate department intervention and should implement rolling thresholds, thereby ensuring that an officer who has received an intervention is not permitted to engage in the initial threshold number of additional events before again triggering the EIS. Finally, the structure of the system must ensure that interventions follow close in time to the actual triggering event.

Once the EIS is triggered for an officer, it is critical that the supervisor conduct a thorough review, take appropriate action, and be diligent in tracking resolution. The supervisor should review any triggering event in its entirety and prescribe appropriate resolutions or training opportunities specifically targeted to the behavior that prompted the intervention. At a minimum, supervisors should be required to review the EIS files on each subordinate every two months and a response by a supervisor should be required within two weeks of detecting a red flag. Thereafter, the supervisor should check the EIS on that officer every month for twelve months to determine if the response has satisfactorily resolved the issue. In each instance of a red flag, the supervisor should document what action was taken and document the event in at least the subject officer's next performance evaluation and the officer's next promotion recommendation. Ideally, a regular audit of the system would be conducted to make sure that it is being optimally deployed.

Recommendation #18 – Equip officers with body cameras.

Providing officers with body cameras will preserve important evidence of the circumstances surrounding encounters between the SPD and citizens. Although no recording can be a perfect record of the totality of an event, body cameras will help SPD officers gather evidence, improve the quality of their reports, and protect them from false citizen complaints, and they will provide valuable evidence when the circumstances of an encounter are called into question by any source.

Recommendation #19 – Explore standardizing the weapons carried by officers in the line of duty.

The Commission is aware that there is variation in the types of weapons that SPD officers are allowed to carry. For example, officers are allowed, with permission, to carry non-standard firearms or batons. While some have expressed a concern about this practice, the Commission is not in a position to state that it should be continued or disbanded. Rather, the Commission recommends that the Chief of Police review the

matter and report to the Mayor on whether weapons standardization should be implemented, and if not, then why not.

C. Citizen Oversight

Although this report is organized in a way that this section is set apart from the earlier “Culture” section, this should not take away from the fact that citizen oversight can, and should be, an incredibly positive force on the culture of a police department. Internally, in the absence of appropriate citizen oversight it can be difficult for individual officers to speak up in the face of peer pressure promoting a code of silence. Externally, a primary value of citizen oversight is its ability to bring transparency to the work of a police department, and thus, lessen distrust between the department and the citizens it serves. Holistically, a police force that welcomes independent citizen oversight can use that engagement as a feedback channel that leads to better insight into the department, better training, better community relations, increased officer morale, and, ultimately, an improved organizational culture.

Recommendation #20 – Invest the Office of the Police Ombudsman with the authority and discretion to open and conduct independent investigations concerning the operations, actions, or omissions of the SPD.

Investing the Office of the Police Ombudsman with the authority and discretion to conduct independent investigations is essential to both establishing objective oversight and building public trust. As a function of human nature, individuals who are part of a group are more likely to favor the interests of the group over “outsiders.” In the context of an investigation into a fellow group member’s alleged misconduct, the peer investigator is apt to be more selective about the investigation’s scope and depth, and may be inclined to avoid a transparent process. All of this behavior can compromise the quality of the investigation and negatively impact the public’s trust in the process and the institution. Conversely, the more independent the investigator, the more likely the investigation will be perceived to be credible to those involved and to the general public.

The ability of the Office of the Police Ombudsman to open and conduct an investigation should not be dependent on the receipt of a complaint from a member of the public. While the expectation is that most of the office’s investigations would originate from such a complaint, the Office of the Police Ombudsman should have the authority to open an investigation when the Ombudsman has knowledge of evidence sufficient to form a reasonable basis for the investigation – whatever the source of the knowledge.

Recommendation #21a – All City employees and those acting on behalf of the City should be required to cooperate fully and truthfully with the Office of the Police Ombudsman.

Recommendation #21b – Subject to legal privilege, the Office of the Police Ombudsman should be given full, unrestricted, and complete access to any and all City information, files, evidence, or other material which the Ombudsman deems necessary to the performance of his/her duties.

The ability to conduct an independent investigation is severely undermined if the Office of the Police Ombudsman does not have the authority to require the cooperation of all City employees and agents, and to secure all necessary records. All City employees and agents, as conditions of employment, should be required to truthfully and completely answer all of the Office of the Police Ombudsman inquiries and fully comply with all requests for records. Appropriate policies and procedures should be adopted so as to extend the protections put forth in *Garrity v. New Jersey*, 385 U.S. 493 (1967) to employees who are required to appear and provide testimony (i.e., compelled statements related to an employee's job and job duties have immunity in any subsequent criminal prosecution of the statement maker).

Prior to conducting any investigative interviews of City employees or agents, the Police Ombudsman should give the employee a memorandum that clearly informs the employee of his or her obligation to truthfully and completely answer all questions asked by the Ombudsman as a condition of employment. If the Ombudsman determines, by a preponderance of the evidence, that a City employee has either knowingly provided false information to, or failed to cooperate fully with, the Office of the Police Ombudsman, the Ombudsman should contact the Chief of Police or appropriate department director and request that the employee be notified of his or her obligation to completely and truthfully cooperate with the Ombudsman. If, after being so notified, the City employee refuses or fails to cooperate completely and truthfully with the Ombudsman, the Ombudsman should file a formal complaint of misconduct against the employee with the Chief of Police or appropriate department director.

Recommendation #22 – Create a Citizen Advisory Board for the Office of the Police Ombudsman.

A Citizen Advisory Board should be established to provide oversight to the Office of the Police Ombudsman. The members of this Board (seven in total) should be appointed by the Mayor and confirmed by the City Council. The Board should be empowered, at a minimum, to: advise the Office of the Police Ombudsman on practices and policies; make recommendations regarding SPD complaint investigation practices, procedures, and policies; request review, monitoring, or inquiry into specific incidents or issues; and, assist the Ombudsman in community communication, outreach, and education.

D. City Administration**Recommendation #23 – The Mayor should maintain an active and visible role in SPD oversight and administration, and in promoting the department to the community.**

As the elected executive of the City, the Mayor should play a visible and active role in SPD oversight, administration, and public engagement. The Mayor appoints the Chief of Police. The Mayor should be an advocate for the entire SPD and for the Chief's administration. The success of the Chief is dependent, in significant part, upon the support of the Mayor.

The Mayor should have an active discussion with the community on the establishment of the proper resources for the department and what the community should expect in terms of greater or lesser levels of service associated with the City's budget. The Mayor should create forums where members of the community can ask questions about the department, express their opinions on the SPD's performance, and make recommendations for improvement.

The Mayor has an important role in recognizing and communicating to the citizens the many positive aspects of the SPD and in fostering the community's trust in, and respect for, its officers. The Mayor should seek opportunities to publicly honor officers who are recognized within the department for excellence in service and performance.

The public must know that the Mayor is personally committed to supporting a department that exemplifies professionalism, respect for others, and a high degree of service to the public. This is particularly important for the current Mayor and his leadership team who are being called upon to make changes within the department following Otto Zehm's death, Officer Thompson's conviction, and the aftermath of both.

Recommendation #24 – The City Attorney's Office should maintain separation of duties and functions between litigation support, employment law representation, and police legal advising.

In her June 28, 2012, presentation to the Commission, Assistant City Attorney Mary Muramatsu explained how the City Attorney's Office (CAO) assigns responsibilities when it comes to providing support to the SPD. That support is now organized around three activities: litigation support, employment law representation, and police legal advising. Litigation support and employment law representation are provided by the appropriate lawyers in the CAO Civil Division. Police legal advice is provided by an Assistant City Attorney who is assigned to the SPD for that function. This separation of duties is the appropriate way for the CAO to render services to the SPD. It ensures that the appropriate subject matter experts are providing direct support to the SPD, that the interests in one area are not unduly put above interests in another area, that conflicts of interest are mitigated, and that a broader understanding of the needs and challenges associated with the SPD is maintained within the CAO.

The organizational structure described above is new. From approximately 2005 until these changes were recently made, the SPD was advised in all matters by a lead attorney out of the CAO. That attorney served as the single point of primary contact for the SPD on all legal matters – litigation, employment, and general advice. It is the Commission's position that the "lead attorney" model creates both real and perceived conflicts of interest that compromise the quality of service received by the SPD and that increase the City's risk profile. The Commission strongly recommends that the lead attorney model not be re-established at any time in the future.

Recommendation #25 – The CAO should adopt strict policies and procedures that ensure the office maintains appropriate distance from all criminal prosecutions of SPD personnel.

The CAO has the responsibility of providing a defense for SPD officers facing civil law suits arising out of officers acting within the scope of their employment. The CAO does not, however, have the same responsibility when it comes to SPD officers facing criminal prosecution. As explained by Assistant City Attorney Muramatsu to the Commission, in that instance the CAO is supposed to remove itself from all involvement in the criminal case. The City Attorney should adopt policies and procedures that ensure the appropriate separation is observed in criminal prosecutions of SPD officers.

Recommendation #26 – The CAO should take an active role in the development and updating of the SPD's use of force policies, and the department's use of force training materials and program.

The use of force by a police officer is strictly regulated by legislation and case law implemented through SPD policies, training, and oversight. In light of this and in light of the concerns raised in Ms. O'Linn's report regarding the weakness of the legal content in the department's use of force training materials, the CAO should take an active role in the development and updating of the SPD's use of force policies and in the entirety of the SPD's use of force training program. At a minimum, the CAO should be required to sign off on the department's use of force policies and any revisions to those policies, it should be required to periodically review and approve all use of force training materials, and it should assume primary responsibility for instructing on the law that regulates the use of force by a police officer. See *also* Recommendation #8.

V. CLOSE

"The police are the community and the community are the police." (Sir Robert Peel)

For policing to be effective in a free society it cannot be a solitary activity. To protect public safety the police must have the public's cooperation and that requires that it first have the public's trust. Policing that is grounded in adherence to the U.S. Constitution, Washington State laws, and the duly adopted policies of the department will create an

environment in which the community can build confidence and trust in its police department. All must understand that there is no “them” in the equation – there is only “us”. Spokane and its police officers are all part of the same community, and all want the same thing – a safe and prosperous community.

While the focus of this Commission has been on those instances where SPD officers use force against civilians, the vast majority of interactions between the department and the public don’t involve any force whatsoever. Opportunities for the SPD to build the necessary public trust that it needs when it comes under scrutiny for using force present themselves every day. It is critical that every member of the department commit himself or herself to adding to that trust in every encounter he or she has with a member of the Spokane community.

The Spokane Police Department, supported by City leadership, must operate as an agency whose members honor their oath to protect and serve the community. Human life must take priority over personal property, inconvenience, individual attitudes, and organizational culture. It is the hope of the Use of Force Commission that its recommendations, if implemented, will foster a better relationship between the SPD and the community, and thus, foster a safer Spokane for all.

City of Spokane Use of Force Commission

Appendix A - Member Biographies

Commission Chair: Earl F. “Marty” Martin was appointed Executive Vice President of Gonzaga University in July 2010. Before becoming the university’s EVP, Mr. Martin served Gonzaga as dean of the School of Law for five years. In his last year as dean Mr. Martin also served the university as its Acting Academic Vice President. Mr. Martin holds a Master of Laws degree from the Yale Law School, and a Juris Doctorate and Bachelor of Arts in Communications from the University of Kentucky.

Commission Vice Chair: William D. Hyslop is a principal in the Spokane and Coeur d’Alene firm of Lukins & Annis, P.S. and has been practicing law for over thirty-two years. Mr. Hyslop is a former United States Attorney for the Eastern District of Washington. He has served as the President of both the Spokane County Bar Association and the Federal Bar Association for the Eastern District of Washington, and as a member of the Board of Governors for the Washington State Bar Association. He received his Bachelor’s Degree in Political Science from Washington State University, a Master’s Degree in Public Administration from the University of Washington, and a Juris Doctorate from the Gonzaga University School of Law.

Commission Member: Gerry Alexander is a retired Justice of the Washington Supreme Court. Justice Alexander served on that Court from 1995 through 2011 and was Chief Justice for nine of those years. He enjoys the distinction of having served as Chief Justice longer than anyone else in Washington State history. Prior to serving on the Supreme Court, Justice Alexander served on the Superior Court for Thurston and Mason Counties (1973-1985) and the Washington State Court of Appeals, Division 2 (1985-1995). He received both his Bachelor of Arts and Juris Doctor degrees from the University of Washington. Currently he is associated with the Olympia law firm of Bean, Gentry, Wheeler and Peternell, PLLC.

Commission Member: Ivan Bush served for twenty years as the Equal Opportunity Officer for Spokane Public Schools before retiring from that position in April 2012. Mr. Bush’s prior experiences include serving Spokane as the Executive Director of the East Central Community Center and the Martin Luther King Center. Mr. Bush holds a Bachelor of Arts degree in Social Science from Texas College in Tyler, Texas. He also has extensive experience via presentations and participation in numerous local, regional, and national workshops and conferences addressing diversity, equal opportunity, and adult and juvenile justice.

Commission Member: Susan Hammond was the Director of Outpatient and Psychology Services at Spokane Mental Health, a Division of Frontier Behavioral Health during the majority of her service on the Commission. Ms. Hammond has worked for thirty years

in the field of public mental health. Ms. Hammond holds a Bachelors of Nursing from Northern Michigan University and a Master of Nursing from Duke University.

DRAFT

City of Spokane Use of Force Commission

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City of Spokane Use of Force Commission

Appendix C

***Report from Mildred K. O'Linn
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Mr. Earl F. Martin
Executive Vice President
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RE: REPORT TO USE OF FORCE COMMISSION

Dear Mr. Martin:

In March, 2012 Mr. Earl Martin, Executive Vice President of Gonzaga University working in his capacity as Chair of the City of Spokane Use of Force Commission, contacted me with regard to serving as a consultant to the Commission. After a preliminary discussion about the nature of the work, I provided Mr. Martin with information on my background, qualifications, training and experience. Thereafter, in mid-May 2012 a contract for services was executed and Mr. Martin began transmitting documents and materials for my review. The original projected date for completion of the project was September-October, 2012.

The scope of the project as agreed to include: a review of use of force training, use of force policies and a review of the field training officer program via written materials provided; meetings in Spokane with executive, management, supervisory level personnel and the training staff; and potential patrol ride-alongs with members of the Spokane Police Department. It was anticipated that I would be evaluating the defensive tactics training program in particular, identifying potential areas of concern and making recommendations with regard to training and policy concerns.

Materials provided by the Use of Force Commission and the Spokane Police Department ("SPD") included documents relating to the SPD defensive tactics program and other use of force options training; the entire SPD policy manual; and materials pertaining to the Field Training Officer Program. During the course of the project additional materials pertaining to these areas of concern were provided, as well as e-mail correspondence relating to questions that arose during the course of the project. Note that with regard to the various materials provided there were multiple instances

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where the items provided were not the current materials being used by SPD or an update was adopted by the department during the course of the project without notice of any such revisions or adoptions being provided. As discussed below in the section pertaining to policy concerns, there remains at this time an issue as to a substantial policy update that was issued by the vendor providing policy recommendations to SPD. That set of substantial recommendations has not yet been adopted. Finally, with regard to materials transmitted for my review, I was provided the entire transcript of the criminal prosecution of Spokane Police Department Officer Karl Thompson which included thousands of pages of testimony. Ultimately, a decision was made by the client to not require review of the entirety of the transcript in preparing this report.

MEETING WITH INTERIM CHIEF OF POLICE

On June 27, 2012 I met with Spokane Police Department Interim Police Chief Scott Stephens with regard to the evaluation of the Spokane Police Department use of force training and policies, and the FTO program of the agency. My meeting with Interim Chief Stephens included a discussion about staffing issues for the Spokane Police Department; an overall historical perspective with regard to the Otto Zehm incident and the federal criminal prosecution of Spokane Police Officer Karl Thompson; the formation of the Use of Force Commission and the Mayor's 100-day plan; and other general areas of concern related to tasks for which I was retained.

Interim Chief Stephens' belief is that the Spokane Police Department is a professional agency with a culture of respect for the community they serve. Interim Chief Stephens indicated that Spokane Police Department staffing level at the time of our meeting was at approximately 277 officers with an authorized strength of 295. However, Interim Chief Stephens indicated that the actual working force available at the time of our meeting was approximately 260 commissioned officers as a result of the number of individuals that are off work as a result of work related injuries. Current staffing was represented as including the following positions: two majors, three captains, 10 lieutenants and 34 sergeants for 16 patrol teams. Interim Chief Stephens described what he characterized as a unique patrol shift program wherein officers work 10 hours and 40 minutes five days on and five days off.

Interim Chief Stephens indicated that he does not believe that Spokane is a "problem police department" and that while he is concerned with training, it is not as many believe a panacea that solves all problems for police departments. His primary concern is staffing levels and service to the community, which is a challenge nationwide given the current fiscal challenges facing communities, including Spokane. Interim Chief Stephens indicated that the supervisory ranks are over extended in their span of control and that in his experience supervisory numbers have a definite impact on use of force issues. With that said, he does not believe that the ratio of force incidents to the number of officer contacts is out of balance for Spokane Police Department.

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Note that with regard to actual complaints against the Spokane Police Department for alleged excessive use of force, I have not been provided any data regarding same and the review of the internal investigative process and procedures is outside the purview of my review. In my discussion with Interim Chief Stephens with regard to risk management issues, I was given the impression that Spokane Police Department has not had a substantial number of civil rights cases for excessive use of force or other Fourth Amendment types of claims. Interim Chief Stephens indicated that there have been more employment related cases than litigation related to allegations of misconduct of officers in the course and scope of their duties.

Discussing the training for officers with regard to dealing with a "vulnerable population" and the mission that was given to the Spokane Police Department by the Mayor's Office in the "100-Day Plan", Interim Chief Stephens indicated that the required training has been completed. With regard to "Crisis Intervention Training" (CIT) in particular, Interim Chief Stephens raised the question as to whether or not a 40-hour certified CIT program is overly burdensome versus a 4-hour block of training for officers on recognition of individuals who are in crisis and immediate action items that officers need to put into play.

MEETING WITH SPOKANE POLICE ACADEMY TRAINING STAFF

The remainder of June 27, 2012 was spent in meetings at the Spokane Police Training Academy with SPD Training Academy Commander, Lt. William Drollinger; Defensive Tactics Instructor and SWAT Team member, Officer Rob Boothe; Patrol Tactics Instructor, Officer Terry Preuninger; and Training Academy Sgt. Joel Fertakis.. The discussion included the State of Washington Criminal Justice Training Commission Basic Law Enforcement Academy; the Spokane Police Department Pre-FTO program; the Spokane Police Department FTO program; State standards and mandates; Use of Force In-Service Training including defensive tactics, TASER electronic control devices (ECDs), chemical agents, impact projectiles and firearms.

BASIC LAW ENFORCEMENT TRAINING FOR NEW HIRES

The discussion commenced with an overview of the curriculum included in the State of Washington Basic Law Enforcement Academy ("BLEA") program and the requirements for the State of Washington which are encompassed in the 19-week program (see "WSCJTC Curriculum Block Definitions, Basic Law Enforcement Academy (July 2010 - Current)" attached hereto as Exhibit "A"). The discussion included areas of concern for SPD relating to subjects that are not included in the BLEA program as taught at the State of Washington Criminal Justice Training Commission (CJTC) facility in Burien, Washington including for example ECDs, PR-24 or side-handled police batons and shotgun training.

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New hires for the City of Spokane also receive two days of training before they go to the basic law enforcement academy. That training includes familiarization with their firearms for safety purposes with regard to handling and transport of the weapons to BLEA, and a report writing block on the computer program that the Spokane Police Department utilizes so that new hires can be familiar with this and use it during their basic academy training. Use of force training and related areas of study at the basic academy level include numerous blocks of instruction designated typically as either Defensive Tactics or Patrol Procedures. (See Exhibit "A".)

PRE-FTO PROGRAM TRAINING

The discussion then turned to the "post-academy" training conducted by Spokane Police Department Training Center for the probationary officers subsequent to completion of the basic law enforcement academy. Note that this training is referred to as the "Pre-FTO" training to avoid confusion with the phrase "P.O.S.T." academy which is commonly understood in law enforcement training to refer to the governing body for law enforcement training in most states (ie. Peace Officer Standards and Training Commission). The State of Washington governing body for law enforcement training is the Criminal Justice Training Commission (CJTC).

At the time of this initial meeting I was presented with a "Pre-FTO Program" schedule for the current probationary officers. That 40-hour Pre-FTO program schedule for the probationary officers was developed by Academy Training Staff and covered June 25-29, 2012 (see "Pre-FTO Program" attached hereto as Exhibit "B"). We discussed that in prior years the Pre-FTO program for Spokane Police Department consisted of 80-hours of training (see Post Academy Schedule, November 14-23, 2011 attached hereto as Exhibit "C"). The June, 2012 schedule reduction in hours resulted in the following cuts: no side-handle or PR-24 police baton training; a reduction of firearms training from 16-hours to 8-hours; a reduction of defensive tactics from 8-hours to 4-hours; no use of force report writing training; no active shooter or low level light shooting exercises or mock scenarios. Additionally, the limited time provided for the defensive tactics portion of the Pre-FTO program also impacted the opportunity for training staff to cover the differences between the Lateral Vascular Neck Restraint System, which is a multi-level system of applying a carotid restraint and the Carotid Restraint as taught by SPD as a 2 level technique. The primary reason given for many of these changes was a reliance on the basic law enforcement academy to cover the majority of these items. Also, pepper spray training (OC) was eliminated from the Pre-FTO program because it was believed to be covered at the basic law enforcement academy as an optional nighttime program.

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During our discussions with regard to this schedule, I inquired as to the nature of the defensive tactics and use of force training that was included in the current 4-hour block in the recruits' schedule for the Pre-FTO training. The materials covered in the 4-hour block include skills and techniques which are not taught at BLEA in the Burien Academy. Of critical importance in any agency training of probationary officers trained at an external academy is the review and training in the agency's policies - in particular the use of force policies. Thus, a portion of the 4-hour block of training for the probationary officers was dedicated to the review of the SPD use of force policy. With regard to the techniques and skills which the instructors included in this Pre-FTO training block the following were reviewed or taught to the probationary officers in the Pre-FTO program: handcuffing techniques; prone restraint positioning issues and prone handcuffing; the modified neck restraint system taught by SPD; weapon retention; mastoid and hair take-downs; and leg restraining techniques.

During a subsequent meeting with SPD defensive tactics instructors, Officer Rob Boothe demonstrated the techniques taught by SPD to probationary officers and those techniques taught during in-service use of force training for the SPD. All of the techniques were reviewed, explained or demonstrated. Given the limited 4-hour block of time for defensive tactics for the probationary officers in the Pre-FTO training program, I inquired as to the manner in which the schedule was developed. Ultimately, I determined that the schedule for the probationary officers in the current group was established without input from the subject matter experts and did not appear optimal. The instructors across the board expressed the same concerns with regard to the lack of time to cover take-downs and various physical skills including, for example, unarmed striking and blocking techniques, neck restraints and weapon retention and disarming. A further time concern comes with a need for physical skill repetitions, time to actually test comprehension of the probationary officer's ability to execute such physical skills and the opportunity to do remedial training as needed.

With regard to the baton training issue, the SPD defensive tactics instructors indicated that there is no one currently certified as an instructor or instructor-trainer in SPD for the side-handle baton or PR-24, and thus the most recent group of probationary officers did not receive PR-24 baton or any other type of side-handle baton training. Since BLEA baton training consisted of only the straight baton, the probationary officers are limited in their choice of batons to the straight baton for which they were certified. The issue of maintaining certification of SPD instructors and providing them with up to date training and instructor-trainer or Master level instructor certifications in various subject areas is of serious concern for the agency's professional development and risk management.

Substantive discussion was also had with regard to Pre-FTO firearms training and the issue of rifle and shotgun training. The Pre-FTO Training program as set forth in Exhibit "B" provided in June, 2012 for the then current probationary officers included a 4-hour block of firearms instruction. That block of instruction consisted of approximately 2-hours of skills testing and qualifications and

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2-hours of training referred to as "Patrol Rifle and Shotgun Familiarization" which includes training on how to render safe the shotgun and patrol rifle and instruction for what was referred to as "emergency operations." Note that probationary officers do not receive the full day of shotgun training or the three day rifle course required by SPD to carry either weapon upon their return from basic training nor did there appear to be a plan in place to deal with this concern. As noted herein, the primary issue is the apparent lack of sufficient shotguns and patrol rifles to equip all of the SPD patrol personnel who actually desire access to a long gun. That issue aside, a plan for when a probationary officer will have the opportunity to complete either or both of those SPD long gun training programs should be part of the Pre-FTO process, presuming they have a desire and the skills required to be issued either.

With regard to our discussions on the content of the "Pre-FTO" training, Academy Training Staff were very open to suggestions with regard to development of a checklist of additional training needed for recruits after the completion of BLEA and a separate checklist for lateral officers hired from other law enforcement agencies. Staff was also more than willing to seek out input on the subject matter areas and amount of time necessary for the various subjects for inclusion in future Pre-FTO training from the subject matter experts in SPD. As a result of the discussions with the FTOs and instructors present at the meetings, it was determined that there was a need to increase the number of orientation training hours for the recruits. As a result of this process the Pre-FTO Training was modified from the subject areas and times listed in Exhibit "B" to the subject areas set forth in the Pre-FTO Training Checklist for Entry-Level Officers (see Exhibit "D") and in the Pre-FTO Training Checklist for Lateral Officers (see Exhibit "E").

STATE TRAINING STANDARDS AND MANDATES

The State of Washington Criminal Justice Training Commission requires 24-hours of in-service training annually for all commissioned peace officers. Training must be recorded by the employing agency in a manner that WCJTC can review. For training to qualify as a portion of the 24-hour in-service mandate it must be training that is widely or wholly applicable to law enforcement officers in the State of Washington. The state allows the Chief of Police to make a written request for a three month extension for personnel to comply with the 24-hour requirement. There do not appear to be any specific mandates at the state level other than the 24-hour requirement.

During the initial meeting with Academy Training Staff, I was informed that the Spokane Police Department training plan periodically includes training on subjects such as first aid and CPR re-certification, blood borne pathogens and legal updates. Additionally, there are City mandates that must be met, such as sexual harassment training. Training records for Spokane Police Department personnel are maintained by the Academy Administrative Assistant. The Administrative Assistant sends email reminders to individuals that do not appear to have fulfilled the training requirements

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requesting that they review their training records and provide information about any missing training which the officer attended. Noting the above requirements, a number of suggestions were made to achieve compliance with the State requirements and City mandates. The City mandates, if any (which remains unclear) should be included in the annual training needs assessment surveys and then built into the annual training plan as discussed further herein.

It would be prudent to schedule an internal audit for the beginning of the last quarter of each year of individual officer training records to confirm compliance with regard to the State in-service requirements and any City mandates. A follow-up review of those officers that have yet to meet the State requirements and City mandates should be conducted every 30-days thereafter to insure annual compliance. This is the type of systematic process that could and should be built into the training records systems and managed by the Academy Staff. Note that having an officer not in compliance involved in a major incident would be an embarrassment and a risk management issue for the agency.

USE OF FORCE TRAINING - DEFENSIVE TACTICS

With regard to this particular area of concern a significant delay occurred involving the documentation provided for my review. Notably on October 3, 2012 during preparation of this report, it was determined during a conversation with Academy Staff that the Defensive Tactics Manual that had been provided to me was significantly out of date. This was determined when I questioned why the manual did not appear to be in alignment with the policies. Subsequently, I was provided a current defensive tactics manual which, along with the policy revisions and update issues discussed below, has substantially delayed my work and required substantial duplication of effort and time invested in this project.

Documentation issues aside, the defensive tactics techniques that are described throughout the previous and current version of the defensive tactics manual were demonstrated to me during my meetings with the SPD defensive tactics instructors. The techniques included in SPD's force options are standard throughout the law enforcement profession. The program appropriately includes lower level control techniques and techniques for more active resistance and for dealing with assaultive behavior.

The only deviation observed in standard defensive tactics type programs is the modification to the "Lateral Vascular Neck Restraint System" ("LVNR") that is taught by the State of Washington CJTC and the modified technique that is taught by SPD, which SPD refers to as "Lateral Neck Restraint." SPD has, in my understanding, chosen to eliminate the level 2 and 3 positions of control taught in the LVNR program from the SPD technique. I understand the rationale as explained to me; however, I would recommend that with a technique of this nature following a nationally recognized

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program and the State's program would be prudent. Additionally, the Defensive Tactics Manual, Section V which deals with "Neck Restraints", indicates the technique is classified as deadly force. This is not the proper classification according to SPD policy as adopted on September 17, 2012 as set forth in section 300.2.5 or as articulated in the Special Policy Update from Lexipol. The designation of carotid or neck restraint techniques at the intermediate force level is more appropriate and is supported by CJTC. The Defensive Tactics Manual should be consistent with the SPD policy in this respect and with regard to the other force options as well. This is simply a matter of the Defensive Tactics Manual referring to the current use of force policy sections that are in place at all times. In practical terms this means that optimally, any time a new force policy is adopted by the SPD, the defensive tactics instructors should review and update the Defensive Tactics Manual. The updates should incorporate the revisions and specifically annotate with regard to the policy adoptions that are being incorporated and the date of the updates to the Defensive Tactics Manual. Additionally, the Defensive Tactics Manual needs to be revised to be clear that the use of pain compliance techniques on purely passive resistors is not in accordance with current case law and the recent policy updates from Lexipol.

Of significant concern for the SPD defensive tactics program is the supporting information relating to legal concepts and federal civil rights throughout all of the documentation that was provided for my review. All of the materials appeared to be in need of revision to bring the materials up to date. For example, the force option scales used in the current version of the Defensive Tactics Manual need attention or should be completely eliminated. The resistance scale in the current manual for example breaks down the subject resistance into the following categories: compliant, passive resistant, active resistant, assaultive and life threatening. The officer response side of the scale lists the categories of force as: cooperative controls, contact controls, compliance techniques, defensive tactics and deadly force. This is problematic in that officers are legally permitted to use deadly force to prevent serious bodily injury (ie. great bodily injury) or death. Thus, the force options scale, if SPD chooses to use one, should be modified so that the current legal concepts with regard to non-deadly and non-deadly intermediate force (ie. pepperspray, ECD probe mode deployment and baton strikes) are accurately represented on any such scale as being only appropriate in the face of active resistance and where there is a threat of harm to officers or others.

The relevant case law in this area has made it clear that force is either non-deadly or deadly; that within non-deadly force is a sub-category of force designated as intermediate force that includes pepper spray, ECD probe deployment and baton strikes. Police canines and neck restraints also fall within the non-deadly intermediate force level and, as stated above, intermediate force options require active resistance with a threat of injury to officer or others. The SPD Use of Force Scale does not depict these concepts accurately. It is also recommended that the phrase "less lethal" be removed from all materials as well as all policies, which is consistent with guidance from the policy provider Lexipol .

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The supporting legal information relating to legal concepts and federal civil rights in all of the documentation needs to be cleaned up with regard to the concepts that are included therein, and recent case law needs to be incorporated. Material including cases such as *Bryan v. McPherson*; *Mattos v. Agarano*; *Young v. County of Los Angeles*; and *Glenn v. Washington County* were provided to the Academy Staff for their review and for incorporation in training materials. Additionally, it was noted that all of the materials provided for my review referenced a case dealing with deadly force that was overturned years ago (*Vera Cruz v. City of Escondido*) and a recommendation was made for that case to be removed.

Of particular significance is the need to address the re-prioritization of the "Graham" factors which are the basis for evaluating an officer's use of force in a Fourth Amendment context. *Graham v. Connor* (misspelled throughout the training materials) is the preeminent use of force case decided by the United States Supreme Court in 1989. The "Graham" factors have been modified with regard to the priority of the factors used in determining whether an officer's use of force was objectively reasonable. All of the material related to this block of training was also provided to the Academy Staff for their use.

All of this is remedied by systematic attention to on-going policy and training updates. Use of force instructors and internal legal counsel should be tasked with maintaining up to date materials and information for SPD. During my meetings with the SPD instructors it was apparent that each and every one of them wants to do the very best job possible and that each has the professional drive and enthusiasm for instructing that is necessary to do the job. Given that they have not received instructor re-certification or updates since 2007, it is no surprise that these issues exist.

The issue of maintaining up-to-date legal material is a good illustration of the need to maintain the expertise of the department's subject matter experts. In particular SPD needs to strategically plan to update and maintain current certifications for the defensive tactics instructors and other force related instructional staff of the agency. Re-certification programs are in place to insure that instructors have access to current materials and an understanding of current law. This is not an uncommon challenge in the law enforcement community nationwide so I do not find that SPD is any worse off in this regard than is typically found in other departments. Attendance of executive, management, supervisory level personnel and subject matter experts at periodic training and updates for law and policy concerns is costly in terms of time and course costs. However, the consequences of not staying current are likely to be much more significant and pose long lasting risk management concerns.

The "Fall 2011 In-Service" materials that were provided included the breakdown of the basic and advanced skills training sessions and a description of the scenarios for the "Reality Based Training" ("RBT") portion of the in-service training. This training program was then demonstrated

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during my second trip to Spokane by the SPD instructors for the various subject matter areas and the overall RBT program . A review of the annual in-service training that took place in 2011 was provided which consisted of a full day of training for all officers. This program is state-of-the-art in-service training that involves skill building exercises and five stations of scenarios with skill testing supervised by the department's subject matter expert instructors. During the meeting with the various instructors, recommendations were made with regard to a number of areas that were designed to enhance the quality of the training provided.

The RBT instructors that I met with included Sgt. Matthew Cowles and Officer Christopher Crane. They went over the Student Safety Briefing and the safety measures that are utilized in the RBT program to make sure that no live weapons are mistakenly discharged during the scenario based training portion of the in-service program. We discussed the need to potentially inquire as to physical limitations that participating officers may have and to advise each individual that they should not exceed their own physical limitations. This is of concern for a variety of reasons including the need to reduce the risk of work-related injuries during the course of training.

With regard to enhancing and improving the decision-making and use of force option selection abilities of officers, a recommendation was made with regard to emphasizing appropriate escalation and de-escalation responses in RBT simulations. This is simply the best vehicle for addressing this area of concern. To that end, additional staff should be involved in the RBT scenarios using a subject matter expert ("SME") team concept including DT/Firearms/ECD/OC/Patrol Tactics instructors. Officers should be scheduled to rotate thru scenarios, with all scenarios potentially running the gamut from no use of force to deadly force based on instructor discretion and the involved officer actions. The score sheet for each scenario should use the "Graham" factors and officer/subject factors for evaluative purposes and optimally should include a documentation and verbal explanation component. Exercises should include: multiple officer scenarios; team tactic issues; protocols for waiting for additional back-up and medical services to arrive when appropriate; and dispatch interaction. RBT scenarios should utilize safety equipment that allows for full-range of force options and weapons (verbal thru deadly force), and the scenarios should be videotaped to allow for the most beneficial and full-range use of the experience.

Critically, first line supervisors should be drawn into the RBT scenarios and required to handle the scenarios from a supervisory perspective as opposed to a first responder. Supervisors should be evaluated on their involvement and a set of criteria and evaluation developed specifically for supervisors. Again, as stated above, criteria for evaluation of the handling of the use of force scenarios should be modified to incorporate the "Graham" factors, officer/subject factors and the department's use of force policies. Supervisors should be evaluated beyond the patrol officer level responsibilities using criteria for the various simulations as appropriate for their responsibilities

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including, for example, such things as: oversight and direction of incident; plan development and implementation; monitoring and intervention; communication with on-scene personnel and dispatch; and post-incident handling concerns.

The RBT exercises are also an opportunity to test knowledge and understanding of policy and law with regard to search and seizure issues such as probable cause, reasonable suspicion and use of force. The overall benefits of the RBT program cannot be overstated and should be expanded upon to incorporate the supervision aspects and report writing component. The benefits with regard to escalation/de-escalation, reduction in use of force concerns as a result of increased supervisor involvement, and responsibility and enhanced arrest tactics teamwork should prove to be worth the added investment in time and effort.

With regard to the selection of use of force instructors for defensive tactics, I was informed that a memo is circulated through the department to advertise the openings that are available for such positions. The qualifications include three years of service on the police department and vetting by Internal Affairs, but at the time of my meeting with those responsible for this activity the full qualifications and the vetting criteria used by IA were not readily apparent. There is a physical assessment that is conducted based on the training regimen that the instructors will be leading; however, again it was not clear what the standards are for a successful applicant. Applicants for these instructor positions also go through oral boards. It was noted that during their oral board interview an applicant would be questioned about their medical history which would give me some concern with regard to the appropriateness of such questions and the privacy rights of the applicants as opposed to having some type of medical clearance. The individuals are then ranked and selected in some manner as instructors by the Training Academy Lieutenant.

With regard to certification as a defensive tactics instructor the following information was provided by the staff. SPD defensive tactics instructors go through an instructor development program that includes 40 hours of training. The instructors must then go through an unarmed defensive tactics training program which includes an 80 hour program through the State of Washington. This is typical type of training program required of defensive tactics instructors in law enforcement. Additional training is required for certification at higher levels of instructor certification by the State of Washington including blocks of training in the various subject matter areas such as: impact weapons (40 hours); ground survival (40 hours); weapon retention/disarming (40 hours); lateral vascular neck restraint (24 hours); and active counter measures (40 hours). These various subject areas require re-certification every two to three years. Furthermore, to become a master instructor, instructors in the State of Washington must complete OC instructor, ECD Instructor, and bio-mechanical instructor development programs and be re-certified every two years in those areas. These additional criteria are set by CJTC and should be considered critical for the SMEs of SPD. The goal should be 2 master level instructors for an agency the size of SPD to

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maintain a high level of internal expertise and to deal with inevitable retirements and potential unavailability of one instructor. The master level instructors can then provide internal instructional updates and re-certifications for the SPD defensive tactics instructors. In the inevitable event of a high-profile force related incident, the ability to offer internally a highly-qualified use of force expert to testify about the department's use of force training programs is invaluable.

With regard to Spokane Police Department instructor certifications, I was informed at the time of my meetings with staff that all of the defensive tactics instructor certifications were expired and that the last SPD instructor re-certifications were reportedly completed in 2007. This is the status of all the instructors according to the instructional staff that I met with on both trips to Spokane. This is a source of serious concern with regard to quality control and risk management. It is apparent that the instructional staff is highly motivated and making every effort to work within the time and budget limits, but they need to receive training themselves to support their efforts.

As noted above, a primary concern with regard to use of force training issues for any agency is keeping law enforcement personnel up to date on the legal precedents and applicable court decisions. Understanding and transmittal of this type of information is typically accomplished by: 1) the legal advisor to the agency publishing legal updates and conducting training; 2) legal updates and publications distribution to personnel by agency; 3) subject matter experts for the agency updating personnel on significant legal developments through on-going training and re-certification processes and incorporating same into in-service training; 4) subject matter experts participation in subject matter expert organizations such as firearms instructor associations, training officer associations, and canine handler associations, and incorporating information received into in-service training; 5) assignments for monitoring and distributing case law updates to a member of the agency with special interest and aptitude.

In Spokane Police Department, Sgt. Tom Hendren, Team Leader with SIU and a SWAT Team member, was identified as the individual tasked with the responsibility of working with the Legal Liaison from the City Attorney's Office to provide legal updates to SPD personnel. Sgt. Hendren works with Assistant City Attorney Mary Muramatsu, who has been as of late designated as the Legal Advisor to Spokane Police Department. The distribution of legal updates by Sgt. Hendren focuses primarily on areas pertaining to criminal procedure and does not include an analysis of how a case decision impacts the defensive tactics training by Spokane Police Department. Sgt. Hendren indicated that he leaves the latter concern to the defensive tactics instructors. He noted that he teaches case law updates to members of the patrol division, the school resource officers and to code enforcement personnel such as loss prevention personnel, animal control and security officers employed by the City of Spokane.

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In preparing the legal updates, Sgt. Hendren uses cases reviewed by the State of Washington Attorney General's Office and asks the Assistant City Attorney Muramatsu to review the cases and his proposed updates. Updates are provided to SPD personnel through in-service training and training bulletins. The in-service training legal update is typically a 1-2 hour class conducted annually. The training bulletins are prepared by Sgt. Hendren and sent to the Assistant City Attorney for review and revision, and then Sgt. Hendren sends the proposed bulletin to the Training Academy Lieutenant, who sends it to the Command Staff. Once it is approved the training bulletin will be sent out to all personnel. Both the contents of the in-service training and the training bulletins are based on cases that Sgt. Hendren has identified by reviewing online sources including the Law Enforcement Digest, case law updates on the CJTC site, Washington State Attorney General's Office Opinions and case law that the Legal Advisor has identified. Sgt. Hendren indicated that he is probably accessing the website monthly based on his availability and other job duties and responsibilities. His review of case law does not include federal case law decisions unless a case is cited in the sources listed above or provided by the Legal Advisor.

It is clear that Sgt. Hendren's service in this area to SPD is extremely valuable and that he has taken on a great deal of responsibility in addition to his duties as Assistant SWAT Commander and Detective Sergeant in SIU. During my discussions with other members of the agency, my review of instructional materials and my review of SPD policy in the various packets that were presented, it became apparent that a concern existed with regard to the understanding and familiarity with recent case law decisions relating to the use of force. Sgt. Hendren agreed that the nature and scope of his responsibilities in this area may need clarification. Likewise, the role and responsibilities of the Legal Advisor to the SPD with regard to legal update type of concerns should probably be clarified in detail. Sgt. Hendren also mentioned that the Law Enforcement Legal Digest used to be printed out and distributed to personnel, with supervisors discussing it at briefing. That practice was discontinued and officers are encouraged to access it on the internet. Sgt. Hendren is unsure how likely it is that officers are motivated to do such review and analysis on their own initiative. Clearly, Sgt. Hendren is to be commended for the excellent service he has provided to SPD in this regard. The issue of legal updates and policy revisions, in particular with regard to high-risk areas such as use of force, needs to be addressed in a more uniform and systematic fashion. This issue should be coordinated with the City Attorney's Office and the use of force SMEs for SPD should be kept in the information loop in a timely manner.

Finally, with regard to use of force training in general, SPD has a use of force report writing training program that is exceptional. The program was created by Sgt. Kevin King and Officer Shawn Kendall and includes a lecture reviewing law and policy, and video of incidents used to train officers in the critical components of use of force report writing thru practical report writing exercises. The program is well thought out and provides practical experience and testing of this critical skill; however, the program suffers the same legal update needs discussed above. The

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supporting materials for the lecture are not up-to-date with recent case law, in particular with regard to use of force cases. Thus, the use of force report writing program would benefit from an on-going review by legal counsel for the department familiar with recent developments in case law and use of force concepts. Additionally, it was suggested that an emphasis be placed on the "Graham" factors and officer/subject factors in evaluating the reports and that supervisors be tested on report review and approval.

USE OF FORCE - ELECTRONIC CONTROL DEVICES

Detective Randy Lesser is the designated Electronic Control Device (ECD) instructor for Spokane Police Department. Det. Lesser is also the SWAT Team Leader for the department. Det. Lesser was originally certified as a TASER ECD instructor in 2002 and has subsequently been re-certified every 2 years. He has not requested nor applied to be elevated to a Master Instructor level which would qualify him to certify other ECD instructors and to do re-certifications for SPD himself.

Det. Lesser explained that SPD personnel receive a 4-hour block of training on ECDs. SPD does not do re-certification annually as recommended by TASER International. Det. Lesser indicated that this is a result of a cost issue based on a per cartridge cost estimated at \$26. According to Det. Lesser, the last in-service ECD training for SPD personnel was in 2010 and consisted of 1 hour of training (see "Taser Updates: In-Service 2010" attached hereto as Exhibit "F") which focused on ECD maintenance issues, ECD operation issues, and the #1 TASER Application Rule, as the document refers to it, summarized as follows:

"Minimize the number of taser applications in any situation. If possible, have an arrest team and apprehension plan in place prior to tasing the suspect. The suspect is only incapacitated while the electricity is on. This is the time to apprehend and cuff the suspect if possible. The lack of an apprehension plan often leads to repeated taser applications, which can increase the length of the physical struggle and lead to the suspect exhibiting symptoms of exhaustion, distress or agitated/excited delirium."

In discussing the issue of annual or bi-annual ECD training, Det. Lesser provided a document detailing the comprehensive nature of the subject areas covered in the 2010 ECD update. Det. Lesser explained that annual hands-on training with the ECDs has previously been deemed unnecessary because targeting with an ECD is perceived as simply a matter of using the built in ECD laser sighting system. Additionally, as mentioned above, he pointed out that having every officer discharge one or more ECD cartridges a year solely for training purposes is cost prohibitive.

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However, Det. Lesser agreed that high stress events can cause targeting concerns and training is necessary to address this issue. We discussed the concerns with regard to both multiple and long-term duration deployments and the need to do training to avoid excessive force issues when compliance with verbal commands is not achieved. Finally, the need for regular legal updates regarding proper ECD force options in this developing area of the law and the on-going concerns with regard to safety and warning issues was discussed. As a result, the benefits of regular in-service updates and re-certification with ECDs seemed to be apparent to Det. Lesser. Det. Lesser clearly understands the importance of training on these issues and agreed that regular updates on these areas of concern would be beneficial to SPD personnel. It is recommended that training such as this should be given greater emphasis and SPD training should include periodic blocks of training at briefing and regular in-service training which reinforce such concepts.

The most recent training on ECDs conducted by Det. Lesser occurred on June 26, 2012 in the Pre-FTO training for the probationary officers. According to Det. Lesser, the training was conducted using the most recent version of TASER International information, Version 18.0. The probationary officers received a 4-hour block of instruction and each fired 3 cartridges from the TASER X26. Det. Lesser agreed that having officers receive 4-hours of training and firing 3 cartridges does not constitute sufficient training for an officer for an indeterminate length of time and that regular periodic training that confirms proficiency with the device and re-familiarizes officers with the operation of a device seems prudent. Det. Lesser also sees the opportunity to incorporate ECD training in the Reality Based Training scenarios as a means of reaffirming the tactical, medical and legal considerations with regard to ECD deployments.

We discussed the need to deal with maintenance of ECDs given feedback from field personnel that indicates they have concerns that the ECDs are not being maintained and that they have not functioned properly in the field on all occasions. Regular inspections and downloading of the ECDS is a recommended option. The benefits include not only confirming the devices are functioning properly, but also to sync up the internal time clocks of the devices. One option is for firearms instructors to be trained to check the ECDs and to download the devices and synchronize the internal clocks of the individual ECDs at firearms training sessions. If firearms instructors are not capable or willing to take on this responsibility, the alternative is to certify additional TASER instructors to handle this responsibility. Any M26 model ECDs that are currently in use should be replaced with the X26 promptly. Also, full deployment of ECDs should be confirmed in as much as this non-deadly force option has been proven to lower force levels used by officers, reduce injuries to arrestees and to officers in the field.

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It appears that some officers are not carrying ECDs because of a lack of functional equipment or because they have lost confidence in the reliability of the device they were issued. One option is to have supervisors confirm at shift briefings that patrol officers are properly equipped and that officers are reminded to bring to the attention of the shift supervisor or other designated personnel the fact that equipment is either not functioning properly or is otherwise unavailable. This is critical in regard to force options because when a non-deadly force option fails because of an availability or functionality issue the implication is negligence in maintaining non-deadly force options and negligent supervision with regard to the same.

With regard to ECD use of force concerns, SPD personnel throughout the ranks should receive force options training on multiple deployments and long-term duration deployments. In particular, in a practical scenario type of setting or a hands-on type of training experience the concept of cuffing under power and handcuffing intervention tactics should be reaffirmed with personnel as preferred to long-term duration deployment. Likewise, 3-point stunning should be taught and emphasized as a way to avoid the need for multiple trigger pulls or long-term duration deployments. Clearly this is another area where the force simulator would be of great assistance. Recent use of force case law decisions have been focused on ECDs including both drive-stunning and probe deployments across jurisdictions. This developing area of the law requires that agencies provide periodic legal updates and hands-on training dealing with the use of both non-deadly and deadly force options.

Updating officers on the classification of probe deployments at the level of non-deadly intermediate force and the need for active resistance and a threat to officers or others prior to using same is imperative. In the case of drive-stuns, this non-deadly force option generally requires a warning and an opportunity for volitional compliance between pain compliance applications. Officers should be trained with regard to the "window of opportunity" and the concept of "cuffing under power" or alternatively, formulation of a plan of action to reduce the number of ECD discharges and gain control over a subject in an efficient manner. Likewise, supervisors need to be trained to intervene when long-term durations or multiple deployments are occurring. Also, supervisors or other typically available personnel need to be trained to download ECDs when ECD devices are used to enable officers to use the data port download printouts to prepare accurate reports of ECD deployments and to require the printouts to be attached to incident and use of force reports.

IN-SERVICE CHEMICAL AGENTS AND IMPACT PROJECTILE TRAINING

During my meetings in Spokane I was not able to meet with the Chemical Agents Response Team (CART) instructor Corporal Kevin Keller. Thus, my meeting with Corporal Keller was conducted via telephone. Cpl. Keller was very helpful and forthcoming with regard to the training and force options available to SPD patrol and specialized team members in the form of chemical

agents and impact projectiles. Cpl. Keller explained that SPD has a SWAT Team, a Crowd Control Team (referred to as TAC) and CART. Cpl. Keller is a CART and SWAT Team member, and the primary instructor for the SPD with regard to chemical agents and impact projectile munitions. Cpl. Keller is certified as an OC instructor both through the State of Washington CJTC and through Def-Tech, the manufacturer of the OC. He is the only OC instructor for SPD and is also a certified Build Searches instructor. The OC instructor and Building Searches instructor re-certification requirement for the State of Washington is every 2 years and consists of paperwork establishing compliance with teaching experience and attending training. Cpl. Keller's certifications are current.

Cpl. Keller indicated that the blunt impact rounds deployed by SPD are only available as designated to SWAT, the Crowd Control Team and CART. He identified the chemical agents and impact projectiles as follows:

1. 12 gauge (SWAT/TAC/CART)
 - Super Sock Round;
 - TKO Breaching Round;
2. 37mm (CART only)
 - Rubber Baton Round;
 - Wood Baton Round;
3. 40mm (CART only)
 - Foam Impact Round;
4. 37mm/40mm Gas (CART only)
 - 37mm CS;
 - 37mm Smoke;
 - 40mm CS ferret round;
 - 40mm OC ferret round;
 - Inert Round (training round);
5. OC Expulsion Grenade (SWAT/CART)
6. Flameless Tri-Chamber Grenade - CS (CART only)
7. Flameless Tri-Chamber Grenade - Smoke (CART only)
8. Small Grenade #98 - Smoke (CART only)
9. Small Grenade #98 - CS (CART only)
10. Large Grenade - Smoke (CART only)
11. Large Grenade - CS (CART only)
12. Triple Grenade - Smoke (CART only)
13. Triple Grenade - CS (CART only)

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Items 1-4 are not for use on individuals. Items 5-13 are handheld devices; 5-7 are for inside locations; 8-13 are for outside use only; 10-13 are capable of being launched. The handheld CS and smoke that are useable inside are covered with a plastic shroud to prevent fire issues.

Cpl. Keller explained the training that occurs with the munitions systems. The training consists of blunt impact training once a year for SWAT, Crowd Control Team and CART. The team members are required to shoot 5-7 rounds of the 12 gauge super sock variety from 7 yards, 10 yards and 15 yards. The target consists of a full body target with a barrel base and the acceptable target areas are thighs, back of legs, buttocks and lower abdomen. If a deadly force area is hit during qualifications the team member must re-qualify. Team members go thru live "Shoot, Don't Shoot" scenarios and are given a written test. The deployment systems available to the SPD personnel include a "less lethal" shotgun, a patrol shotgun and a breaching shotgun.

With regard to safety issues surrounding potential munitions confusion, the one area of concern appeared to be the similarity in appearance between the breaching rounds (designed to be used for taking out door locks and hinges for example) and an impact projectile round known as the "Super Sock" round. Cpl. Keller indicated that the Super Sock round and the TKO breaching rounds look very similar, and thus, he maintains them separate and apart from one another. Cpl. Keller provided the following information with regard to the manner in which this is handled:

"Super Sock rounds are kept on "Less Lethal" Shotguns and are only deployed through designated Less Lethal Shotguns. T.K.O. breaching rounds are kept on designated Breaching Shotguns or in bandoliers that only contain T.K.O. rounds. Although the rounds are the same color, they are clearly marked T.K.O. or Super Sock in bold writing.

Every time we load any of these rounds we perform a two man loading drill. Both officers check to make sure the proper shotgun is clear (empty). Both officers check each round before it is loaded into the shotgun. I also train officers to dispose of any rounds if they are not clearly marked.

In addition, Less Lethal Shotguns are clearly marked with orange and Breaching Shotguns are clearly marked with a stand off device on the end of the barrel.

To be clear, the rounds only look similar because they both have off white color shells. We continue to use each of these rounds because they have proven through training and experience to perform the best. We use the safety procedures listed above to prevent any accidents."

Cpl. Keller indicated that handheld pepper spray (OC) is issued in 3 different sizes to SPD personnel:

1. MK-3 - Small pocket size (detectives);
2. MK-4 - Belt size (patrol);
3. MK-9 - Large canister (Crowd Control Team);

The OC canisters are issued by the SPD and personnel receive an initial 5 hours of training. SPD current policy requires OC training every 2 years. Cpl. Keller brought to the department's attention this policy issue requiring training and in 2010 prepared a video that was reviewed during in-service training. Cpl. Keller believes that it is likely that the department will re-use the video to meet the training requirement in the upcoming year. It is recommended that Cpl. Keller be consulted with regard to this issue and that a plan be developed to deal with on-going re-certification concerns.

Additionally, Cpl. Keller indicated that the OC canisters expire every 5 years and that supervisors are expected to check the OC canisters during uniform inspections. Additionally, Cpl. Keller sends out an email at the end or beginning of each year to remind personnel to check the expiration on their OC. Despite these efforts, there appears to be concern that OC canisters are not being maintained and inspected for compliance on a regular basis. Perhaps OC canister inspection could be accomplished at firearms qualifications similar to the inspection of ECDs suggested above.

IN-SERVICE CANINE TRAINING AND SWAT

Canine Units and SWAT teams are highly specialized units within law enforcement operations involved in use of force actions. As part of this review interviews were conducted with the SPD SWAT Team leader, Det. Randy Lesser and K-9 Unit Sgt. Troy Teigen. The review of these two units was limited to a discussion of the training and policy issues with regard to both.

According to Det. Lesser, the SPD SWAT Team is comprised of 24 operators and 1 team leader broken down into 4 teams of 6. The SWAT Team is overseen by a lieutenant who serves as the SWAT Team Commander and a sergeant that serves as Assistant Team Commander. Det. Lesser also explained that there are 3 former SWAT Team members that serve as trainers for the SWAT Team and assist in Command Post operations during incidents. Det. Lesser estimates that the SPD SWAT Team averages 35-50 call outs per year and that 75% of the call outs are pre-planned executions of search warrants related to narcotics investigations. Applicants for the SWAT Team must have a minimum of 3 years of experience and pass a physical fitness test and an oral board to become a team member. Members of the team each have specialty assignments, but all are cross trained for the various positions of responsibility. The gas operators, medics and marksmen on the team are all certified in their areas of specialty and are re-certified annually. Overall, the training

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for the SWAT Team consists of 20 hours monthly and firearms qualifications 4 times a year on the all the firearms carried my team members. With regard to training and equipment concerns, Det. Lesser indicated that the lack of an operational firearms simulator is a concern for the SWAT Team training. Operationally, he believes that the investment in a small motorized robot and night vision equipment for SWAT Team members should be given consideration.

A telephonic interview was conducted with K-9 Unit Sgt. Troy Teigen with regard to the training for the SPD canine program. The K-9 Unit currently has 5 single purpose canines working patrol. The canine handlers and the sergeant are all certified through the State of Washington CJTC in compliance with the 400-hour training requirement. Four of the five handlers are certified as Master K-9 Trainers based on their experience and the training that they conduct for the SPD unit and other participating agencies. The handlers maintain their certifications via the regular in-service training that is conducted by SPD. SPD's canine handlers participate in 8.5 hours of training weekly and are members of the Washington State Police Canine Association. The training involves practical exercises as well as review of use of force and canine policies, and a debrief of recent canine deployments. Training for patrol officers with regard to how to work with and best utilize the K-9 Unit was included in the department's 2011 in-service training and consideration should be given to doing that every couple of years to maintain that understanding in the patrol division.

While the canine program appears to be professionally staffed and trained in an exemplary manner it is clear that staffing is an issue. The canine unit is in need of one to three additional canines and there is a concern that the unit is at least one canine short for shift coverage even with no sick time or vacation time concerns. Canine handlers are reportedly coming into work when they are sick out of a sense of duty and dedication, and thus, overworked canine handlers should be a concern. Observation of the value to SPD of the canine unit was made during a patrol ride-along when a K-9 Unit was called out to search an extremely large containment area for an armed robbery suspect. The tactical advantage and officer safety benefits were clear and if no K-9 Unit had been available a search of such an area would have been impractical and dangerous.

With regard to K-9 deployments policy issues, it appears that SPD might benefit from a standardized canine deployment announcement. Such a practice has been adopted by other canine units. Recorded warnings of canine deployments using standardized warning language that can be broadcast via electronic means from squad cars or helicopters patrolling a deployment area is worth consideration given the risk management benefits.

IN-SERVICE FIREARMS TRAINING

With regard to firearms training, I was informed that firearms qualification training was mandated to take place four times a year and that the requirement was still "on the books, but was

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not happening" and that there was no state mandated requirement for a specific number of firearms qualifications per year. A review of the SPD Policy 312.4 (Firearms Qualifications) adopted on November 17, 2011, reveals the following:

"All sworn personnel are required to qualify quarterly with their duty firearm on an approved range course, which may include proficiency and/or tactical courses. The Rangemaster shall keep accurate records of quarterly qualifications, repairs, maintenance, and training. In addition to regular qualification schedules, the Rangemaster shall be responsible for providing all sworn personnel with annual practical training designed to simulate field situations. At least annually, all personnel carrying a firearm will receive training on the department Use of Force policy and demonstrate their knowledge and understanding."

The above policy requires quarterly training and qualification, simulation training and use of force policy review and testing. It was made clear to me that the Academy Training Staff did not believe that the firearms qualification policy was being complied with at the time of my initial meeting.

Subsequently, I was provided a draft of policy chapter 312 with "redline" notations. That draft provided under section 312.4 as follows:

"All sworn personnel are required to qualify bi-annually with their duty firearm on an approved range course, one of which will consist of a proficiency course, the other a skills development course addressing conditions the officers are likely to encounter. The Rangemaster shall keep accurate records of bi-annual qualifications, repairs, maintenance, and training. In addition to regular qualification schedules, the Rangemaster shall be responsible for providing all sworn personnel with annual practical training designed to simulate field situations. At least annually, all personnel carrying a firearm will receive training on the department Use of Force policy and demonstrate their knowledge and understanding."

This draft policy reduces the number of firearms training and qualifications per officer per year from 4 times annually to 2 times. The redlined policy only requires officers to qualify by demonstrating proficiency thru a passing score. At the time of the meeting I was informed that the minimum score for qualification was 70% or more once a year. Clearly, the burden and responsibility for compliance with the provisions of this policy as written would fall on the shoulders of the Rangemaster, including simulations, use of force policy review and testing. Note that the training staff informed me that both of the firearms simulators for the agency have been broken and unavailable for 3 plus years, and thus, it has been problematic to effectively meet the requirements of this policy, either as initially provided or as set forth in the redlined version.

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The most recent and apparently operative set of policies adopted by SPD were received on October 2, 2012 with an adoption date of September 17, 2012. The language with regard to firearms qualifications has been modified to read as follows:

"All sworn personnel are required to qualify bi-annually with their duty firearm on an approved range course. The Rangemaster shall keep accurate records of qualifications, repairs, maintenance, and training. In addition to regular qualification schedules, the Rangemaster shall be responsible for providing all sworn personnel with annual practical training designed to simulate field situations. At least annually, all personnel carrying a firearm will receive training on the department Use of Force policy."

Thus, it appears that firearms qualifications requirements have been reduced from 4 times a year to 2 times a year. This is likely a result of budget concerns; however, it is recommended that firearms qualifications be conducted at a minimum of 3 times a year. Qualifications should include not only marksmanship, but also decision-making and review of policy and law relating to the use of non-deadly and deadly force options. There are so many elements of concern in firearms training that twice a year training provides a severely compressed amount of time to achieve desired results. At a minimum, it is recommended that the Rangemaster for SPD survey agencies statewide to provide a comparative perspective.

With regard to patrol rifle and patrol shotgun training and qualification, a redlined policy provided set forth requirements for both in SPD Policy 432. According to that draft policy, officers are required to complete 24-hours of training with the patrol rifle and to annually re-qualify or lose the right to carry the patrol rifle. There appears to be some redundancy in the provisions of the redlined version of the draft policy that was provided in sections 432.5, 432.6 (same numerical designation used twice) and presumably this would be cleaned up if the redlined version was adopted. Likewise, the patrol shotgun policy listed numerically as 432 et.seq. is redundant and presumably this would be cleaned up if the policy was adopted. The redlined version of the patrol shotgun policy required completion of an 8-hour course of instruction and qualification and subsequent re-qualification annually. However, the policy as adopted on September 17, 2012 does not include a patrol shotgun policy at all that I could find. My understanding from firearms training personnel is that the recommendation was for a separate policy, and thus, it appears this issue needs to be addressed.

All SPD officers are required to complete a block of training on long gun familiarization which deals with safety and disarming issues. Carrying either a patrol shotgun or patrol rifle is optional. This policy apparently is a result of a history of issues relating to failures to qualify, and the maintenance and neglect of shotguns in particular. With regard to the provision and issuance

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of patrol shotguns and patrol rifles, a concern exists that there is currently a shortage of both for personnel. For example, firearms staff estimated a shortage of 39 shotguns for issuance to patrol and detective division personnel who want to qualify with these fundamental tools. There is also a 12-person waiting list for patrol rifles with an additional number of current rifles in the field listed for replacement. Firearms training staff indicated that they believe there is at least one shotgun assigned to each detective division such as Major Crimes, Property Crimes, Sex Crimes, Fraud, Domestic Violence, CIU, Targeted Crimes, and SVU. It was also noted that the SIU detectives and Gang detectives have patrol rifles.

It is interesting to note that an officer who fails or misses two qualifications in succession can then work patrol without either type of long gun and that officers with no interest in carrying either can also work patrol. Furthermore, an officer with an interest in carrying one or the other, but who fails to qualify must wait 6-months to re-apply for the "privilege" of carrying either. Although it is my understanding that SPD is not the only law enforcement agency to allow officers to work patrol without a long gun, it is somewhat difficult for me to fathom. It is disheartening that an agency would be placed in a situation where there are insufficient firearms to offer to qualified officers who want the option. That is a grave concern to me and could become a grave concern to an officer or a member of the public in times of crisis. A concern exists as to whether officers opting out of carrying long guns would also opt out of responding to certain types of calls based on the lack of appropriate firepower to respond to a serious threat. The concern is not just one of officer safety, but also for community protection and reduction in potential use of force. It is well established that a show of force such as additional officers at a scene or increased firepower can be a psychological deterrent to criminal actions. In high stress situations the presence of an officer with a shotgun or some other type of long gun can potentially de-escalate a situation.

In my discussions with firearms training staff it was confirmed that personnel are qualifying twice a year and that the passing score level has been elevated to 75%. That scoring level is a higher percentage than the 70% I believe is typically required by basic academies and many local and state law enforcement agencies. Additionally, the language with regard to non-qualifications as set forth in SPD Policy 312.4.1 could be clearer in that it seems to indicate that personnel can leave qualifications having failed to qualify and still retain their firearm. The intent for this policy is that an officer who fails to qualify will be remediated and then will be required to re-test and, if they fail to qualify again, they are then instructed that they are only to use their firearm for practice or training. That policy does not anticipate an emergent situation wherein that non-qualifying officer uses a firearm in defense of themselves or another during the period of non-qualification. Furthermore, the policy appears to presume that officers will eventually qualify and makes no provision for ultimate inability to qualify after a specific period of time. Presumably, if an officer was unable to qualify for a period of some number of days a process for removal or re-assignment exists and should be included in the policy. Firearms staff also believe that electronic rifle sights

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are a developing innovation that should be given consideration to enhance accuracy and may be of necessity with regard to some officers' vision issues to reasonably accommodate such limitations.

Another concern exists with regard to non-qualification with regard to individuals who simply fail to appear for qualifications and are thus out of compliance with policy. This issue potentially arises with administrative staff level personnel and with regard to individuals who are on light duty. Tracking and enforcing policy compliance needs to be addressed. Part of the concern is the need to standardize a protocol for individuals returning to work after leaves of absence for injuries or administrative leave based on the number of days an individual has been off work and the particular training that they may have missed during their absence including not only firearms qualifications, but also legal updates, use of force instruction, EVOC, computer updates and other areas of concern. The issue is also one of responsibility for tracking, enforcing and scheduling compliance with training needs and policy.

The firearms training staff faces a number of challenges that need to be addressed. There is a concern that there is an inability to satisfy the training requirements and to compel participation of personnel. They have a responsibility, but lack the authority or support to achieve compliance. In particular they need clarification with regard to the non-qualification issue. The proposed Spokane Police Firearms Program Standard Operating Procedures proposed by the Rangemaster on March 14, 2012 has not been formally approved. If it is to be deemed unnecessary, unacceptable or adopted in a revised form, the Rangemaster should be notified. Otherwise the SOP should be approved.

Additionally, the training staff believes that the overwhelming focus of the department is on minimizing overtime, and the training budget and quality of training is not perceived as a priority. For example, all SPD instructors other than the Rangemaster serve as full-time patrol members and when training occurs they are required to flex their schedules and do anything necessary to avoid overtime. With regard to firearms instruction this also factors into range safety concerns pushing instructor student ratios to 1:10. Training staff suggested that in addition to the Rangemaster, minimums should be set requiring an instructor student ratio of 1:3 for tactical skills type of training and 1:6 for qualifications. Again, of particular concern is the lack of a functional force simulator to provide "shoot, don't shoot" high stress decision-making training, low-level shooting and other reality based force experiences.

In addition to the equipment needs set forth above there is an on-going need to maintain the professional qualifications of the firearms training staff. The firearms instructors, armorers, and, in particular, the Rangemaster need to maintain their certifications. The Rangemaster should be responsible for recommending training programs for instructors to maintain certifications and enhance the qualifications of these subject matter experts for SPD. Notably, if and when the actions

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of SPD personnel are questioned with regard to the use of force - in particular deadly force - the focus will be on training, policy and supervision. There is no way to turn back the clock with regard to instructional qualifications for the range staff or the defensive tactics use of force instructors.

With regard to the annual in-service firearms training program, a listing of the 2011 "Mandatory and Optional SPD Firearms Courses" was provided for review. (See "Spokane Police Department Firearms Training" attached hereto as Exhibit "G") In 2012 the firearms training staff provided two in-service training programs which were both presented multiple times. The first in-service presented in 2012 was a proficiency qualification course which included marksmanship skills, moving targets and shooting from various positions and cover, multiple officer engagements and shoot house decision-making exercises. Subsequent to my meetings with training staff the training plan for the second range day was developed and transmitted to me for review. The plan for the second range in-service day in 2012 includes: a decision-making component; courtroom testimony; combat first aid; firearms safety rules; escalation and de-escalation of force; "Graham" factors; and a short written test on policy and liability in use of firearms on-duty and off-duty. (See "2012 Fall In-Service" attached hereto as Exhibit "H") It is clear that the firearms training staff is very receptive to input and suggestions, and is doing their best to provide well-rounded comprehensive range training.

FIELD TRAINING OFFICER PROGRAM

The FTO program for the Spokane Police Department is a multi-phase program overseen by the FTO Board. The FTO Board is overseen by the Patrol Captain and is comprised of the Academy Training Director, FTO Sergeant, Patrol Shift Commander, the Patrol Team Sergeant in charge of the FTO and probationer and the current FTO of the probationer. Note that officers hired laterally from other agencies with less than a 2 year break in their law enforcement experience receive 2 weeks of training in the SPD FTO program.

Patrol Phase 1 is comprised of 20 weeks which includes 1 week of pre-basic academy training for SPD report writing software and firearms familiarization, the 18 weeks of BLEA training and 1 week of Pre-FTO training.

Phase 2 consists of 18 weeks of riding with different FTOs broken down as follows: Phase 2A - 6 weeks with FTO #1 (2 weeks unevaluated and 4 weeks evaluated); Phase 2B - 4 weeks with FTO #2 with full evaluation and documentation; Phase 2C - 4 weeks with FTO #3 with full evaluation and documentation; Phase 2D - 4 weeks with FTO #4 with full evaluation and documentation with FTO option of going plainclothes or implementing X-Ray car. Thereafter, the FTO Board meets and either advances the probationer to Phase 3A, extends FTO program into Phase 2E with one more FTO, or terminates employment. If the probationer is extended to Phase 2E the FTO Board will meet again and either advances the probationer to Phase 3A or terminates.

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Phase 3A consists of 2 weeks with the Phase 2A FTO during which the probationer and the FTO work together to complete a critique of the FTOs and the FTO program. Subsequently, the probationer moves into Phase 3B where probationer is assigned to a patrol team and is monitored by a patrol sergeant who submits monthly performance reports on the probationer to FTO Sergeant.

The SPD FTO program review meeting took place on June 28, 2012. I met with Sgt. Brent Austin, Officer Gene Baldwin and Sgt. Joel Fertakis with regard to the FTO program of the Spokane Police Department. We initially discussed how FTOs are selected by the department. Note that prior to my initial meetings in Spokane I reviewed the FTO manual and all corresponding forms. The FTO program structure as set forth above and the supporting documentation are standard and appear to conform to other law enforcement FTO programs.

According to the information received during the June 2012 meeting, SPD has 16 to 17 FTOs. New FTOs are selected out of qualified applicants who must have at least three years of experience with the Spokane Police Department. The FTO applicants submit their FTO application to their sergeants and their lieutenants for their comment and approval. Internal Affairs then reviews the applicant's personnel files and either approves or denies the applicant to be an FTO. The criteria for approval or denial by IA was unclear during the course of this meeting. Also unclear was the appeal opportunity and process when an applicant is denied by their immediate supervisors or based on the personnel file review by IA. Subsequently, applicants for the FTO positions go through an oral board process and a written exercise. The FTO applicants that are successful are then ranked, but it is not clear how the list of successful applications is used with regard to actual selection for assignment as an FTO. It appears that there may be an issue with regard to the fact that scheduling of trainees with FTOs dictates who will actually be used as an FTO for any given trainee rather than appropriateness of fit, experience or specific needs of trainee. The newly appointed FTOs must then complete the 40-hour FTO training program put on by the State of Washington CJTC.

With regard to the selection and continual service of officers as FTOs, the suggestion was made that there needs to be more peer input from current FTOs with regard to which officers would make a good training officer for trainees. Additionally, it was suggested that there should be an FTO evaluation at the end of the FTO process for each trainee that is more substantive so that individuals do not remain as FTOs based on experience alone. It should be noted that a lack of experience as an FTO can be a credibility concern in the event that a probationer fails and there is litigation with regard to the failure of a probationer resulting in termination. There is also the substantial cost of putting more FTOs through the mandatory 40-hour FTO program. Thus, there is a need to balance the FTO pool with experience and enthusiasm for the responsibilities of training probationary officers.

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FTOs receive a 3% salary increase. However, SPD officers can only receive one 3% increase for specialty assignments at any one time. As a result, highly qualified members of the agency who also serve in other specialties such as SWAT receive no benefit or incentive for taking on the duties of serving as an FTO. It was suggested that perhaps a 5% total incentive for taking on multiple specialty assignments would encourage such individuals to take on added responsibilities. This could be a strong incentive for individuals who are likely to be good role models for probationary officers to take on the additional workload required of FTOs.

Another concern of the FTOs has to do with the loss of the FTO meetings that previously had occurred once a month, were subsequently reduced to once a quarter and now do not take place at all. These meetings were viewed by the FTOs as valuable to provide training updates and a forum for exchange of information between the FTOs and to facilitate communication with regard to how training was progressing with the various trainees. These meetings were eliminated as a result of budget concerns. A suggestion was made by the FTOs that a one hour meeting could be held once a month on the Friday shift overlap days which would result in a smaller group of FTOs incurring overtime and allow for training updates and communication issues to be addressed. Given that there are several new FTOs with little to no experience with regard to the challenges that come up during the course of training new officers, the benefits of such meetings could be significant. Having the opportunity for the FTOs to share concerns and discuss such issues is a valuable exercise and the cost of this networking is perceived to be greater than the fiscal cost savings. Additionally, according to all the various versions of the SPD policies that were provided for my review, SPD Policy 436.2.2 requires training of at least 2 hours per month for FTOs and FTOs must attend a minimum of 80% of these trainings per year. Thus, the current policy is not being complied with as a result of the practice described above.

Logistically, the field training process appears to be hampered by the fact that there currently are no extra laptops available for the FTOs to be able to write FTO daily reports while their trainees are preparing incident reports on shift using the one laptop assigned to each patrol vehicle. Documentation of performance issues and feedback to probationers is a significant aspect of the FTO process. The SPD FTO program includes Daily Observation Reports (DOR's) which are required to be completed every shift covering 30 rated areas under 5 categories: 1) appearance; 2) attitude; 3) knowledge; 4) performance; and 5) relationships. The FTO must document specific tasks covered during the shift, and provided positive and negative assessment of performance. The FTO and the probationer must go over the DOR at the end of the shift. Additionally, the FTO must prepare a Bi-Weekly FTO Report at the end of each 2 week period of training. Because of the amount of documentation required for the FTO Program the lack of additional laptops for FTOs is problematic. As a side note, there appears to be a question about the access to report writing rooms and computers for SPD at City of Spokane fire stations. Reportedly, SPD is supposed to be able to access computers in report writing rooms at some fire stations. It appears that the availability of this

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option needs to be clarified. That issue aside, while the FTOs believe that the paperwork system for the FTO program is good and that the two hours of overtime allotted every two weeks is acceptable, it is clear that training time for probationary officers is encumbered with respect to FTOs being unable to complete FTO paperwork at the same time that their trainees are completing incident reports during the course of a shift. There was also a concern expressed that the second bi-weekly report needs to be done by the next FTO and sergeant, and the FTOs believe that this component is probably falling through the cracks.

Continuing with the FTO issues, the FTOs indicated that they used to submit two quizzes per week to the trainees and that there was a bank of quizzes available, but that process dropped through the cracks and that the new FTOs probably don't even know that the program existed - which is partially a result of the cancellation of the monthly FTO meetings. Additionally the FTOs believe that the orientation day that used to be included in the pre-FTO program involving training about the geography of the city which included a scavenger hunt for the trainees oriented them to the city and was very helpful to the trainees. Note that as a result of these discussions the orientation day and use of force report writing have been put back into the Pre-FTO training plan and other adjustments were made as well to hours and subject areas such as defensive tactics.

SPOKANE POLICY REVIEW

Spokane Police Department policies are Lexipol based. The Lexipol Law Enforcement Policy Manual has more than 140 policies based on federal and state laws, regulations and law enforcement best practices. The policy manual is written by legal and law enforcement professionals who constantly monitor major court decisions, legislation and emerging trends affecting law enforcement operations. Lexipol provides regular updates in response to legislative mandates, case law and the evolution of law enforcement best practices.

Initially I was provided with the Spokane Police Department Manual, adopted on November 11, 2011 with a total of 448 pages. Subsequently, during my first meetings in Spokane, I discovered that there was some concern with regard to the timeliness with which Lexipol updates and revisions from Lexipol are reviewed and adopted. It was suggested that I discuss this concern with Captain Judi Carl who is responsible for policy updates for Spokane Police Department. I met briefly with Captain Carl and was made aware of the difficulties that SPD was encountering in working with the Lexipol policy revisions. As it was explained to me, it appears that SPD has a concern with regard to the technical issues in dealing with assimilation of updates received from Lexipol incrementally, as opposed to being required to comprehensively review and revise the entire policy manual in one fell swoop - which is overwhelmingly burdensome and delays the implementation of critical policy changes in smaller increments. I suggested that a meeting with Lexipol should be conducted to remedy this situation.

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After my initial meetings in Spokane, I requested that I be notified of any revisions or updates that were adopted by SPD. I was informed that SPD did not intend to do any updates until the Use of Force Commission issued their report. I expressed my concern with regard to that approach indicating that policy revisions need to be made timely in conjunction with case law and research that pertains to various policy concerns. In an effort to clarify the issues with regard to policy updates and the technical challenges relating thereto, I personally contacted Lexipol. As a result of my conversations in late September, 2012 with Lexipol staff and SPD staff, I determined that SPD had adopted a revised set of policies on September 17, 2012. I had not been made aware of this until that point in time and only became aware of this fact after contacting Lexipol in late September, 2012. Note that this information was acquired as I was preparing to wrap up work on this report. I inquired of Lexipol because of recommendations that I had actually made to Lexipol directly for overall policy revisions which were not contained in the SPD policies that I had been given. In trying to determine what the most current version of the Lexipol policy packet was to agencies in the State of Washington, I confirmed that Lexipol had published a set of policy updates in April, 2012 primarily focused on use of force issues.

When I contacted Mr. Martin to discuss this concern he was unaware of the SPD adoption of any revised policies. Subsequently he confirmed that SPD had adopted an additional set of policies on September 17, 2012. On September 28, 2012 the updated SPD policy manual was transmitted to me with a notation that no updates had been made with regard to the use of force policies and that the SPD had indeed taken the position that no changes would be made until the Commission's report was issued. I requested and subsequently received the April, 2012 Update. (See Exhibit "I") A comparison between the Lexipol "Washington Policy Manual Update" for April, 2012 confirmed that the use of force policy revision recommendations had not been adopted. My concern with regard to delays in adopting policy updates were again conveyed to staff and to Mr. Martin immediately.

As stated in the cover letter issued by Lexipol regarding the Washington Policy Manual Special Update issued April, 2012 relating to Use of Force Policies:

"This special edition update includes a complete review of all force policies to ensure they reflect the most current content based on best practice, litigation and case law research. These policies have been restructured in a way that makes the Use of Force Policy the controlling policy for all other force related policies and the determination of when force is objectively reasonable as governed by the United States Supreme Court in *Graham v. Connor*.

All force related policies have now been carefully realigned so that factors regarding the use of force are not duplicated and all policies interrelate clearly and accurately.

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This approach provides consistency and will greatly reduce the potential for conflicting guidance in these policies."

Given the fact that the recommendations in the Special Update represent significant revisions and reorganization, and include significant clarifications such as change of terminology and the elimination of the separate section entitled the "Shooting Policy" - it is essential for the department to make decisions relating to the adoption of the revisions. Thus my recommendation with regard to the current use of force policies of the Spokane Police Department is to take into consideration on a timely basis the revisions and recommendations made by Lexipol. For the future, Spokane Police Department needs to commit to a plan for maintaining up-to-date policies by implementing a practice of promptly reviewing and revising the policies in the future as updates are received.

It is suggested that the current version of the Lexipol policies be reviewed and adopted and that SPD set a turnaround time for review and adoption or explicit rejection of any future policy updates to be completed within 60 days of receipt unless specifically excused by the Chief - who will ultimately bear the burden of explaining any such choices and thus should be kept apprised of same and not left to be blind-sided when a critical incident occurs and the questions with regard to policy updates are dropped in the Chief's lap. Note that the latest version of the Lexipol use of force policies are something that I am very familiar with and the current version are likely to be aligned with any recommendations I would make.

Of note for SPD with regard to policy concerns is the apparent complete lack of a systematic approach to tracking and complying with various policy provisions. Thus, compliance appears to be hit and miss based on individual familiarity and knowledge of policy requirements. To avoid this type of concern arising again and again, I would recommend a checklist of action items with deadlines be created with regard to SPD policy provisions and that a specific personnel designation be given the assignment of the responsibility for maintaining and updating the policy checklists as policies are revised. Additionally, personnel in various areas of responsibility should be assigned the duty of ensuring compliance with the policy provisions.

In the interest of efficiency given the issue with regard to adoption of the Lexipol "Special Update April 2012" some additional comments are included with regard to typical use of force policy concerns. Note that overall the issue is a general need to maintain up to date policies based on recent case law decisions pertaining to the appropriate court jurisdictions. Lexipol provides a wonderful effective and efficient means of accomplishing that goal. Staff must, however, be given the resources, support and cooperation to complete the revision process. Again, I would expect that the most recent Lexipol use of force policies would address most if not all of concerns listed herein; however, I do feel that addressing a few areas of concern is worthwhile.

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The section of the policy dealing with "Factors Used to Determine the Reasonableness of Force" should reflect the latest case law with regard to the re-prioritization of the "Graham" factors and the officer/subject factors. For example, as set forth in the Lexipol April, 2012 Update in section 300.3.2, the use of force policy should specifically include "threat to the officer or others"; and this factor should be at the top of the list as the most significant factor in deciding whether an officer's use of force was objectively reasonable. With regard to the definition of deadly force includes the phrase "very serious injury" - I would recommend the use of the phrase "serious bodily injury" which is also consistent with the Lexipol April, 2012 Update. Additionally, "TASER" is a registered trademark and should always be all capital letters.

Another area of consideration includes the potential for warning shots to be fired. Departments often prohibit warning shots completely by policy. The recommendation would be to adopt a policy that strongly discourages warning shots, as opposed to one that completely forbids warning shots under all circumstances. This would be similar to discretion provided in the previous Policy 304.1.3 dealing with shooting at or from moving vehicles. There are instances and circumstances, although limited, where warning shots have been used to avoid deadly force. Various agencies across the country have considered and adopted such policies.

The department policy previously provided designated "control devices" as including batons, pepper spray (OC) and CS gas. Policy 308.1.3 (a) requires that proficiency training be monitored and documented by a certified weapons and tactics instructor and (b) requires training every 2 years at a minimum. The training requirements are of particular concern given the apparent lack of certified instructors in the department for batons. Additionally, the policy appears to require proficiency be demonstrated every 2 years for all control devices. That certainly is not accomplished by viewing a videotape as described herein. Likewise, ECDs are a control device and, as discussed above re-training and re-certification have not been part of the training regimen of SPD.

With regard to general policy language, it would be more straightforward and efficient to designate all force - non-deadly and deadly - as needing to be objectively reasonable and to be governed by the primary use of force policy provision and the factors set forth therein. This is the recommendation that Lexipol has also adopted and set out in the April, 2012 update for the various types of force options. Likewise policy dealing with CS/OC gas and chemical agents do not include "intermediate force" and recent force decisions. Also, policy dealing with kinetic energy projectiles/blunt impact munitions needs to be updated based on recent case decisions such as Glenn v. Washington County Oregon and Nelson v. City of Davis. The information on these issues have been provided to the Academy Training Staff. Going forward requires someone in a legal advisory capacity to be responsible for transmittal of such information to policymakers and to SPD subject matter experts for incorporation in training materials. Some of the concerns that arise out of recent case decisions directly impact training and policy such as shot placement and target area for impact

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projectiles. The current policy is not complete in that it only includes the head and neck areas and omits chest area over the heart, groin, spine, or kidneys as areas of concern based on potential for serious bodily injury or death. These are examples of risk management concerns that must be addressed in a more timely fashion.

Policy 208 - Training Policy

Spokane training requirements are set forth in various portions of Policy 208. This Policy includes requirements that the Training Lieutenant develop and maintain a training plan and that the Training Lieutenant maintain, review and update the training plan on an annual basis. The training plan as required by 208.4 must, at a minimum ensure the following:

- All sworn members will successfully complete an annual in-service training program of no less than 24 hours of training that includes required CJCT Training on federal and Washington Court cases and legal updates;

- All sworn members will successfully complete an annual in-service training program on department use of force and deadly force policies;

- All sworn members will successfully complete an annual in-service training on less-than-lethal weapons every two years;

- Full-time supervisors or managers will receive appropriate training and certification required by CJTC;

- All sworn members will successfully complete National Incident Management Systems (NIMS) introductory training course;

The Policy also requires that the training plan address additional miscellaneous areas, including: legislative changes; case law; state mandated training; critical issues training; officer enrichment; unit specific training; and management and leadership training.

Additionally, SPD Policy 208.5 requires an annual training needs assessment to be reviewed by senior staff which, after approval, will form the basis for the annual training plan. During my initial meetings with Spokane Training Academy Staff it was determined that these policy provisions with regard to an annual training needs assessment and an annual training plan have never been complied with in the years since Lexipol policies were adopted by SPD. While the Academy Training Staff certainly has informally reviewed and determined training needs of the department, no formalized training needs assessments has been done for SPD to the knowledge of the training

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staff. Likewise, with regard to an annual training plan as required by the SPD policy, Academy Training Staff members were unable to identify a formalized annual training plan that had been approved for any year in the past. It should be noted that this something that I find to be commonly the case with agencies that are Lexipol subscribers. Nonetheless it must be addressed or the policy revised. To their credit the Academy Training Staff was immediately responsive to this issue and although the SPD had performed the function of assessing training needs and planning for in-service training every year for SPD, the staff recognized and appreciated the benefit of a more formalized process in accomplishing the same goal. Working with the training staff, a memorandum entitled "Spokane Police Department Memorandum to All SPD Personnel from Lt. Drollinger re: 2013 Training Needs Assessment" was created with regard to the 2013 Training Needs Assessment. Additionally, Lt. Drollinger prepared an e-mail entitled "Spokane Police Department 2013 Training Needs Assessment and In-Service Training Plan" that details the preparation of the training needs assessment. (See Exhibit "J") Lt. Drollinger has been extremely responsive and receptive to suggestions, and he and the other members of the training staff have moved forward and addressed this concern, as well as many of the other areas discussed herein.

Finally, with regard to the training requirements identified throughout SPD policy and training materials, it needs to be clearly defined in each block of training what "successfully complete" actually means and what provisions are set forth for remediation when an individual fails. Additionally, it should be clearly defined what the ramifications are when an individual is unable, even after remediation, to "successfully complete" any particular block of training. These may seem like small concerns; however, if an officer or another employee must "successfully complete" a task to perform their job or must be provided "remediation" and then still cannot "successfully complete" that task - an employer must be able to articulate what those terms mean.

Summary of Recommendations for Consideration:

- Foster and support a cultural environment that promotes excellence in the SPD from the executive and management levels that is reinforced by supervision and peer group leaders such as in-house subject matter experts/instructors and Academy Training Staff and FTOs as it pertains to training of personnel and the professional services provided to the community;

- Conduct prompt review, revision and adoption of policy updates to SPD policy and transmission and incorporation of such changes as appropriate in operations, training and training materials in a systematic fashion which is documented;

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- Review policy manual and develop and maintain checklist of action items that are required by policy with associated time frames to preclude failure to comply with department's own policy requirements such as annual training needs assessment, annual training plan, monthly FTO meetings, OC training every 2 years etc.;
- Evaluate staffing issues with particular attention to number of supervisors needed per shift to make supervision in the field a reality to maintain a professional level of excellence in service to the community;
- Evaluate capital expenditure issues with regard to personnel staffing, training and equipment needs with input of stakeholders in the agency including Academy Training Staff and subject matter experts and address concerns with short-term and long-term planning in mind;
- Conduct annual training needs assessment and prepare annual training plan with the input of stakeholders in the community, the various levels and components of the police department, and a concern for developing trends and high-risk issues with regard to law enforcement nationally, regionally and locally;
- Recognize the need for and develop a plan for on-going training in dealing with high-risk events such as: use of force; use of deadly force; vehicle operations; execution of warrants and forced entries; patrol tactics; arrest procedures; medical care; and dealing with the emotionally disturbed and mentally ill;
- Schedule annual internal audit dates for compliance with annual 24-hour State of Washington in-service mandate;
- Review and update training records software addressing concerns of Academy Training Staff and Administrative Assistant;
- Evaluate need for and address budget concerns with regard to the purchase of use of force simulator, additional long guns for trained and qualified personnel and replacement canines;
- Conduct review of BLEA curriculum provided to probationary officers and obtain confirmation of attendance and successful completion of and certification in programs where relevant (ie. baton, OC, firearms, first-aid, CPR etc.);
- Develop, update and maintain a checklist for training to be provided in the Pre-FTO Training Curriculum for both laterals and new hires;

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- Solicit and utilize input from subject matter experts and trainers with regard to development of Pre-FTO Training Curriculum and hours allotted for various subject areas;
- Include an 8-hour minimum for defensive tactics and use of force policy review for probationary officers in the SPD Pre-FTO Training Program;
- Adopt a comprehensive approach wherein Academy Staff view the Pre-FTO Training Program as a collaborative effort between FTOs and subject matter instructors.
- Actively seek feedback from probationary officers who have gone through the FTO program by Academy Training Staff conducting an on-going review of the FTO program including, for example a review of the Bi-Weekly FTO Reports and the critiques of the FTO Program by the probationary officers;
- Conduct monthly FTO meetings as provided in the SPD policy manual, section 436.2.2;
- Provide sufficient additional laptops for FTOs to facilitate efficient prep of FTO program reports while probationary officers are working on field reports;
- Implement a procedure to confirm that second bi-weekly FTO report are being completed as required by the FTO program;
- Review, revise, update and maintain the SPD Defensive Tactics Manual in conformance with current SPD policy and laws and include a revision date/adoption date on document;
- Clarify the role and responsibilities of legal advisor to the SPD with regard to legal updates in particular as to use of force policy and training materials;
- Conduct audit of certifications of subject matter expert instructors and implement a training plan and budget to update and maintain competency levels and where applicable, certifications of in-house SMEs to maintain appropriate quota of certified instructors in such critical skills areas as: firearms skill instructors and armorers; defensive tactics and use of force options such as OC, ECDs and batons; patrol tactics; emergency vehicle operations; canine handlers; SWAT; first-aid and CPR; and legal updates dealing with search and seizure;
- Pursue in-house certification of SPD personnel as a Master TASER instructor and certification of 1-2 additional TASER instructors for SPD;

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- Consider benefits of certification of SPD personnel as TASER Armorers to deal with maintenance and repair issues;
- Replace broken firearms simulators with state-of-the-art use of force simulators that will allow training with regard to decision making and escalation/de-escalation of force options training;
- Develop and implement an on-going ECD and OC re-certification training plan to update personnel and insure that any such plan is consistent with current adopted policy;
- Develop and implement a plan for checking operational viability of ECDs during firearms qualification and training sessions including downloading ECDs and syncing internal clock mechanism;
- Develop and implement a plan for checking current expiration and operational viability of OC canisters during firearms qualification and training sessions;
- Conduct firearms training in manner consistent with everyday operational configuration including availability of all force options normally carried by individual officer whether that is as a detective, an undercover officer, a patrol officer or as a member of management or executive staff;
- Conduct Reality Based Training on an annual basis incorporating the full range of force options in scenarios from verbalization and no force to deadly force;
- Incorporate "Graham" factors into evaluation of performance in Reality Based Training sessions and into training on use of force report writing;
- Incorporate training regarding supervisory responsibilities into Reality Based Training such as: oversight and control of events; manpower allocation and staging prior to intervention; de-escalation and intervention opportunities and responsibilities; community resource outreach; coordination of incident handling and communication with dispatch; and advance staging of medical personnel;
- Conduct research on state-of-the-art Crisis Intervention Training programs and review and evaluate the block of training needed for initial training officers on recognition and assisting individuals who are in crisis and the need for on-going in-service training on a periodic basis;

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- Adopt a "Custody and Care Time Line" approach to increase the opportunities for intervention in high-risk contacts with the vulnerable population of the community (individuals who are at higher risk for arrest-related deaths) including coordinating efforts between communications personnel, field patrol supervisors, patrol officers, fire department paramedics and emergency medical staff with regard to staging of personnel for efficient physical interventions when necessary followed quickly on the heels by medical care based on state-of-the-art programs dealing with such concerns;
- Clarify policy with regard to firearms qualifications and failure to qualify with regard to concerns such as: time frame for requalification and remediation; status in the event of repeat failures to qualify; qualification requirements of personnel during leaves of absence; and ultimate authority for removal of firearm and criteria for same;
- Adopt practice and procedure to mandate that ECD downloads will be performed whenever an ECD use of force occurs in the field and the download will be provided to the officer to attach to the incident report;
- Conduct a cost analysis to compare savings between conducting firearms qualifications and training twice a year versus three times annually and do a risk/benefits evaluation re. same;

Conclusion:

Thank you for the opportunity to conduct this evaluation of the field training officer program, the use of force policies and use of force training of the City of Spokane Police Department. During the course of the meetings with the various members of SPD it was apparent that the organization is made up of professional individuals that want to do the very best job possible and to provide excellent service to the community which they serve. Overwhelmingly the input and suggestions made were discussed during those meetings were received with enthusiasm and an open-mindedness to positive change. That is commendable in particular in a historical environment of confrontation and accusations.

It should be noted that the recommendations set forth above and the discussion of the findings throughout this report are not indicative of anything other than the norm when it comes to areas for improvement in public safety organizations - in particular in these fiscally challenging times for our state and local government agencies. Fiscal difficulties lead to staffing, supervision and overtime concerns which historically has an immediate impact on training quality and quantity and capital expenditures for necessary equipment. All of this is no surprise. These issues are only magnified by the community's expectations for immediate information and service oriented policing in an era of increasing violence against law enforcement.

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Officers must have confidence in their training and confidence that they know the law and policies that apply to the decisions they will make in the field. That confidence must extend to their supervisors, to management and to the executive level of the police department that their efforts to enforce the laws and protect and serve the community will be supported. They must have confidence that the community will stand behind them when they make good decisions and, that if they make a mistake they will be judged fairly and not through the distorted prism of the past.

It is my hope that the input and recommendations discussed herein will assist the City of Spokane and the Spokane Police Department with the future development of the organization. Please let me know if there are any questions or concerns that the Use of Force Commission would like me to address.

Very truly yours,

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

Mildred K. O'Linn

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EXHIBIT A

WSCJTC Curriculum Block Definitions

Basic Law Enforcement Academy (July 2010 – Current)



Module 01

<i>Class Code</i>	<i>Class Description</i>	<i>Hours</i>	<i>Instructor</i>
101	M01-S01 Academy Overview - rules, policies, academy protocols	6:00	Class TAC Officer
102	M01-S02 Cert-Decert - Washington State peace officer certification overview	1:00	WSCJTC Staff
103	M01-S03 Marching and Drill Practical - physical fitness, discipline	1:00	Class TAC Officer
103-5	DT: Intro to Defensive Tactics (classrm) - legal use of force, self defense, control tactics	3:00	Defensive Tactics
104	M01-S04 Chain of Command - leadership, organizational structure, student expectations	1:00	Class TAC Officer
104-5	DT: Basic Handcuffing - leadership, organizational structure	3:00	Class TAC Officer, Defensive Tactics
105	M01-S05 BLEA Problem Solving Model - crime prevention, critical thinking, problem solving	2:00	Class TAC Officer, Crisis Intervention
106	M01-S06 Officer Presence - confidence, verbal & non-verbal communication skills	2:00	Crisis Intervention
107	M01-S07 Community Expectations - traditional & modern policing, community-oriented policing	1:00	Crisis Intervention
108	M01-S08 Intro to Criminal Procedures - court rules and basic procedures, types of contacts, US & state constitution	1:00	Criminal Procedures
109	M01-S09 Applying Problem Solving Model - problem solving	1:00	Crisis Intervention
110	M01-S10 Police Liability - rights of citizens, rules for law enforcement actions	2:00	Criminal Procedures
111	M01-S11 Problem-Based Learning Methods - problem solving, instructor & student roles and expectations	2:00	Crisis Intervention, Class TAC Officer
112	M01-S12 Emotional Intelligence & Journal - communication skills, emotional intelligence, reflective journaling	3:00	Academy Commander
113	M01-S13 Pre-Reading Exam & Case Law Asgn - intro to: criminal law, criminal procedures, criminal investigations, and traffic enforcement	2:00	Criminal Procedures
114	M01-S14 Civil Rights & Color of Law - jurisdiction, misconduct investigations, complaint process	2:00	Criminal Procedures
115	M01-S15 Oral Autobiographies - communication skills	4:00	Class TAC Officer
116	M01-S16 Professional Ethics A - leadership, decision making, communication skills	3:00	Academy Commander
117	M01-S17 Diversity & Bias-Based Policing - ethics, liability, legal rules	2:00	Criminal Procedures
118	Study & Project Time (Case Law Pres.) - self-directed time for study and assignment completion	2:00	Class TAC Officer
199-1	Pre-Exam Review	1:00	Class TAC Officer
199-2	Module 1 Written Exam	2:00	Class TAC Officer
199-3	Post-Exam Review	1:00	Class TAC Officer

Total Class Hours For Block = 48:00

<i>Test Code</i>	<i>Test Description</i>
PBL00	Pre-Reading Written Exam
PBL01	Module 1 Written Exam

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Module 02

<i>Class Code</i>	<i>Class Description</i>	<i>Hours</i>	<i>Instructor</i>
200-1	Case Law Presentations (from M1/S13) - search & seizure rules, communication skills, public speaking	1:00	Criminal Procedures
200-2	Case Law Presentations (from M1/S13) - search & seizure rules, communication skills, public speaking	1:00	Criminal Procedures
200-3	Case Law Presentations (from M1/S13) - search & seizure rules, communication skills, public speaking	1:00	Criminal Procedures
201	M02-S01 Social & Terry Stops - reasonable suspicion, probable cause, legal detentions and seizures	2:00	Criminal Procedures
202	M02-S02 Intro to Patrol Procedures - call types and response, officer safety concepts, tactics	4:00	Patrol Procedures
203	M01-S03 Criminal Law Fundamentals - crime elements, mental states, Corpus Delicti, jurisdiction, defenses, use of force, reasonable, necessary, Misdemeanor Presence Rule	8:00	Criminal Law
204	M02-S04 Stress - sources and effects of stress, stress management	2:00	Crisis Intervention
205	M02-S05 Radio Procedures - police radio use, protocols and standards	2:00	Class TAC Officer
206	M02-S08 Report Writing - basic report organization, avoiding common writing mistakes	2:00	Crisis Intervention
207	M02-S07 Com Caretaking & Knock & Announce - legal authority to enter protected areas	1:00	Criminal Procedures
208	M01-S08 Noise Complaints - noise calls, party calls, fight calls, local ordinances vs. state laws	1:00	Criminal Law
209	M02-S09 Call Response - officer safety, pre-attack indicators, field contacts, types of detentions	3:00	Patrol Procedures
210	**not used		
211	M02-S11 Welfare Checks - call types, emergency response policies, arrival & approach, suspect contact	3:00	Patrol Procedures
212	M02-S12 Mental Illness - reactive vs. proactive patrol, signs & symptoms of mental illness, risk assessment, Involuntary Treatment Act	3:00	Crisis Intervention
213	M02-S13 Security Checks - on-view calls, police response model, tactics, frisk, warrants	4:00	Patrol Procedures, Criminal Procedures
214	M02-S14 ACCESS - use of the computer records systems	4:00	Washington State Patrol
215	M02-S15 People in Crisis - communication skills, de-escalation techniques, crisis situations	3:00	Crisis Intervention
216	M02-S16 Complicity & Anticipatory Offenses - liability of children, complicity, criminal attempt, criminal solicitation, criminal conspiracy	2:00	Criminal Law
217	M02-S17 On-line Rpt Writing (self study) - self-directed time to complete 8-hour report writing course	1:00	Class TAC Officer
218	Study & Project Time - self-directed time for study and assignment completion	1:00	Crisis Intervention
299-1	Pre-Exam Review	1:00	Class TAC Officer
299-2	Module 2 Written Exam	2:00	Class TAC Officer
299-3	Post-Exam Review	1:00	Class TAC Officer

Total Class Hours For Block = 53:00

<i>Test Code</i>	<i>Test Description</i>
PBL02	Module 2 Written Exam
ACCESS	ACCESS Written Final Exam

WSCJTC Curriculum Block Definitions

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Module 03

<i>Class Code</i>	<i>Class Description</i>	<i>Hours</i>	<i>Instructor</i>
300-1	Case Law Presentations (from M1/S13) - search & seizure rules, communication skills, public speaking	1:00	Criminal Procedures
300-2	Case Law Presentations (from M1/S13) - search & seizure rules, communication skills, public speaking	1:00	Criminal Procedures
301	M03-S01 Exigent Circ & Consent Searches - rules of entry, consent, plain & open view	2:00	Criminal Procedures
302	M03-S02 Tactical Communication - de-escalation techniques, communication skills	2:00	Crisis Intervention
303	M03-S03 Crim Investigations Series #1 - crime scene response and management, equipment/kit for scene processing	2:00	Criminal Investigations
304	M03-S04 Fight Calls - tactics, risk assessment, Disorderly Conduct, taking written statements	3:00	Criminal Law, Patrol Procedures
305	M03-S05 Burglary, Trespass & Vehicle Prowl - RCWs	2:00	Criminal Law
306	M03-S06 Procedures of Arrest - arrest, legal authority, levels of proof, warrants, exigent circumstances, citizen's arrest, officer safety, handcuffing, searches	4:00	Criminal Procedures, Patrol Procedures
307	M03-S07 Firearms & Dangerous Weapons - RCWs	4:00	Criminal Law
308	M03-S08 Frisking & Searching - frisk & search, plain feel doctrine, suspect transport	2:00	Criminal Procedures
309	M03-S09 Court Testimony & Evidence Rules - testimony preparation, roles of court participants, types of evidence, privileged communications, hearsay, fruits of poisonous tree	3:00	Criminal Procedures
310	M03-S10 Crim Investigations Series #2 - witness interviews, written statements	2:00	Criminal Investigations
311	M03-S11 Assault & Harassment - RCWs	4:00	Criminal Law
312	M03-S12 Conflict Resolution Practical - tactics, scene management, communication skills, police response model	2:00	Crisis Intervention
313	M03-S13 Interview & Interrogation - Reid Tech - Reid Interview Technique, interview vs. interrogation	2:00	Criminal Investigations
314	M03-S14 On-line Rpt Writing (self study) - self-directed time to complete 8-hour report writing course	1:00	Class TAC Officer
399-1	Pre-Exam Review	1:00	Class TAC Officer
399-2	Module 3 Written Exam	2:00	Class TAC Officer
399-3	Post-Exam Review	1:00	Class TAC Officer

Total Class Hours For Block = 42:00

<i>Test Code</i>	<i>Test Description</i>
PBL03	Module 3 Written Exam

WSCJTC Curriculum Block Definitions

Basic Law Enforcement Academy (July 2010 – Current)



Module 04

<i>Class Code</i>	<i>Class Description</i>	<i>Hours</i>	<i>Instructor</i>
400-1	Case Law Presentation (from M1/S13) - search & seizure rules, communication skills, public speaking	1:00	Criminal Procedures
400-2	Case Law Presentation (from M1/S13) - search & seizure rules, communication skills, public speaking	1:00	Criminal Procedures
400-3	Case Law Presentation (from M1/S13) - search & seizure rules, communication skills, public speaking	1:00	Criminal Procedures
401	M04-S01 Intro to Traffic Enforcement - reasons for traffic enforcement, authority	1:00	Traffic Enforcement
402	M04-S02 Rules of the Road & Equip Violations - RCWs, pretext stops, controlling passengers	3:00	Traffic Enforcement
403	M04-S03 Intro to Traffic Stops - moving vs. stationary enforcement, traffic stop steps, contact model	3:00	Traffic Enforcement
404	M04-S04 High-Risk Vehicle Stops - tactics, preparation, procedures	4:00	Patrol Procedures
405	M04-S05 Drug Abuse & Investigations - drug recognition and testing, symptoms of use, RCWs	5:00	Criminal Investigations
406	M04-S06 Tactical Thinking A - emotional intelligence, de-escalation, communication skills, self-control	1:00	Academy Commander
407	M04-S07 Writing Citations - completion of NGLs and criminal citations, closing contact with violator	3:00	Traffic Enforcement
408	M04-S08 Traffic Stops Practical - vehicle positioning, approaching violator vehicle, tactics, radio procedures	3:00	Traffic Enforcement
409	M04-S09 Driver's License Violations - driving while suspended/revoked, intermediate licenses, endorsements	1:00	Traffic Enforcement
410	M04-S10 Crim Investigations Series #3 - crime scene search techniques	1:00	Criminal Investigations
411	M04-S11 DUI Laws - DUI & physical control laws, implied consent, blood draws	2:00	Traffic Enforcement
411-5	MOCKS: Traffic Stops #1 (BANK A) - mock scene exercises	4:00	Traffic Enforcement, BLEA Staff
412	M04-S12 Vehicle Searches & Impound - plain & open view, scope of search, K-9, impound, control of occupants	2:00	Criminal Procedures
413	M04-S13 Collision Investigation & PTCR - scene investigation and management, report forms, traffic control	4:00	Traffic Enforcement
413-5	MOCKS: High-Risk Vehicle Stops #1 (BANK B) - mock scene exercises	4:00	Patrol Procedures, BLEA Staff
414	M04-S14 On-line Rpt Writing (self study) - self-directed time to complete 8-hour report writing course	1:00	Class TAC Officer
415	M04-S15 DOL (Department of Licensing) - Washington State license rules and records	3:00	WA Department of Licensing
499-1	Pre-Exam Review	1:00	Traffic Enforcement
499-2	Module 4 Written Exam	3:00	Class TAC Officer
499-3	Post-Exam Review	1:00	Class TAC Officer

Total Class Hours For Block = 53:00

<i>Test Code</i>	<i>Test Description</i>
PBL04	Module 4 Written Exam

WSCJTC Curriculum Block Definitions

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Module 05

<i>Class Code</i>	<i>Class Description</i>	<i>Hours</i>	<i>Instructor</i>
500-1	Case Law Presentations (from M1/S13) - search & seizure rules, communication skills, public speaking	1:00	Criminal Procedures
501	M05-S01 Alarm Response - alarm types, property crimes	2:00	Patrol Procedures
502	M05-S02 Crim Investigations Series #4 - crime scene photography	3:00	Criminal Investigations, Patrol Procedures
503	M05-S03 Building Searches - tactics of building search, officer safety, radio procedures	4:00	Patrol Procedures
504	M05-S04 K-9 Patrol & Tactics - use of K-9	4:00	K-9 Officer
504-5	MOCKS: Building Search Practical - Introduction to building search techniques (hands-on)	4:00	Patrol Procedures, BLEA Staff
505	M05-S05 Domestic Violence - DV Law, legislative intent, family/household relationship, primary aggressor, mandatory arrest, human trafficking, stalking, report writing	8:00	Criminal Law
505-5	MOCKS: Crisis #1 (BANK C) - mock scene exercises	4:00	Crisis Intervention, BLEA Staff
506	M05-S06 Property Crimes - RCWs: Burglary, Trespass, Vehicle Prowl, Theft, Malicious Mischief	2:00	Criminal Law
506-5	MOCKS: Traffic Stops #2 (BANK D) - mock scene exercises	4:00	Traffic Enforcement, BLEA Staff
507	M05-S07 Gang Awareness - gang behaviors and recognition, investigation of gang-related incidents	6:00	Gang Officer
508	M05-S08 Crim Investigations Series #5 - crime scene diagramming	3:00	Criminal Investigations
509	M05-S09 Miranda - Miranda warning triggers, WA CCR 3.1, advisement procedures	2:00	Criminal Procedures
509-5	MOCKS: Field Interview #1 (BANK E) - mock scene exercises	4:00	Criminal Procedures, BLEA Staff
510	M05-S10 Fire Investigations - RCWs, working with arson investigators	2:00	Fire Department
511	M05-S11 Gambling Investigations	2:00	WA Gambling Commission
512	M05-S12 Crim Investigations Series #6 - suspect identification procedures, photo montages, field show-ups	3:00	Criminal Investigations
513	M05-S13 Workshop: Criminal Law - gambling RCWs, cheating	1:00	Criminal Law
514	M05-S14 On-line Rpt Writing (self study) - self-directed time to complete 8-hour report writing course	1:00	Class TAC Officer
515	M05-S15 DTS Mid-term Evaluation - meeting with WSCJTC curriculum team to solicit student feedback and evaluate program	1:00	WSCJTC Development, Training, & Standards
516	M05-S16 Criminal Inv Series Review - review ongoing mock investigation and skills learned up to this point	1:00	Criminal Investigations
599-1	Pre-Exam Review	1:00	Class TAC Officer
599-2	Module 5 Written Exam	2:00	Class TAC Officer
599-3	Post-Exam Review	1:00	Class TAC Officer

Total Class Hours For Block = 66:00

<i>Test Code</i>	<i>Test Description</i>
PBL05	Module 5 Written Exam

WSCJTC Curriculum Block Definitions

Basic Law Enforcement Academy (July 2010 – Current)



Module 06

<i>Class Code</i>	<i>Class Description</i>	<i>Hours</i>	<i>Instructor</i>
601	M06-S01 Vulnerable Adults - RCWs, abuse, neglect, exploitation, investigation of elder abuse	2:00	WA Attorney General
601-5	MOCKS: Field Interview #2 (BANK F) - mock scene exercises	4:00	Criminal Procedures, BLEA Staff
602A	M06-S02A Crim Investigations Series #7-A - search warrant procedures, writing search warrants	2:00	Criminal Investigations
602B	M06-S02B Crim Investigations Series #7-B - search warrant procedures, writing search warrants	3:00	Criminal Investigations
603	M06-S03 Domestic Violence Report Review - report writing, investigation of domestic violence	1:00	Criminal Law
604	M06-S04 Fraud and Forgery - RCWs: Theft, ID Theft, Criminal Impersonation, Forgery	2:00	Criminal Law, Patrol Procedures
605	M06-S05 Computer Crimes - digital evidence, RCWs, investigation of computer crime	3:00	Criminal Investigations
606	M06-S06 Workshop: Criminal Investigation - modus operandi, rape investigations	2:00	Criminal Investigations
607	**not used		
608	M06-S08 Crim Investigations Series #8 - fingerprinting	3:00	Criminal Investigations
609	M06-S09 Arrest Warrants - issuance of warrants, reading a warrant, first-party vs. third-party residences, reasonable warrant service	2:00	Criminal Procedures
610	M06-S10 Workshop: Criminal Procedures - search warrants, vehicle searches	4:00	Criminal Procedures
611	M06-S11 Crim Investigations Series #9 - crime scene evidence collection	3:00	Criminal Investigations
612	M06-S12 On-line Rpt Writing (self study) - self-directed time to complete 8-hour report writing course	1:00	Class TAC Officer
699-1	Pre-Exam Review	1:00	Class TAC Officer
699-2	Module 6 Written Exam	2:00	Class TAC Officer
699-3	Post-Exam Review	1:00	Class TAC Officer

Total Class Hours For Block = 40:00

<i>Test Code</i>	<i>Test Description</i>
PBL06	Module 6 Written Exam

WSCJTC Curriculum Block Definitions

Basic Law Enforcement Academy (July 2010 – Current)



Module 07

<i>Class Code</i>	<i>Class Description</i>	<i>Hours</i>	<i>Instructor</i>
701	M07-S01 Homicide & Felony Murder Rule - RCWs	2:00	Criminal Law
701-5	MOCKS: High-Risk Vehicle Stops #2 (BANK H) - mock scene exercises	4:00	Patrol Procedures, BLEA Staff
702	M07-S02 Serving Orders & Civil Stand-bys - order types, sole responsibility, order service, civil stand-bys	2:00	Crisis Intervention
703	M07-S03 Standard Field Sobriety Tests - standardized training program	20:00	Traffic Enforcement
704	M07-S04 Robbery & Kidnapping - RCWs	4:00	Criminal Law
704-5	MOCKS: Crisis #2 (w/reports) (BANK I) - mock scene exercises	4:00	Crisis Intervention, BLEA Staff
705	M07-S05 Death Investigations - investigation of death scenes	4:00	Homicide Officer
706	M07-S06 Communication w/People w/Disabilities - communication skills, diversity, sensitivity	2:00	Crisis Intervention
707	M07-S07 Patrol Investigations - specific types of investigations: auto theft, robbery, burglary, shooting, stabbing & assault	3:00	Criminal Investigations
707-5	MOCKS: Field Interview #3 (BANK J) - mock scene exercises	4:00	Criminal Procedures, BLEA Staff
708	M07-S08 SFST - Practical App & Exam - standardized training program	4:00	Traffic Enforcement
709	M07-S09 Suicide Investigations - Involuntary Treatment Act, suicide risk assessment, suicide by cop, police officer suicide	2:00	Crisis Intervention
710	M07-S10 Evidence Collection Practical - hands-on evidence collection practice	4:00	Criminal Investigations
711	M07-S11 On-line Rpt Writing (self study) - self-directed time to complete 8-hour report writing course	1:00	Class TAC Officer
712	Study & Project Time and Chaplain Intro - introduction to police chaplains, self-directed time for study and assignment completion	1:00	Class TAC Officer, Chaplain
713	M04-S06 Tactical Thinking B - emotional intelligence, de-escalation, communication skills, self-control	1:00	Academy Commander
799-1	Pre-Exam Review	1:00	Class TAC Officer
799-2	Module 7 Written Exam	2:00	Class TAC Officer
799-3	Post-Exam Review	1:00	Class TAC Officer

Total Class Hours For Block = 66:00

<i>Test Code</i>	<i>Test Description</i>
PBL07	Module 7 Written Exam
TR0001	SFST Practical Exam
TR0002	SFST Written Exam

WSCJTC Curriculum Block Definitions

Basic Law Enforcement Academy (July 2010 – Current)



Module 08

<i>Class Code</i>	<i>Class Description</i>	<i>Hours</i>	<i>Instructor</i>
801	M08-S01 Child Abuse Investigations - indicators of child abuse, evidence, child interviews	4:00	Sex Offense Investigator
802	M08-S02 Domestic Violence Pre-Exam Review - review of DV materials	1:00	Criminal Law
803	M08-S03 Crimes Against Children - RCWs	2:00	Criminal Law
804	M08-S04 Sex Crime Investigations - sexual assault investigations, community resources	3:00	Sex Offense Investigator
805	M08-S05 Sex Offenses - RCWs	4:00	Criminal Law
806	M08-S06 BAC & PBT (classroom) - standardized training program	10:00	Traffic Enforcement
806-5	M08-S06 BAC & PBT Exam - standardized training program	4:00	Traffic Enforcement
807	**not used		
808	M08-S08 AMBER Alert - using the AMBER Alert system	1:00	Seattle Police Department
809	M08-S09 Sexual Predators - sexually violent predator laws in Washington State, sex offender levels & registration	1:00	WA Attorney General
809-5	MOCKS: Patrol Beat Mocks - mock scene exercises	8:00	Crisis Intervention, BLEA Staff
810	M08-S10 On-line Rpt Writing (self study) - self-directed time to complete 8-hour report writing course	1:00	Class TAC Officer
898	Domestic Violence Written Exam	1:00	Criminal Law
899-1	Pre-Exam Review	1:00	Class TAC Officer
899-2	Module 8 Written Exam	2:00	Class TAC Officer
899-3	Post-Exam Review	1:00	Class TAC Officer

Total Class Hours For Block = 44:00

<i>Test Code</i>	<i>Test Description</i>
PBL08	Module 8 Written Exam
TR0003	BAC Practical Exam
TR0004	BAC Written Exam
PBLWF1	Domestic Violence Written Final Exam

WSCJTC Curriculum Block Definitions

Basic Law Enforcement Academy (July 2010 – Current)



Module 09

<i>Class Code</i>	<i>Class Description</i>	<i>Hours</i>	<i>Instructor</i>
900-1	NIGHT MOCKS: Force Scenario & DUI #1 - final defensive tactics performance examinations	4:00	Defensive Tactics, BLEA Staff
900-2	NIGHT MOCKS: Force Scenario & DUI #2 - final defensive tactics performance examinations	4:00	Defensive Tactics, BLEA Staff
900-3	NIGHT MOCKS: Final Testing Scenes #1 - final mock scene performance examinations	4:00	Class TAC Officer, BLEA Staff
900-4	NIGHT MOCKS: Final Testing Scenes #2 - final mock scene performance examinations	4:00	Class TAC Officer, BLEA Staff
900-5	Study & Project Time (DUI Report) - completion of DUI arrest report packet, self-directed time for study and assignment completion	2:00	Traffic Enforcement
901	M09-S01 Crim Inv. Series Mock Trial - mock trial conclusion to on-going criminal investigation series	5:00	Criminal Investigations, Criminal Procedures
902	M09-S02 Intro to Unusual Occurrences - high-risk situations, tactics, natural and manmade disasters	2:00	Patrol Procedures
903	M09-S03 Active Shooter - static vs. dynamic situations, team movement	1:00	Patrol Procedures
904	M09-S04 Critical Incident Stress - line of duty death, post-traumatic stress	2:00	COPS Representative
905	M09-S05 Excited Delirium - recognition and protocols for excited delirium incidents	2:00	Crisis Intervention, Defensive Tactics
906	M09-S06 Counter-Terrorism - weapons of mass destruction, terrorist activities	1:00	FBI
907	M09-S07 Leadership (Eff. Followership) - leadership, management, communication skills	3:00	Crisis Intervention
908	M09-S08 On-line Rpt Writing (self study) - self-directed time to complete 8-hour report writing course	1:00	Class TAC Officer
909	M09-S09 Bombs & Explosives - patrol responsibilities in bomb incidents, types of bombs, evacuation and searches, suspicious packages	2:00	Bomb Unit Officer
910	M09-S10 HAZMAT - emergency response guide (ERG), categories of hazardous materials, first responder actions	3:00	Fire Department
911	M09-S11 Bombs & HAZMAT Extension - additional hours for future state-wide expanded training on emergency response	3:00	Class TAC Officer
999-1	Pre-Exam Review	1:00	Class TAC Officer
999-2	Module 9 Written Exam	2:00	Class TAC Officer
999-3	Post-Exam Review	1:00	Class TAC Officer

Total Class Hours For Block = 47:00

<i>Test Code</i>	<i>Test Description</i>
PBL09	Module 9 Written Exam
NM0001	Final Mock - Building Search
NM0002	Final Mock - Crisis
NM0003	Final Mock - Field Interview
NM0004	Final Mock - Traffic

WSCJTC Curriculum Block Definitions

Basic Law Enforcement Academy (July 2010 – Current)



Module 10

<i>Class Code</i>	<i>Class Description</i>	<i>Hours</i>	<i>Instructor</i>
1001	Class Graduation Photos	1:00	Class TAC Officer, Academy Commander
1002	M10-S02 First Aid / CPR	6:00	First Aid / CPR Trainers
1003	M10-S03 DTS End-of-Academy Evaluation	1:00	WSCJTC Development, Training, & Standards
1004	M10-S04 Safe Call Program	1:00	Class TAC Officer
1005	M10-S05 Professional Ethics B	1:00	Academy Commander
1006	M10-S06 Off-Duty Considerations	2:00	Patrol Procedures
1007	M10-S07 Graduation Preparation	2:00	Class TAC Officer, Academy Commander
1008	M10-S08 Inspection/Ringing Out	1:00	BLEA Staff, Class TAC Officer, Academy Commander
1009	M10-S09 Family Orientation/Class Video	3:00	Police Chaplain, Crisis Intervention
1010	M10-S10 Graduation Ceremonies	4:00	Academy Cmdr., BLEA Staff, Class TAC Officer

Total Class Hours For Block = 22:00

WSCJTC Curriculum Block Definitions

Basic Law Enforcement Academy (July 2010 – Current)



Module 11 - Force & Fitness Training

<i>Class Code</i>	<i>Class Description</i>	<i>Hours</i>	<i>Instructor</i>
1101	DT: Intro to Defensive Tactics (classrm)	2:00	Defensive Tactics
1102	DT: Gym Orientation	2:00	Defensive Tactics
1103	DT: Basic Fundamentals	2:00	Defensive Tactics
1104	IDT (Intensive Defensive Tactics / Physical Training)	1:00	Defensive Tactics
1105	DT: Handcuffing #1 of 3	2:00	Defensive Tactics
1106	IDT	1:00	Defensive Tactics
1107	DT: Striking Tools #1 of 3	2:00	Defensive Tactics
1108	IDT	1:00	Defensive Tactics
1109	DT: Striking Tools #2 of 3	2:00	Defensive Tactics
1110	DT: Striking Tools #3 of 3	2:00	Defensive Tactics
1111	IDT	1:00	Defensive Tactics
1112	DT: Handcuffing #2 of 3	2:00	Defensive Tactics
1113	IDT	1:00	Defensive Tactics
1114	DT: Ground Survival #1 of 2	2:00	Defensive Tactics
1115	IDT	1:00	Defensive Tactics
1116	DT: Baton #1 of 4	2:00	Defensive Tactics
1117	IDT	1:00	Defensive Tactics
1118	DT: Frisk	2:00	Defensive Tactics
1119	IDT	1:00	Defensive Tactics
1120	DT: Handcuffing #3 of 3	2:00	Defensive Tactics
1121	IDT	1:00	Defensive Tactics
1122	DT: Search	2:00	Defensive Tactics
1123	IDT	1:00	Defensive Tactics
1124	DT: Basic Defenses	2:00	Defensive Tactics
1125	IDT	1:00	Defensive Tactics
1126	DT: Control Tactics #1 of 6	2:00	Defensive Tactics
1127	IDT	1:00	Defensive Tactics
1128	DT: Scenario Training #1 of 2 (Day Mocks)	4:00	Defensive Tactics
1129	DT: Control Tactics #2 of 6	2:00	Defensive Tactics
1130	IDT	1:00	Defensive Tactics
1131	DT: Control Tactics #3 of 6	2:00	Defensive Tactics
1132	DT: Control Tactics #4 of 6 (Review)	2:00	Defensive Tactics
1133	IDT	1:00	Defensive Tactics
1134	DT: Mid-Term Skills Exam (Closed Skills)	2:00	Defensive Tactics
1135	IDT	1:00	Defensive Tactics
1136	DT: Use of Force #1 of 2 (Classroom)	2:00	Defensive Tactics
1137	DT: Ground Control	2:00	Defensive Tactics
1138	IDT	1:00	Defensive Tactics
1139	DT: Use of Force #2 of 2 (Classroom)	2:00	Defensive Tactics
1140	IDT	1:00	Defensive Tactics
1141	DT: OC Lecture & Practical	6:00	Defensive Tactics, BLEA Staff
1142	DT: Scenario Training #2 of 2 (Day Mocks)	4:00	Defensive Tactics
1143	DT: Control Tactics #5 of 6	2:00	Defensive Tactics
1144	IDT	1:00	Defensive Tactics
1145	DT: Control Tactics #6 of 6	2:00	Defensive Tactics
1146	IDT	1:00	Defensive Tactics
1147	DT: IRS (Impact Resistant Suit) Drills #1 of 3	2:00	Defensive Tactics
1148	IDT	1:00	Defensive Tactics
1149	DT: Baton #2 of 4	2:00	Defensive Tactics
1150	IDT	1:00	Defensive Tactics
1151	DT: Handgun Retention #1 of 2	2:00	Defensive Tactics
1152	IDT	1:00	Defensive Tactics
1153	DT: Ground Survival #2 of 2	2:00	Defensive Tactics
1154	DT: Baton #3 of 4	2:00	Defensive Tactics
1155	IDT	1:00	Defensive Tactics
1156	DT: IRS (Impact Resistant Suit) Drills #2 of 3	2:00	Defensive Tactics
1157	IDT	1:00	Defensive Tactics
1158	DT: Baton #4 of 4	2:00	Defensive Tactics
1159	IDT	1:00	Defensive Tactics
1160	DT: Handgun Retention #2 of 2	2:00	Defensive Tactics
1161	IDT	1:00	Defensive Tactics
1162	DT: Final Skills Exam (Closed Skills)	2:00	Defensive Tactics
1163	DT: Final Written Exam	2:00	Defensive Tactics
1164	DT: IRS (Impact Resistant Suit) Drills #3 of 3	4:00	Defensive Tactics
1165	IDT: IDT/Final Mock Scene Retests	2:00	Class TAC Officer, Physical Training, BLEA Staff
1166	IDT	5:00	Defensive Tactics

Total Class Hours For Block = 119:00

WSCJTC Curriculum Block Definitions

Basic Law Enforcement Academy (July 2010 – Current)



Module 11 - Force & Fitness Training

<i>Test Code</i>	<i>Test Description</i>
DT0001	OC Pepper Spray Written Exam
DT0002	OC Pepper Spray Application & Skills
DT0003	DT Mid-Term Skills Exam (closed skills)
DT0004	DT Final Skills Exam (closed skills)
DT0005	DT Final Written Exam
DT0006	DT Night Force Scenario Exam -Scene 1(H)
DT0007	DT Night Force Scenario Exam -Scene 2(L)
PT0001	P.A.T. Entrance Exam
PT0002	P.A.T. First Test
PT0003	P.A.T. Mid-Term
PT0004	P.A.T. Final

WSCJTC Curriculum Block Definitions

Basic Law Enforcement Academy (July 2010 – Current)



Module 12 - Firearms Training

<i>Class Code</i>	<i>Class Description</i>	<i>Hours</i>	<i>Instructor</i>
1201	Firearms: Orientation (classm) (u#1)	4:00	Firearms Range Staff
1202	Firearms: Fundamentals (u#2-12)	8:00	Firearms Range Staff
1203	Firearms: Live Fire #1 (u#13)	4:00	Firearms Range Staff
1204	Firearms: Live Fire #2 (u#14)	4:00	Firearms Range Staff
1205	Firearms: Intro to Low Light	2:00	Firearms Range Staff
1206	Firearms: Live Fire #3 (u#15)	4:00	Firearms Range Staff
1207	Firearms: Live Fire #4 (u#16)	4:00	Firearms Range Staff
1208	Firearms: Live Fire #5 (u#17)	4:00	Firearms Range Staff
1209	Firearms: Live Fire #6 (u#18)	4:00	Firearms Range Staff
1210	Firearms: Mid-Term Testing (u#20)	4:00	Firearms Range Staff
1211	Firearms: One-Hand Manipulation (u#32)	4:00	Firearms Range Staff
1212	Firearms: Use of Cover #1&2 (u#21-22)	8:00	Firearms Range Staff
1213	Firearms: Low Light Practical Exam (u#24-28)	8:00	Firearms Range Staff
1214	Firearms: CQB, FATS & Prism	8:00	Firearms Range Staff
1215	Firearms: Final Practical Exam (u#36-38)	8:00	Firearms Range Staff
1216	MOCKS: Dynamic Simunitions	8:00	Firearms Range Staff, BLEA Staff

Total Class Hours For Block = 86:00

<i>Test Code</i>	<i>Test Description</i>
FA0001	Firearms Mid-Term Written Exam
FA0002	Firearms Mid-Term Skills Exam
FA0003	Firearms Mid-Term Practical Exam
FA0004	Firearms Low-Light Practical Exam
FA0005	Firearms Final Practical Exam

WSCJTC Curriculum Block Definitions

Basic Law Enforcement Academy (July 2010 – Current)



Module 13 – Emergency Vehicle operator's Course (E.V.O.C.)

<i>Class Code</i>	<i>Class Description</i>	<i>Hours</i>	<i>Instructor</i>
1301	EVOC: Day 1	8:00	Washington State Patrol, Class TAC Officer
1302	EVOC: Day 2	8:00	Washington State Patrol
1303	EVOC: Day 3	8:00	Washington State Patrol
1304	EVOC: Day 4	8:00	Washington State Patrol
1305	EVOC: Day 5	8:00	Washington State Patrol

Total Class Hours For Block = 40:00

<i>Test Code</i>	<i>Test Description</i>
EVOC01	E.V.O.C. Final Written Exam
EVOC02	E.V.O.C. Final Practical Exam

EXHIBIT B

Pre-FTO Program

N. Gobble, S. Wilson, B. Zook

06.25.12 – 06.29.12

Monday, June 25th: 0800-1600- SECTOR with **Officer Moon** at the COMSTAT room by Records

Tuesday, June 26th: 0800-1200- Firearms with **Sgt Cowles/ Officer Crane** at the Academy

1200-1300- Lunch

1300-1700-Taser with **Detective Randy Lesser**

Wednesday, June 27th: 0800-1200- DT with **Officer Boothe** at the Academy (wear appropriate DT/safety gear)

1200-1300- Shower/ Lunch

1300 1500- Municipal Code/DV Orders with **Detective Koerner/ Officer**

Elina Bishop

1500-1600- Tow and Impound Procedures/ Documentation with **Rob**

Chiappe

Thursday, June 28th: 0800-0930-BEAST/ Property Refresher with **Mr. Ricco Hayes** at SPD Property Facility

0930-1000- Travel to Gardner Building

1000-1200- Charging Requests/ SIU with **Detective Vandenberg/ Sergeant**

Hendren

1200-1300- Drug Endangered Children program with **Detective Bowman**

1300-1400- Lunch

1400-1600- FTO Program Overview/ Orientation with **Sgt Fertakis** at the

Academy

Friday, June 29th: 0800-1600- PIT Classroom and Driving Certifications with **Officer's Bulkley and Workman** starting at the Academy then moving to Deer Park Airport

Hopefully this will work for all of you! If you have a scheduling conflict please advise ASAP.

Overtime IS authorized. Thanks, Joel

EXHIBIT C

Spokane Police Department Post Academy Schedule

November 14-23, 2011

Dale Harvey/Christopher Kim

Monday November 14, 2011	COURSE	INSTRUCTOR(S)
0800-1500	Use of Force Report Writing	Sgt. King
1500-1800	Criminal Procedures	Sgt. Meyers
Tuesday November 15, 2011	COURSE	INSTRUCTOR(S)
0800-1000	Property/Beast Training	Rick Hayes
1000-1400	Defensive Tactics	Ofc. Boothe
1400-1800	Taser	Det. Lesser
Wednesday November 16, 2011	COURSE	INSTRUCTOR(S)
0800-1600	Firearms	Sgt. Cowles
1600-1800	K9 Introduction	Sgt. Teigen/Ofc. Kendall
Thursday November 17, 2011	COURSE	INSTRUCTOR(S)
0800-1800	EVOC	Ofc. Bulkley
Friday November 18, 2011	COURSE	INSTRUCTOR(S)
0800-1100	Municipal Codes/DV	Det. Koerner
1200-1400	Prosecution – Referral/Testimony	Det. Vandenberg
1400-1600	Search Warrants	Sgt. Hendren
1600-1800	DEC Protocol/CPS Policies	Det. Bowman
Monday November 21, 2011	COURSE	INSTRUCTOR(S)
0800-1600	Firearms/FATS	Ofc. Preuninger
1600-1800	First Aid/CPR	Ofc. Busse
Tuesday November 22, 2011	COURSE	INSTRUCTOR(S)
0600-1600	Expediter/CAD/RMS	Ofc. Carroll
Wednesday November 23, 2011	COURSE	INSTRUCTOR(S)
0800-1800	Firearms	Sgt. Cowles/Ofc. Crane

EXHIBIT D

Pre-FTO Training Checklist for Entry-Level Officers

# of hours	Subject	Instructor	Date Fulfilled
8	Orientation		
4-6	Firearms (Includes Patrol Rifle & Shotgun familiarization/RBT)		
4	TASER		
6	SECTOR		
6	Defensive Tactics (LVNR 4 hours, Handcuffing Review 2 hours, Policy Review)		
3-4	Municipal Code/DV Orders		
2	Tow & Impound Procedures/Paperwork		
3	Property Tour/BEAST		
4	Charging Requests/ Search Warrants/ Meet Prosecutors/ Tour		
3	Canine Tracking		
1	Drug Endangered Childrens Program		
8	PIT/ Classroom & Driving		
2	FANG Training		
10	CAD/ RMS/ Expediter		
8	Use of Force Report Writing		
8	Mock Scenes/Use of Force/Command Presence		

EXHIBIT E

Pre-FTO Training Checklist for Lateral Officers

# of hours	Subject	Instructor	Date Fulfilled
8	Orientation		
4-6	Firearms (Includes Patrol Rifle & Shotgun familiarization/RBT)		
4	TASER		
6	SECTOR		
6	Defensive Tactics (LVNR 4 hours, Handcuffing Review 2 hours, Policy Review)		
3-4	Municipal Code/DV Orders		
2	Tow & Impound Procedures/Paperwork		
3	Property Tour/BEAST		
4	Charging Requests/ Search Warrants/ Meet Prosecutors/ Tour		
3	Canine Tracking		
1	Drug Endangered Childrens Program		
8	PIT/ Classroom & Driving		
2	First Aid (If needed)		
16	BAC		
8	SFSTs (If needed)		
2	FANG Training		
10	CAD/ RMS/ Expediter		
6.5	ACCESS Training		
8	Use of Force Report Writing		
8	Mock Scenes/Use of Force/Command Presence		

EXHIBIT F

Taser Updates: In-Service 2010

Taser Maintenance Issues

- 1) Remember to test your taser on a daily basis. We recently had a situation where an officer tried to use the taser during a fight and discovered that the battery was dead. He admitted that he hadn't tested it in several weeks.
- 2) When you do test your taser, make sure it is pointed in a safe direction with the cartridge removed.
- 3) The department currently has two types of tasers. The M26 is the older and larger model and needs to be recharged on a regular basis. The X26 is the newer and smaller model. It is not rechargeable and the lithium battery must be replaced when it gets down to 20 percent of its remaining battery life.
- 4) Please make sure that your Sgt. is resetting the clocks on the M26 tasers twice a year (spring/fall time changes). This is not necessary for the X26 tasers.
- 5) Make sure that the M26 tasers have the rubber plug inserted into the data port.
- 6) Please check your cartridges and make sure they are not expired (expiration date is printed in small numbers on the white paper portion on the cartridge).
- 7) Do not utilize cartridges that have the blast doors missing. The blast doors are the colored plastic pieces (green or yellow and black) on the face of the cartridge.
- 8) If your M26 taser does not sound like it is functioning properly or won't hold a charge, let me know and I'll get you new batteries (rllessen@spokanepolice.org).
- 9) If you get a new battery for your X26 taser, insert the battery into the taser. If a "P" appears in the data window, do not turn the taser on and let the numbers flash through in the data window. When the numbers are done flashing, the taser can be turned on and is ready to go.
- 10) Any SWAT member or CART member can get you a cartridge if you need one.

Taser Operation Issues

- 1) Drive stuns are often not very effective. If the level of force allows it, utilize the firing of the cartridge with the probes. The distance between the probes increases the effectiveness of the taser.
- 2) When the cartridge is fired, the top probe should hit very close to where the laser is pointed. The bottom probe comes out of the weapon at an 8 degree downward angle. This angle leads to a foot of separation between the probes for every seven feet that they travel from the taser. The maximum separation is a little over 3 feet at 25 feet (maximum distance that the probes will travel).
- 3) If you deploy a drive stun and are hearing a lot of noise (the same noise you hear when you are testing the weapon in thin air), you do not have good contact with the suspect. You may have to reposition the drive stun or drive the taser harder into the target area. If you have deployed the probes and are hearing the same noise and the suspect does not appear to be incapacitated, deploy a different cartridge or move in and make contact on the suspect with a drive stun.

- 4) The taser is one of many tools. Don't assume it will always work. Be thinking about your next step if it fails to work.
- 5) Remember that you can grab a person and cuff them, as they are being tased. You should not be shocked unless the probes have been deployed and you grab between the two probes. If you do receive a shock, just let go and reposition your hands.
- 6) Remember to not taser anybody covered with a flammable liquid or taser anybody inside a flammable environment (meth lab, etc.).
- 7) Don't taser anybody standing next to a ledge or in any situation where that person could fall any distance. The taser typically locks a person's muscles up and they can lose control of their body.
- 8) Take pictures of all taser injuries and any secondary injuries. The secondary injuries usually occur when the person falls to the ground, after the probes are utilized. Also take photos if there were no injuries during a taser activation. This may save the department from getting sued when the suspect later inflicts injuries to themselves and claims the taser caused them. This has occurred in the past.
- 9) Make sure we're announcing "index" before we fire any less lethal weapon, so we don't end up with sympathetic gun fire from another officer.

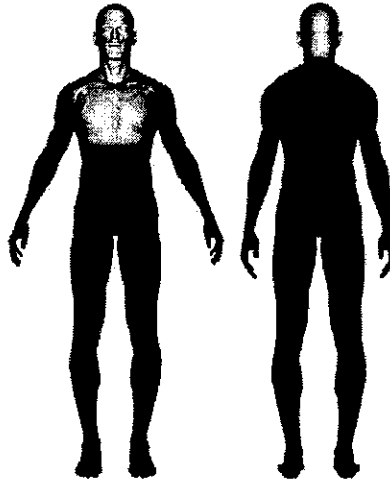
#1 Taser Application Rule

1) Minimize the number of taser applications in any situation. If possible, have an arrest team and apprehension plan in place prior to tasering the suspect. The suspect is only incapacitated while the electricity is on. This is the time to apprehend and cuff the suspect if possible. The lack of an apprehension plan often leads to repeated taser applications, which can increase the length of the physical struggle and lead to the suspect exhibiting symptoms of exhaustion distress or agitated/excited delirium.



Training Bulleting Synopsis: Bulletin 15.0

ADVISORY: We have lowered the preferred point of aim for frontal TASER® Electronic Control Device (ECD) discharges by about 5 inches to avoid the head, neck, and chest area when possible.



PREFERRED TARGET ZONES (DARKER AREAS)

RATIONALE:

1. Avoiding chest/breast shots with ECDs, whenever possible, helps minimize the controversy about whether ECDs do or do not affect the human heart because the farther away from the heart the darts are deployed, the less it can be argued that the ECD affected the heart.
2. For frontal shots, ECDs have been found to be more effective if the probes are in the abdominal to pelvic region rather than in the chest/breast (more nerves, more muscle, less bony structures, and critical balance functions in the mid body)
3. We believe this recommendation will improve the effective use of ECDs while further increasing safety margins and enhancing the ability to defend such cases in post-event legal proceedings.
4. Back shots, below the neck, remain the preferred target area when practical.

REMINDER: Once officers engage in detention and restraint procedures, regardless of the type of force option, it is important to minimize the duration of the physical struggle and amount of force used. The longer the struggle, the greater the risk of injury or death related to overexertion, trauma, or escalation.

The risk of an adverse cardiac event related to an ECD discharge is deemed to be extremely low. These guidelines further reduce this remote risk and improve risk management.

NOTE: ECD discharges to sensitive areas are not prohibited. It is expressly understood that confrontation, capture, control, and restraint situations are dynamic and fluid and that ECD discharges to these areas will occur. These guidelines are intended to improve effectiveness while reducing risk and post-incident litigation.

This bulletin is not intended to be a substitute for any agency's individual policies and/or procedures.

More Information: www.TASER.com/bulletin

EXHIBIT G

SPOKANE POLICE DEPARTMENT FIREARMS TRAINING

MANDATORY AND OPTIONAL SPD FIREARMS COURSES:

Handgun:

- Ballistic Shield Workshop
- L.E. Handgun Operator
- 1911 Handgun Course
- Low Light Pistol
- Stance Directed Pistol
- Close Quarter Battle
- Surviving Armed Encounters I and II
- Handgun Vehicle Tactics

Reality Based Force on Force Training:

- Vehicle Stops
- 2011 Fall In-Service**
- Reality Based Train the Trainer
- Decision Making Simulator Training

Rifle:

- Spring Patrol Rifle**
- Tactics for the Patrol Rifle
- Basic Patrol Rifle**
- Low Light Patrol Rifle

Shotgun:

- 2011 4th Quarter Rifle/Shotgun Qualifications**
- Personal Shotgun Deployment**
- Shotgun Manual – 2011
- Next Level Shotgun
- 2012 Shotgun Refresher

EXHIBIT H

Spokane Police Academy

2302 N. Waterworks
Spokane, WA 99212
(509) 742-8100

2012 Fall Inservice

RANGE

Oct 10 – Dec 7, 2012

Schedule:

1. 0700-0715- Chief Straub Time
2. 0715-0800- Courtroom Testimony (Prosecutor Steve Garvin)
3. 0800-1100-Half of the class attends Firearms and half attends Combat First Aid
4. 1100-1200- Lunch
5. 1200-1500-Half of the class attends Firearms and half attends Combat First Aid (flip-flop from the morning)
6. 1500-1700- Use of Force/DT (All)

Group Intro- Target Room

Update on De-escalation of Force and the Graham Factors.

(Use Classroom Posters and/or PowerPoint)

Sign in on Class Roster

Short written test on: Policy, firearms safety rules, shooting skills, and liability in the use of the firearm, both on and off duty, Graham Factors and Force de-escalation.

Split into 3 groups. (30 minutes per Session).

Group 1- North Range- Rifles, Shotguns and Ofc. Rescue.

SET-UP: AT THE 25 YRD LINE OF THE NORTH RANGE:

1 Colt AR-15, 1 S&W M&P 15, 1 Mossberg 590, 1 Rem 870

.223 AMMO and Birdshot

Tables, Cover (IF NEEDED), Mags and Ammo at the 25 yrd line.

Patrol Car straddling sidewalk between North and Center Range, at about the 27yrd line.

DOWNRANGE:

Metal knock down plates starting at the north end of North Range.

Threat Targets on 1, 2, and 5.

Non-Threat Target on 3 and 4

South wall of North Range-

- | | |
|---------------------|--|
| <u>3 YARD LINE-</u> | Fire Dummy in SPD Jumpsuit over ballistic vest, inside vest is Quik Clot, CAT Tourniquet and bandage wrap. |
| <u>10 YARD LINE</u> | SOLID WALL OF COVER TO PULL DOWNED OFFICER TO,
HUGGING THE SOUTH WALL OF THE NORTH RANGE (IFAK HERE) |
| <u>27 YARD LINE</u> | PATROL CAR FACING DOWNRANGE ON LANES ON LANES 5 AND 6. |

1. Safe weapons on the table, select the safety, keep muzzle depressed and trigger finger indexed.

2. FOUR shooters on a gun, Rack the action and fire a few rounds on command, make gun "safe" and table it.

3. Rotate through until everyone has shot both SHOTGUNS and both RIFLES.
4. Shoot normal Targets with Rifle. Shoot Knock Down plates with Birdshot.
5. Start from car, shoot #5 until a head shot hits while moving up on cover, drag downed Ofc to behind brick wall, obtain Quik Clot, apply it to upper arm and wrap it, apply tourniquet to leg, call for help and give location.

Group 2- South Range- Handguns (30 min)

Equipment needed: Practice Mags and handgun ammo HAVE DUMMIES HANDY
Decision maker targets on Lanes 18-30

1. Draw from Holster and Fire Failure Drills @ 3yrd line.

INCORPORATE DECISION MAKING AND CHALLENGES. RELOADS CAN BE LIMITED TO SPEED ONLY

2. Incorporate step off line and scan, and reloads.
3. Will have shooters that need help getting their head hits, so spend more time on this until there are no misses.
4. Incorporate Primary Malfunction Drill
5. Incorporate Secondary Malfunction Drill
6. Incorporate Strong Hand only Firing if time allows.
-can use holster or between legs as only options for out of battery speed reloads only.
7. Support hand only shooting and reloading if time allows.

Group 3- DV HOUSE- Rubber guns and Flashlights. (30 min)

Equipment needed: Normal cover that is already in the building - Dark out windows
Bad guy is played by Shooter(s)
3 Blue Guns 3 Red Guns each of 21 and 22

1. Instructor show how to properly index the handgun and search with a flashlight.
2. If weapon mounted light, Officer expected to ONLY SHOOT with the mounted light, unless he/she shows extreme care in the Laser Rule.
Searching with weapon mounted light only...**NOT PERMITTED.**
3. Two Shooters search building.
4. Using "Tactical Pause" when needed, to back up a step or two and do it again, better than before...Good, Better, Best ways to do it. (Know last position of cover to back-up to)
5. Three Shooters if time allows.
6. At least one student as bad guy until everyone has had a turn playing bad guy. Every now and then, "Bad Guy" displays a Police Badge.

RANGE CLEAN-UP, DEBRIEF, AND WEAPON MAINTENANCE

Training Points Covered during this training;

- *Low light *SPD Shooting Policy *De-escalation of Force *Multiple Officer Movement
- *Room Clearing Tactics *Search/Flashlight Techniques
- *When to shoot in the conditions that Officers face everyday by using the
Shoot house to simulate a residence or Commercial Building.
- *Judgmental/Decision making Targets
- *Simulated populated area shooting (multiple NO SHOOT targets in building)
- *One handed Shooting and Manipulations *Depressed Muzzle Theory reinforcement

EXHIBIT I



Predictable is Preventable™

Washington Policy Manual Update

Release Notes
Special Update April 2012
Use of Force Policies
<https://policy.lexipol.com>

The following list contains recommended changes and updates to your policy manual. This special edition update includes a complete review of all force policies to ensure they reflect the most current content based on best practice, litigation and case law research. These policies have been restructured in a way that makes the Use of Force Policy the controlling policy for all other force related policies and the determination of when force is objectively reasonable as governed by United States Supreme Court in *Graham v. Connor*.

All force related policies have now been carefully realigned so that factors regarding use of force are not duplicated and all policies interrelate clearly and accurately. This approach provides consistency and will greatly reduce the potential for conflicting guidance in these important policies.

You may start the update at a time of your choosing by clicking on the Accept New Manuals/Update link. If you do not see the update link it is most likely because your manual is in draft. You may need to validate and publish your manual to see the update link. You may continue modifying your manual after you have completed this update, although you should archive a copy for reference.

We strongly recommend that you refer to these notes as you complete your update. Insertions are shown in underline. Deletions are shown in ~~strikethrough~~. Terms shown in square brackets, such as [officer/deputy], represent variables that will be correctly displayed when the content is installed into your manual.

Each update will be presented alongside your current content for comparison. If you accept an update, the new content will automatically replace your current content for that section of your manual.

Important: If you have customized content in the same section or subsection as the update, you will lose your customization if you accept the update. If you reject an update your manual will remain unchanged for that section. You may also cancel and return to an update at a later time. Please see the User's Manual for more information on updating your manual available at <http://forum.lexipol.com/index.php?topic=548.0>.

After all chapter updates have been completed, you may be presented the option to continue to the questionnaire. If so, follow this link and answer any questions that are presented. If any chapter on the navigation pane to the left is unchecked, click on it and review and answer any unanswered questions.

After completing all updates and questionnaire items, click on the Submit link to generate your updated manual, which will be presented in draft form ready for further editing. Please review all updates and new policies to make certain they conform to your agency's requirements. You may edit as needed by using the Edit or View Manuals link.

Legal Disclaimer

Lexipol strives to provide the most current and legally sound policies possible. These policies and updates however, do not constitute legal advice. As always, you are urged to carefully review all content and updates for applicability to your agency, and check with your agency's legal advisor for appropriate legal review before changing or adopting any policy.

Policy 300 - Use of Force

MODIFIED POLICY

In this update several policies related to the use of force are being modified as part of our continuous improvement efforts and our review of practices regarding the use of various weapons, tools and tactics.

These changes make the Use of Force Policy the controlling policy for all application of force and for the determination of when force is objectively reasonable as governed by United States Supreme Court in *Graham v. Connor*. Terms such as non-deadly force, less lethal force and physical force have been amended for consistency and are now referred to as simply the use of force.

State-specific statutes and definitions related to force are generally deleted unless these provide greater restrictions than the U.S. Constitution. In most cases, the U.S. Constitution provides the greatest protection for individuals; states may not, by statute, reduce those protections. Therefore any statute providing lesser protection has not been included.

Language regarding the use of the carotid hold has been amended to remove existing language that generally requires deadly force justification. The amended language permits greater use of this technique, provided the officer has proper training.

Language is amended to eliminate the use of pain compliance techniques on purely passive resisters.

Guidance regarding shooting at moving vehicles also has been amended.

In addition, the Shooting Policy has been removed to avoid duplication. No substantive content has been eliminated. The subsections in the Shooting Policy that were not duplicated in other policy sections have been moved into the Use of Force Policy.

Because the policy has undergone significant revision and reorganization, it is presented without change markup for easier review. Please note that all updates to this policy must be accepted to avoid mixing old and new content in your manual. If you choose to reject this policy (which is not recommended) you should reject all updates to this policy.

300.1 PURPOSE AND SCOPE [BEST PRACTICE]

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

300.1.1 DEFINITIONS [FEDERAL]

Definitions related to this policy include:

Deadly force - Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury.

Force - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed or restrained.

300.2 POLICY [BEST PRACTICE]

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. [Officers/Deputies] are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

[Officers/Deputies] must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting [officers/deputies] with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

300.2.1 DUTY TO INTERCEDE [FEDERAL]

Any [officer/deputy] present and observing another [officer/deputy] using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. [An officer/A deputy] who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

300.3 USE OF FORCE [FEDERAL]

[Officers/Deputies] shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the [officer/deputy] at the time of the event to accomplish a legitimate law enforcement purpose.

The "reasonableness" of force will be judged from the perspective of a reasonable [officer/deputy] on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that [officers/deputies] are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation [an officer/a deputy] might encounter, [officers/deputies] are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which [officers/deputies] reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. [Officers/Deputies] may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires [an officer/a deputy] to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 USE OF FORCE TO EFFECT AN ARREST [STATE]

[An officer/A deputy] may use all means reasonably necessary to effect an arrest if, after notice of the intention to arrest the person, he/she either flees or forcibly resists (RCW 10.31.050).

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE [FEDERAL]

When determining whether to apply force and evaluating whether [an officer/a deputy] has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

- (a) Immediacy and severity of the threat to [officers/deputies] or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the [officer/deputy] at the time.
- (c) [Officer/Deputy]/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of [officers/deputies] available vs. subjects).
- (d) The effects of drugs or alcohol.
- (e) Subject's mental state or capacity.
- (f) Proximity of weapons or dangerous improvised devices.
- (g) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (h) The availability of other options and their possible effectiveness.
- (i) Seriousness of the suspected offense or reason for contact with the individual.
- (j) Training and experience of the [officer/deputy].
- (k) Potential for injury to [officers/deputies], suspects and others.
- (l) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the [officer/deputy].
- (m) The risk and reasonably foreseeable consequences of escape.
- (n) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the [officer/deputy] or others.
- (p) Prior contacts with the subject or awareness of any propensity for violence.
- (q) Any other exigent circumstances.

300.3.3 PAIN COMPLIANCE TECHNIQUES [BEST PRACTICE]

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. [Officers/Deputies] may only apply those pain compliance techniques for which they have successfully completed department-approved training. [Officers/Deputies] utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the person can comply with the direction or orders of the [officer/deputy].
- (c) Whether the person has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the [officer/deputy] determines that compliance has been achieved.

300.3.4 CAROTID CONTROL HOLD [BEST PRACTICE]

The proper application of the carotid control hold may be effective in restraining a violent or combative individual. However, due to the potential for injury, the use of the carotid control hold is subject to the following:

- (a) The [officer/deputy] shall have successfully completed department-approved training in the use and application of the carotid control hold.
- (b) The carotid control hold may only be used when circumstances perceived by the [officer/deputy] at the time indicate that such application reasonably appears necessary to control a person in any of the following circumstances:
 - 1. The subject is violent or physically resisting.
 - 2. The subject, by words or actions, has demonstrated an intention to be violent and reasonably appears to have the potential to harm [officers/deputies], him/herself or others.
- (c) The application of a carotid control hold on the following individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective, or would present a greater danger to the [officer/deputy], the subject or others, and the [officer/deputy] reasonably believes that the need to control the individual outweighs the risk of applying a carotid control hold:
 - 1. Females who are known to be pregnant
 - 2. Elderly individuals
 - 3. Obvious juveniles
- (d) Any individual who has had the carotid control hold applied, regardless of whether he/she was rendered unconscious, shall be promptly examined by paramedics or other qualified medical personnel and should be monitored until examined by paramedics or other appropriate medical personnel.
- (e) The [officer/deputy] shall inform any person receiving custody, or any person placed in a position of providing care, that the individual has been subjected to the carotid control hold and whether the subject lost consciousness as a result.
- (f) Any [officer/deputy] attempting or applying the carotid control hold shall promptly notify a supervisor of the use or attempted use of such hold.
- (g) The use or attempted use of the carotid control hold shall be thoroughly documented by the [officer/deputy] in any related reports.

300.4 DEADLY FORCE APPLICATIONS [FEDERAL]

Use of deadly force is justified in the following circumstances:

- (a) [An officer/A deputy] may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) [An officer/A deputy] may use deadly force to stop a fleeing subject when the [officer/deputy] has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the [officer/deputy] reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if [an officer/a deputy] reasonably believes any of the following:

- 1. The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the [officer/deputy] or another.
- 2. The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES [BEST PRACTICE]

Shots fired at or from a moving vehicle are rarely effective. [Officers/Deputies] should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. [An officer/A deputy] should only discharge a firearm at a moving vehicle or its occupants when the [officer/deputy] reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the [officer/deputy] or others.

[Officers/Deputies] should not shoot at any part of a vehicle in an attempt to disable the vehicle.

300.5 REPORTING THE USE OF FORCE [BEST PRACTICE]

Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The [officer/deputy] should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure or law.

300.5.1 NOTIFICATION TO SUPERVISORS [BEST PRACTICE]

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable [officer/deputy] to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.

- (e) Any application of an [EMDT TM device] or control device.
- (f) Any application of a restraint device other than handcuffs, shackles or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges any of the above has occurred.

300.6 MEDICAL CONSIDERATION [BEST PRACTICE]

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

Based upon the [officer/deputy]'s initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another [officer/deputy] and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor, or if not available, the primary handling [officer/deputy] shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the [officer/deputy] reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called "excited delirium"), or who require a protracted physical encounter with multiple [officers/deputies] to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. [Officers/Deputies] who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

300.7 SUPERVISOR RESPONSIBILITY [BEST PRACTICE]

When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

- (a) Obtain the basic facts from the involved [officers/deputies]. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) When possible, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her *Miranda* rights, the following shall apply:

1. The content of the interview should not be summarized or included in any related criminal charges.
 2. The fact that a recorded interview was conducted should be documented in a property or other report.
 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- (d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (e) Identify any witnesses not already included in related reports.
- (f) Review and approve all related reports.
- (g) Determine if there is any indication that the subject may pursue civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
- (h) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

300.7.1 [WATCH COMMANDER] RESPONSIBILITY [BEST PRACTICE]

The [Watch Commander] shall review each use of force by any personnel within his/her command to ensure compliance with this policy and to address any training issues.

Policy 302 - Use of Force Review Boards

REVISED POLICY

The Use of Force Review Boards Policy, formerly Deadly Force Review, has been renamed and revised in concert with the concurrent review of other force-related policies. Language has been added generally requiring that members who are involved in deadly force incidents be removed from line duty assignments unless the agency head authorizes otherwise. This helps to ensure that members are treated equally and minimizes the stigma that is often attached to being placed in an administrative assignment. In addition, it lessens the likelihood of the Chief/Sheriff being seen by the public or others as having made a decision about the merits of the incident before any review has taken place.

New language has been added recommending that the Use of Force Review Board be comprised of five members and that any recommended findings of the board be reached by a majority vote.

Because the policy has undergone significant revision and reorganization, it is presented without change markup for easier review. Please note that all updates to this policy must be accepted to avoid mixing old and new content in your manual. If you choose to reject this policy (which is not recommended) be sure to reject all updates to this policy.

302.1 PURPOSE AND SCOPE [BEST PRACTICE]

This policy establishes a process for the [Anytown Police Department] to review the use of force by its employees.

This review process shall be in addition to any other review or investigation that may be conducted by any outside or multi-agency entity having jurisdiction over the investigation or evaluation of the use of deadly force.

302.2 POLICY [BEST PRACTICE]

The [Anytown Police Department] will objectively evaluate the use of force by its members to ensure that their authority is used lawfully, appropriately and is consistent with training and policy.

302.3 REMOVAL FROM LINE DUTY ASSIGNMENT [DISCRETIONARY]

Generally, whenever an employee's actions or use of force in an official capacity, or while using department equipment, results in death or very serious injury to another, that employee will be placed in a temporary administrative assignment pending an administrative review. The [Chief of Police/Sheriff] may exercise discretion and choose not to place an employee in an administrative assignment in any case.

302.4 REVIEW BOARD [BEST PRACTICE]

The Use of Force Review Board will be convened when the use of force by a member results in very serious injury or death to another.

The Use of Force Review Board will also investigate and review the circumstances surrounding every discharge of a firearm, whether the employee was on- or off-duty, excluding training or recreational use.

The [Chief of Police/Sheriff] may request the Use of Force Review Board to investigate the circumstances surrounding any use of force incident.

The [Administrative] [Division Commander] will convene the Use of Force Review Board as necessary. It will be the responsibility of the [Division Commander] or supervisor of the involved employee to notify the [Administrative] [Division Commander] of any incidents requiring board review. The involved employee's [Division Commander] or supervisor will also ensure that all relevant reports, documents and materials are available for consideration and review by the board.

302.4.1 COMPOSITION OF THE BOARD [DISCRETIONARY]

The [Administrative] [Division Commander] should select five Use of Force Review Board members from the following, as appropriate:

- Representatives of each [division]
- Commanding officer in the involved member's chain of command
- [Training Manager]
- Non-administrative supervisor
- A peer [officer/deputy]
- A sworn peace officer from an outside law enforcement agency
- Department instructor for the type of weapon, device or technique used

The senior ranking command representative who is not in the same [division] as the involved employee will serve as chairperson.

302.4.2 RESPONSIBILITIES OF THE BOARD [BEST PRACTICE]

The Use of Force Review Board is empowered to conduct an administrative review and inquiry into the circumstances of an incident.

The board members may request further investigation, request reports be submitted for the board's review, call persons to present information and request the involved employee to appear. The involved employee will be notified of the meeting of the board and may choose to have a representative through all phases of the review process.

The board does not have the authority to recommend discipline.

The [Chief of Police/Sheriff] will determine whether the board should delay its review until after completion of any criminal investigation, review by any prosecutorial body, filing of criminal charges, the decision not to file criminal charges, or any other action. The board should be provided all relevant available material from these proceedings for its consideration.

The review shall be based upon those facts which were reasonably believed or known by the [officer/deputy] at the time of the incident, applying any legal requirements, department policies, procedures and approved training to those facts. Facts later discovered but unknown to the [officer/deputy] at the time shall neither justify nor call into question [an officer/a deputy]'s decision regarding the use of force.

Any questioning of the involved employee conducted by the board will be in accordance with the department's disciplinary procedures, the Personnel Complaints Policy, the current collective bargaining agreement and any applicable state or federal law.

The board shall make one of the following recommended findings:

- (a) The employee's actions were within department policy and procedure.
- (b) The employee's actions were in violation of department policy and procedure.

A recommended finding requires a majority vote of the board. The board may also recommend additional investigations or reviews, such as disciplinary investigations, training reviews to consider whether training should be developed or revised, and policy reviews, as may be appropriate. The board chairperson will submit the written recommendation to the [Chief of Police/Sheriff].

The [Chief of Police/Sheriff] shall review the recommendation, make a final determination as to whether the employee's actions were within policy and procedure and will determine whether any additional actions, investigations or reviews are appropriate. The [Chief/Sheriff]'s final findings will be forwarded to the involved employee's [Division Commander] for review and appropriate action. If the [Chief of Police/Sheriff] concludes that discipline should be considered, a disciplinary process will be initiated.

At the conclusion of any additional reviews, copies of all relevant reports and information will be filed with the [Chief of Police/Sheriff].

Policy 304 - Shooting Policy

DELETED POLICY

The Shooting Policy (304) is being removed to avoid duplication of content between policies. The substantive content, for example, warning shots and shooting at moving vehicles, has been written into the Use of Force Policy (300), as it more clearly aligns with the use of force.

Policy 306 - Leg Restraint Device

REVISED POLICY

Previously, handcuffing and the use of leg or other restraints were addressed in separate policies. Because the use of these devices carries similar requirements and risks, the two policies have been consolidated into one policy and renamed the Handcuffing and Restraints Policy. As a result, the Handcuff Policy (354) is no longer needed as a stand-alone policy and has been removed. This approach eliminates redundancy and the potential for conflicting content.

Guidance regarding the use of spit hoods has been added.

The new policy is presented below without markup in its final view. Please review your existing policies to include any content that is specific to your agency after completing the update.

Please note that all updates to this policy must be accepted to avoid mixing old and new content in your manual. If you choose to reject this policy, (which is not recommended), be sure to reject all updates to this policy.

Policy 306 - Handcuffing and Restraints

306.1 PURPOSE AND SCOPE [BEST PRACTICE]

This policy provides guidelines for the use of handcuffs and other restraints during detentions and arrests.

306.2 POLICY [BEST PRACTICE]

The [Anytown Police Department] authorizes the use of restraint devices in accordance with this policy, the Use of Force Policy and department training. Restraint devices shall not be used to punish, to display authority or as a show of force.

306.3 USE OF RESTRAINTS [BEST PRACTICE]

Only members who have successfully completed [Anytown Police Department]-approved training on the use of restraint devices described in this policy are authorized to use these devices.

When deciding whether to use any restraint, [officers/deputies] should carefully balance officer safety concerns with factors that include, but are not limited to:

- The circumstances or crime leading to the arrest.
- The demeanor and behavior of the arrested person.

- The age and health of the person.
- Whether the person is known to be pregnant.
- Whether the person has a hearing or speaking disability. In such cases, consideration should be given, safety permitting, to handcuffing to the front in order to allow the person to sign or write notes.
- Whether the person has any other apparent disability.

306.3.1 RESTRAINT OF DETAINEES [BEST PRACTICE]

Situations may arise where it may be reasonable to restrain an individual who may, after brief investigation, be released without arrest. Unless arrested, the use of restraints on detainees should continue only for as long as is reasonably necessary to assure the safety of [officers/deputies] and others. When deciding whether to remove restraints from a detainee, [officers/deputies] should continuously weigh the safety interests at hand against the continuing intrusion upon the detainee.

306.3.2 RESTRAINT OF PREGNANT PERSONS [STATE]

Persons who are known to be pregnant should be restrained in the least restrictive manner that is effective for officer safety.

No person who is in labor shall be handcuffed or restrained except in extraordinary circumstances and only when a supervisor makes an individualized determination that such restraints are necessary to prevent escape or injury (RCW 70.48.500).

306.3.3 RESTRAINT OF JUVENILES [BEST PRACTICE]

A juvenile under 14 years of age should not be restrained unless he/she is suspected of a dangerous felony or when the [officer/deputy] has a reasonable suspicion that the juvenile may resist, attempt escape, injure him/herself, injure the [officer/deputy] or damage property.

306.3.4 NOTIFICATIONS [BEST PRACTICE]

Whenever [an officer/a deputy] transports a person with the use of restraints other than handcuffs, the [officer/deputy] shall inform the jail staff upon arrival at the jail that restraints were used. This notification should include information regarding any other circumstances the [officer/deputy] reasonably believes would be potential safety concerns or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration) that may have occurred prior to, or during transportation to the jail.

306.4 APPLICATION OF HANDCUFFS OR PLASTIC CUFFS [BEST PRACTICE]

Handcuffs, including temporary nylon or plastic cuffs, may be used only to restrain a person's hands to ensure officer safety.

Although recommended for most arrest situations, handcuffing is discretionary and not an absolute requirement of the Department. [Officers/Deputies] should consider handcuffing any person they reasonably believe warrants that degree of restraint. However, [officers/deputies] should not conclude that in order to avoid risk every person should be handcuffed, regardless of the circumstances.

In most situations handcuffs should be applied with the hands behind the person's back. When feasible, handcuffs should be double-locked to prevent tightening, which may cause undue discomfort or injury to the hands or wrists.

In situations where one pair of handcuffs does not appear sufficient to restrain the individual or may cause unreasonable discomfort due to the person's size, [officers/deputies] should consider alternatives, such as using an additional set of handcuffs or multiple plastic cuffs.

Handcuffs should be removed as soon as it is reasonable or after the person has been searched and is safely confined within a detention facility.

306.5 APPLICATION OF SPIT HOODS/MASKS/socks [BEST PRACTICE]

Spit hoods/masks/socks are temporary protective devices designed to prevent the wearer from biting and/or transferring or transmitting fluids (saliva and mucous) to others.

Spit hoods may be placed upon persons in custody when the [officer/deputy] reasonably believes the person will bite or spit, either on a person or in an inappropriate place. They are generally used during application of a physical restraint, while the person is restrained, or during or after transport.

[Officers/Deputies] utilizing spit hoods should ensure that the spit hood is fastened properly to allow for adequate ventilation and that the restrained person can breathe normally. [Officers/Deputies] should provide assistance during the movement of restrained individuals due to the potential for impaired or distorted vision on the part of the individual. [Officers/Deputies] should avoid comingling individuals wearing spit hoods with other detainees.

Spit hoods should not be used in situations where the restrained person is bleeding profusely from the area around the mouth or nose, or if there are indications that the person has a medical condition, such as difficulty breathing or vomiting. In such cases, prompt medical care should be obtained. If the person vomits while wearing a spit hood, the spit hood should be promptly removed and discarded. Persons who have been sprayed with oleoresin capsicum (OC) spray should be thoroughly decontaminated including hair, head and clothing prior to application of a spit hood.

Those who have been placed in a spit hood should be continually monitored and shall not be left unattended until the spit hood is removed. Spit hoods shall be discarded after each use.

306.6 APPLICATION OF AUXILIARY RESTRAINT DEVICES [BEST PRACTICE]

Auxiliary restraint devices include transport belts, waist or belly chains, transportation chains, leg irons and other similar devices. Auxiliary restraint devices are intended for use during long-term restraint or transportation. They provide additional security and safety without impeding breathing, while permitting adequate movement, comfort and mobility.

Only department-authorized devices may be used. Any person in auxiliary restraints should be monitored as reasonably appears necessary.

306.7 APPLICATION OF LEG RESTRAINT DEVICES [BEST PRACTICE]

Leg restraints may be used to restrain the legs of a violent or potentially violent person when it is reasonable to do so during the course of detention, arrest or transportation. Only restraint devices approved by the Department shall be used.

In determining whether to use the leg restraint, [officers/deputies] should consider:

- (a) Whether the [officer/deputy] or others could be exposed to injury due to the assaultive or resistant behavior of a suspect.
- (b) Whether it is reasonably necessary to protect the suspect from his/her own actions (e.g., hitting his/her head against the interior of the patrol unit, running away from the arresting [officer/deputy] while handcuffed, kicking at objects or [officers/deputies]).
- (c) Whether it is reasonably necessary to avoid damage to property (e.g., kicking at windows of the patrol unit).

306.7.1 GUIDELINES FOR USE OF LEG RESTRAINTS [BEST PRACTICE]

When applying leg restraints the following guidelines should be followed:

- (a) If practicable, [officers/deputies] should notify a supervisor of the intent to apply the leg restraint device. In all cases, a supervisor shall be notified as soon as practicable after the application of the leg restraint device.
- (b) Once applied, absent a medical or other emergency, restraints should remain in place until the [officer/deputy] arrives at the jail or other facility or the person no longer reasonably appears to pose a threat.
- (c) Once secured, the person should be placed in a seated or upright position, secured with a seat belt, and shall not be placed on his/her stomach for an extended period, as this could reduce the person's ability to breathe.
- (d) The restrained person should be continually monitored by [an officer/a deputy] while in the leg restraint. The [officer/deputy] should ensure that the person does not roll onto and remain on his/her stomach.
- (e) The [officer/deputy] should look for signs of labored breathing and take appropriate steps to relieve and minimize any obvious factors contributing to this condition.
- (f) When transported by ambulance/paramedic unit, the restrained person should be accompanied by [an officer/a deputy] when requested by medical personnel. The transporting [officer/deputy] should describe to medical personnel any unusual behaviors or other circumstances the [officer/deputy] reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

306.8 REQUIRED DOCUMENTATION [BEST PRACTICE]

If an individual is restrained and released without an arrest, the [officer/deputy] shall document the details of the detention and the need for handcuffs or other restraints.

If an individual is arrested, the use of restraints other than handcuffs shall be documented in the related report. The [officer/deputy] should include, as appropriate:

- (a) The amount of time the suspect was restrained.
- (b) How the suspect was transported and the position of the suspect.
- (c) Observations of the suspect's behavior and any signs of physiological problems.
- (d) Any known or suspected drug use or other medical problems.

Policy 308 - Control Devices and Techniques

MODIFIED POLICY

This policy has undergone a complete review and has been revised to bring it into alignment with modifications made to other force-related policies.

Language addressing the reasonableness of force that was previously repeated in several of the force-related policies has been removed to avoid unnecessary duplication and potentially conflicting language. This policy now focuses specifically on the issuance, deployment and training of control devices. The reasonableness of the use of force is now exclusively in the Use of Force Policy.

Outdated language regarding use of kinetic energy projectiles and devices is being eliminated, recognizing that properly trained members are carrying these devices and not just supervisors and SWAT team members.

Because this policy has been extensively modified, it is shown below without change markup for easier review. To avoid the potential for inaccurate or confusing language, you should accept each individual update in this policy and modify, if necessary, for your specific department needs after completing the update.

308.1 PURPOSE AND SCOPE [BEST PRACTICE]

This policy provides guidelines for the use and maintenance of control devices that are described in this policy.

308.2 POLICY [BEST PRACTICE]

In order to control subjects who are violent or who demonstrate the intent to be violent, the [Anytown Police Department] authorizes [officer/deputies] to use control devices in accordance with the guidelines in this policy and the Use of Force Policy.

308.3 ISSUANCE AND CARRYING CONTROL DEVICES [BEST PRACTICE]

Control devices described in this policy may be carried and used by members of this [office/-department] only if the device has been issued by the Department or approved by the [Chief of Police/Sheriff] or the authorized designee.

Only [officers/deputies] who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device.

Control devices may be used when a decision has been made to restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances.

308.4 RESPONSIBILITIES [BEST PRACTICE]

308.4.1 [WATCH COMMANDER] RESPONSIBILITIES [BEST PRACTICE]

The [Watch Commander] may authorize the use of a control device by selected personnel or members of specialized units who have successfully completed the required training.

308.4.2 [RANGEMASTER] RESPONSIBILITIES [BEST PRACTICE]

The [Rangemaster] shall control the inventory and issuance of all control devices and shall ensure that all damaged, inoperative, outdated or expended control devices or munitions are properly disposed of, repaired or replaced.

Every control device will be periodically inspected by the [Rangemaster] or the designated instructor for a particular control device. The inspection shall be documented.

308.4.3 USER RESPONSIBILITIES [BEST PRACTICE]

All normal maintenance, charging or cleaning shall remain the responsibility of personnel using the various devices.

Any damaged, inoperative, outdated or expended control devices or munitions, along with documentation explaining the cause of the damage, shall be returned to the [Rangemaster] for disposition. Damage to [city/county] property forms shall also be prepared and forwarded through the chain of command, when appropriate, explaining the cause of damage.

308.5 BATON GUIDELINES [BEST PRACTICE]

The need to immediately control a suspect must be weighed against the risk of causing serious injury. The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the [officer/deputy] reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the [officer/deputy] or others.

When carrying a baton, uniformed personnel shall carry the baton in its authorized holder on the equipment belt. Plainclothes and non-field personnel may carry the baton as authorized and in accordance with the needs of their assignment or at the direction of their supervisor.

308.6 TEAR GAS GUIDELINES [BEST PRACTICE] (WASPC 3.1.4)

Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the [Watch Commander], Incident Commander or Crisis Response Unit Commander may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.

When practicable, fire personnel should be alerted or summoned to the scene prior to the deployment of tear gas to control any fires and to assist in providing medical aid or gas evacuation if needed.

308.7 OLEORESIN CAPSICUM (OC) GUIDELINES [BEST PRACTICE]

308.7.1 OC SPRAY [BEST PRACTICE]

Uniformed personnel carrying OC spray shall carry the device in its holster on the equipment belt. Plainclothes and non-field personnel may carry OC spray as authorized, in accordance with the needs of their assignment or at the direction of their supervisor.

308.7.2 PEPPER PROJECTILE SYSTEMS [BEST PRACTICE]

Pepper projectiles are plastic spheres that are filled with a derivative of OC powder. Because the compressed gas launcher delivers the projectiles with enough force to burst the projectiles on impact and release the OC powder, the potential exists for the projectiles to inflict injury if they strike the head, neck, spine or groin. Therefore, personnel deploying a pepper projectile system should not intentionally target those

areas, except when the [officer/deputy] reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the [officer/deputy] or others.

The use of a pepper projectile system is subject to the following requirements:

- (a) [Officers/Deputies] encountering a situation that warrants the use of a pepper projectile system shall notify a supervisor as soon as practicable. A supervisor shall respond to all pepper projectile system deployments where the suspect has been hit. The supervisor shall ensure that all notifications and reports are completed as required by the Use of Force Policy.
- (b) Each deployment of a pepper projectile system shall be documented. This includes situations where the launcher was directed toward the suspect, whether or not the launcher was used. Accidental discharges shall be promptly reported to a supervisor and documented on the appropriate report form. Only non-incident deployments, such as training and product demonstrations, are exempt from the reporting requirement.

308.7.3 TREATMENT FOR OC SPRAY EXPOSURE [BEST PRACTICE]

Persons who have been sprayed with or otherwise affected by the use of OC should be promptly provided with clean water to cleanse the affected areas. Those persons who complain of further severe effects shall be examined by appropriate medical personnel.

308.8 KINETIC ENERGY PROJECTILE GUIDELINES [BEST PRACTICE]

This department is committed to reducing the potential for violent confrontations. Kinetic energy projectiles, when used properly, are less likely to result in death or serious physical injury and can be used in an attempt to de-escalate a potentially deadly situation.

308.8.1 DEPLOYMENT [BEST PRACTICE]

Only department-approved kinetic energy munitions shall be carried and deployed. Approved munitions may be used to compel an individual to cease his/her actions when such munitions present a reasonable option.

[Officers/Deputies] are not required or compelled to use approved munitions in lieu of other reasonable tactics if the involved [officer/deputy] determines that deployment of these munitions cannot be done safely. The safety of hostages, innocent persons and [officers/deputies] takes priority over the safety of subjects engaged in criminal or suicidal behavior.

Circumstances appropriate for deployment include, but are not limited to, situations in which:

- (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions.
- (b) The suspect has made credible threats to harm him/herself or others.
- (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or [officers/deputies].
- (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.

308.8.2 DEPLOYMENT CONSIDERATIONS [BEST PRACTICE]

Before discharging projectiles, the [officer/deputy] should consider such factors as:

- (a) Distance and angle to target.
- (b) Type of munitions employed.
- (c) Type and thickness of subject's clothing.
- (d) The subject's proximity to others.
- (e) The location of the subject.
- (f) Whether the subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

A verbal warning of the intended use of the device should precede its application, unless it would otherwise endanger the safety of [officers/deputies] or when it is not practicable due to the circumstances. The purpose of the warning is to give the individual a reasonable opportunity to voluntarily comply and to warn other [officers/deputies] and individuals that the device is being deployed.

[Officers/Deputies] should keep in mind the manufacturer's recommendations and their training regarding deployment distances and target areas. However, [officers/deputies] are not restricted solely to use according to manufacturer recommendations. Each situation must be evaluated on the totality of circumstances at the time of deployment.

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death. The head and neck should not be intentionally targeted, except when the [officer/deputy] reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the [officer/deputy] or others.

308.8.3 SAFETY PROCEDURES [BEST PRACTICE]

Shotguns designated for the use of kinetic energy projectiles will be specially marked as such.

[Officers/Deputies] carrying these shotguns will inspect the shotgun at the beginning of each shift to ensure that it is in proper working order and loaded only with approved projectiles.

308.9 TRAINING FOR CONTROL DEVICES [BEST PRACTICE]

The [Training Manager] shall ensure that all personnel who are authorized to carry a control device have been properly trained and certified to carry the specific control device and are retrained or recertified as necessary.

- (a) Proficiency training shall be monitored and documented by a certified, control-device weapons or tactics instructor.
- (b) All training and proficiency for control devices will be documented in the [officer/deputy]'s training file.
- (c) [Officers/Deputies] who fail to demonstrate proficiency with the control device or knowledge of this agency's Use of Force Policy will be provided remedial training. If [an officer/a deputy] cannot demonstrate proficiency with a control device or knowledge of this agency's Use of Force Policy after remedial training, the [officer/deputy] will be restricted from carrying the control device and may be subject to discipline.

308.10 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES [BEST PRACTICE]

Any application of a control device or technique listed in this policy shall be documented in the related incident report and reported pursuant to the Use of Force Policy.

Policy 309 – [EMDT device TM]

MODIFIED POLICY

This policy has been reviewed and modified to align with other force-related policies for consistency and clarity. The *2011 Electronic Control Weapon Guidelines*, published by Police Executive Research Forum (PERF) was included in the many resources used to complete this review.

Content pertaining to the determination of reasonableness of force has been removed from this policy as it is more appropriately addressed in the Use of Force Policy and is now included here only by reference. This approach reduces the possibility of conflicting content between policies.

Under Special Deployment Considerations, the language regarding the use of the TASER device in drive-stun mode has been changed to conform to current training standards and best practices.

The Multiple Applications of the Device section has been modified to make clearer that multiple applications of the device or extended cycles generally are not recommended.

New sections addressing off-duty considerations and documenting use have been added. Additionally, a new section has been included that directs supervisorial oversight whenever the TASER device has been deployed.

With regard to medical treatment, we have carefully considered the risk when crafting language in 309.7 requiring appropriate medical personnel to perform probe removal. We recognize that this, at times, can be burdensome. But the risk of allowing your personnel, who may not be specifically medically trained to remove the probes, outweighs any expense in the time and resources required to transport the subject to appropriate medical services. We recommend that your agency consult with local medical providers to develop appropriate protocols for medical evaluation and removal of probes following exposure to electronic control weapons.

Much of the remaining language is unchanged. However, in some cases it has been reordered and renumbered. This revised policy is shown below without change markup. To avoid the possibility of inaccurate or confusing language, you should accept each individual update in this policy and modify, if necessary, for your specific department needs after completing the update.

309.1 PURPOSE AND SCOPE [BEST PRACTICE]

This policy provides guidelines for the issuance and use of the [EMDT TM] device.

309.2 POLICY [BEST PRACTICE]

The [EMDT device] is intended to control a violent or potentially violent individual, while minimizing the risk of serious injury. The appropriate use of such a device should result in fewer serious injuries to [officers/deputies] and suspects.

309.3 ISSUANCE AND CARRYING [EMDT DEVICE]S [BEST PRACTICE]

Only members who have successfully completed department-approved training, may be issued and carry the [EMDT device].

[EMDT device]s are issued for use during a member's current assignment. Those leaving a particular assignment may be required to return the device to the department's inventory.

[Officers/Deputies] shall only use the [EMDT device] and cartridges that have been issued by the Department. Uniformed [officers/deputies] who have been issued the [EMDT device] shall wear the device in an approved holster on their person. Non-uniformed [officers/deputies] may secure the [EMDT device] in the driver's compartment of their vehicle.

Members carrying the [EMDT device] should perform a spark test on the unit prior to every shift.

When carried while in uniform [officers/deputies] shall carry the [EMDT device] in a weak-side holster on the side opposite the duty weapon.

- (a) All [EMDT device]s shall be clearly and distinctly marked to differentiate them from the duty weapon and any other device.
- (b) Whenever practicable, [officers/deputies] should carry two or more cartridges on their person when carrying the [EMDT device].
- (c) [Officers/Deputies] shall be responsible for ensuring that their issued [EMDT device] is properly maintained and in good working order.
- (d) [Officers/Deputies] should not hold both a firearm and the [EMDT device] at the same time.

309.4 VERBAL AND VISUAL WARNINGS [BEST PRACTICE]

A verbal warning of the intended use of the [EMDT device] should precede its application, unless it would otherwise endanger the safety of [officers/deputies] or when it is not practicable due to the circumstances. The purpose of the warning is to:

- (a) Provide the individual with a reasonable opportunity to voluntarily comply.
- (b) Provide other [officers/deputies] and individuals with a warning that the [EMDT device] may be deployed.

If, after a verbal warning, an individual is unwilling to voluntarily comply with [an officer/a deputy]'s lawful orders and it appears both reasonable and feasible under the circumstances, the [officer/deputy] may, but is not required to, display the electrical arc (provided that a cartridge has not been loaded into the device), or the laser in a further attempt to gain compliance prior to the application of the [EMDT device]. The aiming laser should never be intentionally directed into the eyes of another as it may permanently impair his/her vision.

The fact that a verbal or other warning was given or the reasons it was not given shall be documented by the [officer/deputy] deploying the [EMDT device] in the related report.

309.5 USE OF THE [EMDT DEVICE] [BEST PRACTICE]

The [EMDT device] has limitations and restrictions requiring consideration before its use. The [EMDT device] should only be used when its operator can safely approach the

subject within the operational range of the device. Although the [EMDT device] is generally effective in controlling most individuals, [officers/deputies] should be aware that the device may not achieve the intended results and be prepared with other options.

309.5.1 APPLICATION OF THE [EMDT DEVICE] [BEST PRACTICE]

The [EMDT device] may be used in any of the following circumstances, when the circumstances perceived by the [officer/deputy] at the time indicate that such application is reasonably necessary to control a person:

- (a) The subject is violent or is physically resisting.
- (b) The subject has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm [officers/deputies], him/herself or others.

Mere flight from a pursuing [officer/deputy], without other known circumstances or factors, is not good cause for the use of the [EMDT device] to apprehend an individual.

309.5.2 SPECIAL DEPLOYMENT CONSIDERATIONS [BEST PRACTICE]

The use of the [EMDT device] on certain individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective or would present a greater danger to the [officer/deputy], the subject or others, and the [officer/deputy] reasonably believes that the need to control the individual outweighs the risk of using the device. This includes:

- (a) Individuals who are known to be pregnant.
- (b) Elderly individuals or obvious juveniles.
- (c) Individuals with obviously low body mass.
- (d) Individuals who are handcuffed or otherwise restrained.
- (e) Individuals who have been recently sprayed with a flammable chemical agent or who are otherwise in close proximity to any known combustible vapor or flammable material, including alcohol-based oleoresin capicum (OC) spray.
- (f) Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles).

Because the application of the [EMDT device] in the drive-stun mode (i.e., direct contact without probes) relies primarily on pain compliance, the use of the drive-stun mode generally should be limited to supplementing the probe-mode to complete the circuit, or as a distraction technique to gain separation between [officers/deputies] and the subject, thereby giving [officers/deputies] time and distance to consider other force options or actions.

The [EMDT device] shall not be used to psychologically torment, elicit statements or to punish any individual.

309.5.3 TARGETING CONSIDERATIONS [BEST PRACTICE]

Reasonable efforts should be made to target lower center mass and avoid the head, neck, chest and groin. If the dynamics of a situation or officer safety do not permit the [officer/deputy] to limit the application of the [EMDT device] probes to a precise target area, [officers/deputies] should monitor the condition of the subject if one or more probes strikes the head, neck, chest or groin until the subject is examined by paramedics or other medical personnel.

309.5.4 MULTIPLE APPLICATIONS OF THE [EMDT DEVICE] [BEST PRACTICE]

[Officers/Deputies] should apply the [EMDT device] for only one standard cycle and then evaluate the situation before applying any subsequent cycles. Multiple applications of the [EMDT device] against a single individual are generally not recommended and should be avoided unless the [officer/deputy] reasonably believes that the need to control the individual outweighs the potentially increased risk posed by multiple applications.

If the first application of the [EMDT device] appears to be ineffective in gaining control of an individual, the [officer/deputy] should consider certain factors before additional applications of the [EMDT device], including:

- (a) Whether the probes are making proper contact.
- (b) Whether the individual has the ability and has been given a reasonable opportunity to comply.
- (c) Whether verbal commands, other options or tactics may be more effective.

[Officers/Deputies] should generally not intentionally apply more than one [EMDT device] at a time against a single subject.

309.5.5 ACTIONS FOLLOWING DEPLOYMENTS [BEST PRACTICE]

[Officers/Deputies] shall notify a supervisor of all [EMDT device] discharges. Confetti tags should be collected and the expended cartridge, along with both probes and wire, should be submitted into evidence. The cartridge serial number should be noted and documented on the evidence paperwork. The evidence packaging should be marked "Biohazard" if the probes penetrated the subject's skin.

309.5.6 DANGEROUS ANIMALS [BEST PRACTICE]

The [EMDT device] may be deployed against an animal as part of a plan to deal with a potentially dangerous animal, such as a dog, if the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective.

309.5.7 TASER® CAM™ [BEST PRACTICE]

The TASER CAM is activated any time the safety is in the off position. The safety should be in the safe position unless the [officer/deputy] intends to use the device. Because the TASER CAM memory is limited, the video and audio data should be downloaded frequently and retained as required by the department records retention schedule.

309.5.8 OFF-DUTY CONSIDERATIONS [BEST PRACTICE]

[Officers/Deputies] are not authorized to carry department [EMDT device]s while off-duty.

[Officers/Deputies] shall ensure that [EMDT device]s are secured while in their homes, vehicles or any other area under their control, in a manner that will keep the device inaccessible to others.

309.6 DOCUMENTATION [BEST PRACTICE]

[Officers/Deputies] shall document all [EMDT device] discharges in the related arrest/crime report and the [EMDT device] report form. Notification shall also be made to a supervisor in compliance with the Use of Force Policy. Unintentional discharges,

pointing the device at a person, laser activation and arcing the device will also be documented on the report form.

309.6.1 [EMDT DEVICE] FORM [BEST PRACTICE]

Items that shall be included in the [EMDT device] report form are:

- (a) The type and brand of [EMDT device] and cartridge and cartridge serial number.
- (b) -Date, time and location of the incident.
- (c) Whether any display, laser or arc deterred a subject and gained compliance.
- (d) The number of [EMDT device] activations, the duration of each cycle, the duration between activations, and (as best as can be determined) the duration that the subject received applications.
- (e) The range at which the [EMDT device] was used.
- (f) The type of mode used (probe or drive-stun).
- (g) Location of any probe impact.
- (h) Location of contact in drive-stun mode.
- (i) Description of where missed probes went.
- (j) Whether medical care was provided to the subject.
- (k) Whether the subject sustained any injuries.
- (l) Whether any [officers/deputies] sustained any injuries.

The [Training Manager] should periodically analyze the report forms to identify trends, including deterrence and effectiveness. The [Training manager] should also conduct audits of data downloads and reconcile [EMDT device] report forms with recorded activations. [EMDT device] information and statistics, with identifying information removed, should periodically be made available to the public.

309.6.2 REPORTS [BEST PRACTICE]

The [officer/deputy] should include the following in the arrest/crime report:

- (a) Identification of all personnel firing [EMDT device]s
- (b) Identification of all witnesses
- (c) Medical care provided to the subject
- (d) Observations of the subject's physical and physiological actions
- (e) Any known or suspected drug use, intoxication or other medical problems

309.7 MEDICAL TREATMENT [BEST PRACTICE]

Consistent with local medical personnel protocols and absent extenuating circumstances, only appropriate medical personnel should remove [EMDT device] probes from a person's body. Used [EMDT device] probes shall be treated as a sharps biohazard, similar to a used hypodermic needle and handled appropriately. Universal precautions should be taken.

All persons who have been struck by [EMDT device] probes or who have been subjected to the electric discharge of the device shall be medically assessed prior to booking. Additionally, any such individual who falls under any of the following categories should,

as soon as practicable, be examined by paramedics or other qualified medical personnel:

- (a) The person is suspected of being under the influence of controlled substances and/or alcohol.
- (b) The person may be pregnant.
- (c) The person reasonably appears to be in need of medical attention.
- (d) The [EMDT device] probes are lodged in a sensitive area (e.g., groin, female breast, head, face, neck).
- (e) The person requests medical treatment.

Any individual exhibiting signs of distress or who is exposed to multiple or prolonged applications (i.e., more than 15 seconds) shall be transported to a medical facility for examination or medically evaluated prior to booking. If any individual refuses medical attention, such a refusal should be witnessed by another [officer/deputy] and/or medical personnel and shall be fully documented in related reports. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

The transporting [officer/deputy] shall inform any person providing medical care or receiving custody that the individual has been subjected to the application of the [EMDT device].

309.8 SUPERVISOR RESPONSIBILITIES [BEST PRACTICE]

When possible, supervisors should respond to calls when they reasonably believe there is a likelihood the [EMDT device] may be used. A supervisor should respond to all incidents where the [EMDT device] was activated.

A supervisor should review each incident where a person has been exposed to an activation of the [EMDT device]. The device's onboard memory should be downloaded through the data port by a supervisor or [Rangemaster] and saved with the related arrest/crime report. Photographs of probe sites should be taken and witnesses interviewed.

309.9 TRAINING [BEST PRACTICE]

Personnel who are authorized to carry the [EMDT device] shall be permitted to do so only after successfully completing the initial department-approved training. Any personnel who have not carried the [EMDT device] as a part of their assignment for a period of six months or more shall be recertified by a department-approved [EMDT device] instructor prior to again carrying or using the device.

Proficiency training for personnel who have been issued [EMDT device]s should occur every year. A reassessment of [an officer/a deputy]'s knowledge and/or practical skill may be required at any time if deemed appropriate by the [Training Manager]. All training and proficiency for [EMDT device]s will be documented in the [officer/deputy]'s training file.

Command staff, supervisors and investigators should receive [EMDT device] training as appropriate for the investigations they conduct and review.

[Officers/Deputies] who do not carry [EMDT device]s should receive training that is sufficient to familiarize them with the device and with working with [officers/deputies] who use the device.

The [Training Manager] is responsible for ensuring that all members who carry [EMDT device]s have received initial and annual proficiency training. Periodic audits should be used for verification.

Application of [EMDT device]s during training could result in injury to personnel and should not be mandatory for certification.

The [Training Manager] should ensure that all training includes:

- (a) A review of this policy.
- (b) A review of the Use of Force Policy.
- (c) Performing weak-hand draws or cross-draws to reduce the possibility of accidentally drawing and firing a firearm.
- (d) Target area considerations, to include techniques or options to reduce the accidental application of probes near the head, neck, chest and groin.
- (e) Handcuffing a subject during the application of the [EMDT device] and transitioning to other force options.
- (f) De-escalation techniques.
- (g) Restraint techniques that do not impair respiration following the application of the [EMDT device].

Policy 312 - Firearms

MODIFIED SUBSECTION

The title of the policy has been modified to more accurately reflect the content. The content in subsection 312.3.1(c) has been moved and rewritten in more detail in a new section (312.7). Other minor edits have been made where indicated to address grammar and for clarity.

312 Firearms and Qualification

312.3.1 SAFETY CONSIDERATIONS [BEST PRACTICE]

- (a) [Officers/Deputies] shall not unnecessarily display or handle any firearm.
- (b) [Officers/Deputies] shall be governed by all rules and regulations pertaining to the use of the range and shall obey all orders issued by the [Rangemaster]. [Officers/Deputies] shall not dry fire or practice quick draws except under [Rangemaster] supervision.
- ~~(c) Any member who discharges his or her weapon accidentally or intentionally, on or off duty, except during training or recreational use, shall make a verbal report to his/her supervisor as soon as circumstances permit and, if the occurrence was on-duty, shall file a written report with their [Division Commander] prior to the end of shift. If off-duty, as directed by the supervisor.~~
- ~~(d)~~(c) [Officers/Deputies] shall not clean, repair, load or unload a firearm anywhere in the Department, except where clearing barrels are present.

- (e)(d) Shotguns or rifles removed from vehicles or the equipment storage room shall be loaded and unloaded in the parking lot and outside of the vehicle.
- (f)(e) [Officers/Deputies] shall not place or store any firearm or other weapon on Ddepartment premises except where the place of storage is locked. No one shall carry firearms into the jail section or any part thereof when securing or processing a prisoner, but shall place all firearms in a secured location. It shall be the responsibility of the releasing [officer/deputy] to make sure that persons from outside agencies do not enter the jail section with any firearm.
- (g)(f) [Officers/Deputies] shall not use any automatic weapon, heavy caliber rifles, gas or other types of chemical weapon (from the armory), except with approval of a supervisor.
- (h)(g) Any weapon authorized by the Department to be carried on- or off-duty, that is found by the [officer/deputy] to be malfunctioning or needing service, shall not be carried, ~~and it~~ shall be promptly presented to the Department or [Rangemaster] for inspection. Any weapon determined to be in need of service or repair during an inspection by the department [Rangemaster], will be immediately removed from service. If the weapon is the [officer/deputy]'s primary duty weapon, a replacement weapon will be issued to the [officer/deputy] until the duty weapon is ~~again rendered serviceable~~.

NEW SECTIONS

The following sections have been moved from elsewhere and have been included in this policy to eliminate duplication and the potential for confusion. The existing sections that follow these added sections have been renumbered accordingly.

312.5 WARNING AND OTHER SHOTS [BEST PRACTICE]

Generally, warning shots or shots fired for the purpose of summoning aid are discouraged and may not be discharged unless the [officer/deputy] reasonably believes that they appear necessary, effective and reasonably safe.

312.6 DESTRUCTION OF ANIMALS [BEST PRACTICE]

[Officers/Deputies] are authorized to use firearms to stop an animal in circumstances where the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective.

In circumstances in which [officers/deputies] have sufficient advance notice that a potentially dangerous animal may be encountered, [officers/deputies] should develop reasonable contingency plans for dealing with the animal (e.g., fire extinguisher, [EMDT device], oleoresin capsicum (OC) spray, animal control officer). Nothing in this policy shall prohibit any [officer/deputy] from shooting a dangerous animal if circumstances reasonably dictate that a contingency plan has failed or becomes impractical.

312.6.1 INJURED ANIMALS [BEST PRACTICE]

With the approval of a supervisor, [an officer/a deputy] may euthanize an animal that is so badly injured that human compassion requires its removal from further suffering and where other dispositions are impractical. Injured animals (with the exception of dogs and cats) may only be euthanized after a reasonable search to locate the owner has been made. Injured dogs and cats found without their owners shall be taken to an appropriate veterinarian for determination of whether they should be treated or humanely destroyed.

312.7 REPORT OF FIREARM DISCHARGE [BEST PRACTICE]

Except during training or recreational use, any member who discharges a firearm intentionally or unintentionally, on- or off-duty, shall make a verbal report to his/her supervisor as soon as circumstances permit. If the discharge results in injury or death to another person, additional statements and reports shall be made in accordance with the Officer-Involved Shooting Policy. If a firearm was discharged as a use of force, the involved member shall adhere to the additional reporting requirements set forth in the Use of Force Policy.

In all other cases, written reports shall be made as follows:

- (a) If on-duty at the time of the incident, the member shall file a written report with his/her [Division Commander] or provide a recorded statement to investigators prior to the end of shift, unless otherwise directed.
- (b) If off-duty at the time of the incident, a written report shall be submitted or recorded statement provided no later than the end of the next regularly scheduled shift, unless otherwise directed by a supervisor.

RENUMBERED SECTIONS

The following existing sections will appear as new however they have only been renumbered. There is no change to the content.

312.68 [RANGEMASTER] DUTIES [BEST PRACTICE]

312.69 MAINTENANCE AND REPAIR [BEST PRACTICE]

312.6-19.1 REPAIR OR MODIFICATIONS OF DUTY WEAPONS [BEST PRACTICE]

312.7-10 FLYING WHILE ARMED [FEDERAL]

312.8-11 CARRYING FIREARMS OUT OF STATE [FEDERAL]

Policy 354 - Handcuff Policy

REMOVED POLICY

A new policy has been written to address the use of all restraints, including handcuffs and leg and other restraints, to put those with similar or overlapping application in a single concise and updated policy. As a result, the Handcuff Policy is being removed as a stand-alone policy to avoid unnecessary duplication.

Policy 418 - Mental Illness Commitments

MODIFIED SECTION

This section has been modified as shown below to substitute the term "deadly force" for "lethal force" for consistency with definitions used in the Use of Force Policy.

418.2 [OFFICER/DEPUTY] CONSIDERATIONS AND RESPONSIBILITIES [STATE]

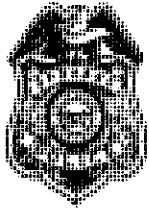
Any [officer/deputy] responding to or handling a call involving a suspected or actual mentally disabled individual or commitment should carefully consider the following (RCW 71.05.010):

- (a) That it is vitally important to safeguard the rights of mentally disabled individuals.
 - (b) Any available information which might assist in determining the cause and nature of the mental illness or developmental disabilities.
 - (c) Conflict resolution and de-escalation techniques for potentially dangerous situations involving mentally disabled persons.
 - (d) Appropriate language usage when interacting with mentally disabled persons.
 - (e) If circumstances permit, alternatives to ~~lethal~~deadly force when interacting with potentially dangerous mentally disabled persons.
 - (f) Community resources which may be readily available to assist with the mentally disabled individuals.
 - (g) The need to protect public safety.
-

Corrections of a minor nature that do not affect the substance or meaning of the content are done silently. This allows Lexipol to correct obvious formatting, spelling or other typographical errors and not require a full update review and approval for such minor changes. These minor corrections will only occur if you have not modified the specific portion of the manual where the error occurs so any custom content you may have added will not be affected.

[illegible]

EXHIBIT J



SPOKANE POLICE DEPARTMENT

MEMORANDUM



TO: All SPD Personnel

FROM: Lt. Drollinger

DATE: September 24, 2012

RE: 2013 Training Needs Assessment

The Spokane Police Academy is researching the 2013 training needs for the entire agency. This research includes indentifying the training needs for individuals, for specific units or specialty teams and Department wide training. The Academy Staff encourages input from all SPD commissioned and non-commissioned personnel, as well as other stakeholders within our community. This "Training Needs Assessment" improves the Academy's ability to identify and provide meaningful training throughout the Department. Though there are numerous training requirements mandated by the Washington State Training Commission and the City of Spokane, some of the most valuable training comes from ideas provided by individuals within our Department.

The objectives of the SPD Training Program are:

- Enhance the level of law enforcement service to the public.
- Increase the technical expertise and overall effectiveness of our personnel.
- Provide for continued professional development of department personnel.
- Meet state requirements for training.
- Annual review of high-risk/high-liability policy.

As a member of the Spokane Police Department, we are requesting you to identify training that would enhance your ability to; work more efficiently within your assignment, work more effectively with other units within the Department, work more effectively when representing the SPD to other stakeholders, the courts, the prosecutors, the ombudsman etc.

Each of you is being asked to submit your training ideas or concerns to Sandy O'Connor by October 15, 2012.

Also attached to this e-mail is the entire Spokane Police Department 2013 Training Needs Assessment and In-Service Training Plan document.

Spokane Police Department

2013 Training Needs Assessment and In-Service Training Plan

The Spokane Police Department policy requirements with regard to training are set forth in SPD Policy 208. The current policy provisions provide that training will provide for the professional growth and continued development of department personnel, and will ensure department personnel possess the knowledge and skills necessary to provide a professional level of service to the community.

The overall philosophy of the department with regard to training is to provide ongoing training and to encourage all personnel to participate in advanced training and formal education on a continual basis. Training is to be provided within the confines of funding, requirements of a given assignment, staffing levels, and legal mandates. Whenever possible, the department policy requires that SPD will use courses certified by the Washington State Criminal Justice Training Commission (WSCJTC).

The objectives of the SPD Training Program are to:

- Enhance the level of law enforcement service to the public.
- Increase the technical expertise and overall effectiveness of our personnel.
- Provide for continued professional development of department personnel.
- Meet state requirements for training.
- Annual review of high-risk/high-liability policy.

Policy 208 requires the development and maintenance of a training plan for all employees by the Training Lieutenant. It is the responsibility of the Training Lieutenant to maintain, review, and update the training plan on an annual basis.

According to Policy 208 the training plan will ensure, at minimum, the following:

- All sworn members will successfully complete an annual in-service training program of no less than 24 hours that includes the following required CJTC Training (WAC139-050-300):**
 - Federal and Washington Court cases.
 - Legal updates.
- All sworn members will successfully complete an annual in-service training program on the department use of force and deadly force policies.
- All sworn members will successfully complete in-service training on less-than-lethal weapons every two years.
- Full-time supervisors or managers will receive appropriate training and certification required by CJTC.
- All sworn members will successfully complete the National Incident Management System (NIMS) introductory training course.

****Note:** WAC 139-050-300 in actuality does not contain any specific reference to training requirements for "Federal and Washington Court cases" or "Legal updates" This proposed training plan addresses those topics despite that lack of a specific requirement

As per the SPD Training Policy 208 the plan should also address the following areas:

- Legislative changes
- Case law
- State mandated training
- Critical issues training
- Officer enrichment training
- Unit specific training
- Management and leadership training

SPD Training Policy 208 requires that an annual training-needs assessment of the department be conducted and states that, "The needs assessment will be reviewed by senior staff. Upon approval by the senior staff, the needs assessment will form the basis for the training plan for the fiscal year."

The needs assessment to be conducted will address the training needs for the following SPD personnel: executive, middle management and first-line supervisory level personnel; patrol officers; investigators; dispatchers; property room personnel; and records personnel.

Note that specialized training for certain teams is handled within the individual units including: SWAT, canine officers, tactical team, explosive disposal unit, hostage negotiations unit, crisis intervention, dignitary protection team, traffic unit, neighborhood resource officers, public information officers, volunteer services and training for special events. The unit or team is responsible for the development, implementation and maintenance of the training plan for specialty assignments.

In conducting a needs assessment for training of SPD personnel that fall within the provisions of the training plan, the Training Lieutenant will contact the following resources for input:

- Stakeholders Outside Spokane Police Department
 - City of Spokane Ombudsman
 - City of Spokane City Attorney's Office, Legal Advisor to SPD
 - Spokane County District Attorney's Office
 - Clerk of the Spokane Municipal Court
 - City of Spokane, Streets Department
 - City of Spokane Office of Human Relations re mandatory training requirements including, but not limited to the following:
 - Blood Borne Pathogens
 - Sexual Harassment
 - First Aid
 - Vulnerable Population Training
 - Diversity Training
 - Legal Updates
 - State of Washington, CJTC requirements for individual SPD officers to maintain individual officer's certifications re State mandated annual 24-hour in-service
 - Other Regional Law Enforcement Agencies
- Internal Stakeholders within Spokane Police Department
 - Office of Professional Standards, Internal Affairs Division re the following:

- High Profile concerns
- Citizen's Complaints
- Civilian/Non-Commissioned Personnel re individual training needs and training to augment the efficiency between units including:
 - Dispatch
 - Records
 - Property
- Patrol officers and Commanders
- Investigative personnel and Commanders
- Chaplains
- Specialty Team Commanders including:
 - Canine Unit
 - Special Weapons and Tactics Team
 - Tactical Team
 - Explosive Disposal Unit
 - Hostage Negotiations Team
 - Crisis Intervention Team
 - Dignitary Protection Team
 - Traffic Unit
 - Neighborhood Resource Officers
 - Public Information Officers
 - Volunteer Services
 - Special Events

The Training Lieutenant will also review the training requirements and mandates for SPD personnel including supervisors (both non-commissioned and commissioned) and for SPD instructors. The requirements to be reviewed of note include any State of Washington, City of Spokane and SPD policy requirements. In particular, the Training Lieutenant will confirm the status of all instructors and the instructor certifications and re-certification requirements including the hours needed and program content for instructors in the following areas:

- EVOC
- Firearms
- Traffic
- Defensive Tactics
- WSCJTC
- CIT
- UOF

TIMELINE FOR IMPLEMENTATION

In-service training sessions for SPD for 2013 should be targeted for the following timeframes:

- Session #1 Early Spring In-Service
 - Command Review: February
 - Training Dates: Late February – Early March
- Session #2 Last Spring – Early Summer
 - Command Review: April
 - Training Dates: May-June
- Session #3 - Late Fall
 - Command Review: August-September
 - Training Dates: September

The proposed timeline for development and implementation of the SPD 2013 In-Service Training Plan is as follows:

- September, 2012
 - Conduct Needs Assessment as detailed above.
 - Compile data and prepare summary for Senior Staff.
 - Formulate draft 2013 Training Plan based on data received.
 - Transmit summary of Needs Assessment data and draft 2013 Training Plan to Senior Staff for review and feedback.
 - Senior Staff review, revise and prepare proposed 2013 Training Plan for Command Staff approval.
- December, 2012 (By the 3rd Week)
 - Confirm dates for a minimum of three 2013 In-Service training sessions.
 - Check for conflicts with the following:
 - SWAT
 - TAC
 - Traffic Unit
 - Special Events
 - Dignitary Protection Team
- All training is to be vetted through Senior Staff approximately two months prior to a scheduled in-service training session. At this time the Training Lieutenant will also confirm that all required training requirements for the scheduled in-service are met per SPD Training Policy 208.
- Final review of a scheduled in-service training session will be completed by Command Staff a minimum of two weeks prior to the beginning of each in-service training cycle.

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December 3, 2012

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Mr. Earl F. Martin
Executive Vice President
502 E. Boone Ave.
Spokane, WA 99258

RE: ADDENDUM TO REPORT TO USE OF FORCE COMMISSION

Dear Mr. Martin:

Addendum to Report re Receipt on 11/29/12 of Draft Policies -

On 11/29/12 an additional set of policies based presumably on the Lexipol April, 2012 Update for State of Washington agencies was transmitted to me for review. I agreed to review of the policies despite the exhaustion of the contract and the fact that my report was, once again, in the final stages of review and revision.

Given the fact that my report was in the very final stage of revisions it would be a substantial re-write to incorporate the comments on the latest draft of the policies in the body of the report at this point. After spending approximately 3 hours reviewing and drafting comments on the draft policies, a rough, but workable set of comments was provided that same date to SPD.

SPD's use of force policies have been substantially enhanced by this update. Note that there are comments in the body of the actual report relating to policy concerns that require consideration that are not discussed in this addendum. My goal, as always, is to help enhance the professionalism of SPD. Hopefully my comments are viewed as just that - helpful.

Comments on draft policies provided 11/29/12 -

Under 300.1.1 -The definition of Deadly Force as set forth in the Lexipol April Update is preferable to the language in the SPD version;

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I do not personally prefer the use of himself/herself or other multi-gender references in documents. Lexipol does this and I would suggest and prefer to use a gender neutral pronoun or plural pronouns such as "they" or "themselves" or to re-word the sentence so this type of wording is avoided. So for example with regard to the definition of "Force" re-wording the second sentence to, "It is not a use of force when an individual allows themselves to be searched, ..."

Under 300.3.1 it may be that the this may actual language from the RCW statute reads this way, and thus why it is stated this way in the Washington Update. I would suggest that he/she be changed to "the individual" - again just semantics and personal preference on my part. The gender pronoun issue continues throughout the policy - I will leave that issue to the SPD to consider for the entirety of their policy - I just think it is a) unnecessary and b) distracts from substance.

Substantively I would suggest that it is important to hold the line with regard to the distinction between "force which is reasonably necessary" and "force which reasonably appears to be necessary." The former is an erroneous ultimate fact standard and the latter is an accurate re-phrasing of the "objectively reasonable force" standard. Additionally, under section 300.3.3 the "only apply those techniques for which they have completed department-approved training" seems to contradict the fourth paragraph of section 300.3 that which allows an officer to improvise. Thus the "only" portion of 300.3.3 should be deleted.

Under (g) of section 300.3.4 I would suggest that the documentation requirement also include documentation of compliance with sections (d), (e) and (f) - and that the supervisor reviewing the overall reports for an incident is responsible for confirming that compliance occurred and that the reports document the compliance. Likewise, in any other portion of the policy where notifications are required, such as 306.3. for example, the officer should be required to document compliance and supervisors should be required to confirm both compliance and documentation of compliance. I would suggest that a word search of the policy manual to deal with this issue would be efficient.

Likewise a word search for the words "shall", "must", "always" and "never" throughout the entire policy manual would be prudent to determine if there are corresponding documentation requirements for officers and for supervisors to be responsible for confirming compliance and documentation of compliance. This will also identify other action items that may be overlooked and/or problematic.

Under 300.4 I believe it should be made clear that the use of deadly force is also governed by the objectively reasonable force standard and that all the provisions of 300.3, 300.3.2 specifically apply to the use of deadly force. Thus the first sentence should read, " Use of deadly force like any force used by an officer, must be objectively reasonable based on the totality of the facts and

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circumstances known to the officer at the time the force is used. Factors for evaluating an officer's use of force are set forth in section 300.3.2. The use of deadly force is justified under the following circumstances:..."

Note that under section 300.4 there is also a formatting error and a blank line needs to be inserted between the 2 paragraphs in subsection (b).

Under 306.5 paragraph 4, I am very reluctant to include a provision that permits hooding someone after they have been pepper sprayed even with the "thoroughly decontaminated" provision - if they have a complete change of clothes and have been showered maybe - but OC is extremely hard to get off and once a hot moist environment is created it starts coming out of pores etc. I would suggest using a spit mask of sorts - not a hood on someone after OC spray used. This is most certainly just an abundance of caution and concern because when this goes wrong - if it goes wrong - there will be alot of finger pointing.

Section 306.7 contains the "reasonably necessary" phrase again. I would suggest that a word search be done and this phrase always be replaced with "reasonably appears necessary" again to avoid the "ultimate fact vs. objectively reasonable" issue.

Section 308.8.1 dealing with deployment of Kinetic Energy Projectiles is something I would like to discuss with SPD and the CART instructor - I think it could be improved with regard to being a bit more specific. It requires a bit more than me just proposing revisions.

Section 308.8.4 has formatting issues.

Section 418.5 Training deals with training requirements with regard to mentally disabled persons. This responsibility needs to be specifically delegated to someone - ie Training Academy Staff or someone else. The phrasing for this and any other provision of policy that vaguely refers to a training need or requirement should be reviewed and revised to achieve clarity and specificity with regard to the requirement and the responsibility. For example here the following sentence is ripe with problems: "As a part of officer training programs, this agency will endeavor to include CJTC approved training on interaction with mentally disabled persons." What does "endeavor" mean? As part of what officer training programs - BLEA? Pre-FTO?, FTO? in-service? Annually? This is a recipe for disaster equivalent to the Bainbridge Island PD failure to comply with their own policy issue that just cost them \$1M.

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This concludes my comments. Please let me know if you have any questions or if I can be of any further assistance.

Very truly yours,

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

Mildred K. O'Linn

MKO/df

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City of Spokane Use of Force Commission

Appendix D

***Report from Michael J. Gennaco
OIR Group***

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December 5, 2012

Earl F. Martin, Chair
City of Spokane
Use of Force Commission
c/o Gonzaga University
502 East Boone Avenue
Spokane, WA 99258

RE: OIR Group Review of Spokane Police Departments Use of Force Practices

Dear Mr. Martin:

I. Introduction

Pursuant to the 2012 Consultant Agreement with the City of Spokane, please consider this Report as OIR Group's review and assessment of the Spokane Police Department's ("SPD") use of force practices, policies and procedures. During our review, we evaluated a total of twelve force incidents, including canine deployments, two officer involved shootings and internal affairs investigations. Our goal was to examine how the Department reports the use of force and how force incidents are reviewed and to evaluate the quality of its administrative investigations. We would be remiss not to comment on the assistance provided to our review by the SPD command staff in helping us understand the protocols and procedures of the Department. That assistance was critical in providing us a baseline understanding of those processes and we are grateful for their time and cordiality.

Our comments fall into four main sections. In the first section, we discuss two shooting incidents and identify some potential room for improvement, as well as, notable effective practices within the SPD post-critical incident processes. With regard to the shootings, we reviewed the investigative and administrative processes of those incidents, as well as the work undertaken by the Deadly Force Review Board (DFRB), a body intended to review critical incidents to identify training, supervision, equipment and other systemic issues with a goal to identifying potential "lessons learned". In the next section, we conducted an "autopsy" of individual use of force cases and noted instances where gaps in the reporting practices and evidence gathering and a circumscribed approach to reviewing a use of force prevented the

Department from learning all it could about an incident or an officer's conduct. Next, we identify potential strengths and weaknesses of the internal affairs investigations. In the fourth section, we discuss other potential areas of reform of SPD policies and its use of force protocols and practices. In each section, we provide a list of recommendations that relate directly to the issues we identified in this report.

II. Officer -Involved Shooting Incidents

In our review, we assessed two officer-involved shootings. Consistent with a relatively newly devised protocol, the criminal investigations were conducted by a "Response Team" which includes detectives from the homicide units of the Spokane County Sheriff's Department and the Spokane Police Department, along with detectives assigned to the criminal investigative unit of the Washington State Patrol's Spokane District. Per those protocols, the lead investigator is not a member of the involved employee's agency. The criminal investigative reports were submitted to the local prosecutor for review and, in both instances, the shootings were deemed by the prosecutor to be legally justified. There was a subsequent administrative investigation conducted by SPD in one of the two shooting incidents we reviewed. We offer the following observations about the Department's post-incident response and review of the shooting incidents.

A. Date of incident: November 2010

In this officer-involved shooting, the subject arrived at a residence and yelled for his father to come out. According to witnesses, when the father did not come out, the subject threatened to kill his father and used a shotgun to shoot several rounds at the house. The subject then drove away. SPD received 911 calls from neighbors regarding the incident. A responding officer received information from witnesses about what had occurred and pointed out the subject's direction of travel.

Officer C then observed the subject's vehicle and informed dispatch of the subject's actions and location. The subject stopped and exited his vehicle with the shotgun in his hands and fled on foot in the direction of a restaurant. Officer C believed that the subject was attempting to enter the restaurant and fired a round at the subject. The subject diverted and was pursued on foot by Officer C who fired four more rounds at the subject.

Officer P also observed the subject with the shotgun in his hands and followed him on foot. Officer P saw two other officers pull into the area. Officer P fired two rounds at the subject. Corporal M saw the subject exit his vehicle with the shotgun and heard officers order the subject to drop his weapon. Corporal M then ordered the subject to drop his weapon and fired two rounds at the subject.

Officer H1 told investigators that he observed the subject fire his shotgun. However, it could not be established during the subsequent investigation whether, in fact, the subject had fired his weapon. Officer H1 fired five rounds at the subject.

Officer H2 and Officer S exited from their vehicle and ordered the subject to drop his weapon. The subject yelled back but refused to comply. Officer S fired two rounds at the subject and Officer H2 fired 12 rounds at the subject using an AR15 rifle. The subject then turned and fatally collapsed on the ground.

In accord with the above-described protocols, a joint criminal investigation headed by the Spokane Sheriff's Department was conducted and presented to the District Attorney who found the use of deadly force legally justified. Following a subsequent internal investigation, the SPD Administrative Review Panel found no violations of policy by the involved officers. Finally, a Deadly Force Review Board was convened and made certain recommendations described below.

Investigative Issues

Transparency: A redacted copy of the criminal investigation is available on-line. SPD is to be commended for making the investigation available for all to review. However, unlike the internal affairs investigations of force incidents, the internal affairs investigation of the shooting is not publicly available.

Organization: The criminal investigation that appears on-line is not well organized or easy to follow. There is no table of contents and the first scores of pages consist of supplemental reports by officers who responded to the scene but were not involved in the shooting. No summary of the incident appears until well into the hundreds of page of documents that comprise the investigative report.

Witness Canvass: To the investigative team's credit, there was an extensive and well-documented witness canvass of the incident.

Police Response: To the investigative team's credit, all responding officers documented their response and actions relating to the incident, however minimal.

First Names Used in Reports: As we have also noted in our review of other force incidents, the police reports repeatedly refer to the subject, involved police officers, and other civilian witnesses by their first names. The use of last names in the reports would instill in the investigation a more appropriate degree of formality.

Transport of Officers: The police reports indicate that the involved officers were individually transported away from the location. Transporting of involved officers individually is a best practice designed to preserve the integrity of the investigation and avoid contamination of observations and recall.

Apparent Lack of Segregation of Officers: While the transport of officers was consistent with best practices, at least one involved officer indicated that the location that officers were directed to at the station prior to being processed and interviewed was not ideal and created a potential for witness contamination. According to this officer, he was escorted to the station

lunch room, where individuals were discussing the shooting and secretaries were entering and leaving. The officer indicated he would have preferred being segregated from everyone else involved so that he could not have heard what others were saying about the incident. This issue expressly identified by at least one involved officer was not further explored by the investigation nor commented on by the DFRB.

Scene Contamination: One involved officer indicated that after the subject went down, he did not feel good about where the shotgun had come to rest and therefore moved the weapon farther away. A responding sergeant confirmed that this had occurred and that he had instructed the officer to put the shotgun back but it was not placed back in the original position in which it was found. This act by an SPD officer that disturbed the scene was not reviewed nor critiqued by the DFRB.

Diagrams: To SPD's credit, a high quality scaled diagram was prepared in the investigation. Unfortunately, the diagram was not regularly presented to witnesses during either the criminal or internal investigations. It would have been extremely helpful in understanding this dynamic complicated event had the involved officers been presented with a copy of the diagram in which they could have traced the paths that they took, their direction of fire, the location of the subject, etc. Instead, the involved officers were shown aerial photographs from Google maps or asked to construct their own diagrams to depict their path of movement.

Use of Waiver: Investigators assigned to help process the crime scene recognized that the Spokane Tribal Building had suffered bullet strikes as a result of the shooting and were interested in determining whether there was any further damage to the interior of the building. Appropriately, an individual who had regular access to the building was contacted and signed a waiver allowing investigators to enter the building. The use of the waiver was consistent with best practices so that investigators had certain legal authority to enter the building and further their investigation.

Leading Questions: During the internal investigation, there was repeated use of leading questions during the interviews of involved officers by the investigative team. Leading questions can be interpreted as not intended to objectively document the officer's recollection but rather helping guide the officer to provide an answer consistent with what the interviewer is seeking.

Examples of leading questions are frequent in the internal investigative reports:

Officer C was asked by a Spokane Internal Affairs investigator: "So you were concerned at all about, um, the situation turning into either an active shooter or hostage situation inside the restaurant?" to which he responded "Yes."

During Officer H2's interview, the Spokane Ombudsman¹ asked: "But you felt threatened by that action, is that correct?" The officer responded "Yes".

During Officer P's interview, he was asked by the Spokane Ombudsman: "So you felt that he posed an immediate threat to the public as well as to officers at the location?" to which the officer responded: "Absolutely."

Later Officer P was asked by the Spokane Ombudsman: "So the location where you took the shot then, if I understand it, would've posed the least likely threat to bystanders or onlookers or the public, is that correct?" to which the officer responded: "Correct, absolutely."

Officer S was asked by a Spokane Internal Affairs investigator: "Well, um, you stated before that you had concerns for the community, um, did you also have concerns for Officer [H2's] safety and your own safety?" to which the officer replied: "Yes."

Officer H1 was asked by a Spokane Internal Affairs investigator: "Okay, so I guess to paraphrase what you said, um, your use of deadly force was in defense of other officers on scene as well as the general public that was in the immediate area?" to which the officer replied in the affirmative.

Officer H2 was asked by the Ombudsman: "Okay, and I believe you said it, but I just wanted to affirm, he did actually point the shotgun at you several times, is that correct?" but the questioner did not get the anticipated response: "He... it wasn't directly at me. It was in the air and then when he started running to the west, it was pointed down towards the west, but he was looking back at me." The questioner then asked, "Okay, so... but you felt threatened by that action, is that correct?" to which the officer then replied "Yes... yes."

These leading questions which go to the heart of the reason for using deadly force or the officers' tactical decision-making can be perceived as directing the officers to answer the question in a way that would legally justify their use of force and could be interpreted that the interview is designed to elicit answers that do so. This practice is inconsistent with the goals of objective fact gathering which should be designed to obtain an account from the witness; not to potentially guide the witness to an account that the questioner presumes, expects or desires.

On a related subject, the involved officers were asked by a Spokane Internal Affairs investigator whether their actions were consistent with training. The utility of this question is subject, and not surprisingly, all of the officers responded to the question in the affirmative.

¹ Per current protocols, the Spokane Ombudsman participates in internal affairs interviews of involved officers.

Officers' On-Scene Cooperation/ Failure to Obtain Timely Statements from Two Involved Officers

All six of the officers provided brief "tactical" interviews primarily intended to guide detectives in their search for evidence. To their credit, four of the involved officers also provided voluntary interviews shortly after the incident. However, those interviews did not occur until three to five days after the incident. In accord with standard investigative practices and to gain the public's trust of officer-involved shooting investigations, it is critical to obtain detailed interviews of the officer's observations and actions close in time to the incident. While the impact of the delay in obtaining a detailed interview is ameliorated somewhat as a result of the "tactical" interviews that were conducted closer in time to the incident, the 3-5 day delay in obtaining detailed interviews with the involved officers is well short of ideal.

Even more concerning is how the investigation dealt with two officers who declined to provide detailed voluntary interviews. Those officers were not interviewed in depth about their observations and actions until approximately five months after the incident. That means that for five months, these officers were not required to provide a detailed version of what occurred. Interestingly, as a result, one officer was no longer able to recall some of the details of the incident with any specificity. That same officer raised a concern during the interview about the gap between the incident and the time in which he provided the interview and thought that the administrative interview should have occurred much closer in time to the incident so that he could have reached "closure" about the incident.

It is critical for any effective deadly force investigation that all involved officers as part of their job duties be required to provide detailed accounts of their observations and actions close in time to the incident. To cause officers to delay providing that account for months after the incident results in recollections that have faded and potentially contaminated by other information received in the intervening months. In fact, in this case, contamination was likely with regard to at least one of the officers who was not interviewed in detail until months later. At the time of his interview, he acknowledged that he had discussed the event in a group during a team debriefing approximately a week after the incident. While officers have the Constitutional right not to provide voluntary statements, it is incumbent upon SPD to obtain compelled administrative interviews from those officers who decline to provide voluntary statements close in time to the incident. Failure to do so significantly compromises the integrity of the deadly force investigation.

Deadly Force Review Issues

As noted above, the criminal investigation of this officer-involved shooting was presented to the prosecutor's office for review which found that the officers were justified in their use of deadly force. The seventeen page memorandum in support of this decision is limited to the following analysis:

The officers were justified in their use of deadly force. [The Subject] had fired six rounds from a shotgun into an occupied house in a residential neighborhood. The police were responding to this call when they located him in a residential neighborhood. The police were responding to this call when they located him by Shari's Restaurant, on a busy arterial in the middle of the afternoon. He refused repeated commands to drop his weapon and police had legitimate concerns for not only their safety but the safety of others.

As noted above, after the conclusion of the internal investigation, the Spokane Police Department convened an Administrative Review Panel who similarly determined in a one paragraph analysis that all involved officers' use of force was in compliance with the Department's Deadly Force Policy. The brief analyses provided by both the Prosecutor's letter and the Department's Administrative Review Panel failed to individually set out the justification and reason for use of deadly force for each involved officer and each use of deadly force.²

For example, the initial officer who first viewed the subject indicated that he was concerned as the subject got close to the restaurant that he would enter and create a hostage situation and that observation formed the basis for his first use of deadly force. It is not unreasonable to recognize this tangible real threat of harm to innocents in assessing the officer's decision.

Later in the scenario, one officer indicated that he fired because he saw that the subject was heading toward a residential area that had a school nearby as a basis for his use of deadly force. This officer has related a concern that is certainly more remote and less tangible than the restaurant articulation. In virtually all urban police responses to a subject there will be residences and schools nearby and thus the rationale articulated by the officer here could be used as a basis for using deadly force in virtually every one of them. Whenever such a blanket justification is expressed as the basis for using deadly force, it should invite discussion whether the threat meets the "imminent" circumstances in which deadly force may be used. In this case, however, the SPD's Administrative Review Panel did not provide any detailed analysis that examined the threat justification articulated by each officer but rather considered and justified the use of deadly force as if every officer was similarly situated. While not detailed in the analysis, apparently all rationales provided by the involved officers were accepted as justifying the use of deadly force without any distinction made about the reasonableness or the articulation for the officers' actions. While our assessment is not intended to substitute judgment about whether the use of deadly force by each involved officer was justified, an exacting force analysis would have more carefully examined each officer's use of deadly force, compared it to training, policy and Departmental expectations, and made individualized determinations as to each

² In some cases, the officers who fired multiple rounds articulated different reasons for the firing of those rounds.

individual officer's use of deadly force rather than a blanket finding for the use of force as a group.

Moreover, the scope of the internal investigation, Administrative Review Panel conclusion, and the DFRB review of the deadly force incident were all too narrow. Since the internal investigation was scoped as narrowly as it was, it failed to collect sufficient information for the eventual internal reviewers of the incident. The Administrative Review Panel focused exclusively on the officers' decision to use deadly force as a whole and did not individually assess and critique officer performance nor include any assessment of their tactics. As detailed below, the DFRB did consider some broader issues such as equipment but was reticent to constructively critique virtually any element of SPD's response and failed to evaluate the strength or weaknesses of the criminal and internal investigations.

Deadly Force Review Board

The SPD's DFRB consists of executives from the Department who are convened to review a deadly force incident, the response to the incident, and to examine issues of tactics, training, investigative activities, and equipment performance. Missing from the convened is the Ombudsman. SPD is to be commended for even convening such a Board since most similarly sized police departments in the country still only conduct a cursory paper review of such events. However, as noted in this report, a robust identification of potential issues and critique is lacking in the DFRB review of the shooting.

The DFRB did identify two scene preservation issues in their review. One issue that was identified was that after the incident a paramedic had apparently draped a blanket over the subject in an attempt to shield his body from public view and another walked through the crime scene disturbing expended shell casings on the ground. However, other than identify the issue, no concrete after-action plan was developed by the Board to address the issue identified either with its own or fire department personnel. More importantly, as noted above, the DFRB failed to address the actions of an officer who may have unnecessarily disturbed the crime scene by picking up the shotgun the subject was carrying from its initial resting place

Another issue identified by the DFRB was that while Officer H2's rifle was equipped with an EOTECH sight system, he missed striking the subject with all but one of the twelve shots he fired. The review determined that because the EOTECH is a battery sighting system, officers do not power the sight up until they anticipate deploying the weapon. The review determined that in this instance, Officer H2 claimed that he did not have time to turn the sight on before deploying the weapon.

The DFRB concluded that as a result, Officer H2 looked over the top of the sight which caused his rounds to go high. According to his interview, Officer H2 adjusted his aim and then looked through the window of the EOTECH to find that something was blocking his view. Eventually, Officer H2 was able to deploy the weapon in the manner in which it was designed.

According to the DFRB, the recommended additional training on use of the sights on the rifle had already occurred by the time the Board convened.

In addition, the suggestion was made to equip the response team with metal detectors to locate shell casings and other metal objects, replacement weapons, and voice recorders. There was a suggestion about installation of in-car cameras but apparently no documented follow up came out of that discussion.

Finally, the DFRB recommended reality based training, quicker processing of the involved officers, refresher training on the legal requirements of when deadly force is allowed, consideration of the deployment of more two person cars, and to debrief the incident to the involved officers. However, there was no after-action plan developed or person assigned to coordinate all of the DFRB recommendations to ensure further consideration or implementation.

The identification of the matters raised by the DFRB were sound and certainly worthy of discussion and reform. However, other issues completely escaped the DFRB's discussion. Most prominently, as detailed below, the DFRB displayed an apparent hesitancy in constructively and exactly critiquing the involved officers' tactical performance.

Conservation of Ammunition, Backdrop, and Use of Deadly Force

The number of shooters and the overall number of rounds fired in this incident is remarkable, particular since only two of the twenty-six rounds fired actually struck the subject. Despite this, the DFRB concluded that the officers were "disciplined" in their fire control.

Regarding backdrop issues, one stray bullet was discovered to have gone through a kitchen window and another bullet struck a non-involved vehicle. There were also a number of bullet strikes on the outside of the Spokane Tribal Building. Some of the bullets that were fired were never found. The investigation did not attempt to identify which shooting officers might have fired the stray bullets. Despite this paucity of information and analysis, the DFRB concluded that officers were aware of their surroundings and of their backdrop.

Whenever an officer-involved shooting involves a large number of shooters and a substantial number of rounds, it raises particular issues of concern. First, because officers are trained to stop a threat, each round that did not stop the threat suggests tactical or proficiency issues regarding that shooter officer since the delivery of the round did not meet its objective. Second, any use of rounds that is not on target raises the possibility that innocent bystanders or nearby residents will be struck by them. However, at the DFRB, the issues of target acquisition were only raised in evaluating equipment issues of the long gun and some non-specific discussion for additional tactical training.

Ideally, the review would have examined each officer's use of deadly force and an assessment of whether the officer was tactically sound and proficient when he fired. For

example, the DFRB would have discussed Officer H2's statement that after he fired a burst with the AR-15, the subject jumped up and down and whether that action provided a basis for continuing to use deadly force. At a minimum, firearms training experts should have been asked to assess how to better train each involved officer to ensure a higher level of performance in the future. These lessons learned could and should also have been exported to develop training regimens for the Department as a whole.

Cross Fire Issues

Responding Officer P stated that there was a cross fire issue that existed that prevented him from firing and he alerted other officers to the situation. Because of the number of responding officers, there may have been other officers with a potential cross fire situation but the interviews and subsequent investigation did not sufficiently plumb this issue to determine whether there were other cross-fire issues with other officers. While the DFRB praised Officer P for holding fire, our review found insufficient fact-finding for the Board to conclude that all of the officers were aware of cross fire situations and dealt with them optimally. Issues of preeminent officer safety such as cross fire concerns must be clearly identified during the investigative process and carefully considered during the subsequent review.

Other Tactical Issues

Officers H1 and H2 indicated to investigators that they broke cover in order to shoot at the subject. Best tactical practices and principles of officer safety discourage officers from engaging in such risky behavior.

Officer H2 said that the vehicle he was in stopped only ten feet from the armed subject. Another officer admitted that he had gotten too close to the subject causing him to need to use deadly force. Best tactical practices and principles of officer safety discourage officers from placing themselves so close to an armed subject.

Several of the officers described shooting at the subject while they were on the move, a disfavored technique that usually leads to missing the target.

During the review, none of these tactical choices were discussed, considered or critiqued by either the Administrative Review Panel or the DFRB.

Foot Pursuit

A number of officers went into foot pursuit of the subject, but it is unclear from the investigation whether each radioed that they were in pursuit. One officer noted that he lost sight of the subject during his pursuit and slowed down, a tactic consistent with principles of officer safety. Yet even this tactically desired decision was not addressed by the DFRB. Foot pursuits of an armed subject are inherently dangerous, yet there is no record that the DFRB discussed the

appropriateness of the tactic and whether there was sufficient communication and coordination of the foot pursuits.

Communication Issues

According to their interviews, Officers P and H1 never placed themselves on scene. While they offered explanations about their failure to do so, citing busy radio traffic, the investigation did not apparently examine the radio traffic to learn the degree of radio traffic and whether the account of the officers comported with other external evidence. If radio traffic prevents officers from effectively communicating with dispatch or each other, the review process should have examined this issue to determine whether effective strategies can be devised so that officers can communicate effectively with dispatch and each other regarding their location during future serious critical incidents.

Feedback from Initial Crime Scene

The investigation revealed that the subject had deployed his shotgun at the door of the residence when his father did not come out. However, it is clear that the rounds were not intended to strike an individual and no one was injured by the rounds. It is not apparent from the investigation whether those facts were known to responding officers at the initial scene when other officers were attempting to detain the subject. It is also not clear when officers arrived at the initial scene to determine whether any of the occupants were injured as a result of the subject's delivery of the shotgun rounds.

Had officers dealing with the subject known what was being learned about the incident at the initial scene, it could have reduced the threat the subject presented to some degree. However, because the investigation did not attempt to discern when that knowledge was learned, any subsequent review process would be unable to make any assessments on whether that information could have been communicated in a timely fashion to assist the officers in gauging the subject's threat level. This illustration proves how the review process will be cabined by what issues are identified and pursued during the investigation, and how the investigation needs to be wide-ranging in scope to cover any potential issues worthy of review.

Alternative Plausible Scenarios

Officers at the end of the incident asserted that the subject repeatedly refused to obey their commands to drop the weapon. That being said, Officer S stated that the subject was yelling at them in response but he could not hear what was said because of the patrol car siren. If the officers could not hear what the subject was yelling, it well could have been possible that the subject could not hear the commands the officers were yelling at him. During the review and analysis of this incident, this alternative plausible scenario was not considered.

Sometimes, noises such as police sirens negatively impact officers' ability to effectively communicate with each other and with subjects. Here, the fact that the officers were not able to hear what the subject was saying may have negatively impacted the ability of the officers to optimally respond. Lessons learned about turning off sirens when they are not needed and interfering with communication could have come out of this review. However, neither this potential scenario nor the potential lesson learned was explored during the DFRB review of the shooting incident.

The Subject Should Not Dictate the Police Response

There are references in the analysis of the incident that the subject created the situation that led to the use of deadly force against him. This conclusion is common among police officers but misses the point of progressive policing. A progressive policing model equips officers with strategies that do not allow subjects to dictate the response. It is the peace officer that must effectuate an effective plan of detention that avoids the use of deadly force if at all possible and still safely takes a dangerous individual into custody. The police should dictate the situation; not the subject, and should approach any tactical situation with that mindset. Any written conclusions about the subject's conduct should also not reinforce any notion that the subject is in charge or able to dictate the police response.

B. Date of incident: March 2010

In this officer-involved shooting, officers responded to a call (from subject's family member) that the subject was outside their home and armed with a firearm. The family had been involved in a dispute over their deceased father's collection of firearms. Officers A and B were the first to arrive at the location and observed the armed subject. Officer B thought he heard Officer A yell something at the subject. The subject then aimed his firearm (with laser light) at the officers and fired. Officer A returned fire. Officer B was "out of position" at the time and did not return fire. Officer A then obtained cover behind a jeep. The subject did not retreat or flee and was observed using the laser light on his firearm to gain target acquisition of the officers and other arriving units. At one point during the incident, both officers entered separate nearby homes in search of better positions. Officer A continued to engage the subject and fired the fatal rounds at the subject. Officer B never gained target acquisition of the subject and therefore did not fire his weapon. There was no formal administrative investigation conducted by SPD. The criminal investigation, which included the officers' voluntary statements, was reviewed by the Deadly Force Review Board and the Administrative Review Panel ("ARP") which addresses issues of policy compliance.

Investigative Issues

Formal Administrative Investigation: As mentioned above, in this case, SPD did not conduct a formal administrative investigation of this incident but simply repackaged the criminal investigation. The involved officers gave voluntary statements to the criminal investigators but

were not re-interviewed by SPD internal affairs investigators. The better practice is to re-interview the involved officers (and other relevant witnesses) in the administrative phase so that the Department can address individual officer actions and potential tactical issues not fully explored in the criminal investigation.

Organization: Similar to the criminal investigation of the November 2010 shooting incident (discussed above) there was no table of contents or exhibit list in this report. In addition, there was no summary of the incident in the investigative report making it difficult to sort out the sequence of events and also determine the involvement of a third officer (who was ordered on paid administrative leave).

First Names Used in Reports: Again, similar to the November 2010 report, there were instances in this investigation report when the subject and other witnesses were referred to by their first names.

Canine Unit: A canine (“explosive dog”) was utilized to assist in searching for bullets and shell casings. There is no indication in the report, however, if the utilization of the canine resulted in additional found casings.

Diagrams: Unlike the November 2010 investigation, the report in this case did not contain a “to scale” diagram of the scene. Such diagrams are valuable tools to use during interviews in order to more accurately determine officer positions, target acquisitions, and movement.

Photographs: The investigative report contained a comprehensive photo log of the scene and surrounding area, officers, equipment and other physical evidence (i.e. shell casings).

Notable Post-critical Incident Practices

Notifications: After the officer shooting had been reported, SPD personnel made immediate and proper notifications to responding units including assisting law enforcement agencies in the county. Notifications were also promptly made to the Forensic Unit and Ombudsman. In addition, as a precautionary action, notification was made to a nearby school which was in session at the time.

Post-OIS Coordination: In the report, there was ample documentation of SPD personnel performing post-critical incident duties. For instance, on-scene briefings were conducted to investigators, responding units and assisting agencies upon their arrival. Also, a SPD sergeant directed units to set up a perimeter around the scene and crime scene tape was promptly erected.

Sequestering/Transport of Involved Officers: Per Department protocol, steps were taken to separate the involved officers. At the scene, the officers were placed in separate vehicles and then transported to the station.

Preservation of Physical Evidence: In the investigation report, it was documented that a fire truck may have moved casings from their original landing place. After identifying this issue, SPD personnel appropriately set up cones over the casings and documented the potential issue.

Waiver/Consent: Investigators obtained a waiver from the family who permitted the involved officer to enter their home. The legal search resulted in the discovery of shell casings inside the bedroom where one of the officers was positioned.

Assistance to Decedent's Family: Personnel contacted the decedent's sister and asked if she wanted a Chaplain to respond to her home to assist the family. The decedent's girlfriend was also contacted and presented with the same offer. Both accepted the offer and a Chaplain responded to their homes.

Deadly Force Review Board

As part of the SPD's post-incident review process, an Administrative Review Panel was convened and determined that the officer's use of deadly force was in compliance with the Department's policy. As stated above, the charge of the DFRB is to consider tactics, training and other relevant issues surrounding a use of deadly force. Similar to our comments made regarding the review of the November 2010 incident, the DFRB did identify some pertinent issues. For example, the DFRB assessed Officer A's decision to use a rifle (not his Department-issued handgun) which was equipped with an EOTECH sight.³ The Board ultimately determined that, under the circumstances, the rifle was the best option since the subject had a laser sight device on his weapon (which the officers assumed was on a rifle) and provided the officer tactical advantages (enhanced target acquisition) over a handgun. Recognizing the benefit of using a rifle with the EOTECH sight, the DFRB recommended that an audit be conducted to establish how many of the Department's rifles should be equipped with the EOTECH sight and also recommended that it be determined how much it would cost to outfit the rifles with that device.

The DFRB also discussed the advisability of the officers to "slow down" the response. The Board specifically noted that since the subject was located slowing down the response may have been appropriate and may have provided officers and responding units time to plan and execute a more methodical approach to apprehending the subject. As with the November 2010 shooting, the DFRB's review, however, was narrow in scope and failed to specifically address the following tactical and decision-making issues:

- The officers' initial approach and advancement on the subject: When the two officers responded to the scene they were aware that the subject was armed but the record indicates that neither officer had appropriate cover when they contacted the subject.

³ An EOTECH sight is an electronic sight that does not broadcast a laser beam but rather transposes a crosshair over the subject within the sight.

When the subject fired his weapon, Officer B was “out of position” and therefore did not return fire. Officer A ran for cover behind a jeep after the initial volley of rounds were deployed.

- Partner-splitting: At one point, each of the officers had entered separate homes to gain a better visual of the subject. While doing that, the officers lost sight of each other.
- Lack of communication: There is no indication in the record that while the officers were separated that they continued to communicate to one another about their movement or the location of the subject. In fact, Officer A had a visual of the subject but it appears he did not communicate that information to his partner. After the initial volley of rounds, Officer B moved into different positions but never obtained a visual of the subject and therefore did not fire his weapon. Also, there is also no indication that the officers were broadcasting their movements to other units over the radio.
- The Decision to Enter Occupied Dwellings: Both officers entered occupied homes (invitations by the homeowners) to obtain a better visual of the subject. Officer A monitored the subject from a second story bedroom. Clearly, entering the homes was not part of the initial plan to apprehend the subject. The DFRB did not address the potential legal, liability, or safety issues related to that decision.
- Backdrop Issues: The subject was hiding behind a corner of a home. The incident occurred just after 0600 during a work day—a time when many residents are up and getting ready or leaving for work or taking to their children to school/daycare. The DFRB did not address this issue.

C. Recommendations

- We recommend that the Internal Affairs investigations of deadly force incidents be available to the public.
- We recommend that the investigative reports that are publicly available be well-organized with the summary report at the beginning of the document.
- We recommend that protocols be developed with participating investigative agencies so that subjects, involved officers, and civilian witnesses are not referenced in the reports by their first names.
- We recommend that involved officers continue to be transported away from the scene individually.
- We recommend that officers be relocated to a station setting which is comfortable and ensures preclusion of any potential for discussion about the shooting incident.
- We recommend that the investigative and review process focus and identify any scene contamination issues.
- We recommend that SPD continue to produce scaled diagrams of the scene and that investigators use the diagrams during the witness interviews.

- We recommend that SPD continue to use waivers and document consent during the investigative process.
- We recommend that the use of leading questions by any member of the interviewing team be eliminated and that the review process include review of the interview transcripts to ensure that inappropriate leading questions have not been deployed by interviewers.
- We recommend that involved officers be interviewed in detail on the date of the incident about their observations and actions. Should an officer decline to provide a voluntary statement, the officer should immediately be subjected to a compelled interview.
- We recommend that the SPD Administrative Review Panel individually consider every articulated justification of force by each involved officer to determine whether each use of deadly force meets departmental expectations.
- We recommend that the internal investigation and subsequent review of deadly force incidents exactly plumb and consider tactical issues such as cross-fire, backdrop, and number of rounds fired in determining whether they comply with best principles and office safety.
- We recommend that tactical lead ups to the use of deadly force such as vehicle pursuits, vehicle approaches, and foot pursuits be included in the scope of the investigation and subsequent review.
- We recommend that communication issues be carefully explored and considered during the investigative and subsequent review process.
- We recommend that the review process consider alternative plausible scenarios in identifying potential lessons learned.
- We recommend that the SPD communicate to its officers the importance of not allowing subjects to dictate their response.
- We recommend that a formal administrative investigation be conducted in all deadly force incidents and that they include interviews of the involved officers and other relevant witnesses.
- We recommend that the SPD continue to make prompt notifications to appropriate stakeholders.
- We recommend that Response Team members continue to promptly take command of a scene, conduct timely briefings and erect crime scene tape around the perimeter of the scene to secure the area.
- We recommend that the SPD continue to use canines to search for evidence at scenes of officer involved shootings. We also recommend that the outcome of the canine search for evidence be documented in the investigative report.
- We recommend that the SPD continue to take photographs of all relevant evidence and include a comprehensive photo log in the investigative file.
- We recommend that SPD continue to make contact with a decedent's family/significant others and offer them the opportunity to be counseled by a Chaplin.

III. Use of Force Cases

A. Force Reporting/Review: Process and Practices

All SPD officers are required to provide a “full description” of his/her use of force in an incident report.⁴ We found that, in general, the officers did provide sufficient detail in incident reports about their own actions and involvement in a force incident. These statements are critical to a supervisor’s formal review of an incident and help create a complete record. Equally important is documentation of what an officer observes during a use of force incident. SPD officers, however, are not required by policy to report their observations of other officers’ actions. The absence of this mandate was evident in the police reports. As we observed in one case, for instance, in an encounter with a domestic violence subject, one officer applied a lateral neck restraint (Level 1) technique on the subject and the officer and subject went to the ground. The officer then applied a Level 2 lateral neck restraint and the subject may have momentarily lost consciousness. Two backup officers arrived and one applied two strikes to the subject’s torso and assisted in handcuffing the subject. Here, the initial responding officer did not report the strikes the backup officer deployed on the subject and the backup officer did not report the neck restraint hold deployed by the initial officer. In addition, a witness officer did not write a report of any of his observations. In another case, a guild attorney reminded one of the officers that they are instructed to write only what they did and not report about what other officers did.

A more robust reporting policy which includes observations made by both involved and witness officers is a better practice and provides a more complete record of how the incident unfolded. Also, per Department policy, there is an expectation that officers be cognizant of fellow officers’ use of force⁵ so those observations should be documented. In essence, SPD officers are hired and trained to be effective witnesses and it is incumbent upon those witnesses to not only report what force they used but also to report what force they saw.

Once a use of force is reported a determination is made whether the conduct rises above the “formal review” threshold and requires a supervisor to complete a use of Force Administrative Report.⁶ If a formal assessment is triggered then the incident receives a closer scrutiny of review and requires a supervisor to collect relevant evidence and statements from the involved officers, witnesses and the subject of the use of force.⁷ Although supervisors were committed in obtaining statements from the involved officers, in several cases, there was no record of statements from others. For instance, in the example provided above, the subject was not interviewed about the force used on him. In another use of force case, which involved a man and woman assaulting another man, there was no documentation that the supervisor attempted to obtain a statement from the subject or the female who was involved in the assault.

⁴ See SPD policy 300.4: *Reporting the Use of Force*

⁵ See SPD policy 300.1.2: *Duty to Intercede*

⁶ See SPD policy 300.4.1: *Notifications to Supervisors*

⁷ See SPD policy 300.5: *Supervisor Responsibility*

As part of the formal review process, a supervisor is also required to make a recommendation/finding about the use of force. The supervisor's completed report and recommendation is reviewed by the chain of command—as a second layer of review—and they are also provided an opportunity to document comments about the force incident. We found that in several cases the comment section was left blank by reviewers. A closer review of the force package revealed that this issue was a Department policy shortcoming as opposed to a supervisor performance lapse since the force review form itself notes that such comments are “optional”. In our view, supervisors tasked with assessing use of force incidents should be required to document his/her observations about the force used and also consider the review form as an opportunity to examine any related training, tactics, policies and supervision issues.

B. Expand Scope of Review

In our review, we noted that not all potentially relevant aspects of a use of force were addressed. These aspects include actions taken by officers before and after a use of force incident. While these aspects may be secondary to the force, they nonetheless warranted the Department's attention.

In one case, for example, officers went to a subject's residence to arrest him for vehicle theft. While the subject was standing at the threshold of the front door, the officer asked him to step outside. The subject refused. The officer then told the subject that he was going to arrest him and directed him, again, to exit the residence. The subject refused and began to make movements that suggested he was contemplating "fight or flight." The subject then moved one foot over the door threshold at which time the officer reached out and grabbed the subject. The subject pulled away and began to recede back into the residence. The officer pursued the subject inside the residence, pushed him, and then performed a takedown. The subject sustained a minor injury when he stuck his forehead on a picture frame during the use of force. The use of force was adequately addressed in the review but actions taken by officers prior to the use of force were not reviewed or documented and deserved some attention. Below, is a list of potential issues that warranted assessment during the review process:

- Was the entry into the residence legal?
- Did the officers' plan to contact the subject at his home contemplate that there may have been others inside? In the incident report, it stated that there was an adult female and "small boy" inside the home.
- Did the decision to approach the subject at his residence provide the officers optimal tactical advantage? To avoid a potential barricaded subject incident, would a planned traffic stop have been a viable tactical option?
- Did the officers have intelligence that the subject may have had weapons inside the residence? The report states that inside the home (where the use of force incident took place) there were Samurai swords hanging on the wall.

- Were the assisting officers adequately positioned when initial contact was made with the subject? In the report, one officer states that after he heard the detective talking to the subject he believed that there was a brief struggle at the front door but admitted, "[I] couldn't see very well based on my position in the front yard." Does this information suggest overall less than optimal tactical planning and positioning? Does it suggest that there was a lapse in communication?
- Was there a contingency plan if the subject refused to voluntarily exit his residence to be arrested?
- Was there adequate communication among the officers during the incident? [In fact, there may have been communication among the officers, but none of that is documented in the report.]

In another case, a subject was transported from the hospital to the jail by the officer who used force on him. We found this practice to be repeated in another case. The better practice is for an uninvolved officer to be instructed to transport the subjects when feasible. Reasons for a diversion from the practice may be explainable (subject is non-resistant, there is a limited number of units in the field, etc.) but if they exist, those reasons should be documented in the report and should be addressed during the review process. In another case, although the use of force was evaluated, the reviewers did not address the fact that the involved officer did not report the force to a supervisor until the subject was being transported to the jail. This same officer (who was involved in the use of force) also questioned the subject about his involvement in the alleged assault of another man. Reviewers did not offer observations about this officer's post-use-of force conduct.

In another case, we noted that the police report referred to the subject by his first name in the narrative, a practice which seems unnecessary and informal and deserved to be documented with a notation to follow up with the officer.

Review and assessment of these additional issues can provide a glimpse into possible individual officer performance or training issues, risk management matters and Department policy gaps. Failure to expand the scope of review and evaluate these secondary issues is a missed opportunity for the Department and prevents it from taking immediate corrective action and implementing meaningful and timely reform.

C. Thoroughness of Evidence Gathering

In our review of cases, we noted instances where some force packages included critically relevant materials. For instance, in one case photographs were taken of the subject and officer's injuries. In addition, in another case, officers did a good job documenting their attempt to take a photograph of the damage caused inside a residence (broken picture frame) as a result of a use of

force and included, in the report, the female resident's refusal to oblige. In another case, officers appropriately checked for video surveillance that may have captured the force incident.

Other force packages, however, were of inconsistent quality regarding inclusion of secondary materials. For instance, we found that the reports typically did not indicate the status of any charges, in particular, those related to the officers' use of force (i.e. resisting arrest, assault on a police officer) sought against the subjects. The outcome of these charges is of value in any force incident review. For example, while there may be many reasons for the prosecutor's decision not to file charges against the subject, that decision is worthy of further inquiry to learn whether the decision was impacted by any concerns by the prosecutor's office about the actions of the involved officer.

D. Canine Cases

SPD currently maintains a K9 unit; five handlers, five patrol dogs and one supervisor (full time supervisor) and a lieutenant (part-time unit commander). The canines are an invaluable tool for the officers when searching for and apprehending subjects. And because the dogs are trained to "bite and hold" (not bark and hold), successful deployments and apprehensions typically result in injuries to a subject. Like other uses of force, the use of Department canines is subject to policies, procedures, and review. As part of our audit, we analyzed three individual canine incidents and assessed the uses of the canines in each case and evaluated the way in which SPD reviewed the incidents.

1. Consideration of Other Tactical Options

Overall, canine handlers performed well describing the circumstances that led to the deployment of a canine. Although the Canine Reports contained good articulation of the reasons and necessity for the use of the dog—which comported with Department policy—the force review did not address whether other tactical approaches may have been available or optimal before releasing a dog. In one case, for example, the facts suggested that officer safety issues may have warranted the consideration of an initial alternative approach before deployment of the canine.

In this case, officers responded to a disturbance/burglary in progress call. The victim reported that the subject (his stepson) was kicking in doors and windows of the residence. When officers arrived, the subject barricaded himself in a room attached to a garage. Based on the record, the room was small and appeared to be empty. In addition, the door of the room was notably "thin and flimsy" and had a "large gap" under it. Officers were also informed by the victim that the subject was "always armed with knives." There was no information, however, that anyone saw the subject with a weapon. It was also unknown if there were other weapons in the room.

When K9 personnel arrived a briefing was conducted and it was determined that there was sufficient information to deploy the canine. Verbal announcements were made and when the subject refused to come out, the door was breached and the canine was released into the small dark room. The canine alerted and eventually made contact with the subject who was promptly apprehended. The subject was unarmed. In the review, the actions of the K9 officer and the effectiveness of the canine deployment were deemed "Excellent!" There was no discussion in the review form, however, whether a different initial approach may have been more tactically sound. For instance, one option may have been to call the specialized unit (SWAT) to assist in the apprehension of the barricaded subject. Also, with appropriate planning, the use of a diversionary device (i.e. flash/bang or gas) could have been a potential option and been deployed under the large gap under the door providing personnel with valuable seconds of advantage. A diversionary device used to disorient the subject may have forced him out of the dark room and out into the open area where officers, behind appropriate cover, would have been at a tactical advantage to observe whether the subject had a weapon. We do not conclude that these other approaches were superior to the one adopted by the involved officers in this case; our point is simply to suggest that during any robust review, alternative approaches and strategies should be part of the after-action discussion.

In another case, a K9 officer responded to a call that a robbery subject had fled into a residential neighborhood. The canine alerted to a man under a trailer and then dragged out the subject by his hand. The subject then tried to punch the canine, at which point, the K9 officer kicked the subject in the shoulder twice. The decision to deploy the canine instead of going into a foot pursuit was tactically wise, particularly after SPD lost sight of the subject. What was not addressed in the review, however, was why the K9 handler did not have other officers (members of SPD SWAT who were with the K9 handler when he used force on the subject) go tactical since the handler was involved with dealing with the canine.

2. Additional Documentation

Canine Reports also contained good articulation and detail of the subject's injuries (i.e. description of injury (rakes, punctures, etc.), (location of injury on body, severity, etc.). The reports also contained photographs of the subject's injuries. One detail missing from the reports, however, was information regarding the length of time of the canine bite. This information may help identify unusual patterns and/or explain an injury. For example, a longer bite may explain the severity of a subject's injury (longer bite may have been necessary because subject continued to be resistive/assaultive). In addition, if, on average, a canine hold is no more than 40 seconds but one canine consistently engages a subject for two minutes, if documented, the Department will be in a better position to identify a potential issue (i.e. the canine fails to immediately release when ordered or handler fails to timely order release). Documenting and collecting this data makes it easier for the Department supervisors to evaluate whether the deployment of the dog was reasonable and not excessive. In addition to the time a canine engages with a subject, the

following is a list of some other questions that should be considered when assessing the reasonableness of a canine deployment and use of force.

- Was immediate apprehension of the subject critical?
- Was the subject posing a danger to himself or others?
- Was the subject armed?
- Was the subject actively fleeing or resisting arrest or was the subject simply hiding?
- Were there other tactical options to apprehend the subject?
- Did the dog bite the subject once or multiple times?
- Was the subject given an opportunity to surrender (i.e. hear verbal warning)?

3. Announcements/Warnings

Summaries of the incidents were clear and concise and were fair representations of the evidence. They also succinctly documented steps taken before deployment of the canine. For instance, before deploying a canine, the K9 handler documented that announcements were made notifying the subject that he was under arrest and ordering him to surrender. Although verbal announcements are intended to afford a subject an opportunity to surrender, they should also be used to protect the community and notify persons within the containment area of the potential use of the canine. One way to do that effectively (so that the announcements are heard over a large geographical area) is to pre-record the announcements and play them loudly from a radio car public address system. The start and end times of the pre-recorded announcements should be documented in the reports (i.e. announcements began at 2220 and ended at 2230).

The utilization of the public address systems will increase the likelihood that the announcements are heard by the subject and others within the containment area. Also, in the reports, although containment personnel performed well in documenting that they heard the K9 announcements, there was no indication that the area was canvassed to learn if citizens in the area heard the announcements, as well. Obtaining statements from uninvolved third parties is valuable information, particularly in instances where a subject claims he/she did not hear the announcements.

4. Dispositions

The Canine Report contains a section entitled, "Canine Effectiveness" in which the reviewer can comment on the efficacy of the operation and use of the K9. It is also a section in which a reviewer can address training concerns. In one K9 case, the reviewer stated that the canine effectiveness was "Perfect." Although, in this case, the use of the canine was effective and provided a safer and swifter manner to locate the subject and allowed arresting officers to

take the subject into custody with minimal level of danger, the reviewer should simply state whether the use of the canine was effective and why and state whether the actions taken by the K9 handler were within Department policy and met Department expectations.

In the same Canine Report, the review stated in the “Patrol Support” section that the officers’ actions were “Perfect.” Again, the reviewer should simply state whether the officers’ actions were effective and fell within Department policy. Dispositions should be free of editorial comments.

In one case, the section requiring “K9 Supervisor Comments” was blank. There was a notation that there are no supervisor comments because it was the sergeant’s first deployment with his canine. It is unclear why this reason would justify failing to complete the report. All sections of the report should be completed.

5. Assess all Uses of Force

In one case, a canine alerted to a man (robbery subject) hiding under a trailer. The canine dragged out the subject by his hand. The subject tried to punch the dog at which time the K9 officer kicked the subject in the shoulder twice. The K9 officer ordered the dog to release and the subject was taken into custody. The canine contact was reviewed for appropriateness but the kicks by the K9 officer were not. All uses of force related to a canine deployment should be addressed in the reports.

E. Recommendations

- We recommend that SPD expand its force reporting policy to require that officers report all force they observe. Supervisors should enforce and monitor compliance with the policy.
- We recommend that, in formal use of force reviews, supervisors make a concerted effort to obtain statements from all relevant witnesses to a use of force, including statements from witness officers, subjects and uninvolved third parties.
- We recommend that the force review form be revised to require all reviewers to document his/her comments about the use of force and use the form to address any training, tactics and policy issues.
- We recommend that, in police reports, subjects and witnesses are referred to by their full or last names.
- We recommend that the Department broaden its scope of force reviews and pursue all potentially relevant aspects of an incident, including ancillary issues to a use of force.
- We recommend that the Department include all relevant information in its force packages/reports, including the status of any charges against the subject. Supervisors should evaluate this information as part of the use of force review.

- We recommend that, in canine cases, supervisors address whether other tactical approaches may have been available or optimal before deploying a canine.
- We recommend that, in canine cases, incident reports record the length of time of the canine bite so that the Department will be in a better position to identify any potential issue with the canine or handler and also so that supervisors can better evaluate whether the deployment of a dog was reasonable and not excessive.
- We recommend that, in canine cases, the Department consider making pre-recorded canine announcements and play them from a radio car public address system to ensure that the advisement is heard by the subject and others within the containment area. We also recommend that announcement start and end times be documented in the reports. We also recommend that the Department attempt to obtain statements from uninvolved parties to learn whether they heard the announcements.
- We recommend that, in canine cases, supervisors complete the comment section of the reports. Also, we recommend that notations/dispositions be free of editorial comments.
- We recommend that, in canine cases, all uses of force related to a canine deployment be assessed and addressed in the reports.

IV. Internal Affairs Investigations

Timeliness of internal affairs investigations is a critical aspect of the administrative process. Prompt conclusion of an investigation allows for swift and constructive Department intervention in cases where officer misconduct has been identified. In this respect, we found that the internal affairs investigations were completed in an extremely timely manner (approximately two months). We also found that the investigative files contained a good tracking record of the administrative process including when the investigation was completed and sent to the command staff for review. There was also a well-developed record of when the Department contacted the Ombudsman to ask for input. We also found commendable the Department's detailed (addressed specific allegations) and timely letters to complainants regarding the outcome of the investigations.

A. Notable Investigative Practices

The following are examples of other notable investigative efforts and practices:

- Files contained transcripts of officers' interviews.
- In one investigation, it was noted that the complainant did not have visible injuries or red marks on his body. The investigator did a good job including photographs of no apparent injuries for the record.
- During the review, a lieutenant noted that two officers were not interviewed except at the scene and appropriately sent the case back for additional investigation.

- In one case, when contacted, a subject said he wanted to talk with an attorney before being interviewed and never re-contacted the investigator. SPD appropriately did not close out the case but continued to pursue the allegations.
- In another case, there was a rigorous attempt to look for evidence. The area was canvassed and there was a notation that there were no surveillance cameras that captured the use of force incident.

B. Missed Investigative Opportunities

We did, however, find instances where investigative practices were less effective. The following are some examples of missed investigative opportunities:

Failure to interview potential witnesses: In our review, we found a chronic failure to obtain statements from all potential witnesses. In one case, one of the witness officers stated that there was a female standing in “close proximity” to where the force incident unfolded. Another officer at the scene mentioned that a female citizen may have been a witness to the incident. The reports also indicated that there may also been a second female who may have witnessed the physical interaction between the involved officer and the subject. These potential witnesses were not interviewed and the investigative file did not indicate whether efforts were made to contact them.

In another case, the subject’s wife was a witness to at least part of the encounter yet was not interviewed. A subject, in another case, provided an eyewitness to the incident. He was not interviewed but his voice mail message about the incident was used to justify the force. In allegations of officer misconduct, the investigations should be thorough and contain statements from all relevant witnesses. Voice mail messages should never suffice as a substitute for a full investigative interview.

Evidence gaps in case file: As with use of force reports, in the internal investigations we reviewed, the status of any charges sought against subjects was not included in the investigative reports. Also, in one case, it was noted that the complainant was evaluated by jail medical staff and that there was no request for him to be transported to the hospital. However, there is no information regarding the actual medical assessment of the individual. If the medical staff records indicated that the complainant had no visible injuries then that should be noted in the investigative record. In another case, the investigator did well to note that there were no visible marks on the involved officer’s hand. A photograph, however, of the officer’s hand would have completed the record.

Leading questions: In several cases, at the end of the interview, the officers were asked the following leading and not helpful question: “Were tactics and techniques that you used consistent with your training?” Also, during an administrative interview, a subject officer was asked, “Do you feel like the amount of force you used during this incident was excessive in any

way?” This question which is designed to elicit a “no” response does nothing to advance the concepts of an objective review.

Questionable Interview Protocol: In one case, although the investigation addressed the involved officer’s actions leading up to the physical intervention, the subject officer interview did not address all the specific allegations made by the complainant. To the credit of the review panel, this investigative shortcoming was recognized and a request was made to address the issue. Instead of re-interviewing the subject officer, however, the officer was asked to respond—via email—to the follow up questions (he admitted placing his knee in middle of the subject’s back but denied performing elbow and knee strikes as alleged by the complainant.) For follow up interviews, the subject officers should be provided with all proper admonitions. Subject interviews, including supplemental interviews should be conduct in-person and should be recorded.

Failure to document attempt to contact complainant: In one case, it is noted in the file that the complainant failed to appear for a scheduled IA interview and did not return “calls” to the investigator. Ideally, the file should contain better documentation of the attempts made to contact the complainant (i.e. dates of telephone messages). Also, the file should contain copies of certified letters which sought to schedule the investigative interviews. Detailed notes documenting the multiple attempts to contact the complainant will show the Department’s diligence and pursuit of fairness in the process.

Findings not supported by evidence: In one case, the reviewing lieutenant found the use of force in policy because of the subject’s “assaultive” behavior. However, in the interviews, neither officer described the subject’s behavior as assaultive. It is unclear how the lieutenant concluded that the subject was assaultive since neither officer described the actions of the subject as such during their interviews.

Failure to name involved officer as subject: In one case, the sergeant was not named as a subject of the investigation, even though he used force. Apparently, he was not named a subject because the complainant did not complain of the sergeant’s actions. Best practices do not limit the identification of subject officers to those raised by the complainant and, in this case, since he too used force, the sergeant should also have been named as a subject in the investigation.

Narrow Scope of Review: In one case, officers responded to a subject’s residence after he threatened to blow up the power company. When the subject was on the porch, officers told the subject he was under arrest and asked him to turn around and put his hands behind his back. The subject did not comply with the orders, at which time, an officer then went hands on with the subject and gained control of him using a straight arm bar and application of a lateral neck

restraint. A sergeant gained control of the subject's arm and placed it in a wrist lock.⁸ The officer then released the neck restraint hold and the subject was handcuffed. The articulated reason for the use of force was that the porch had an abundance of items on it that could have been used as a weapon or could have injured the subject. However, there was no discussion about the tactical advisability of asking the subject to step off the porch before dialoguing with him. In another case that involved officers locating a domestic violence subject in the field, the officers called for backup. The officers, however, engaged the subject before backup arrived. Though, in the report, it appears that the officers articulated potential reasons for not waiting for backup, this issue was not addressed in the investigation.

C. Recommendations

- We recommend that SPD interview all potential witnesses regarding officer misconduct investigations.
- We recommend that investigative reports contain information regarding the status of any charges sought against the subjects.
- We recommend that investigative reports contain any relevant medical assessment/documentation and that they indicate whether a complainant had any injuries. Photographs of the injuries of subjects and officers should be included as part of the investigative record.
- We recommend that investigators refrain from asking leading questions.
- We recommend that investigators address all aspects of alleged misconduct during an administrative interview. We also recommend that subject officers compelled to a supplemental interview be provided with all proper admonitions and that they are conducted in-person and are recorded. We also recommend that witness officers be admonished but not be provided subject rights.
- We recommend that the investigative file contain documentation of attempts made to contact complainants (i.e. dates of telephone messages, copies of certified letters which sought to schedule the investigative interviews, etc.)
- We recommend that supervisors ensure that their findings are supported by the evidence.
- We recommend that the City identify resources to ensure that those with supervisory responsibilities be able to perform those roles instead of being required to perform line functions.
- We recommend that, in internal investigations involving the use of force, all involved officers who use force are named as subjects.

⁸ It appears that recent resource scarcity has required sergeants in the field to perform street officer roles.

- We recommend that SPD broaden the scope of internal investigations to include secondary issues that may raise individual officer performance or training issues, risk management matters and Department policy gaps. Once those issues are flagged the Department should take immediate action and implement meaningful reform.

V. Other Recommendations

A. Expand Criteria for Use of Force Administrative Reports

Per SPD policy, supervisors are only required to complete a Use of Force Administrative Report if (1) use of force resulted in an injury (no report if minor handcuff marks or minor face injury as a result of prone handcuffing) (2) subject complains of injury (even if no visible injury observed) (3) Application of Carotid Neck restraint (Level 2—subject rendered unconscious) (4) all Taser applications and (5) firearm discharges.

The criteria for prompting a Use of Force Administrative Report should be expanded to include head strikes; knee strikes; elbow strikes; open and closed hand strikes; baton/flashlight strikes; all applications of less lethal devices (OC spray, foam or wood rounds, beanbag rounds, etc); carotid neck restraint (Level 1)--technique attempted but not successful--subject was not rendered unconscious); all takedowns and prone handcuffing incidents that result in any head or facial injury. Expanding the review of these uses of force will help the Department evaluate its practices/policies and individual officer actions. A collection of this data, for example, can help managers track and monitor what types of force is being used Department-wide and can also help identify the frequency certain techniques are used by certain officers.

B. Consider Revising Threat Level for Authorization of Lateral Neck Restraints

In the force reports, we noted a frequent use of the lateral vascular neck restraint to subdue subjects. There are two levels of this control technique.⁹ A lateral vascular neck restraint level 1 (subject not rendered unconscious) may only be used by an officer to obtain control of a physically non-compliant subject. The level 2 lateral vascular neck restraint (rendered unconscious) may only be used when an officer believes/perceives that a non-compliant subject may assault an individual or an officer. We found that this differential threat level in the policy gave rise to questionable justification for the technique.

In one case, for example, a subject refused commands to stop then squared up with the officer in what the officer perceived as a fighting stance. The subject refused additional commands at which point the officer applied a level 1 lateral vascular neck restraint. The officer and the subject then went to the ground. The subject continued to try to break free and grabbed

⁹ See SPD policy 300.2.5: *Lateral Neck Restraint*.

the officer's fingers. In the report, the officer stated that he considered this action "assaultive" and warned the subject that he would render him unconscious if he did not let go of his fingers. The officer then performed a level 2 vascular neck restraint and the subject may have momentarily lost consciousness. In our view, it is uncertain whether the subject's behavior could be considered assaultive. A natural reaction to having a level 1 restraint applied is for a subject to try to interrupt the hold. The natural actions of the subject then seemed to be used to justify a greater level of force. In other words, a subject who may resist application of the hold may be simply fighting for air rather than trying to assault the officer.

For that reason, we recommend that the Department consider authorizing a level 1 or level 2 lateral neck restraint only when the subject is displaying assaultive behavior.

C. Consider Further Development and Use of an Early Intervention Tracking System

The best way for the Department to accurately track and monitor use of force cases, including critical incidents, and investigations is to have an integrated database. To ensure that the Department maximizes the value of the information, data would have to be promptly inputted for all documented incidents. Citizen complaints and law suits could also be maintained in an integrated database. The database can provide Department executives/managers with information that can assist them in measuring and managing use of force incidents, provide them updated information regarding the status or outcome of a force review or an investigation and give insight regarding Department-wide complaint history and systemic trends, etc. If information is accurately and promptly recorded, the data system can be also be used as an early warning system to identify employees with potential performance issues. Having the ability to easily query a database to learn about Department-wide issues or individual officers allows timely and proactive intervention ensuring professionalism and accountability. While we have been informed that SPD may have begun collecting such data, we saw no evidence of the data being used in the investigations we reviewed. In other words, we saw no officer performance history included with the investigative reports and no mention of any officer performance history in assessing the performance of the officer in the incident being reviewed.

VI. Conclusion

We have appreciated the opportunity to review SPD's investigative and review process and issues related to use of force. In sum, while there is much to be respected about the quality of the work done by the Department, as with any law enforcement agency, there is always room for improvement. We hope that the recommendations offered here are accepted in that vein.

If you have any questions or comments regarding the content of this Report, please do not hesitate to contact us.

Very Truly Yours,

A handwritten signature in blue ink that reads "Michael J. Gennaco". The signature is fluid and cursive, with the last name being particularly prominent.

Michael J. Gennaco
Attorney
OIR Group

A handwritten signature in blue ink that reads "Cynthia L. Hernandez". The signature is fluid and cursive, with the last name being particularly prominent.

Cynthia L. Hernandez
Attorney
OIR Group