



OMBUDSMAN'S REPORT
Officer-Involved Shooting
Investigation & Findings

OMB02/0242 - February 25, 2004

EXECUTIVE OVERVIEW

The Office of the Community Ombudsman conducted an investigation into the use of deadly force by two Boise Police officers on November 14, 2002. This use of deadly force resulted in the death of one person (the Subject). As the ombudsman, I also investigated the involvement of the same two officers, as well as two other Boise Police officers, in the high-speed vehicle pursuit of the Subject that immediately preceded the deadly force situation. As part of my review of this incident, I looked at the application and effectiveness of existing police policy, under the conditions presented by this situation.

It is my finding that the use of deadly force by each of the two Boise Police officers was consistent with the department's use of force policy. The facts and evidence available to me clearly show that each of the two officers reasonably perceived that his life and/or the lives of others were in immediate danger from the Subject. The Subject had led the police on a two-county, high-speed pursuit, fired at pursuing officers, and was (at the time that the two Boise Police officers fired their weapons) pointing a rifle at police officers.

I found that two Boise Police officers were directly involved in the pursuit of the Subject, even though approximately 14 other police vehicles from other agencies were already actively engaged in pursuing the Subject. Even though the pursuit policy of the Boise Police Department limits to two the number of police vehicles that can be directly engaged in a pursuit, I exonerated the officers' decision to get involved. I based this

finding on my conclusion that the policy is unclear as to whether the limit applies to the total number of police vehicles involved or just the number of Boise Police units engaged in a given pursuit. I have recommended that the department's pursuit policy should be modified to clearly prohibit Boise officers, without authorization from a supervisor, from becoming involved in any pursuit where two or more units are already engaged in the pursuit.

This incident ended in the tragic death of the 19-year-old Subject. It had the potential to end far more tragically given the high number of police vehicles (16 at its conclusion) traveling through Boise at a high rate of speed in the middle of a weekday and the more than 65 rounds fired by police at the intersection of Myrtle and Broadway. There were offices, retail shops, and parking lots in the direct line of fire. In spite of the best efforts of a Boise Police watch commander who attempted to gain control of the situation once the pursuit headed inbound on I-184, the pursuit lacked overall command and control as it entered the center of downtown Boise on a busy Thursday afternoon.

This near tragedy was not the result of poor decision-making or improper actions by any of the involved officers. In fact, those involved performed remarkably well, some with great courage, in the middle of a chaotic and rapidly-changing situation. My analysis of the incident points, instead, to the absence of a uniform policy and command structure to govern such multi-agency pursuits. Therefore, I am recommending that the chief of the Boise Police Department seek the agreement of all other state, county, and municipal law enforcement agencies operating in Ada County to a uniform pursuit policy and single command structure in the event of vehicle pursuits that cross jurisdictional boundaries and/or involve more than one agency.

I monitored and reviewed the criminal investigation of the incident conducted on behalf of the Boise Police Department by the Ada County Critical Incident Task Force (CITF).

I found the investigation to be thorough and objective. In the course of reviewing the criminal investigation, I noted a few procedural items that, if changed, might improve the overall effectiveness of future investigations. I also noted that a report from the Federal Bureau of Alcohol, Tobacco and Firearms (ATF) contained information regarding the operation of the Subject's rifle when it was test fired by the ATF, and that this information was not consistent with the mechanical capabilities of the weapon at the time it was seized by the police.

THE SITUATION

On November 14, 2002, the Subject took his parents' pickup and an SKS assault rifle from their residence in Homedale. The stolen pickup and rifle were reported to the Homedale Police Department sometime around 11:00 AM. The Subject caused a vehicle accident on Highway 20-26, left the scene on foot, and took another pickup from a farm located between Parma and Notus, Idaho. Deputies from the Canyon County Sheriff's Office spotted the Subject and pursued him eastbound on I-84. A Canyon County deputy reported that the Subject fired a shot near milepost #38. As the pursuit continued eastbound, pursuing officers reported shots being fired from the Subject's vehicle again, near milepost #44. The Subject crossed the median of I-84 and traveled eastbound into the westbound lanes for a short distance. He crossed back over to the eastbound lanes and took the City Center exit onto I-184. Ada County deputies, Canyon County deputies, and Meridian Police officers were now actively engaged in pursuing the Subject. The Subject caused three additional traffic accidents; one at the Fairview exit, one near the intersection of Myrtle and 13th, and one at the intersection of Myrtle and Broadway. Officers from the Boise Police Department got involved once the Subject entered the City of Boise. Officer #1 entered the pursuit from near the Fairview (Chinden) Avenue exit of I-184, Officer #2 entered the pursuit from 13th and Myrtle, Officer #3 followed the pursuit from Myrtle and 2nd, and Officer #4 trailed the pursuit from Curtis and I-184.

In the final vehicle accident at the intersection of Broadway and Myrtle, the Subject's vehicle spun around approximately 180 degrees. When the truck came to a stop, the Subject got out carrying a rifle. He aimed the rifle towards the pursuing police officers and fired at them. Officer #1 and Officer #2 returned fire, as did six Ada County deputies and two Garden City officers. The Subject suffered nine gunshot/shrapnel wounds, one of which was fatal, from the rounds fired at him by the deputies and police officers.

THE ISSUES

The following performance issues were addressed in the course of this investigation:

1. Was Officer #1's use of deadly force consistent with the restrictions and requirements of the Boise Police Department's policy governing such use of force?
2. Was Officer #2's use of deadly force consistent with the restrictions and requirements of the Boise Police Department's policy governing such use of force?
3. Were Officer #1's actions, involving himself in the active pursuit of the stolen pickup truck, consistent with the restrictions and requirements of the Boise Police Department's policy governing vehicle pursuits?
4. Were Officer #2's actions, involving himself in the active pursuit of the stolen pickup truck, consistent with the restrictions and requirements of the Boise Police Department's policy governing vehicle pursuits?
5. Were Officer #3's actions, following behind the pursuit of the stolen pickup truck,

consistent with the restrictions and requirements of the Boise Police Department's policy governing vehicle pursuits?

6. Were Officer #4's actions, following behind the pursuit of the stolen pickup truck, consistent with the restrictions and requirements of the Boise Police Department's policy governing vehicle pursuits?
7. Following the incident, did Boise Police Department officers and supervisors follow the department's officer-involved shooting policies and procedures?
8. Was the criminal investigation conducted by the CITF thorough and objective?

In addition, the following policy issues were addressed in the course of this investigation:

1. Did the Boise Police Department's use of force policy function as intended to safeguard the lives and safety of citizens and officers, while protecting the Subject's constitutional rights and other legal protections?
2. Did the Boise Police Department's vehicle pursuit policy function as intended to safeguard the lives and safety of citizens and officers, while advancing the legitimate law enforcement goals of the department, specifically to stop and apprehend those suspected of criminal acts and to protect the peace and safety of the public?
3. Did the Boise Police Department's critical incident (officer-involved shooting) response policy and procedures function as intended to ensure consistent and effective handling of the many complex law enforcement, investigative, and administrative issues that often follow such an event?

THE INVESTIGATION

Both the assistant ombudsman, Michelle Callaham, and I were involved in this investigation. Ms. Callaham conducted the follow-up interviews of the witnesses and the involved Boise Police Department officers and supervisors.

Our investigation of this incident and of the performance of the involved Boise Police Department officers and supervisors included the following:

1. Immediate response to the scene of the incident. We observed the Boise Police Department's post-incident response as well as the CITF's identification and collection of evidence. We also examined the crime scene and documented our observations.
2. Review and analysis of all reports, interviews, recordings, documents, records, and evidence included in the final CITF investigative report. These documents and recordings included dispatch recordings, officer belt recordings, interviews with 33 police officers from all of the involved agencies, interviews with 87 civilian witnesses, six police reports, 11 crime scene investigator reports, the Ada County coroner's report, the ATF report on their examination of the Subject's weapon, and several other miscellaneous documents and reports.

The CITF investigation found that the Subject, starting in Homedale and ending at the intersection of Myrtle and Broadway in downtown Boise, launched a sequence of events that resulted in his death. Four Boise Police officers became involved. Two of the four officers were only witnesses and did not fire their weapons. The other two Boise Police officers did fire their weapons in the incident.

Key information gleaned from the CITF investigation report included information about the pursuit, the use of deadly force, the weapon used by the Subject and its capabilities, and the cause and the method of the death of the Subject.

Pursuit

The following is a list of the officers (all agencies) who were involved in the pursuit of the Subject, based on the information contained in the CITF investigation report. I have recorded each agency/officer involved and where each officer entered the pursuit and where each officer discontinued or terminated his pursuit.

CCSO = Canyon County Sheriff's office

ACSO = Ada County Sheriff's office

GCPD = Garden City Police Department

MPD = Meridian Police Department

ISP = Idaho State Police

BPD = Boise Police Department

End = Broadway and Myrtle

Agency/Officer:

Start/Terminated:

CCSO #1

Canyon County/Exit #3

CCSO #2

Canyon County/Curtis Rd.

CCSO #3

Canyon County/13th St.

CCSO #4

Canyon County/End

CCSO #5

Milepost #35/Milepost #46

CCSO #6

Canyon County/End

ACSO #1	Eagle Rd./End
ACSO #2	½ mile west of Meridian Rd/End
ACSO #3	Meridian Rd./End
ACSO #4	Meridian Rd./End
ACSO #5	Eagle Rd./End
ACSO #6	Eagle Rd./End
ACSO #7	Eagle Rd./End
ACSO #8	Myrtle at Capitol/End
ACSO #9	Eagle Rd./Exit #3
GCPD #1	Hit by Subject at 13 th and Myrtle followed to end.
MPD #1	Meridian Rd./End
ISP #1	Meridian Rd./I-184 Exit #3
BPD #1	Fairview/End
BPD #2	13 th and Myrtle/End
BPD #3	Avenue A./End
BPD #4	Orchard Rd/End

GCPD #2 was ahead of the pursuit at the Broadway/Park intersection.

ISP #2 followed and monitored the pursuit from a distance beginning at Meridian Road. He reported that he contacted dispatch for instructions on how to proceed and was advised not to join the pursuit, but to follow and offer assistance once the pursuit ended.

A total of six Canyon County deputies were involved in the pursuit of the Subject out of Canyon County, entered Ada County, and ended in Boise City. One Canyon County deputy terminated his pursuit at milepost #46, while the remaining five maintained active pursuit positions into the City of Boise.

A total of nine Ada County deputies were involved in the pursuit of the Subject. Three Ada County deputies became involved near Meridian Road and I-84, five became involved near Eagle Road and I-84 and one entered the pursuit near Myrtle and Capitol.

One Garden City Police officer became involved in the pursuit and was hit by the Subject's vehicle at 13th and Myrtle. A second Garden City Police officer was ahead of the pursuit and positioned himself at the intersection of Broadway and Myrtle.

One Meridian Police Department officer was involved in the pursuit from the Meridian Road area of I-84 to the end. One Idaho State Police officer was involved in the pursuit from the Meridian Road area of I-84 to the WYE. A second Idaho State Police officer was directed to follow the pursuit in order to provide assistance at the pursuit's end, he entered at Meridian Road area and followed to the end.

Four Boise Police Department officers were also involved. Officer #4 entered the pursuit at Orchard and I-184; Officer #1 entered the pursuit at the Fairview on-ramp and I-184 (ahead of Officer #4); Officer #2 entered the pursuit at 13th and Myrtle Streets; and Officer #3 entered from the WinCo parking lot (Myrtle and 2nd).

A total of 22 police officers were, at various times, in pursuit of the Subject. A total of 16 police officers were in active pursuit of the Subject when it ended at Broadway and Myrtle.

Autopsy Results

The Subject received a total of nine gunshot and/or shrapnel wounds. Two of the gunshot wounds (GSW) were to the head: GSW #1 through the top of the head and GSW #2 behind the Subject's right ear. The cause of the Subject's death was determined to be a gunshot to the head. It was reported that either GSW #1 or GSW #2 could have been fatal wounds. An additional four gunshot wounds (GSW #3, #4, #5, and #6) were found in the Subject's chest, back and abdominal area. The remaining three gunshot wounds (GSW #7, #8 and #9) were to the Subject's arm.

CITF investigators determined that the round associated with GSW #1 was a .45 caliber projectile. It was also found that the rounds associated with GSW #2, GSW #3, and GSW #7 were .40 caliber bullets. The caliber or origin of the rounds associated with the fragments found at GSW #4, 5, 6, 8, and 9 could not be determined. It was also reported that a small lead fragment was found inside the container used to transport the Subject's body from the scene to the coroner's office and a .40 caliber bullet was found in the Subject's clothing.

Subject's Weapon

Included in the CITF report was a report produced by the Bureau of Alcohol, Tobacco and Firearms (ATF). The Subject's weapon was shipped to the ATF and inspected by a firearms enforcement officer employed by the ATF. The report stated that the weapon was a Chinese SKS, Type 56, semiautomatic rifle, 7.62 x 39mm caliber. It was reported that the rifle's original magazine assembly had been removed and that the rifle had been converted to accept a detachable magazine. The report also stated that the rifle had been test fired by the ATF officer, that it had functioned in a semiautomatic mode, and was capable of expelling a projectile by the action of an explosive.

Officer and Witness Interviews

According to the Boise Police officers involved and other police officers and witnesses at the scene, the Subject, after crashing into an uninvolved motorist's vehicle at the intersection of Myrtle and Broadway in downtown Boise, got out of the stolen pickup truck carrying a rifle. The Subject reportedly took aim and fired at the pursuing police officers. The officers, fearing for their lives, returned fire. Some of the rounds fired by the police struck the Subject, resulting in his death.

Numerous witnesses, both civilians and officers, reported seeing the Subject get out of the truck with a rifle and point it in the direction of the pursuing officers who were stopping in the intersection of Myrtle and Broadway. Several witnesses said that they saw and/or heard the Subject fire the rifle more than once.

With regard to the two Boise Police Department officers who fired their weapons (Officers #1 and #2), they both stated that they shot at the Subject because they perceived that their lives, the lives of other officers, and the safety of the general public were being immediately threatened by the Subject.

Officer #1 Audio Tape Review

A review of Officer #1's micro-cassette audio recording of the incident was conducted. Officer #1's tape starts with the sound of many sirens and loud popping noises (rapid gun-fire). The gun-fire lasts for approximately 20 seconds. Approximately 15 seconds into it, there is a five-second pause in the sound of gun-fire, followed by the sound of three more shots. The sirens continue and yelling can be heard, though it is not possible to distinguish what is being said. Music can be heard playing and voices continue to shout. A great deal of activity can be heard after the music is turned off, including a police radio

and an officer saying that a lit cigarette should be put out.

3. Personal interviews with eight witnesses, including five civilian witnesses and three witnesses who are Boise Police Department employees.
4. Personal interviews with the two Boise Police Department officers who fired their weapons during this incident.
5. Attendance at the entire Ada County coroner's inquest into the death of the Subject. The inquest lasted three days, from April 28 through April 30, 2003.
6. Review and analysis of transcripts (900 pages) of the testimony given by witnesses during the coroner's inquest.
7. Follow-up contacts with the CITF and other agencies.

WHAT THE INVESTIGATION FOUND

Based on the preponderance of the evidence available to me, I have issued the following findings of fact:

1. The Subject entered the City of Boise on I-84 after leading police from other agencies on a 36-mile pursuit from Canyon County.
2. The Subject was driving a stolen pickup truck.
3. The pursuit was handled on two dispatch channels, Valley All Call and ACSO Channel 2.

4. It was reported over police radio channels that the Subject was carrying a firearm and had fired shots from his stolen vehicle, at least twice, while on the freeway.
5. The Boise Police watch commander authorized the use of extreme measures after the Subject entered I-184 eastbound from I-84. The watch commander directed that the Subject be slowed to around 35 miles per hour first.
6. Officer #4 began to follow behind the pursuit from the Orchard on-ramp of I-184.
7. The Subject caused a vehicle accident at the Fairview exit of I-184, injuring the driver of the other vehicle.
8. Officer #1 joined the pursuit shortly after the Fairview exit/entrance of I-184.
9. The Subject was involved in another vehicle accident near the intersection of Myrtle and 13th with a Garden City Police vehicle. No injuries resulted from that accident.
10. Officer #2 entered the pursuit at the intersection of Myrtle and 13th.
11. Officer #3 followed behind the pursuit from the WinCo store parking lot at Avenue A and Myrtle.
12. The Subject caused a final vehicle accident in the Myrtle/Broadway intersection. The driver of the other vehicle was not injured.
13. At the end of the pursuit, 16 police vehicles were in active pursuit of the Subject.

A total of 22 police vehicles had been involved at various times during the pursuit.

14. The Subject got out of the pickup truck with a rifle, pointed the rifle at police, and fired at least one round.
15. One 7.62x39 shell casing was located on the ground where the Subject stood after getting out of the pickup. Two additional 7.62x39 shell casings were found inside the cab of the pickup. A fourth spent shell casing was later discovered inside chamber of the SKS rifle.
16. Six .45 caliber shell casings were located in the two areas where Officer #1 discharged his weapon. Officer #1 was armed with a .45 caliber handgun.
17. Four .45 caliber shell casings were located in the area where Officer #2 discharged his weapon. Officer #2 was armed with a .45 caliber handgun.
18. A total of 58 additional shell casings were located at the scene (twenty-four .40 caliber, nine 9 millimeter, twenty-five .223 caliber).
19. The Subject received a total of nine gunshot or shrapnel wounds.
20. The Subject died of a fatal gunshot wound to the head.
21. At the time that the SKS rifle used by the Subject was seized by the police, the rifle did not contain a gas piston or "rod".
22. The Subject's rifle was operational only in manual (bolt-action) mode. It was not operational in semiautomatic mode without the gas piston.

OMBUDSMAN'S ANALYSIS OF THE ISSUES

Performance-related Issues

1. Was Officer #1's use of deadly force consistent with the restrictions and requirements of the Boise Police Department's policy governing such use of force?

The Boise Police Department's use of force policy states:

1.0101 Authorization:

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

1.0102 Criteria for Use of Force:

- a. *The appropriateness of an officer's actions will be determined by the totality of the circumstances and by the reasonableness of the officer's perceptions at the time of the incident.*
- b. *The criteria for determining use of force shall include but not be limited to:*

(1) The severity of the crime.

- (2) The nature and extent of the threat posed by the suspect.*
- (3) The degree to which the suspect resists arrest or detention.*
- (4) Attempts by the suspect to evade arrest by flight.*
- (5) Other factors, including:*
 - (a) Nature and quality of intrusion upon the individual.*
 - (b) Duration of that intrusion.*
 - (c) Severity of injuries inflicted, if any.*
 - (d) Officer/Subject size and other physical attributes.*
 - (e) Environmental considerations.*
 - (f) Reaction time.*
 - (g) Totality of circumstances.*

The type and amount of force used by Officer #1 was necessary to protect his life and the lives of others. Officer #1 reasonably concluded that the Subject's actions (pointing a rifle at the police) posed an imminent threat of mortal danger.

Officer #1 was aware that the Subject had led police on a 36-mile chase from Canyon County into the City of Boise. He also knew that other law enforcement officers had reported that the Subject had fired a gun at pursuing officers. He had first-hand knowledge that the Subject was driving recklessly at a high rate of speed. Officer #1 also heard the watch commander authorize the use of extreme measures (deadly force) based on the circumstances.

Immediately after the Subject's pickup stopped spinning around and was facing the pursuing officers, Officer #1 stopped his patrol car within several feet of the front, right corner of the pickup. Officer #1 stated that he was attempting to "box-in" the truck so that the Subject could not drive away. Once his own patrol car came to rest, Officer #1 looked up and saw the Subject standing in the driver's doorway of the pickup truck with a semiautomatic rifle in his hands. Officer #1 described the Subject as holding the rifle

in a “port arms” position (with the barrel pointed up and the stock of the rifle across the Subject’s chest). Officer #1 said that the Subject was staring angrily at him. Officer #1 said that he feared that he was about to be shot, so he got out of his car and ran around to the back of it. Officer #1 then ran for cover behind another police car to put even more distance between himself and the Subject.

Officer #1 reported that, from his second position of cover, he saw the Subject raise the rifle to his shoulder and take aim at the police officers who were stopping and getting out of their patrol cars. While Officer #1 did not see or hear the Subject fire the rifle, he clearly saw the Subject aiming the rifle towards police. Officer #1 said that the Subject gave no indication that he wanted to surrender.

Officer #1 fired two sets of rounds at the Subject. He fired the first set after he observed the Subject pointing a rifle at the officers. Officer #1 was aware that other shots were being fired at the Subject at the same time that he (Officer #1) fired his first set of rounds. At this time the pickup truck was between Officer #1 and the Subject. Officer #1 then saw the Subject drop out of sight behind the truck. Officer #1 moved forward into a position from which he could more clearly see what the Subject was doing on the ground. Officer #1 crouched down and looked under the pickup truck and saw the Subject lying on the ground with the rifle lying next to the Subject’s left side. Officer #1 reported that the Subject was looking right at him (Officer #1). Officer #1 then fired his second set of rounds.

Based on the preponderance of the evidence available to me, it is my finding that Officer #1's use of deadly force on November 14, 2002, was within the restrictions and requirements of the Boise Police Department’s use of force policy.

2. Was Officer #2's use of deadly force consistent with the restrictions and

requirements of the Boise Police Department's policy governing such use of force?

Officer #2 was also aware that the Subject had led police on a chase from Canyon County into the City of Boise. He knew that other law enforcement officers had reported that the Subject had fired a gun at pursuing officers. He saw the Subject driving recklessly on Myrtle, from 13th Street to the final collision at Myrtle and Broadway.

Officer #2 was several cars behind Officer #1 in the pursuit and arrived at the intersection of Myrtle and Broadway just after the Subject's pickup truck stopped spinning and came to rest. Officer #2 stopped his patrol car in the middle of the intersection a few car lengths behind Officer #1's car.

Officer #2 watched as the Subject got out of the truck and aimed a black object in the direction of Officer #1 who was, according to Officer #2, crouching by the driver's door of his (Officer #1's) patrol car. Officer #2 assumed that the object being aimed by the Subject was some sort of shoulder-fired weapon.

Officer #2 got out of his patrol car and heard what sounded to him like a military assault rifle shot. Officer #2 responded by firing at the Subject because he (Officer #2) believed that the Subject was attempting to kill Officer #1. Officer #2 reported that he continued firing until he saw that Officer #1 was safely out of the way.

Based on the preponderance of the evidence available to me, it is my finding that Officer #2's use of deadly force on November 14, 2002, was within the restrictions and requirements of the Boise Police Department's use of force policy.

3. Were Officer #1's actions, involving himself in the active pursuit of the stolen

pickup truck, consistent with the restrictions and requirements of the Boise Police Department's policy governing vehicle pursuits?

The Boise Police Department's policy on vehicle pursuits states, in part:

3.0301 General:

A vehicular pursuit is recognized as a valid law enforcement activity performed by police officers attempting to apprehend a fleeing suspect under certain circumstances. All pursuits shall be monitored by a supervisor.

Only the primary officer and one assist officer shall enter into direct pursuit, unless otherwise ordered by the primary officer or the Incident Commander based upon facts that justify such actions. Officers in unmarked cars or on motorcycles shall yield direct pursuit positions to marked patrol vehicles at the earliest opportunity. Officers shall not become engaged in pursuits, intercepts, or roadblocks if transporting prisoners.

While in direct pursuit, officers shall exercise due regard for the safety of life and property and operate the police vehicle in compliance with Idaho Code 49-623. State law does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons nor does the law protect the driver from the consequences of an arbitrary exercise of these privileges.

In addition, officers and supervisors shall exercise the same regard for the safety at the termination point of a pursuit, maintaining self-control and strict personal discipline during all post-pursuit activities.

3.0305 Pursuits Involving Other Jurisdictions:

When a pursuit initiated by an officer leaves the City limits, only the primary unit, secondary unit, assist units specifically assigned by the Incident Commander, and the Incident Commander shall leave the City. If the pursuit terminates outside the City, the Watch Commander or Incident Commander shall determine if additional units are required and will request such assistance at the scene.

If the other agency is willing to assume primary responsibility for a BPD-initiated pursuit which enters that agency's jurisdiction, the Incident Commander shall assign a Boise unit to assist in a backup status only. If officers are requested to discontinue the pursuit, they may continue Code 2 to the termination point, unless terminated by the Incident Commander, and should coordinate with the other agency to determine how the follow-up will be handled.

When a pursuit is initiated by a law enforcement agency of another jurisdiction and enters the Boise City limits, the initiating unit and jurisdiction shall be responsible for the progress of the pursuit. However, officers may become actively involved or, if requested, may accept direct responsibility for the pursuit but must stay within the guidelines of this policy.

Officer #1 set his police car up as an "intercept" on the off-ramp of eastbound I-184 onto Fairview/Chinden when the pursuit passed him. Officer #1 got back into his police car and joined the pursuit. The evidence clearly shows that more than two police vehicles (from agencies other than BPD) were in direct pursuit of the Subject's pickup truck at the time that Officer #1 joined the pursuit.

The pursuit policy of the Boise Police Department clearly prohibits more than two BPD officers from joining a pursuit without the permission of either the incident commander or the lead car in the pursuit. However, it is not clear if the policy explicitly prohibits BPD officers from joining a pursuit when two or more units from a different agency are engaged in a pursuit within the city limits of Boise. The policy allows BPD units to become directly involved in other agencies' pursuits when requested. The policy also requires involved BPD units to, "stay within the guidelines of this policy." Some of the officers and supervisors we spoke with argued that the policy is intended to limit the number of BPD units only. Under this interpretation of the policy, up to two BPD units could get directly involved in a pursuit involving another agency, regardless of the number of units from other agencies already directly involved in the pursuit. If this understanding of the policy were to be applied, Officer #1 would be considered the

primary unit for BPD and his decision to enter the pursuit would be allowed under the policy.

However, a plain reading of the policy does not support this second, more permissive interpretation. This is especially true when one considers the reasons behind placing a limitation on the number of units that can be involved in a pursuit at any given time. Model pursuit policies around the United States, Canada, and the United Kingdom all place limits on the number of police cars that can be in direct pursuit. These limits are established to reduce the risk to both officers and the general public. The more police units driving at high rates of speed through stop lights and stop signs, the greater the probability that one or more of the pursuing units will be involved in a collision.

Despite what I consider to be a 'common sense' reading of the pursuit policy's intent regarding the two-unit restriction, our interviews with the involved BPD officers and their supervisors indicate the presence of some confusion about the intent of the policy. In order to clear up this apparent confusion, I have made a specific policy recommendation to the Boise Police Department (see the "Policy Recommendations" section of this report, below).

Specifically with regard to Officer #1, he is a member of BPD's Crisis Negotiations Team. He explained to us that he joined the pursuit in order to be readily available to negotiate with the Subject if he barricaded himself in his truck at the conclusion of the pursuit. Officer #1 also heard the lead ACSO unit in the pursuit ask for assistance from BPD. Officer #1 recognized that no other BPD units were currently involved in the pursuit and he felt that his knowledge of the city's streets might be helpful. Officer #1 was neither ordered nor given permission to join the pursuit by the watch commander. This was a decision Officer #1 made on his own.

While I consider Officer #1's decision to enter the pursuit to be a technical violation of the pursuit policy, I have not sustained a policy violation against him. Instead, I have issued a finding of 'exonerated' in this case. I issued this finding for two reasons. Primary in my consideration was Officer #1's intent in becoming directly engaged in the pursuit. He joined to provide BPD support and assistance to the officers from other agencies. He felt that he might be most qualified to keep dispatch and supervisors informed of the pursuit's location. He also thought that his skills and training as an experienced crisis negotiator might be essential in peacefully resolving a standoff at the conclusion of the pursuit, should the Subject barricade himself in his truck or take hostages. In hindsight, Officer #1 would have been well-advised to ask the watch commander for authorization to join the pursuit, but his motivation was, nonetheless, well-intentioned.

In deciding on a finding of 'exonerated' for Officer #1's involvement in the pursuit, I also took into consideration the apparent confusion about the application of the policy's two-unit restriction to pursuits being conducted by other agencies.

4. Were Officer #2's actions, involving himself in the active pursuit of the stolen pickup truck, consistent with the restrictions and requirements of the Boise Police Department's policy governing vehicle pursuits?

Officer #2 joined the pursuit after it passed through the intersection of Myrtle and 13th. Officer #2 is a K-9 officer and had his trained police dog with him that day. He stationed himself just east of the intersection of Myrtle and 13th as the pursuit was heading inbound (east) on I-184. Officer #2 anticipated that an attempt might be made to stop the Subject as he came off I-184. Officer #2 thought that his police dog might be a valuable asset to have in the event that the pickup truck was stopped and the Subject tried to flee on foot or offered any sort of resistance.

After the pickup truck struck the back of the Garden City Police unit and continued eastbound on Myrtle, Officer #2 joined the pursuit. While Officer #2 characterized his involvement in the pursuit as following, rather than being actively engaged, the result was the same. Officer #2 drove at speeds over the posted limit with his emergency equipment activated as part of a group of approximately 15 police units pursuing the Subject's stolen pickup truck.

Officer #2's motivation for joining the pursuit was to be helpful. He wanted to make his police dog available when the pursuit ended. This is in line with the purpose of a K-9 unit and was an appropriate goal for Officer #2. Given this, I have issued a finding of 'exonerated' regarding Officer #2's decision to join the pursuit. While he was in technical violation of the policy in that there were already far more than two units actively engaged in the pursuit, I find that his reasoning was sound, the circumstances were extraordinary, and there was sufficient confusion about the meaning of the policy to argue against sustaining a violation of the pursuit policy against him.

5. Were Officer #3's actions, following behind the pursuit of the stolen pickup truck, consistent with the restrictions and requirements of the Boise Police Department's policy governing vehicle pursuits?

Officer #3 positioned himself ahead of the pursuit along Myrtle near the WinCo Foods store. This put Officer #3 in a position where he might be able to stop the Subject if the conditions were right. However, due to the speed at which the Subject was driving, Officer #3 did not consider it safe and prudent to fire his rifle at the Subject.

Once the Subject's vehicle and all of the pursuing police units had passed him, Officer #3 pulled in behind the pursuit. At about that same time, the stolen truck was running the red light at Myrtle and Broadway and ramming into a sedan driven by an unsuspecting

motorist.

Officer #3 was never directly involved in the pursuit. It ended before he was ever in it. Therefore, the pursuit policy was not applicable to his actions. For this reason, I have issued no finding regarding Officer #3.

6. Were Officer #4's actions, following behind the pursuit of the stolen pickup truck, consistent with the restrictions and requirements of the Boise Police Department's policy governing vehicle pursuits?

Officer #4, who was driving an un-marked detective's car, stationed himself at the Curtis Road on-ramp for westbound I-184. He blocked traffic onto I-184 in order to protect motorists from getting tangled up in the pursuit that was heading that way. Once the pursuit passed the Curtis Road interchange, Officer #4 trailed behind the pursuit.

Officer #4 said that his motivation for following the pursuit was to be on the scene quickly in the event that the pursuit ended in an officer-involved shooting. Officer #4 is an experienced detective and a senior member of the CITF. He felt that his skills and experience would be helpful if a shooting took place.

The evidence shows that Officer #4 was never directly engaged in the pursuit of the Subject. Therefore, the pursuit policy was not applicable to his actions. For this reason, I have issued no finding regarding Officer #4.

7. Following the incident, did Boise Police Department officers and supervisors follow the department's officer-involved shooting policies and procedures?

Yes, the 'critical incident' policies and procedures of the Boise Police Department were,

with one minor exception, followed. The one exception was the fact that Officer #4, a witness to the shooting who did not fire his own weapon, was not sequestered along with other witness officers in a timely manner. Given the large number of involved officers, witness officers, and civilian witnesses, along with a very chaotic crime scene for the first 30 minutes, it is completely understandable that Officer #4 was permitted to remain at the scene for as long as he did. In the final analysis, the delay in removing Officer #4 from the scene had no material impact on the investigation and/or on Officer #4's testimony.

8. Was the criminal investigation conducted by the CITF thorough and objective?

This was a very complex and extensive criminal investigation. The CITF, the investigators who worked on this particular investigation, and the Meridian Police Department that directed the investigation conducted a thorough and objective criminal investigation. Our review of their investigative reports and supporting documentation confirmed this fact. However, there were two areas of concern that surfaced during our review of the CITF investigation and report.

I have recommended to the Boise Police Department that they consider working with the other agencies on the CITF to establish norms regarding the documentation of witness interviews. During our review of the CITF's investigation, we noted that not all witness interviews were audio-recorded. We also saw a variety of different formats employed by investigators to summarize and document what each witness said. It appears that these differences stem from the fact that each of the five agencies on the CITF have different protocols and methodologies regarding witness interviews. While the variety of documentation methods used and the inconsistent recording practices did not negatively impact the outcome of the investigation or its integrity, I do believe that a more consistent set of practices is in the best interests of the involved agencies, various reviewing and oversight agencies, and any future litigation that might result from a critical incident.

The second area of concern is a question that was generated about the SKS rifle used by the Subject. During the CITF investigation, the SKS rifle was first placed into evidence and then turned over to the Bureau of Alcohol, Tobacco and Firearms (ATF) to be examined and test fired.

The ATF generated a report that was included in the CITF investigative report. The ATF report stated that, when the SKS rifle was test fired, it “functioned in the semiautomatic mode, being capable of expelling a projectile by the action of an explosive.”

Immediately prior to the commencement of the coroner’s inquest, the Subject’s parents presented the Ada County prosecutor with a rifle part they claimed belonged to the SKS rifle used by the Subject during the incident. This particular SKS rifle belonged to the Subject’s father. The Subject had taken the rifle from his parents’ house at the same time that he stole his father’s pickup truck and began in the tragic chain of events leading up to the Subject’s death. The rifle part given to the prosecutor by the Subject’s parents was a rod or gas piston.

The SKS rifle is completely incapable of being fired in a semiautomatic mode without a gas piston. Absent the gas piston, the rifle can only be fired in manual, bolt-action mode. This means that the person firing the weapon must pull back the rifle’s action, or bolt, to chamber a live round, close the action, and then pull the trigger each time a round is fired. In its semiautomatic mode, the gas piston allows the hot gas from a fired round to automatically move the action back, chamber a round, and then close the action. Thus, in semiautomatic mode, the person firing the rifle need only pull the trigger each time he or she wishes to fire a round.

Testimony at the inquest confirmed the fact that the SKS rifle recovered next to the Subject’s body was the same rifle taken earlier that day from the home of the Subject’s

parents. Testimony also confirmed that the SKS rifle in evidence was missing its gas piston. It was incapable of being fired in a semiautomatic mode. The rifle used by the Subject could only be fired in a manual, bolt-action mode.

This fact, discovered in the eleventh hour before the inquest, is in direct contradiction to the statement included in the ATF report. The ATF report stated that the Subject's SKS rifle did something when it was test fired that it could not do without the gas piston, operate in a semiautomatic mode.

I have contacted the ATF and discussed with them the possible reasons behind such an error. While no one can point to a specific reason, it appears that the report itself may have been written without adequate review. The ATF has assured me that there is no reason to believe that the SKS rifle was not actually test fired, or that the error in the report was anything more than an unintentional mistake.

Nonetheless, the fact remains that the CITE, the involved police agencies, the Ada County prosecutor, the ombudsman's office, and other review agencies, placed their faith in the credibility and reliability of the information contained in the ATF report. Fortunately, the Subject's parents had the integrity to come forward with the missing gas piston and the good sense to do this before the coroner's inquest began.

In the final analysis, and with respect to the central question of whether the involved officers acted reasonably and within policy when they used deadly force, it makes no difference that the SKS rifle used by the Subject was incapable of being fired in a semiautomatic mode. The Subject's decision to point the rifle and fire it at the officers (both on the interstate and at the intersection of Myrtle and Broadway) left the police with little choice but to protect themselves and return fire.

General Policy-related Issues

1. Did the Boise Police Department's use of force policy function as intended to safeguard the lives and safety of citizens and officers, while protecting the Subject's constitutional rights and other legal protections?

Yes, the policy functioned as intended to both prohibit the unnecessary and/or excessive use of force and to permit officers to use deadly force to protect their own lives and the lives of others.

2. Did the Boise Police Department's vehicle pursuit policy function as intended to safeguard the lives and safety of citizens and officers, while advancing the legitimate law enforcement goals of the department, specifically to stop and apprehend those suspected of criminal acts and to protect the peace and safety of the public?

I have already pointed out an apparent ambiguity in the policy regarding the application of the two-car limit when BPD officers become involved in another agency's pursuit. This particular problem is addressed in my policy recommendations, below.

There is another area in which BPD's current pursuit policy was not robust enough to address the unique circumstances presented by this incident. The current policy only briefly touches on the involvement of BPD officers in pursuits being conducted by other agencies within Boise City limits. My analysis of this incident highlights the need for a coordinated command effort and consistent pursuit policies throughout Ada County in order to limit the potential danger to both officers and the public. This issue is also addressed in the "Policy Recommendations" section, below.

3. Did the Boise Police Department's critical incident (officer-involved shooting) response policy and procedures function as intended to ensure consistent and effective handling of the many complex law enforcement, investigative, and administrative issues that often follow such an event?

Yes, as has been the case in past incidents, this policy and its detailed procedures and task lists provided necessary and helpful guidance and direction.

OMBUDSMAN'S POLICY FINDINGS

Officer #1

PM 3.0300 - Vehicular Pursuits **Exonerated**

PM 1.0100 - Use of Force **Exonerated**

Officer #2

PM 3.0300 - Vehicular Pursuits **Exonerated**

PM 1.0100 - Use of Force **Exonerated**

OMBUDSMAN'S POLICY RECOMMENDATIONS

Analysis of this incident reveals that no single supervisor was in command of the vehicle pursuit as it entered Boise City. As many as six agencies (ISP, Canyon County, Ada County, Meridian, Garden City, and Boise City) had units directly or indirectly engaged in the pursuit as it entered Boise City in the eastbound lanes of I-84. Each of those six

agencies had supervisors on duty who were aware of the situation and were engaged, to a greater or lesser extent, in directing the actions of each agency's own units. However, there was no unified command of the pursuit; no single commander organizing, directing, and controlling all involved officers' actions.

As the stolen pickup truck turned onto the inbound Connector (I-184) and sped towards downtown Boise, the Boise Police Department's on-duty watch commander indicated over the Valley All Call channel that he was authorizing "extreme measures" to be used in order to stop the suspect truck. In effect, the BPD watch commander attempted to gain supervisory control of the pursuit. In our interview with him, it was clear that this was his intent. The watch commander drew the conclusion, correctly it would seem, that the pursuit lacked supervisory command and control. He was reasonably concerned about the safety of motorists and the general public as the pursuit headed towards Boise's downtown core. The watch commander asked the pursuing units to look for an opportunity to ram the suspect truck, should it slow down enough to make such an attempt safe for the officers. The watch commander also directed BPD units to set up intercepts and monitor the direction of the pursuit.

As laudable as the watch commander's initiative was, there is no evidence to suggest that any of the non-Boise officers involved in the pursuit recognized and acknowledged his authority to direct their actions. In fact, no formal agreements existed (then or now) between BPD and other law enforcement agencies that authorize and empower a supervisor of one police agency to assume command of officers from other agencies engaged in a multi-agency pursuit. In addition, each of the police agencies involved in this pursuit has its own policy regarding pursuits. These policies are not uniform, they differ from agency to agency. In summary, the officers engaged in the pursuit of the suspect truck were not all governed by one set of pursuit guidelines, nor were they directed by a single, unified command.

Our investigation of this incident shows that as many as 16 police units from several different agencies were engaged in the pursuit at the time the stolen pickup truck collided with a sedan driven by a member of the general public at the intersection of Myrtle and Broadway. BPD's pursuit policy limits to two the number of units that can be directly involved in a pursuit at any given time. Exceptions can be made by either the primary unit in pursuit or the supervisor in command. It is my understanding that one or more of these other agencies also have policies restricting the total number of units that can be engaged in a pursuit.

These limitations exist for good reason. Additional units increase the risk to officers and the general public, while doing little to increase the odds that the pursuit will end safely. There are, however, excellent reasons why a pursuit commander might want to authorize more than two units to engage in a pursuit. As was the case in this particular incident, the presence of an armed suspect and the fact that shots were fired at pursuing officers might reasonably suggest that one or more additional units should be added to the pursuit to provide backup in case of a shoot-out with the suspect. It would also make sense for a pursuit commander to add an additional unit if the primary and secondary units in the pursuit are unfamiliar with the area. This might happen when one agency pursues a violator into another jurisdiction and a third officer is added to keep dispatch and the pursuit commander informed of the officers' location.

In the context of this incident, were as many as 16 police vehicles needed in the pursuit as the suspect truck sped east on Myrtle? Given the sheer number of emergency vehicles pursuing the Subject through the center of downtown in the middle of a weekday, it is remarkable that none of the police cars collided with each other, or with an innocent motorist. It is also fortunate that no innocent bystanders were struck by the more than 65 bullets fired by the police after the suspect got out of the truck and pointed his rifle at them. Retail shops, parking lots, and offices formed the backdrop behind the Subject and

his truck as these 65 shots were fired. Any one of those 65 rounds could have struck a pedestrian, motorist, or office worker. In fact, several rounds did go into nearby buildings and parked cars.

While the police officers who were confronted by the Subject pointing and firing an assault rifle at them had little choice other than to fire back, the total number of rounds fired by the police was high. This is not to say that any individual officer fired an excessive number of rounds. Rather, it was the number of officers in the pursuit and at the scene (16) that led to such a high number of police rounds being fired at the Subject.

This situation clearly called for an armed response by the police. The suspect had already fired at the police. It was reasonable for there to be more than two officers on hand when the pursuit ended. How many officers were enough to secure the safety of the public and the police? At what point did the presence of additional officers add more risk than benefit? In hindsight, it is impossible to say. Nonetheless, it is just this sort of risk vs. benefit calculation that should be in the hands of an incident commander, guided by policy, training, and experience.

Therefore, it is my recommendation that the chief of the Boise Police Department work with the sheriff of Ada County, the chiefs of the Meridian and Garden City police departments, and the director of the Idaho State Police to seek a uniform pursuit policy for the entire county. It is also recommended that the Boise chief seek a multi-agency agreement that will create a clear, unified, and consistent command of every multi-agency pursuit in Ada County, regardless of which agencies are involved.

I recognize that such an agreement will raise many complex legal and political issues. It may be difficult for multiple law enforcement agencies and political subdivisions to agree on a uniform policy and a single command of multi-agency pursuits. Nonetheless,

this is in the interest of both public and officer safety. It should be sought in spite of its difficulty. For these reasons, I respectfully request Boise's mayor and City Council to ask the other elected officials in Ada County, Meridian, and Garden City to support the adoption of a county-wide pursuit policy and unified command agreement.

Pierce Murphy
Community Ombudsman
P.O. Box 500
Boise, Idaho 83701-0500
(208) 395-7859
mailbox@boiseombudsman.org