CITY AND COUNTY OF DENVER

JOHN W. HICKENLOOPER
Mayor

DEPARTMENT OF SAFETY
POLICE ♦ FIRE ♦SHERIFF

OFFICE OF MANAGER
1331 CHEROKEE STREET
SUITE 302
DENVER, COLORADO 80204
PHONE: (720) 913-6020

June 8, 2007

Public Statement of the Manager of Safety Regarding an Officer-Involved Shooting by Sergeant Rick Stern, Officer Andrew Richmond and Officer James Medina on May 6, 2006 at West Tenth Avenue and Clay Way

I. SYNOPSIS

On Saturday, May 6, 2006, at approximately 4:58 p.m., while Cinco de Mayo celebrations were taking place along Federal Boulevard, Denver Police Officer James Medina saw a green Jeep Cherokee with a broken out wing window heading eastbound on West 9th Avenue from Federal Boulevard. He requested that another officer check the license plate of this vehicle through the computer system. This check revealed that the plate was on a stolen vehicle. A specific description including the license plate number, style, make and color of the vehicle, as well as the fact that the wing window was broken was broadcasted over the police radio and assisted police officers in rapidly locating and identifying it. Within a minute of the original call, Denver Police officers radioed that the stolen vehicle was spotted on West 10th Avenue near Clay Way, traveling at a high rate of speed.

Sergeant Rick Stern, Officer James Medina and Officer Andrew Richmond, all uniformed officers in separate marked police cars, responded to the radio transmissions. The three officers went immediately towards the area of West 10th Avenue and Clay Way. As they drove down West 10th Avenue, the officers saw the stolen Jeep Cherokee traveling on West 10th Avenue towards them. While in view of the officers, the stolen Jeep made a quick U-turn and parked along the north edge of West 10th Avenue, at Clay Way.

The three officers positioned their police cars so as to box in the stolen vehicle. Officer Medina drove up to the vehicle, stopping his car in a diagonal position facing it. Sergeant Stern stopped his car behind Officer Medina's. Officer Richmond stopped in the intersection of West 10th Avenue and Clay Way, to the side of the cars driven by Officer Medina and Sergeant Stern.

When the officers boxed in the stolen Jeep, one of the three occupants, thirty-four year old Roberto Gonzales, jumped out of it and began to walk away. The driver of the Jeep, Michael Romero, remained seated inside the vehicle, as did the other passenger, Dale Sirratt.

When he had walked just a few feet away from the stolen Jeep, Roberto Gonzales came upon another man and a woman who were walking down the sidewalk. Gonzales grabbed the man, who later turned out to be a recent acquaintance of his. Gonzales positioned this man between himself and the police officers. As soon as Sergeant Stern got out of his police car, he began to give orders to Roberto Gonzales, telling him to "stop" and "get down". At this point all three officers were out of their police cars and advancing toward Gonzales to make a felony arrest.[1]

Sergeant Stern and Officer Richmond both saw Gonzales try to hand off something he had taken from his waistband to the man he had grabbed. During this attempted handoff, Sergeant Stern and Officer Richmond could see that Gonzales was holding what appeared to be a black semi-automatic pistol in his left hand. The officers immediately issued loud and repeated commands, ordering Gonzales to drop the weapon. Sergeant Stern heard the citizen to whom Gonzales had been trying to hand something say, "I don't want that! I don't want that!" and then saw the man walk away from Gonzales, putting up his hands. The officers continued to give orders to Gonzales, yelling at him to "put the weapon down", "drop it", "show your hands" and "get on the ground". Rather than complying with these commands, Gonzales raised his gun up and directed it at Sergeant Stern. All three officers immediately fired their weapons at Gonzales. The officers' bullets struck Gonzales and he fell to the ground. When Gonzales went down, the officers stopped firing and, holding him at gunpoint, approached him. As they neared Gonzales, the officers saw the gun near his feet. It was not until other police personnel arrived on scene that a close inspection of the very real looking handgun showed that it was a replica.

The three officers fired sixteen shots, four of which hit Roberto Gonzales, who died as a result. Other officers were on scene immediately after the shooting. Pursuant to Department protocol, the three officers who had fired their weapons were separated from each other.[2] Despite having no opportunity to discuss what

---

[1] Aggravated Motor Vehicle Theft, C.R.S. § 18-4-409(2)(a), (d), (3) (a): A person commits aggravated motor vehicle theft in the First Degree if he or she knowingly obtains or exercises control over the motor vehicle of another without authorization or by threat or deception and: (a) retains possession or control of the motor vehicle for more than twenty-four hours; or (d) uses the motor vehicle in the commission of a crime other than a traffic offense. (3) Aggravated motor vehicle theft in the first degree is a: (a) Class 4 felony if the value of the motor vehicle is fifteen thousand dollars or less.

[2] Pursuant to established protocol, these involved officers (Sergeant Rick Stern, Officer Andrew Richmond and Officer James Medina), were sequestered after the shooting and subsequently provided video-recorded statements.

happened among themselves, the descriptions of these events given by Sergeant Stern, Officer Richmond and Officer Medina were remarkably consistent. Additionally, the videotaped interviews of several civilian witnesses corroborated the information provided by these three officers.

An autopsy was conducted on May 8, 2006 and established that Gonzales was struck by four of the sixteen shots fired by the officers and that all four were fired from 9mm handguns. Further testing established that it was the fire of Sergeant Stern and Officer Richmond that struck the suspect. Officer Medina fired a .45 caliber handgun, but none of those rounds struck Gonzales. The autopsy also resulted in the discovery of an old bullet from a prior incident in the abdomen of Roberto Gonzales. Toxicology tests revealed that Gonzales had cocaine metabolites in his blood at the time of his death.

An investigation into this incident was conducted by the Denver District Attorney's Office and the Denver Police Department, with the oversight and participation of the Office of the Independent Monitor.[3] Based upon the facts and circumstances of the case, the District Attorney reached a legal conclusion that no charges were warranted against any of the officers for shooting their weapons at Roberto Gonzales.[4] The Chief of Police also reviewed the investigation file and determined that the involved officers had not violated any Departmental rule or policy and that no disciplinary action was warranted. The Independent Monitor, who provided suggestions, input and consultation throughout the investigation, concurred with the determination of the Chief of Police.

After careful consideration, this Office also concludes that no disciplinary action should be or will be taken against any of the officers involved in this shooting. This decision is based on the independent determination of this Office, which is consistent with the determinations of the Police Department and the Independent Monitor, that these officers reasonably believed that Mr. Gonzales' actions posed an imminent threat of death or serious bodily injury to Sergeant Stern, therefore justifying their response under the Denver Police Department's Use of Force Policy.

The purpose of this public statement is to provide a more detailed explanation of the basis of this decision.

---

[3] The mission of the Office of the Independent Monitor (OIM) is to monitor the Denver Police Department and other Denver law enforcement agencies and to provide fair and objective oversight of the uniformed personnel. OIM has been fully integrated into the Denver Police Department's officer-involved shooting procedures. OIM responds to the scene of such shootings, observes and participates in both the criminal and administrative investigations, has access to and reviews complete files and makes recommendations to fact finders and decision makers throughout the case, including making recommendations to the Manager of Safety and the Chief of Police.

[4] See: District Attorney's 'Officer-Involved Shooting' letter dated May 12, 2006, at page 7

II. THE INVESTIGATIVE PROCESS IN THIS CASE

As with all officer-involved shootings, this case was jointly investigated by the Denver Police Department Homicide Unit and the Denver District Attorney's Office. The Monitor's Office was on hand to observe the investigation, as were members of the Internal Affairs Bureau. Interviews were observed by the OIM, as required by Ordinance and permitted by the protocol of the District Attorney's Office. The criminal investigation was completed and the District Attorney's brief decision letter was released on May 12, 2006. In the language of the statutory requirements, the District Attorney declined to file charges against any of the three officers, concluding:

> Based on the totality of the facts developed in this investigation, the shots fired by the three officers were not criminal conduct under C.R.S. 18-1-707 (2) and 18-1-704 (1). We could not prove beyond a reasonable doubt that it was unreasonable for the three officers to perceive that Gonzales' conduct posed an imminent threat to them when they fired the shots. The facts developed in the investigation support the conclusion that the officers had no reason to believe the black handgun was incapable of being fired. A police officer has a right to act on reasonable appearances. Under the facts of this case, the three officers had every reason to believe Gonzales was capable of killing them with the gun. The District Attorney's authority and responsibility in these cases is not to determine whether an officer should or should not shoot in a given situation, but rather to determine if the act is criminal if an officer does elect to shoot and wounds or kills a person. Under the facts of this case, no criminal charges are fileable and provable against the officers in the shooting death of Gonzales.

At this point, the case was turned over to the Denver Police Department's Internal Affairs Bureau for review. Internal Affairs, pursuant to policy, referred the case to the Use of Force Review Board. On August 23, 2006, the Use of Force Review Board determined that no further investigation was needed and forwarded its recommendations to the Chief of Police, Gerald Whitman. The recommendations of the Use of Force Review Board are advisory in nature, and are not binding on Chief Whitman. After reviewing the investigation, considering the recommendation of the Use of Force Review Board and consulting with the Independent Monitor, Chief Whitman concluded that there were no violations of Department rules or policies in this incident. The case was subsequently forwarded to the Manager of Safety's office.

This Office thereafter reviewed the investigation files prepared by the Homicide Unit and Internal Affairs Bureau, including the officer statements, witness statements, diagrams, photographs and physical evidence reports. Additionally, this Office studied the policies in effect on the date of the shooting and is aware

of relevant training materials and academy training practices. Consideration was given to the decision of the Denver District Attorney and the Chief of Police, as well as the recommendations and conclusions of the Use of Force Review Board and the Independent Monitor.

III. DETAILED FACTUAL BACKGROUND

There are some cases in which a full understanding of a deadly interaction between police officers and a suspect can only be reached through exploring the background and behavior of that suspect. This is such a case. A full comprehension of the genesis of Roberto Gonzales' deadly encounter with Denver Police officers requires an understanding of the habitual behaviors in which Roberto Gonzales engaged when he interacted with police officers and others.

Evidence of Roberto Gonzales' Prior Use of Drugs and their Effect on His Conduct and Demeanor

At the time of his fatal confrontation with Denver police officers, Roberto Gonzales had established a reputation among his acquaintances as being "intimidating" and "crazy". Michael Romero, a companion with Roberto Gonzales in the stolen Jeep Cherokee on May 6, 2006, knew Gonzales as "Rico". Mr. Romero described Gonzales, as "controlling, demanding, intimidating" and said that "Rico" created these perceptions in others "by threats". Dale Sirratt, who was also in the stolen vehicle, had been an acquaintance of Gonzales for about six or seven months and also called him "Rico". Mr. Sirratt knew Gonzales to carry several guns on his waistband and in his pockets and said that Gonzales did this because he was "crazy".

S.E.[5] lived in the complex at W. 10th Avenue and Clay Way and knew Gonzales as "Rico". S.E. told detectives that on May 6, 2006, Gonzales had tried to get "crack" from him earlier in the day. According to S.E., he couldn't find any "crack" for Gonzales, so Gonzales left S.E.'s apartment.

P.R. was the man who Gonzales attempted to involve in his confrontation with police and to whom Gonzales tried to hand off his "handgun". Having only met Gonzales about three weeks prior to May 6, 2006, P.R. also called Gonzales "Rico" and had worked on cars for Gonzales. P.R. told police that Gonzales drinks alcohol all the time. According to P.R., in the three weeks he knew him, Gonzales had come to his apartment about eight times to smoke "crack" cocaine. In P.R.'s experience, when Gonzales smoked "crack" he became very

[5] For the purpose of this public statement, certain witnesses not directly involved in the officers' use of force or the theft or use of the Jeep Cherokee are identified by initials only. However, the full identities of these witnesses are contained in the Denver Police Department investigative files related to this case.

paranoid, was very jittery, and continually played with a gun he carried. P.R. also stated that Gonzales used "crystal meth" (methamphetamine). According to P.R., Gonzales sold a lot of "meth" out of his house and often traded methamphetamine for "crack" cocaine. P.R. specifically indicated that Gonzales had smoked "crack" at his (P.R.'s) house the night before the shooting.

Civilian witness C.M., who lived in the neighborhood, informed the police after the shooting that she had seen Gonzales in her neighborhood before. She identified him as one of the people who smoked "crack" cocaine with her neighbor. C.M. said that she had seen the people in the Jeep before and knew with certainty that "these guys" used drugs with her neighbor.

Another witness from the neighborhood, C.C., told police that she knew Gonzales and that he "does not do drugs". Her statement is in direct conflict with the toxicology report, which established that Gonzales had cocaine metabolites in his system at the time of his death. Additionally, C.C.'s assertion that Gonzales "does not do drugs" is completely undermined by the statement of another witness from the neighborhood, C.M., which is set forth immediately above. Finally, C.C.'s belief is in contradiction with the statements of Michael Romero, Dale Sirratt, P.R. and S.E., all of whom had seen Roberto Gonzales use drugs or had used drugs with him on several occasions, including within the twenty-four hour period immediately before his fatal confrontation with police.

As noted in the District Attorney's May 12, 2006 letter regarding that Office's investigation into Roberto Gonzales and this shooting:

> Roberto Gonzales, 4/3/72, has an extensive criminal record that includes arrests for assault (multiple arrests), menacing, harassment, domestic violence, kidnapping, disturbance, disorderly intoxication, false reporting, criminal mischief, theft, motor vehicle theft, theft by receiving, and drug offenses. He has two felony convictions and was sentenced to the Department of Corrections for 6 years on a 1997 conviction for Possession of Controlled Substances with Intent to Distribute. Gonzales has claimed gang membership with the Latin Kings and has a tattoo "Latin Kings". His moniker is "Psycho".

Evidence of Roberto Gonzales' Pattern of Carrying Real or Replica Firearms

According to Michael Romero, Gonzales always carried toy guns, which looked real. Mr. Romero stated that Gonzales carried real guns, although he personally had never actually seen Gonzales carrying a real gun. Nonetheless, Mr. Romero was clear that Gonzales would often threaten him with guns. Mr. Romero also said that Gonzales would "flash" the toy guns so that people could not tell if they were real or fake.

Dale Sirratt told the police that he had seen several of Gonzales' guns, including a 9mm Ruger, a 9mm Derringer and a .45 caliber handgun. Mr. Sirratt did not specify if these guns were real, but he did say that Gonzales would carry all of the guns at times, usually in his waistband or his pocket. As noted above, Mr. Sirratt felt that Gonzales did this because "he's crazy". He also informed the police that Gonzales liked to show and "kind of brag" about his guns. That Gonzales also carried fake guns was known to Mr. Sirratt, who claimed that Gonzales carried fake guns because "he didn't want to kill anyone".

S.E. was the man to whom Gonzales came to get "crack" on the day of the shooting, May 6, 2006. From his acquaintance with Gonzales, S.E. had come to know Gonzales to carry guns.

P.R., who Gonzales thrust into the middle of his confrontation with police, stated that Gonzales carried a gun with him at all times. P.R. described Gonzales' guns as a silver Derringer with an over-under barrel and two black semi-automatic pistols. In P.R.'s experience, Gonzales carried the two semi-automatics in his side pockets and the Derringer in his waistband. Gonzales would often carry 9mm ammunition as well. P.R. indicated that Gonzales had firearms on him every time that P.R. saw him. P.R. said that Gonzales would have as many as three guns on him at one time and that he liked to "show" them. However, P.R. thought those guns might not be real.

Other Denver Police Department officers had contacted Roberto Gonzales prior to May 6, 2006. In a May 8, 2006 interview, Denver Police Gang Unit Officer Kyle Smith identified Roberto Gonzales by photographs. Office Smith stated that he and Officer Steve Castro had contacted Gonzales three times in the past. During the most recent contact, Officer Castro found a fake gun on Gonzales. On the other two occasions, Officer Smith was the one who conducted the searches of Roberto Gonzales and, on both occasions, he also discovered that Gonzales was carrying replica handguns. On the first of these two contacts, Gonzales had a black gun that looked like a Smith & Wesson. The second contact resulted from a call of a "party with a gun". Upon contacting Gonzales, he was found to have a fake revolver. Officer Smith stated that until he actually "grabbed" one of the guns carried by Gonzales, he believed the guns were real. The guns which Gonzales carried were, in Officer Smith's experience, plastic and either black or silver. Gonzales claimed he collected fake guns. Of interest is that Gonzales complained to Officer Smith that the police were always "messing" with him and that he (Gonzales) "did not like" the police. Officers Smith and Castro specifically warned Roberto Gonzales that it was not a good idea to carry a fake gun and that if Gonzales pulled this gun out and pointed it at someone, they would think it was a real gun.

Further Evidence of Events Immediately Prior to the May 6th, Confrontation with Police

While many Denverites were enjoying Cinco de Mayo festivities on May 6, 2006, Roberto Gonzales was taking a different path. What is known about Gonzales' activities in the time before his confrontation with Denver Police officers on May 6, 2006 comes, primarily, from the videotaped interviews of his two companions in the stolen Jeep Cherokee, Michael Romero and Dale Sirratt. Gonzales, along with Mr. Romero and Mr. Sirratt, had been up for several days without any sleep. They had, according to Mr. Romero, been driving around in the stolen Jeep Cherokee while stealing other things in order to get money to buy drugs. On May 6, 2006, as Mr. Romero reported it, both Gonzales and Mr. Sirratt were smoking "crack". It was Gonzales who, Michael Romero said, had stolen the Jeep Cherokee. Mr. Romero said that Gonzales made him drive the three of them around while they "stole stuff", which included paint machines that they had pawned. Additionally, Romero stated that Gonzales often used "meth", marijuana and alcohol and had used "meth" earlier in the day. At one point during the day, Gonzales gave Romero a "toy gun" and told Romero that he should put it under the driver's seat of the Jeep.

Dale Sirratt was Roberto Gonzales' other companion in the stolen Jeep. In his interview, Mr. Sirratt was reluctant to give information regarding the specifics of how he and Gonzales had spent the day. Mr. Sirratt did tell the police that the time of the shooting was the second time that Gonzales and his companions had been in that area on May 6, 2006. He explained that they had been at "the projects" earlier and that Gonzales was trying to buy "crack". On the return trip, which resulted in the shooting, Gonzales was again attempting to buy "crack". Mr. Sirratt stated that he did not know the Jeep was stolen, although he did say that he "should have known" since there were no keys and the ignition was broken out. Mr. Sirratt further stated that Gonzales was carrying a gun with white paper around it in his waistband. Although Mr. Sirratt had, as noted above, seen Gonzales with guns in the past, he explained that this gun was not one of the guns that he had seen before. During his interview, Mr. Sirratt admitted that he himself had been smoking methamphetamine and that he was "in the zone" because he was coming back down off "speed".

More information about Gonzales' activities before he confronted Denver Police officers comes from the statement of P.R. As described above, P.R. was the person on whom Gonzales attempted to hide his replica handgun. In his video interview, P.R. explained that two hours before the shooting incident, he had seen Gonzales and these two "guys", when they had stopped by his house and his brother-in-law had taken Gonzales to buy "crack" cocaine. At that time, it was only Gonzales who came to his door, and the other two "guys" stayed in a Jeep. This was the same Jeep that Gonzales got out of later in the day, immediately before his confrontation with police officers.

Evidence of the Fatal Confrontation with the Police

As described above, Sergeant Rick Stern, Officer James Medina and Officer Andrew Richmond responded to a radio call reporting a stolen Jeep Cherokee in the area of West 10th Avenue and Federal Boulevard. As the stolen Jeep came directly toward the three uniformed officers in their marked police cars, the driver did a U-turn and parked along the north edge of West 10th Avenue at Clay Way. The officers positioned their vehicles to block the stolen Jeep from leaving and got out of their cars to make a felony arrest.[6]

Michael Romero, the driver of the stolen Jeep, explained that when they parked, Roberto Gonzales noticed that the police were coming. Mr. Romero stated that Gonzales yelled out "run" and the next thing they knew they had officers pointing guns at them. Mr. Romero indicated that he knew that these were cops because of their uniforms and the police cars they were driving. When the officers told them to stay in the vehicle, Mr. Romero said that Gonzales got out and began to run. Mr. Romero reported that he then heard "a lot" of gunshots.

Dale Sirratt told police that he was sitting in the back seat of the stolen vehicle and that Mike (Romero) had been driving. According to Mr. Sirratt, Gonzales, who was in the front passenger seat, was the only one who got out of the Jeep, He also stated that he and Mike put their hands up because the cops had their guns drawn on them and were yelling at them. Dale Sirratt heard the officers tell Gonzales to get down. When the shooting took place, Mr. Sirratt thought that there were two to three officers there. He described hearing about five to six shots, fired close together. Mr. Sirratt believed that everything happened within a 10-second period. Sirratt explained that everything happened so fast; that all of a sudden they were blocked in by the police and then the shots were fired.

P.R. explained that he saw some police cars coming from Federal Blvd. and that when Gonzales saw the police cars, he stepped behind P.R. and began grabbing at him, trying to put a gun on him. Gonzales tried three or four times to place the gun into his (P.R.'s) waistband according to P.R., just before this attempt the officers had jumped out of their police cars and had drawn their weapons. P.R. said that the officers were continuously ordering Gonzales to "get down" and "drop the gun"; he estimated that the officers yelled these commands about ten times. P.R. explained that he froze, but that Gonzales did not drop the gun nor did Gonzales respond to the police. In describing his own reaction to the police orders, P.R. stated that he stood there, with his hands up in the air, not moving. P.R. explained that his pants were too tight for Gonzales to be able to get the gun into his waistband and that Gonzales finally let go of him. P.R. described the gun that Gonzales was trying to put into his waistband as a black and silver semi-

[6] To better ensure officer and public safety, Denver Police officers are trained that when making a felony arrest from a vehicle, the occupants of the vehicle may, based upon the circumstances, be ordered at gunpoint to take whatever action the officer deems appropriate in order for him to control the arrest.

automatic. He stated that the gun appeared to be one that he had seen Gonzales carrying in the past.

N.F., the woman who was with P.R., explained that as they were walking, a green Jeep parked near them. One of the passengers got out and started talking to P.R. when a police car pulled up. The police got out with their guns drawn and were yelling for the guy to "get down". P.R. was between the apartments and the guy but when P.R. put his hands up, the guy moved toward the apartments.[7] N.F. saw that the guy had a gun in his hand and was trying to hide it behind P.R. When she saw the gun, N.F. hid between two nearby dumpsters.

P.R. refused to take the gun that Gonzales tried to hand him. The officers saw that Gonzales had the gun and was starting to raise it towards Sergeant Stern; yet even then, they withheld their fire. Instead, they yelled repeatedly to Gonzales to put down the weapon. The officers were between six and twenty feet from Gonzales, with Sergeant Stern and Officer Medina at about six feet away and Officer Richmond approximately twenty feet away. Instead of complying, Gonzales continued to bring the gun up and directed it at Sergeant Stern. All three officers then fired their weapons.

Nearly every person who was within earshot of this confrontation remarked on the numerous commands which the three officers gave to Roberto Gonzales. Even Gonzales' companion, Dale Sirratt, admitted that he heard the officers tell Gonzales to "get down". Mr. Sirratt also described hearing an officer say something about "he's the one with the gun" and then shots were fired. P.R. also stated that all of these police officers were continually yelling at Gonzales to drop the gun, but he did not. P.R., who was literally within inches of and standing right next to Gonzales, clearly heard the shouted commands of the officers and responded by raising his hands. Once P.R. was able to get away from Gonzales, he turned and walked away. It was at this point that P.R. heard the gunshots, while his back was turned to Gonzales. P.R. stated that there was no question in his mind that these were police officers, because of their police cars and because of their police uniforms.

Other Witness Summaries:

Numerous people in the area saw or heard parts of this incident. Many of them heard the officers' commands to Gonzales and several also saw how Gonzales reacted to those commands. Among the orders these witnesses heard were repeated commands to "stop", "get down", "put down the weapon" and "drop the gun". To a person, every witness who was able to hear all or parts of this incident confirmed both the commands given and Gonzales' refusal to comply with those commands. Additionally, several of the witnesses listed below saw

[7] The apartments were behind P.R. at that point. By moving toward the apartments, Gonzales would have put P.R. between himself and the police.

Gonzales make a sudden reach toward his waistband or a sudden move towards the police before any shots were fired.

A.P. related that on this date she had been walking home with her daughter and her daughter's children when they saw some "cop cars" coming down West 10th Avenue. A.P. and her family looked to the area where the cops' cars were stopped and "heard the cops telling three guys to stop". She did not know where the three men had come from, but one of them (Gonzales) went towards the cops, and he was shot. A.P. also said that it appeared that this guy was possibly reaching or doing something with his waistband area. Although she could not hear whether this person said anything to any of the officers, A.P. did hear the officers tell the man who went toward them to "get down". A.P. explained that the two other people did get down, but the man who was shot did not. She also said that she knew these were cops because they were wearing police uniforms and driving police cars.

C.M. was another witness to the confrontation. She stated that she saw the officers arrive at the scene, and that a man who she described as black (Roberto Gonzales) had gotten out of the Jeep. The officers yelled an order to "get back in the car". C.M. said it was obvious that these men were police officers because of their uniforms. The officers continued yelling to "get back in the car" and pulled their guns. As the officers got closer to the Jeep, they were yelling to the man to "get down on the ground". Although the man turned away from the cop and was acting as if he was going to run, the man did not run. Instead, C.M. stated, Gonzales turned around and actually began walking towards the officers. It was at this time that C.M. observed Gonzales grabbing under his shirt or in his pants for something and then heard gunshots. At the sound of the gunshots, C.M. got on the ground. When she got up, C.M. saw the man she had seen reaching for something under his shirt on the ground, not moving. This witness emphasized that the officers were yelling orders at Gonzales the whole time but Gonzales was completely ignoring their orders. C.M. explained that it appeared to her that the officer was justified in shooting because this person was definitely reaching for something. In C.M.'s own words: "The cops had every right to shoot, because he [Sergeant Stern] was defending himself."

A commotion outside drew C.V., another witness, to her kitchen window. Looking out her window, C.V. saw the police officers in a confrontation with a man, later identified as Gonzales. She knew they were police officers, she explained, because they were in uniform and had their guns out. As she listened, C.V. heard the officers repeatedly tell Gonzales to stop and show his hands. At no time in the entire incident did C.V. hear Gonzales say anything to the officers, rather, she said, Gonzales was ignoring the police. Although she did not see anything in his hands, C.V. reported that Gonzales reached for something in his waistband and, at that point, he was shot. C.V. heard approximately 10 to 15 gunshots. After this happened, C.V. said that she could see from the look on his

face that the officer with the salt and pepper hair who had shot his gun [Sergeant Stern] was pretty upset.

C.V.'s husband, L.V., joined his wife at their kitchen window when they heard the disturbance going on outside. L.V. saw three uniformed officers with their guns drawn who were ordering two men to stop. One of these men was later identified as Gonzales. L.V. reported that the "other guy got down on the ground", but that Roberto Gonzales reached into his back "like he was grabbing something". It was at this point that the officers fired at Roberto Gonzales. Right after the shots were fired, L.V. saw an officer kick what appeared to be a gun on the ground. L.V. did not know where this gun had come from. L.V. heard approximately eight gunshots. Like his wife, L.V. specifically noticed that the older officer who shot his weapon [Sergeant Stern] was very upset and "looked like he was ready to buckle". L.V. stated that if he were a police officer, he would have "blasted this guy too" because of the way he was reaching for something.

F.V., the twenty-seven year old daughter of L.V. and C.V., was at her parents' residence and also went to the window with them to look for the cause of the commotion they heard. Looking out the window, F.V. reported seeing an officer who was yelling at a man, later identified as Gonzales. The officer was shouting at Gonzales to stop and put his hands up. Instead of complying, Gonzales reached across his body. F.V. explained that it was then that she heard multiple gunshots. She went on to say that there was no question at all that these were police officers who were giving Gonzales commands.

Another citizen, C.W., was walking with her mother and sisters when, as she put it, "a bunch of police cars" drove by them "really fast". C.W. then heard the officers yell at three men to "stop". One of these men was later identified as Roberto Gonzales. Instead of stopping, C.W. reported that Gonzales walked towards the officers and that he was then shot. C.W. heard approximately six to seven gunshots. Although she did not see anything in Gonzales' hands, C.W. said, "From the people around the crowd, they said he pulled out a gun".

C.C. reported she was standing outside her residence, when she observed Roberto Gonzales get out of the Jeep and walk toward the apartments. C.C. heard police officers yell at Gonzales to get down. C.C. then heard approximately 10 gunshots. C.C. admitted to personally knowing Gonzales, who she referred to as "Robert". It was C.C. who asserted that Gonzales never did drugs. Two of C.C.'s family members also witnessed the incident with her, including A.C., who described hearing the officers yell, "get down" and thought that there were nine officers who fired their guns. He stated that he did not see anything in Gonzales' hands. M.C., another family member, said that he saw Gonzales move so that the white guy (P.R.) was between Gonzales and the police officers. M.C. also made clear that he saw Gonzales have his hand in his pocket twice and the police fired when Gonzales pulled his hand out of his pocket for the second time.

E.M. was with C.C at the time of the shooting. E.M. heard someone yell, "Get down". When she went outside, E.M. saw officers who were running with their guns out. There was no question that these were officers, she said, as they were all wearing uniforms. E.M. reported that the male later identified as Roberto Gonzales was not getting down. Once outside, E.M. described seeing Gonzales trying to grab one of the guys by him. E.M. reported that the officers started shooting at Roberto Gonzales after Gonzales made a sudden move. E.M. heard between 15 and 18 gunshots.

Even S.E., Gonzales' acquaintance in the neighborhood to whom Gonzales had come earlier in the day to get some ""crack" ", reported hearing officers yelling at Gonzales to "get down on the ground". Although S.E. described his vision as bad, he stated that he could see three officers and that one of them had a gun out.

T.G., described seeing Gonzales with his back to her. She heard an officer yell at Gonzales, at least twice, to "get down". The man refused to get down and was still standing up when the officer fired. T.G. said that she did not notice anything in either of the man's hands and that she only saw one officer fire his gun. The officer who she saw fire his gun was the same officer who told Gonzales to get down. She described the officer as having "salt and pepper" hair.

Finally, a ten-year-old boy, M.S., who had gone to shut the door of the apartment where he was visiting a playmate, gave a videotaped statement of what he saw. When he went to the door, M.S. saw "a guy pointing a gun at the cop". Although he was very frightened and immediately shut the door, this young witness was very clear that he saw the other man pointing his gun at the police officer. M.S. said he knew it was a police officer that the man was pointing a gun at because he saw the officer's badge.

Summaries of Officers' Statements

In his videotaped interview, Sergeant Stern described the events after P.R. separated from Gonzales, explaining that it was then that "the suspect came up on me with the gun ... ". At this point, Sergeant Stern estimated that he and Gonzales were about five or six feet apart. Sergeant Stern saw that the gun was in Gonzales' left hand. The Sergeant said that he was yelling as loud as he could and pointed his gun at the suspect [Gonzales], but [Gonzales] refused to do anything that Sergeant Stern told him. As the Sergeant described it, "I was shouting ... I repeated seven or eight times to get down on the ground ... at the time I fired the weapon I could see a large black object in his left hand consistent with a gun ... I thought he was going to shoot me ... ".

Officer Richmond described what he saw after P.R. separated from Gonzales. He described Sergeant Stern yelling, "Stop" ... "Show your hands", but [Gonzales] was not complying. Officer Richmond could see that [Gonzales] was actually reaching to his left where Sergeant Stern could not see his hands. [Gonzales] was still not complying with the officers' orders. Officer Richmond saw the gun in Gonzales' left hand. As he described it, [Gonzales] "looked over at me then over at Sergeant Stern". Then, within seconds, as Officer Richmond watched, [Gonzales] brought the gun up at Sergeant Stern. It was at that point that Officer Richmond decided to shoot. As he stated, "it happened so quickly ... I wanted to give Sergeant Stern a chance to live". Officer Richmond fired at Roberto Gonzales and continued firing until Gonzales went down to the ground. After the shooting was over and all the other participants were in custody, Officer Richmond explained that he still did not know whether [Gonzales] had shot at Sergeant Stern. Officer Richmond then described how he walked up to Sergeant Stern to see if the Sergeant was okay. Officer Richmond estimated that when he fired his duty weapon, he was approximately 20-25 feet away from the suspect. Officer Richmond believed that he had fired four to five shots from his Glock 9mm.

Similarly, Officer Medina described that he heard Sergeant Stern order Gonzales to get on the ground. Initially, he thought Gonzales was going to run, but instead Gonzales "wheels around, he pulls out a gun". Officer Medina immediately yelled, "Drop it. Drop it." and heard Sergeant Stern yell "Gun. Drop it". When Gonzales did not comply with commands, Officer Medina fired because, as he said it, "I thought [Gonzales] was going to kill Sergeant Stern". Officer Medina said that officers told Gonzales to drop the gun. Gonzales was shot after raising the gun at Sergeant Stern and taking a step toward him. Officer Medina believed that both he and Sergeant Stern fired their weapons at the suspect. Officer Medina thought he fired his duty weapon three times. He stopped shooting after Gonzales went down on the ground.

Sergeant Larry Subia arrived at the scene and heard the shots being fired just as he was getting out of his car. As he advanced on the scene, Sergeant Subia observed Gonzales down on the ground with a black handgun lying within his reach. As observed by L.V., Sergeant Subia immediately kicked the handgun away from Gonzales' reach. It was not until he subsequently observed the weapon more closely that he realized that it was a replica.

The multiple civilian statements above corroborate the descriptions of these events by Sergeant Rick Stern, Officers James Medina and Andrew Richmond. Even though Sergeant Stern and Officers Medina and Richmond were holding him at gunpoint, Gonzales refused to comply with these officers' commands to get down, to show his hands and to drop the weapon. Instead, Gonzales made a sudden move towards his waistband and Sergeant Stern, and then directed a gun towards Sergeant Stern. It is evident that all three of the officers did, in fact, believe that Mr. Gonzales was armed with a gun and that they also believed,

because of his actions in bringing the gun up towards Sergeant Stern, that Sergeant Stern was about to be fired upon at any moment.

CRIME SCENE INVESTIGATION AND TESTING

At the scene, medical personnel provided emergency treatment to Roberto Gonzales and an ambulance transported him to Denver Health Medical Center. Gonzales was pronounced dead by Doctor Moore at Denver Health Medical Center. An autopsy was performed and the toxicology report established that Gonzales' blood tested positive for cocaine and cocaine metabolites. The autopsy report also noted an old yellow-metal jacketed bullet from a previous injury which was located in Gonzales' abdomen. Roberto Gonzales had four gunshot wounds. Three of those wounds came from bullets which did not exit his body, and those bullets or fragments of them were recovered at autopsy. These three wounds included: a penetrating wound which entered the head by the left ear, passed from left to right, front to back and traveled upward; a penetrating would which went into the left shoulder area, passed from left to right, front to back and traveled upward to the neck; and a penetrating wound which entered the abdomen, passed right to left, front to back and traveled downward. The fourth wound was a perforating wound below the elbow of the right arm, which passed through the arm and upward and exited the body. The medical examiner determined that Gonzales died as a result of these four gunshot wounds.

The crime scene investigation was conducted by the Denver Police Department Crime Lab. Crime Lab personnel videotaped the crime scene, took still photographs of the scene and specific items of evidence and collected numerous articles of physical evidence. Among the items of physical evidence collected which where associated with Gonzales were articles of his clothing, a cell phone and, lying near him the black handgun seen by Sergeant Stern, Officers Richmond and Medina, P.R., N.F. and M.S. when Gonzales was holding it. Crime lab personnel also searched for and recovered all 16 shell casings from the rounds fired by the three officers and tracked the bullet strikes from shots that did not strike Gonzales.

On May 17, 2006, Detectives from the Firearms Section of the Denver Police Department Crime Lab Unit prepared a comparison report on the replica handgun that had been in the possession of Roberto Gonzales and a Walther P99 semi-auto pistol. According to this report, Roberto Gonzales' replica handgun was an HFC P99, air soft pistol, black in color. This pistol is an air-cocking, one shot, 6mm weapon that shoots round plastic pellets, and is a replica of the Walther P99 semi-auto pistol. Visually, the HFC and Walther P99 are virtually identical in overall length, width of grip, width of slide, height of muzzle and general appearance.

Pursuant to standard police practices, the crime lab videotaped the stolen Jeep Cherokee from the outside. That videotape shows that there were no keys in the Jeep, which was running at the time of the videotape, and that the ignition was broken out. The vehicle was towed and a search warrant was executed, which also showed that the ignition was broken out. During the course of the search, a second replica handgun was discovered. This gun was silver with brown grips and was recovered from under the driver's seat. It appeared to be the handgun which Michael Romero told the police he had "stashed" under the seat of the car earlier that day, at Gonzales' direction. Also found inside the vehicle was a pair of skis, a pair of ski boots, a pair of ski poles, car amps, car stereos, car speakers, hockey equipment, numerous house and car keys – including a Porsche car key, several cell phones, a pair of binoculars, a couple of flashlights and miscellaneous articles of clothing.

V. ANALYSIS OF ISSUES

As a general matter, an administrative review analyzing whether an officer-involved shooting was in accordance with Departmental policy focuses on three areas: (1) the reasonableness of the tactics utilized by the officer immediately prior to the shooting; (2) the reasonableness of the officer's assessment of the threat; and (3) the reasonableness of the use of force option selected by the involved officer.

It should be noted that there is a significant difference between the evidentiary standards that were utilized by the District Attorney in his criminal review of this shooting incident and the standard utilized in an administrative review. The criminal review process required a determination of whether, at the moment force was used, there existed proof "beyond a reasonable doubt" that officers had no legal justification under the applicable criminal statute, C.R.S. § 18-1-707, for the use of physical force and/or deadly physical force under the circumstances presented. That means that Sergeant Rick Stern, Officers James Medina and Andrew Richmond could not be found criminally liable unless there was proof beyond a reasonable doubt that when they fired their weapons, it was unreasonable for them to believe that Roberto Gonzales presented a threat of serious bodily injury or death to themselves or to a third person. That third person who was believed to be endangered could be either a fellow police officer or members of the public.

The administrative review process is much broader in scope and requires a determination regarding whether there exists a "preponderance of evidence" to show that the involved officers violated the Department's Use of Force Policy or any other rules and regulations that were in effect on the date of the shooting.

The Policy encompasses the criminal statute applied by the District Attorney's Office as it relates to the reasonableness of an officer's actions at the moment deadly force is used, but also encompasses other aspects of tactics and training regarding an officer's actions prior to the actual use of force. The Policy indicates that officers should recognize that their conduct immediately connected to the use of force may be a factor which can influence the level of force necessary in a given situation. It acknowledges that officers may escalate or de-escalate the use of force as the situation progresses or circumstances change and may use tactical options (such as warnings, verbal persuasion, cover, concealment, barriers, disengagement, repositioning, retreat, containment and others) as a preferable response to a deadly force confrontation, if reasonable under the circumstances.

The Policy also specifically indicates that officers are to rely upon their training in making the decision as to the level of force to be used. With regard to potential deadly force situations, Denver Police officers are trained in classroom lectures, video based scenarios, and practical exercises to employ certain tactical principles wherever possible or practical. The purpose of these principles is to better ensure the officers' safety, as well as the safety of the public. These can include:

1. the use of cover and/or concealment;
2. the use of barriers between the officers and the potential threat;
3. the use of communication among the involved officers, as well as with the potential threat;
4. the use of movement to:
    a. seek a better tactical position;
    b. increase the distance between the officers and the threat;
    c. increase the time the officers have to react to the threat.

As it relates to the sections of the Policy referencing the criminal statute, the Policy expressly incorporates C.R.S. § 18-1-707 which sets forth the legal framework under which a police officer is justified in using deadly physical force. The applicable language states, in part,

> *"A peace officer is justified in using deadly physical force upon another person…when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force."*

In applying that section of the policy, the task in this administrative review is to determine whether the evidence and circumstances of this case make it more likely than not that a police officer would not have been reasonable in believing that Roberto Gonzales presented a threat of the imminent use of deadly physical force against that officer or a third person.

In addition, as it relates to the provisions of the policy dealing with tactical considerations and de-escalation, the task of this administrative review is to determine whether the evidence presented makes it more likely than not that a police officer would not have been reasonable in employing similar tactics as those used in this case when attempting to arrest Roberto Gonzales.

In making the above determinations, consideration must be given to all the circumstances, including, without limitation, the information which was available to the involved officers, as well as any reasonable inferences arising from that information; the observations of the officers; the lighting that is present and the visibility at the scene; the distances between the officers and the threat; the logistics at the scene; the timing of the incident; the immediacy of the threat; the nature of other offenses believed to have been committed; the manner in which force was both threatened and used; and the practicality and feasibility of employing other tactical options under the circumstances. It is necessary to gauge the behavior of these officers against what would be expected of an objectively reasonable police officer under similar circumstances.

A. The Reasonableness of the Officers' Tactics

In this case, Sergeant Rick Stern, Officers James Medina and Andrew Richmond were responding to a series of radio calls that described a felony motor vehicle theft in progress. The calls occurred at approximately 4:58 p.m. in broad daylight. The weather was partly cloudy and dry and officers had excellent visibility. When the stolen Jeep parked at the curb of West 10th Avenue, the three officers immediately blocked it in with their marked police cars. As soon as the stolen Jeep stopped, Roberto Gonzales jumped out and began moving rapidly away. The officers used appropriate tactical measures when all three of them got out of their vehicles, drew their weapons in preparation of making a felony arrest, positioned themselves in a triangulated fashion to avoid the danger of crossfire, and gave Gonzales loud, clear orders to stop, get down on the ground and show his hands.

Rather than complying with the officers' orders, Roberto Gonzales chose to contact a citizen walking by (P.R.) and attempted to pass something to him. Gonzales then escalated the situation even further by continuing his refusal to comply with the officers' orders after P.R. walked away with his hands up saying, "I don't want that! I don't want that!" – statements which certainly heightened the concern of the responding officers. The officers had approached to within a few feet of Gonzales while he was holding onto P.R. – the closest officer, Sergeant Stern, was about six feet away and the most distant, Officer Richmond, was about twenty to twenty-five feet away. At almost that same moment, Sergeant Stern and Officer Richmond saw that the object which P.R. refused to take and which was still in the hands of Roberto Gonzales was what appeared to be a gun. Sergeant Stern instantly yelled "Gun", to alert the other officers that they were in a potentially lethal situation. Tactical training indicates that an officer

who observes a weapon should immediately communicate that fact, if possible, to other officers involved, which is exactly what Sergeant Stern did. Sergeant Stern and the other officers continued to utilize their tactical training when they then immediately gave orders to Gonzales to "put the gun down ... put the weapon down ... ".

These officers were confronted with a sudden and unanticipated situation when, rather than complying with these very specific orders, Gonzales escalated this confrontation to a deadly level by unexpectedly raising the gun and directing it towards Sergeant Stern. By all appearances, Mr. Gonzales was aiming at Sergeant Stern and was about to shoot.

Both the statements of the three officers and multiple civilian witness accounts establish unequivocally that Sergeant Stern, Officer Richmond and Officer Medina continually gave Gonzales commands to show his hands, stop and get down on the ground. Had Gonzales complied with these orders, it is clear that this deadly confrontation would have been avoided. Although their guns were out throughout this encounter, none of the officers fired until they saw Gonzales raise the gun and direct it toward Sergeant Stern. In the face of this perceived deadly threat to his life, Sergeant Stern fired three shots from his weapon at Roberto Gonzales. Officer Richmond and Officer Medina both responded to the perceived direct threat of deadly physical force against a third person, their Sergeant, by firing their weapons at Roberto Gonzales. Officer Richmond fired nine times and Officer Medina fired four times. A total of sixteen shots were fired, all of which were exclusively directed at Roberto Gonzales. Four of those sixteen shots actually struck Gonzales. All three officers ceased firing immediately upon seeing the threat neutralized when Roberto Gonzales fell to the ground.

Sergeant Stern was confronted with a perceived immediate and lethally dangerous threat to his life. By all appearances, Gonzales was not only armed with a deadly weapon, but was intent upon using it rather than submit to police authority. This confrontation took place in front of an apartment complex where numerous citizens resided, some of whom were outside at the time of this encounter. Gonzales tried to involve another citizen in his attempts to avoid police contact and that citizen was within feet of Gonzales when the three officers saw that Gonzales was raising the gun at Sergeant Stern. Sergeant Stern, Officer Richmond and Officer Medina were appropriately focused on neutralizing a danger not only to the life of Sergeant Stern, who was in the direct line of fire, but also to the public.

Sergeant Stern, Officer Richmond and Officer Medina demonstrated sound tactical thinking by approaching the suspect and issuing verbal commands in an attempt to resolve the situation in a peaceful manner. However, Gonzales refused to comply with these commands. Instead Gonzales escalated the confrontation by grabbing hold of an uninvolved passerby who he used to screen

his actions from the police. At this point two of the three officers were without cover and were, literally, within a few feet of Gonzales. The uninvolved citizen on whom Gonzales was attempting to hide his handgun and who Gonzales was using as a human shield was yelling repeatedly "I don't want that!".

As one officer remained partially shielded by a police car, the other two uniformed officers were, necessarily, moving in to assist the citizen and to arrest Gonzales. By all accounts, there was, at most, a couple of seconds between the uninvolved citizen's refusal to take the gun from Gonzales and Gonzales turning toward Sergeant Stern and raising the gun at him. The deciding point for the officers facing the determination of whether to use force and the level of force needed was at this instant. In these few seconds, Sergeant Stern and Officer Richmond found themselves without any cover, without any barrier between themselves and Gonzales, without any response to any of their repeated commands and without any time to move to a better tactical position. Despite the danger of the situation, these three officers continued to try to communicate with the suspect and gave Gonzales orders to drop the weapon. However, Roberto Gonzales chose to ignore those orders and instead, further escalated the threat by stepping towards Sergeant Stern and raising the gun at him. These actions by Roberto Gonzales eliminated any opportunity for any of these three officers to de-escalate the situation. When confronted with this perceived and immediate deadly threat to Sergeant Stern's life and given the proximity of the apparently armed suspect to an innocent citizen, all three officers responded appropriately with deadly force, firing their weapons and ceasing fire as soon as the threat was neutralized.

In light of the immediacy and lethality of the threat which Gonzales posed, this Office concludes that appropriate tactics were used. Based upon the totality of the circumstances, no other reasonable tactic was available that might have allowed Sergeant Stern, Officer Richmond or Officer Medina to avoid or reduce the likelihood of a deadly force encounter and still safely carry out their sworn duties as police officers.

B. The Reasonableness of the Assessment of the Threat

This analysis requires consideration of the justification for using force. It is clear from the interviews of the multiple civilian witnesses to the shooting, including P.R., N.F., M.S., and others, as well as the videotaped statements of the three officers who fired their weapons, that this shooting was precipitated by Roberto Gonzales' actions. There was reason to believe that Gonzales was involved in the felony offense of motor vehicle theft. When confronted by police officers, Gonzales also put an uninvolved citizen in great danger by trying to pass an apparent deadly weapon to that citizen. Gonzales also used this citizen to shield his actions and his possession of that weapon from police officers who were giving him orders as they attempted to arrest him. Gonzales refused police commands to show his hands. He ignored the police when ordered to stop and

get on the ground. He pulled a very real looking handgun. Even in the face of this escalating threat, the police officers continued giving Gonzales commands to drop the gun, but he ignored them. Instead, Gonzales raised his weapon toward Sergeant Stern and put Sergeant Stern in fear of being shot. His actions also led Officer Richmond and Officer Medina to conclude, independently, that if they did not shoot, Gonzales would shoot or kill Sergeant Stern.

After being shot, Gonzales fell to the ground and the very real looking replica of a semi-automatic weapon was found at his feet. The appearance of this weapon was so real that, even in clear daylight, the first officer who was not involved in the shooting immediately kicked it away from the reach of Roberto Gonzales as soon as he saw it – a fact which is also corroborated by a civilian witness. It was not until the weapon was closely inspected that it was determined to be a replica rather than an actual semi-automatic handgun.

It is evident that when Sergeant Stern, Officer Richmond and Officer Medina fired their weapons, they had evidence that Gonzales was not only armed, but that he was willing to use that weapon against Sergeant Stern. As Sergeant Stern stated, "I thought he was going to shoot me". The statement of Officer Richmond who described how he fired when Gonzales brought the gun up on Sergeant Stern and said, "I wanted to give Sergeant Stern a chance to live", also supports this conclusion. Similarly, Officer Medina made very clear that he thought Gonzales "was going to kill Sergeant Stern".

In the opinion of this Office, the perception of Sergeant Stern that he was in imminent danger of having deadly physical force used against him was objectively reasonable. Likewise, it is also the opinion of this Office that the dual perceptions of Officers Richmond and Medina that Sergeant Stern was in imminent danger of having deadly physical force used against him by Roberto Gonzales were also objectively reasonable.

C. The Reasonableness of the Use of Force Option

This analysis requires consideration of the justification for the level of force used. Sergeant Stern, Officer Richmond and Officer Medina resorted to deadly physical force in firing their weapons at Roberto Gonzales. As explained above, both state statutes and DPD policy have delineated the very limited situations in which police officers are justified in using deadly force. Such force is justified only when an officer reasonably believes that the suspect or threat is using or will imminently use deadly physical force against the officer himself or a third person.

The Department's Use of Force Policy focuses on the "objective reasonableness" of a police officer's decision to use deadly physical force under the "totality of circumstances" present at that time. The officer is required to rely on his training, experience and assessment of the situation in deciding the level of force to be employed, and to exercise reasonable and sound judgment. The Policy

recognizes that police officers often face circumstances that are "tense, uncertain and rapidly evolving," requiring them to make split-second life or death decisions, which was certainly the case in this particular incident. In those circumstances, a higher level of force may be deemed reasonable than would be the case if the officer had minutes or hours to make that choice. The policy also provides that the greater the level of threat facing the officer, the greater the level of force that may be used by the officer.

It is important to point out that under the Department's Use of Force Policy, as well as the criminal statutes governing the use of force, an officer is not deemed to have used excessive force simply because it is later determined that the officer was mistaken in his belief that a subject posed an imminent threat of death or serious bodily injury. An officer need only base a decision to use deadly force on an "apparent necessity", not an "actual necessity". Similarly, an officer is not required or expected to wait until he is fired upon, or has a weapon pointed directly at him, in order to use deadly physical force. Such a policy or practice would subject an officer to the grave danger of being injured or killed and would be highly impractical. Thus, an officer is entitled to act on appearances. However, in doing so, it is the officer's responsibility to draw reasonable conclusions from the facts and surrounding circumstances.

The facts discussed in the preceding section (B.) are equally dispositive in determining whether the degree of force used against Roberto Gonzales was reasonable and justified. The actions of Gonzales created a situation in which Sergeant Stern reasonably believed that deadly physical force was imminent and his life, as well as the lives of others, was in danger. Sergeant Stern explained that he specifically saw the weapon in Gonzales' left hand when P.R. walked away from Gonzales. The Sergeant then watched as Gonzales ignored his commands to drop the gun and instead raised and directed the weapon towards him. Both Officers Richmond and Medina described watching these same actions by Gonzales and fearing that Sergeant Stern was going to be shot and probably killed. At that point, all three officers fired their weapons at Gonzales. When Gonzales immediately fell face down, his gun dropped to the ground near him.

As indicated previously, the facts and circumstances surrounding this event lead to the conclusion that Sergeant Stern's belief that he was in imminent danger from deadly physical force was objectively reasonable. Similarly, the facts and circumstance detailed here and available in the file of this investigation demonstrate conclusively that the beliefs of Officers Richmond and Medina that Sergeant Stern was in imminent danger from deadly physical force were also objectively reasonable. Therefore, the use of deadly physical force by the officers against such a threat was also reasonable. No lesser degree of force could have been or should have been reasonably expected of these officers.

D. Summary of Findings

It is the finding of this Office that the actions of Sergeant Rick Stern, Officer James Medina and Officer Andrew Richmond on May 6, 2006, were reasonable and necessary to defend against the perceived imminent threat posed by Roberto Gonzales. The officers' actions were a direct and appropriate response to what they reasonably believed to be the imminent use of deadly physical force against Sergeant Stern. Given these circumstances, this Office concludes that all three officers' actions were in compliance with the provisions of the Denver Police Department Use of Force Policy.

VI. ADDITIONAL ISSUES

A. Replica or Simulated Weapons Which are Later Determined to be Non-Deadly

As indicated above, officers are entitled to act upon appearances in their perception of imminent danger in their decisions to use deadly force. However, the reasonableness of those perceptions and decisions must be determined on a case-by-case basis, taking into consideration the totality of the circumstances. In this case, the use of the replica weapon was deliberate and reasonably led the officers to believe that Sergeant Stern was about to be fired on.

Numerous factors can be considered in reaching a determination about the reasonableness of an officer's use of force in response to a suspect's use of a replica or simulated weapon. Some of those factors may include, without limitation, the information which the officer knew or should have known prior to utilizing force; any reasonable inferences that should have been drawn from that information; the observations of the officer; the logistics of the scene; the timing of the incident; physical factors such as the lighting in the area, the distance between the officer and the person with the alleged weapon; the physical appearance of the alleged weapon and the manner in which the person handles it; the immediacy of the threat and the time available for reaction by the officer; the movement and activity of the person with the alleged weapon; and, other people or activities in the area and how they may interact with the situation.

All these factors, and a multitude of others, can and often will affect the determination of whether an officer's use of force was reasonable under the circumstances. Based on the facts of this case, including the very realistic nature of the replica firearm and the manner in which Gonzales used it, this Office believes that Sergeant Stern, Officer Richmond and Officer Medina were reasonable in interpreting the actions of Roberto Gonzales to mean that he was in possession of a fully functional firearm with the intention of using it against Sergeant Stern.

B. Round Accountability Beyond The Intended Target

In this case, the rounds fired by Sergeant Rick Stern, Officers James Medina and Andrew Richmond were meticulously collected and analyzed. Pursuant to the officer-involved shooting protocol, the Denver Police Department Crime Lab firearms examiner took possession of the service pistols of the three officers after the shooting. His initial examination of the weapons determined that Sergeant Rick Stern fired three shots from his 9mm Glock-17 semi-automatic pistol. Officer Andrew Richmond fired nine shots from his 9mm Glock-17 semi-automatic pistol. Both these weapons have a magazine capacity of 17 rounds. Both weapons were being carried with the magazine fully loaded and an additional round chambered—a total of 18 rounds in the weapon. Officer James Medina fired four shots from his Glock .45 caliber GAP, model 37, semi-automatic pistol. The weapon has a magazine capacity of 10 rounds, but Officer Medina carries it with nine rounds in the magazine and an additional round in the chamber. A total of 16 shots were fired by the three officers.

At the crime scene, Crime Lab personnel searched for and recovered all 16 shell casings from the rounds fired by the three officers. They also tracked and identified bullet strikes from shots that did not strike and remain in Gonzales.

While it could not be conclusively determined where every round went, it is known that one round missed Roberto Gonzales and traveled approximately one-half block east, passing through the stop sign at West 10th Avenue and Bryant Street, before going through an upstairs window and landing on the floor of a bedroom at 988 Bryant Street. That round was determined to have been fired from the weapon of Officer Medina.

In the area north of the crime scene, a 9mm bullet slug was found on an outside vertical roof beam in the rear of 1033 Bryant Street. This bullet slug was recovered and was later examined. Although it possessed the characteristics of having been fired from a Glock 9mm firearm, the bullet lacked sufficient individual characteristics (based on its condition), to determine which officer, Sergeant Rick Stern or Officer Andrew Richmond, fired this shot.

Denver Police officers are trained that they are responsible for all bullets fired from their guns and that they must be aware of their intended target and beyond. Officers learn that fired bullets that either miss or travel through their intended target may strike other objects or persons and may ricochet in any direction.

The purpose of this training is generally three-fold:

1. To make officers aware of the danger of firing their weapons unless necessary;
2. To teach officers to be aware of their surrounding circumstances before deciding to use deadly force; and
3. To lessen the likelihood of striking an unintended target or injuring an innocent person.

However, officers are also taught that these principles must be applied based upon the totality of the circumstances and balanced against the need to take immediate action to avoid the use of deadly force against themselves or others.

There are a number of considerations to take into account in assessing the significance of the two rounds which struck unintended targets. One factor is the location of Sergeant Stern, Officer Medina and Officer Richmond when Roberto Gonzales confronted them. As set forth above, the officers were at distances from Gonzales that ranged from approximately six feet for Sergeant Stern and Officer Medina to approximately twenty feet for Officer Richmond. Another of the numerous factors to consider is the immediacy of the threat to which the officers were forced to react.

To protect the community and officers themselves, a threat of deadly physical force must be stopped. In this case, the logistics of the scene and Gonzales' escalation of the situation by raising his weapon and directing it toward Sergeant Stern, in large part, dictated the direction and placement of the rounds fired by the officers. It goes without saying that when a suspect intends for police officers to believe that he is armed and willing to shoot at them, there is an immediate threat to public safety that the officers must stop. This threat to public safety is exponentially increased when a suspect uses a firearm at a time and in a location which creates greater risk to innocent citizens. Such a situation creates a need to balance the necessity of stopping a demonstrated threat to public safety against the concerns about the potential of bullets traveling beyond their intended target.

The decision of these officers to stop what appeared to be a deadly threat to the community and themselves was, on balance, a difficult but reasonable choice. This is true even though some of their bullets ultimately traveled past the immediate threat and to adjacent buildings. The officers were responding appropriately under the Use of Force Policy and applicable law to what they reasonably believed to be a deadly threat. The considerations and factors outlined above lead to the conclusion that the officers were not in violation of Departmental policy. Nor did they intentionally, recklessly or negligently disregard that major principle of their firearms training that they must always be aware of their target and beyond. This is a principle that must be applied in the context of the circumstances in which the officers found themselves and must be balanced against the threat posed.

Neither does the number of rounds fired by the officers (a total of sixteen from three weapons) establish that the shooting was in any way reckless, negligent or unreasonable. Understandably, no rule or policy can dictate the number of shots necessary to stop a threat. Officers are trained to shoot at the "center mass" of the threat's body, an area most likely to incapacitate the threat. Officers are also trained to fire until the threat is incapacitated or, for some other reason, no longer exists. That is precisely what happened in this case. The shots were fired rapidly within a few brief moments and firing ceased immediately when the threat no longer existed.

Nor does it appear that any of the shots were the result of what is commonly referred to as "contagious" or "infectious" fire – a phenomenon where an inordinate number of rounds are fired by a number of officers and the decision to fire is unreasonably influenced by the fact that other officers are firing. In this case, each officer was able to individually articulate what he saw and heard and his reasons for the decision to use deadly force and for the need to fire until it was clear that the threat no longer existed.

Based upon all of the above considerations and all of the facts and circumstances of this case, this Office believes that the involved officers acted reasonably and in accordance with their training and were not otherwise reckless or negligent in the manner in which they handled this encounter.

VII. CONCLUSION

In closing, this Office wants to assure the public and the members of this Department that it has reviewed and analyzed this case carefully. The conclusions reached here are consistent with those of the District Attorney's Office, the Independent Monitor and the Chief of Police. These consistent conclusions result from no other reason than they are dictated by the facts. It is always a concern to the Department when a police officer has to use deadly force in the line of duty. However, in many instances, as in this case, the actions of the person against whom force was used have precipitated that use of force.

Sergeant Stern and Officers Medina and Richmond were undertaking a felony arrest of Roberto Gonzales when he confronted them with an apparent deadly weapon. His companions described Gonzales as "crazy" and made clear, as did the autopsy report, that Gonzales had used cocaine on the day of this encounter. Gonzales attempted to insert an uninvolved citizen in the middle of his attempt to avoid arrest and to hide an apparent deadly weapon. He refused to comply with multiple, loud and repeated commands by police to stop, get on the ground, show his hands and drop his weapon. At every stage of his encounter with these three police officers, Gonzales not only ignored their orders but also escalated the confrontation. The officers employed sound tactics and used every reasonable means available to them to de-escalate the confrontation. However, Gonzales' ultimate decision to direct what appeared to be a functional weapon at

Sergeant Stern created a life-threatening, deadly force situation which forced the officers to respond as they did.

There can be no doubt that this was an incident which should never have risen to a level requiring deadly force. However, at every step along the way, Roberto Gonzales made choices which escalated the confrontation and, ultimately, mandated the deadly force response. The impact of the actions of Roberto Gonzales is not limited to his immediate survivors, but is also felt by the citizens who were witness to or made part of this frightening event. Additionally, the actions taken by Roberto Gonzales put three police officers in the very traumatic position of having to take one life to save another. It is truly tragic that this situation unfolded as it did. Nonetheless, it is clear that on May 6, 2006, Sergeant Rick Stern, Officer Andrew Richmond and Officer James Medina acted reasonably under the circumstances with which they were confronted.

Alvin J. LaCabe, Jr., Manager of Safety

Mary A. Malatesta, Deputy Manager of Safety