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Public Statement of Manager of Safety Regarding Discipline of Officer Ranjan Ford Arising from the Shooting Death of Frank Lobato on July 11, 2004

I. INTRODUCTION

As the Manager of Safety of the City and County of Denver, I am responsible for overseeing the Department of Safety, which includes the Denver Police Department (DPD). I provide the first line of civilian review of discipline outside of the DPD process. As I have stated previously, I believe that it is important for me to share with the public when disciplinary action has or has not been taken as a result of certain types of incidents, including police shootings that result in death.

My goal in sharing this information is to ensure that the citizens of Denver have the utmost confidence in our Police Department and our police officers who put their lives on the line every single day in carrying out their duties to serve and protect. While outside agency and civilian review are invaluable, it is only by holding itself to the highest standards of accountability that the Denver Police Department will be able to maintain the trust and confidence of the community it serves.

There has been media coverage and public interest in the shooting death of Frank Lobato on July 11, 2004, which is understandable considering that Mr. Lobato appears to have been a citizen whom Officer Ranjan Ford mistook as being armed, but who turned out to be holding only a soda can. This incident has given rise to strong emotions ranging from outrage to sympathy not only for Mr. Lobato, but also for Officer Ford. For some, it has reopened old wounds. For others, it has reaffirmed that being a police officer is a dangerous and challenging profession.

It is my responsibility, however, to set aside the emotions and the outcry, and reach what I believe to be a fair decision based solely on a carefully considered examination of the facts and a reasoned application of the laws, rules, policies, training principles and values that govern Denver's police officers in the use of deadly force. I take this responsibility very seriously. After all, a citizen's life has been taken, and a police officer's career is on the line. I want to share that decision with you here today.

I have today issued an order suspending Officer Ford for ninety (90) days without pay, effective August 6, 2005, based on my conclusion that his actions on July 11, 2004 violated the Department's Use of Force Policy. In particular, I have concluded that Officer Ford's assessment of the threat posed by Frank Lobato on that date was not objectively reasonable under the circumstances.

I hope that this statement will provide all of those who are interested with a clear understanding of the reasoning behind my decision, both in terms of why I have concluded that the Use of Force Policy was violated and why I concluded that a ninety (90) day suspension is the appropriate discipline. Please keep in mind that what I am sharing is only a detailed outline of how I made this difficult decision, and not an exhaustive description of every single fact and circumstance that played a role in my decision-making process. For instance, I would point out that there are certain legal restraints on the extent to which I can disclose an officer's statements made to the Internal Affairs Bureau, or "IAB," if that officer is or may be subjected to discipline. As a result, the factual summary that I will be providing is not based on any statements made by Officer Ford other than those statements made to homicide detectives on the night of the incident.

Because this shooting was investigated by a grand jury, the District Attorney did not issue a letter detailing the facts and evidence revealed by the homicide investigation. Therefore, I have taken the responsibility to give the public a detailed synopsis of the events that culminated in this tragic shooting on July 11, 2004. With the public's indulgence, I also believe that this unfortunate incident provides me with the opportunity to explain some of the principles that form the foundation for my disciplinary decisions, including the difficult decision I have reached here today.

Please allow me to remind you that my decision may or may not be the final decision in this matter. Officer Ford has a constitutional right to appeal my decision to a Hearing Officer appointed by the Civil Service Commission, who will hold a hearing and then issue a written decision. Thereafter, the unsuccessful party will have the right to appeal the Hearing Officer's decision to the full Commission or to the Denver District Court.

II. OFFICER FORD'S BACKGROUND

Officer Ranjan Ford has been a member of the Denver Police Department since 2001. He graduated from a police academy in Jasper, Texas in 1992, and worked for the Jasper Police Department for approximately seven years, first as a patrol officer and later as a detective in the Criminal Investigations Division. He also worked on the Southeast Texas Narcotics Task Force and for the Jasper County Sheriff's Department. As part of his continuing education in the State of Texas, Officer Ford completed a SWAT training program as well as a one-week Safety and Survival School course taught by the FBI.

Officer Ford applied to and was accepted into the Denver Police Academy as a member of the Lateral Recruit Class of 2001, and completed his three months of academy training in March 2002.¹ Since that time, he has been primarily assigned as a Patrol Officer in District 6, and served a brief temporary assignment at Denver International Airport. He is still assigned to District 6, where he has been performing administrative duties since the shooting. Since joining the Denver Police Department, Officer Ford has received continuing education in many areas, including the Use of Force Policy.

¹ The Denver Police Academy's recruit and lateral recruit training programs meet or exceed all of the requirements of the Peace Officer Standards and Training Act for the State of Colorado, C.R.S., § 24-31-301, *et seq.*, and have been approved by the Peace Officer Standards and Training Board.

III. FACTUAL BACKGROUND OF SHOOTING

On Sunday, July 11, 2004, at approximately 7:00 p.m., Cathy Sandoval called 9-1-1 from a McDonald's restaurant to report that she had been assaulted and held against her will for the previous 17 hours in her apartment at 1234 W. 10th Avenue by her boyfriend, Vincent Martinez. Ms. Sandoval reported that she had managed to escape from the apartment a few minutes earlier when Mr. Martinez had passed out on the couch and her mother, sister and children came to the front door to check on her after having been unsuccessful in contacting her several hours earlier. Ms. Sandoval had left without the only set of keys to her apartment, which keys were in the possession of Mr. Martinez.

District Six patrol officers Robert Shiller, Jason Huff and Joshua Herrick responded to the McDonald's at 1350 West Colfax Avenue and met with the victim, who had visible bruises and injuries consistent with a recent assault. At their request, District Six Sergeants Rick Kyle and Steve Addison stopped by briefly to bring the officers a digital camera to photograph Ms. Sandoval's injuries. A brief video statement about the prior assault was also taken of Ms. Sandoval. The officers learned from Ms. Sandoval that the suspect, Mr. Martinez, was likely still asleep on a couch in the living room on the first floor of her apartment, that the apartment was locked and she did not have a key, and that the suspect had disabled the only telephone by breaking it and ripping the cord from the wall. She described the suspect as a large Hispanic man in his forties with a recently shaved head, and wearing shorts but no shirt. According to Ms. Sandoval, she told the officers that Mr. Martinez "had a warrant out for his arrest so he would probably run."

Ms. Sandoval also advised the officers that another man she referred to as an "uncle" had been staying in her apartment and was in one of the bedrooms when she left. According to her statements later that evening, she told the officers that the uncle was "sleeping upstairs in the other room," although there is some question as to whether some of the officers heard, or recalled hearing this information. Officer Huff stated at one point that he believes he may have been told "something about the uncle being in a bedroom." However, Officers Herrick and Shiller have stated repeatedly that while Ms. Sandoval told them that the uncle was in the apartment when she left, she said did not know his specific location. The only description she gave of the uncle was that he was an older Hispanic male. No mention was made to officers at any time by Ms. Sandoval that the uncle might have any physical disabilities, nor did she ever state that the uncle was in any way involved in her assault or false imprisonment.²

Ms. Sandoval stated that she did not believe there were any firearms or other weapons in the home except for kitchen knives and other ordinary household items. She gave the officers consent to enter her apartment and conduct a search. Officer Shiller then confirmed with a detective that exigent circumstances would allow them to arrest Mr. Martinez at the residence without an arrest warrant, and that the appropriate charges would be second degree assault, false imprisonment and obstruction of telephone service.

² It has been speculated upon in the media and elsewhere that Mr. Lobato was hearing impaired or otherwise physically challenged. After the shooting and during the course of the investigation, Mr. Lobato's ability to hear and walk was corroborated by another individual who had frequent contact with Mr. Lobato and had seen him within a few weeks of his death.

A criminal record check on Mr. Martinez revealed that he currently had two outstanding warrants for his arrest, including one for a recent assault, and a long history of alcohol abuse and violence. He was described as 5' 11" tall and weighing 290 pounds. Given the suspect's size, criminal history, and reported state of intoxication, the officers called for some additional back-up. Officer Ranjan Ford responded to a location close to 1234 West 10th Avenue, where he met with the other three officers and was advised of the situation, including the possible presence of an uncle. The four officers parked their vehicles where they could not be seen from the subject address and then traveled by foot to the address, arriving at 8:07 p.m.

The apartment where Mr. Martinez was suspected to be is one of a row of two-story housing units in a rectangular building located on West 10th Avenue, and is the fourth unit north of the south end of the building. The units face west and have a rear entry from the east that opens into the kitchen of each unit. This particular unit has a metal interior front door that opens inward. The front door opens almost directly onto a staircase leading to the second floor. To the left (or south) of the front door and staircase is a living room with a couch that faces south, and behind the living room is a laundry and kitchen area with a back door that leads outside. There is a window with two panes of glass at the front of the apartment that looks into the living room. Upstairs there are three small bedrooms and one bathroom. One room on the southeast corner of the unit has a window that faces the rear of the building. Behind the building are small concrete square patios and a rectangular strip of grass that extends the length of the building.

When officers first arrived at the location, they noticed that the apartment appeared to be occupied in that the lights and a television downstairs were on, and they heard some faint sounds of movement inside the apartment. The officers noted that the suspect was no longer on the living room couch, as had been reported by Ms. Sandoval. Officer Ford went to the rear of the apartment building and positioned himself near the back door. After requesting over the radio a hold on the air so that they would have a clear radio channel, the officers in front repeatedly announced themselves as Denver police officers and knocked loudly at the locked front door, without any response from anyone inside, although several neighbors heard the commotion and came out to investigate. The officers also managed to crack one of the front windows open approximately two inches and then yelled through the opening for the occupants to open the door. When those efforts failed to elicit a response, Officer Ford banged loudly on the rear door of the apartment and announced his presence repeatedly, but received no response. At that point, the officers released their hold on the radio air and Officer Ford returned to the front of the apartment. Officer Herrick then took up a position at the rear of the apartment, however, it appears likely that there was a gap of approximately two minutes between the time that Officer Ford left the rear of the building and Officer Herrick took his place. Officer Herrick noticed that the second story window of the victim's apartment was open and its screen had been removed, at which time the Denver Fire Department was called and asked to respond with a ladder.

At approximately the same time that Officer Ford returned to the front of the building, Officer Shiller was engaged in an I-Call with Sergeant Addison. An I-Call is a way of communicating through the radio dispatch system privately in that the conversation is not aired over the radio, however, it is recorded by the dispatch center. Sergeant Addison was at McDonald's at that time obtaining additional information from Ms. Sandoval in order to determine whether a forced entry should be made. Sergeant Kyle

was outside waiting in their patrol vehicle, not privy to the conversation. A tape of that I-Call reflects that Sergeant Addison advised Officer Shiller that Ms. Sandoval had stated that if the suspect was not still on the living room couch, he had probably left and gone to Nettie's bar. Sergeant Addison also warned Officer Shiller that "there should be an uncle in the house also, and he would be in one of the back bedrooms, so be careful." However, it does not appear that Sergeant Addison and Officer Shiller made any of the other officers aware of that information. Further, even though Officer Ford was standing near Officer Shiller during the I-Call, it appears that Officer Ford may not have overheard that statement, as Officer Shiller was wearing an ear piece while on that call.

In the meantime, Officer Herrick was advised by a young boy in the neighborhood that a man matching the suspect's description had jumped out of the open window and left the scene running approximately ten minutes before the police arrived. However, his story was not considered particularly credible since Mr. Martinez could have simply walked out of the apartment before police arrived, without risking injury by jumping out a second story window. A female neighbor was also questioned and she told officers that she had been standing in the same place cooking for at least thirty (30) minutes with a full view of the rear of the victim's apartment and had not seen anyone jump out of a window or run by. The officers on scene were skeptical that a man of the suspect's size could jump out of a second story window directly to the ground without being injured and they looked for any evidence of how that could be accomplished.

According to their statements to homicide detectives later that night, Sergeant Addison and Sergeant Kyle responded to the location at 8:26 p.m., approximately the same time that the Denver Fire Department arrived with a ladder. Officer Gene Sharla also responded to the location several minutes later. When Sergeant Addison and Sergeant Kyle arrived, the officers on scene advised them of the varying reports from neighbors about the suspect's possible escape. The sergeants asked Officer Herrick if the rear of the building had been covered by an officer at all times, and Officer Herrick advised them that it had, because that's what he believed to be true. Believing that the suspect was probably still in the apartment, Sergeant Addison decided, with Sergeant Kyle's concurrence, that entry should be made through the second floor window. Their reasoning was that the alternative was causing heavy damage to one or both of the exterior doors, which would have meant that the victim and her children would have been displaced for a day or more. In addition, because of the layout of the apartment, it was felt that entering the second floor of the apartment would be less dangerous for the officers than entering through the front or back doors and being unable to see anyone who might be upstairs and planning to attack them.

Officers Ford, Herrick and Sharla were selected to enter the apartment, and Officer Sharla was designated to carry a Taser. Officers Huff and Shiller were positioned at the front door while Sergeant Addison and Sergeant Kyle remained at the rear door. Officer Ford initially scaled the ladder to see if entry could be safely made, and then came back down to report that the room with the window was mostly unfurnished and empty except for an ironing board and laundry. The ladder was then repositioned and the officers were reminded by Sergeant Addison to announce themselves constantly. At that point Officer Herrick scaled the ladder and positioned himself on the nearby awning to provide cover while Officer Sharla made entry through the second story window. Officer Herrick then entered through the window, followed by Officer Ford, and the three officers began to search the upstairs rooms while repeatedly announcing their presence, which could be heard by the officers outside the front of the residence.

While those three officers were making entry, Officers Huff and Shiller again knocked loudly on the front door, identified themselves, and yelled for anyone inside to make their presence known. The officers who were inside the apartment were able to hear the commands of the officers outside very clearly.

Once inside the apartment, the officers cleared the room they had entered, where the window screen was laying on the floor. They then proceeded to clear a second room and a bathroom, the doors to which were open. They then focused their attention on the only remaining room, the door to which was closed. That bedroom door opens inward from the right to the left of a person facing it. Just a few feet to the left of the door hinges is the staircase leading down to the first floor, and just a few feet to the right of the door knob is the bathroom, which faces the staircase. Officer Sharla positioned himself just outside the entry to the bathroom within reach of the bedroom door knob with his Taser drawn. Officer Ford positioned himself on the side of the staircase nearest the door hinges, with one foot on the top and the other foot on the first or second step down, with his Glock 9 millimeter semiautomatic handgun in his left hand and a flashlight in his right hand. Officer Herrick positioned himself behind a short wall that borders the hallway on the opposite side of the staircase, facing the bedroom door with his firearm drawn. The officers again announced their presence by yelling "Denver Police, come out with your hands up," but received no response and heard no movement inside the room.

Officer Sharla then swung the door open. Almost immediately, Officer Ford saw that there was a person lying down on a bed on the far right side of the room against the wall. According to Officer Ford, that person suddenly bolted upright from the far side of the bed, holding the blanket that was covering him with his left hand, and raising a shiny object in his right hand as he exclaimed loudly "what the f***." According to his statement later that evening, Officer Ford perceived the object in Mr. Lobato's right hand to be a gun and, fearing for his life, fired his weapon one time while simultaneously starting to duck down. Because of their location in the hallway with respect to the bedroom, neither Officer Herrick nor Officer Sharla was able to see the person in the bed.

Unsure of whether the person in the bed had been hit by the bullet, Officer Ford and the other two officers then immediately began yelling for that person to show his hands and approached the bed with their weapons drawn. At the same time, the officers outside heard the gunshot and reacted by kicking in the front and rear doors to the apartment and running upstairs. The officers discovered an unarmed man later identified as Frank Lobato lying unconscious and unclothed on the bed with a single gunshot wound to the right side of his chest. The report of "shots fired" to the radio dispatcher was made at approximately 8:45 p.m. While they were still in the bedroom tending to Mr. Lobato and/or searching for a weapon, Officer Herrick and Officer Sharla heard Officer Ford state one or more times "I thought he had a gun."

Several of the officers on scene, including Officer Shiller who is a certified paramedic, and Officer Sharla immediately carried Mr. Lobato downstairs to expedite his transfer to an ambulance and, together with some of the firefighters on scene, began lifesaving efforts. Paramedics arrived within minutes and rushed Mr. Lobato to Denver Health Medical Center, where he was pronounced dead at 9:05 p.m. by Dr. Katie Hurlbut. A urine drug screen conducted at the hospital was positive for opiates.

According to standard protocol, Officer Ford was transported almost immediately to police headquarters, where he gave a videotaped interview with homicide investigators and members of the District Attorney's Office. The other officers who were present at the scene were also transported to headquarters where they gave videotaped statements to homicide investigators. The apartment where the shooting occurred was immediately declared to be a crime scene and was thoroughly processed for evidence pertaining to both the shooting and the prior assault on Ms. Sandoval. Statements were taken from a number of residents of the apartment complex, many of whom had heard the officers trying to gain the attention of anyone inside Ms. Sandoval's residence and/or witnessed Mr. Martinez escape from the second floor window when the rear of the building was briefly left uncovered. In accordance with standard protocol, all officers who responded to the scene that night were required to provide a written statement prior to the end of their shift.

A search of the bedroom where Mr. Lobato was shot and video recordings made later that night revealed no guns or other weapons. An empty "Big K" brand soda can was laying on the floor a few feet from the bed. There were also a number of empty soda cans on a makeshift table near the bed, and in a number of other locations throughout the apartment. There was some liquid on the floor next to the soda can. An inspection of the comforter on the bed revealed some spots of blood and holes that appeared to have been made by a bullet, indicating that the comforter was bunched up and covering Mr. Lobato's chest when he was shot. No other liquids were found on the comforter. Officers also discovered drug paraphernalia in the bedroom, including a syringe and a spoon. The can found on the floor was later tested for fingerprints and saliva but neither were detected.

The three officers on scene had somewhat different recollections of the critical events that took place immediately prior to and at the time of the shooting. In his statement to homicide detectives and representatives of the District Attorney's Office that evening, Officer Ford recalled at one point that he yelled to his fellow officers "there's someone in the bed" just before firing his weapon, though the other officers did not recall hearing such a statement. He also recalled that all of the officers yelled "show me your hands" multiple times as they entered the bedroom. Officer Sharla recalled that Officer Ford yelled "show me your hands" several times just before firing, and several more times after he fired. Officer Herrick, on the other hand, did not believe that anything was said by Officer Ford before he fired, but stated that immediately after the bullet casing from Officer Ford's gun landed near him he heard Officer Ford yell "show me your hands" and "I've got one man down," or words to that effect. Officer Ford also indicated in his statement later that evening both that he heard Frank Lobato say to him "what the f***?" just before Officer Ford fired, and that he heard an object he later concluded to be a soda can fall to the floor right after he fired his weapon. Neither Officer Herrick nor Officer Sharla ever reported hearing such a statement or such a noise.

The three officers inside the residence generally agreed that lighting was not a problem when the shooting occurred. However, Officer Ford indicated that there were no lights on in the bedroom when the door was pushed open and that he was using a flashlight to see inside the room just before he fired, whereas Officer Herrick indicated that he had his flashlight out but never had the need to illuminate it. Officer Sharla recalled that lights were on in the bedroom when they were checking Mr. Lobato to see if he had a weapon in his hands, but is not sure whether the lights were on when the shot was fired or if one of the officers turned them on when they ran into the room. None of the three officers

clearly recall turning on the bedroom light at any time, however, those lights were on when the scene was being cleared. Similarly, none of the officers clearly recall whether the television in the bedroom was on or off, but all are in agreement that they did not notice any sound emanating from that television at any time.

Two nights after the shooting a detective and a member of the District Attorney's Office returned to the scene at the same time of night that the shooting occurred, and reconstructed the lighting in the bedroom and hallway according to the crime scene photographs and the officers' statements. With the hallway light on, the overhead bedroom light off, the television on, and the shading on the window matched to the crime scene photographs, the detective positioned himself where Officer Ford had been standing just prior to firing his weapon. When the bedroom door was opened, the detective was able to see into the room and distinguish various items located in the room.

Further investigation indicated that the suspect, Vincent Martinez, almost certainly escaped from the apartment by jumping out of the second story window during the one or two minutes that the rear of the building was apparently left uncovered after Officer Ford returned to the front of the building upon hearing his fellow officers release the air. Mr. Martinez was located and arrested the following day at an address near 7th Avenue and Santa Fe Drive. He has since been sentenced to ten years in prison for assaulting Cathy Sandoval – his seventh felony conviction.

A reconstruction of the shooting incident was performed by Lieutenant Jon Priest of the Denver Police Department. Lieutenant Priest analyzed the trajectory of the bullet based on the physical evidence and statements of the officers. He concluded that Mr. Lobato was on the bed when he was shot, that his body was raised up no more than 30 degrees when struck by the bullet, and that the bullet first passed through the comforter while it was folded in several places before striking Mr. Lobato's left chest area. Lieutenant Priest formed the opinion that Officer Ford most likely fired his weapon unintentionally as a result of what is known as a "startled response." This conclusion was based on Officer Ford's statement that at the same time he fired his weapon he was also ducking down, the type of weapon used, and the fact that he fired only a single shot, whereas officers nearly always instinctively fire two or three shots at a minimum based on their training. Lieutenant Priest indicated that, from his experience, the most frequent reason for such an unintentional firing is placing the finger on the trigger prior to target identification and/or sight acquisition.

Several months after the shooting, Officer Ford mentioned to a fellow officer that he had fired his weapon with his left hand, which is not his dominant hand. This information was provided to and analyzed by Lieutenant Priest, who concluded that although the information meant a slight difference in his projection of the positions of Officer Ford and Mr. Lobato, it did not substantially change the results of his trajectory analysis, which remained within an acceptable variance of plus or minus 10 degrees. Further investigation later revealed that Officer Ford had received substantial academy and post-academy training while in Texas on shooting a weapon with his left hand when circumstances so dictated, and is proficient firing with either hand.

IV. PROCEDURAL BACKGROUND

This shooting incident was investigated initially by the Homicide Unit of the Denver Police Department in conjunction with the Denver District Attorney's Office. At the conclusion of the investigation, the District Attorney at that time, William Ritter, elected to present the case to the Grand Jury, as was his prerogative. The Grand Jury accepted the case for investigation on September 1, 2004. Evidence was presented to the Grand Jury by the Denver District Attorney's Office and witnesses were subpoenaed and questioned under oath. Of course, those proceedings were secret, and I have no knowledge of the testimony and evidence that was presented to the Grand Jury.

The Grand Jury issued their report on December 1, 2004, reflecting that nine or more members of the Grand Jury could not reach an agreement on probable cause to support any of the counts in the presented indictment and issue either a True Bill (a document indicating that the necessary number of jurors agreed that there was sufficient evidence to indict) or a No True Bill (a document indicating that the necessary number of jurors agreed that there was not sufficient evidence to indict). District Attorney Ritter subsequently decided not to charge Officer Ford with any crimes resulting from the shooting death of Frank Lobato based on his professional opinion that he could not prove to a jury beyond a reasonable doubt that a crime had been committed.

The shooting case was turned over to the Denver Police Department's Internal Affairs Bureau for further investigation on December 10, 2004. During the course of that investigation, follow-up interviews were conducted with Officer Ford and the other officers and supervisors who were present at the time of the shooting, as well other officers with pertinent knowledge about the case.

The Use of Force Review Board, which examines all incidents where serious injury or death results from any officer-involved use of force and all firearm discharges by police officers, was impaneled and reviewed this matter. The Use of Force Review Board is made up of the four Division Chiefs of the Department, two citizen members trained and certified by the Department, and the Commander of the IAB, who serves as Chair of the Board but does not vote except in the case of a tie vote. Officer Ford appeared and answered questions posed by the Use of Force Review Board at its first meeting. The Use of Force Review Board then referred the matter to the Tactics Review Board for review of several areas of concern and a written recommendation report.

The Tactics Review Board is made up of seven voting members and one non-voting advisory member appointed by the Chief of Police, all of whom are sworn police officers from inside and outside the Department with demonstrated experience in the areas of police tactics and officer safety. One of the voting members must be from the rank of Police Officer First Grade, Corporal or Technician, and no more than two members may be appointed from outside the Department. The Tactics Review Board is tasked with the responsibility of reviewing tactical situations or documented incidents involving the use of force to determine whether the tactics utilized may have deviated from Department training, policy or procedure; whether there is any need for revisions to policy, procedure or training; whether there was proper management of the situation by supervisors and command officers; and whether commendatory actions may be warranted. A secondary function of this Board is to review and make recommendations on tactics that are being considered for adoption as a recognized tactical option.

The Tactics Review Board met several times and requested that the IAB conduct some additional interviews, which were then reviewed. The Tactics Review Board issued its written report to the Use of Force Review Board on January 18, 2005. The Use of Force Review Board convened again later that same day, at which time Officer Ford appeared for a second time to answer questions and was also allowed to provide a narrative statement of the events. The Use of Force Review Board then issued its report and a disciplinary recommendation to the Chief of Police.

Thereafter, Officer Ford and his attorney were notified by IAB that its investigation file and the investigation file of the Homicide Unit were available for review. The matter was then presented to the Disciplinary Review Board, or "DRB," a panel that is composed of two peer officers, two command officers, two citizen representatives, and the Chair of the Board who is a Deputy Chief or his or her designee. Again, Officer Ford appeared to answer questions. The DRB issued its initial disciplinary recommendation to the Chief of Police on February 8, 2005. The disciplinary recommendations of both the DRB and the Use of Force Review Board are advisory in nature, and are not binding on the Chief of Police. The Department considers the recommendations of all of these Boards to be confidential.

After receiving the recommendations of these Boards, Chief of Police Gerald Whitman issued a contemplation of discipline letter to Officer Ford. An initial pre-disciplinary meeting was conducted by Chief Whitman on March 8, 2005, at which time Officer Ford was given the opportunity to, and did, provide Chief Whitman with a statement. The meeting was then re-convened on March 14, 2005, at which time Chief Whitman announced his decision that Officer Ford had violated the Use of Force Policy and should be suspended for a specific amount of days which he specified to me in writing.

By Charter mandate, the decision made by Chief Whitman is only a recommendation and the final decision on whether Officer Ford violated any departmental policies and, if so, what the discipline should be rests with the Manager of Safety. Therefore, it then became my responsibility to review the case and issue a disciplinary order within fifteen (15) calendar days. However, prior to the expiration of that deadline, I determined that the matter needed further investigation and remanded the matter to Chief Whitman on March 25, 2005.

The additional investigation was completed on approximately June 1, 2005. The Use of Force Board and DRB were subsequently re-convened to consider the new investigation materials, and both Boards stood by their initial recommendations. A revised contemplation of discipline letter was then issued to Officer Ford, and a second pre-disciplinary meeting with Officer Ford and his legal counsel was conducted by Chief Whitman on July 14, 2005. On July 21, 2005, Chief Whitman announced that his initial decision remained unchanged – that Officer Ford had violated the Use of Force Policy and should be suspended for a specified number of days. I then reviewed the case again and made the decision that I have announced here today.

In reaching my decision, I have reviewed at length all of the investigation files prepared by the Homicide Unit and the IAB, including the officer statements, witness statements, and physical evidence reports, and have personally viewed most or all of the physical evidence. I have studied the Use of Force Policy in effect on the date of the shooting, Officer Ford's training records, relevant portions of his personnel file, and the investigation file pertaining to the assault of Cathy Sandoval by Vincent Martinez. I

visited the scene of the shooting on the night that it occurred, and have since reviewed photographs, videotapes and drawings of the scene. I have also reviewed relevant training materials and academy training methods.

In addition, I have considered what I believe to be the principles and purposes of discipline, as well as prior disciplinary cases which might assist me in reaching a fair decision. I have also given consideration to my Charter-mandated duty as Manager of Safety to maintain administrative control of the Police Department; Officer Ford's employment history; as well as the prior recommendations from the respective Boards and Chief Whitman.

IV. ANALYSIS

A. Applicable Evidentiary Standards

It is important that the public understand that there is a significant difference between the evidentiary standards that were utilized by the Grand Jury and the District Attorney in their criminal review of this shooting incident and the standard that I have utilized in my administrative review. The criminal review process required a determination of whether there existed proof "beyond a reasonable doubt" that Officer Ford had no legal justification under the applicable criminal statute for the use of deadly physical force under the circumstances presented. In this particular case, that meant that Officer Ford could not be found criminally liable unless there was proof beyond a reasonable doubt that it was unreasonable for Officer Ford to believe, at the moment he pulled the trigger, that there was an imminent danger that Mr. Lobato was armed with a gun and was going to shoot him or his fellow officers with that gun. In other words, Officer Ford could only be charged criminally if there was proof beyond a reasonable doubt that he either did not really believe that Mr. Lobato was armed with a gun and preparing to shoot Officer Ford and/or his fellow officers; or, if Officer Ford really did hold such a belief, that belief was unreasonable under the circumstances presented.

The administrative review process that I utilized in deciding whether Officer Ford should be disciplined as a result of the shooting incident involved a determination of whether there exists a "preponderance of evidence" to show that Officer Ford violated the Denver Police Department's Use of Force Policy that was in effect on the date of the shooting. The Policy requires that an officer use only that level of force that is "objectively reasonable" under the "totality of circumstances surrounding the immediate situation," without the benefit of hindsight. Therefore, my task was to determine whether the evidence presented to me made it more or less likely that an objectively reasonable police officer under identical circumstances would have reasonably perceived that Frank Lobato posed an imminent threat such that use of deadly physical force was justified. In this particular case, much of the critical evidence must be derived solely from Officer Ford's statements, because even though Officer Herrick and Officer Sharla were positioned near him in the upstairs hallway with their weapons drawn, they were not able to see what transpired inside the bedroom that caused Officer Ford to fire his weapon.

B. Use of Force Policy in Effect in July 2004

As stated previously, 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." Thus, the 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.

C. Training Received by Officer Ford

Needless to say, the extent to which an officer is entitled to use force, including deadly force, in carrying out his duties is a topic that receives significant attention in training at the Academy, in post-Academy training courses, and in the mandatory quarterly firearms qualifications that each officer must undergo every three (3) months. As I have previously indicated, Officer Ford initially attended an accredited police academy in the State of Texas, where he received extensive training on the use of force.

When he attended the Denver Police Academy as a lateral recruit in 2001, Officer Ford's training focused primarily on four areas: firearm skills, arrest and control techniques, driving skills, and the procedures, rules and laws of the Denver Police Department, the City and County of Denver, and the State of Colorado. Of course, Officer Ford received extensive training on the Department's Use of Force Policy, both while in the Academy and later as part of his continuing education.

Training on the use of deadly force is accomplished through a combination of classroom lecture, target shooting and decisional shooting. It begins in the Academy, but is a topic that is addressed throughout an officer's career. There are several principles associated with the use of deadly force that are taught and then repeatedly emphasized over and over again so that they will become a learned response by the officers in stressful situations. Among these principles are the following:

1. Officers should give clear verbal commands to the suspect prior to shooting.
2. Officers should never point their weapon at anyone they are not willing to kill.

3. Officers should keep their finger off of the trigger until the target has been identified and the decision to shoot has been made.
4. Officers should not fire their weapon until they have properly assessed the threat and determined that deadly force is justified.
5. Every shot fired must be based on a conscious decision to do so.
6. Officers should fire multiple shots to center mass, and continue firing until the threat no longer exists.³
7. Repetition, repetition, repetition.

This last principle simply reinforces that the point of the training is to create, by repetition, a learned response that the officer will be able to revert to when he is experiencing the effects of the adrenaline that pumps through his body when facing a life or death situation. Therefore, in addition to training officers on use of force principles in the classroom, the Department utilizes both decisional shooting exercises and mandatory quarterly firearms qualifications as training tools that are aimed at re-creating, to the extent possible, the stress that an officer will experience at the moment that he is called upon to use deadly force so that in real-life deadly force situations, the officer will respond according to his training.

Decisional shooting training is provided both as part of the Training Academy curriculum and in post-Academy continuing education courses, and is sometimes also referred to as “shoot/don’t shoot” training. This training, utilizes both state-of-the-art computerized simulators and live fire scenarios on a pistol range that simulate real-life situations, such as a suspect making furtive gestures, or suddenly turning toward the officer and producing a simulated weapon. Many times the officers will be given certain factual information in advance of a scenario, which information he then must evaluate in the context of deciding whether to shoot as the scenario plays out. In all of these simulations, the deadly force principles listed above are emphasized again and again, and the officer is evaluated on his ability to make appropriate decisions about using deadly force by applying those principles. At the conclusion, the officer de-briefs with instructors to discuss and evaluate whether his decisions to use (or not use) deadly force were justified. Officers are advised repeatedly throughout their Academy training that it is impossible for the instructors to train them on every situation that might arise during their careers, and that the instruction they are given consists of fundamental principles and rules that they will be expected to apply by using their common sense, experience, education and other training.

³ This principle reinforces that when deadly force is justified, the officer should fire until the threat no longer exists. Shooting at center mass (the torso area) instead of the head or limbs gives the officer a larger margin of error and reduces the risk that a missed or ricocheted bullet will strike a fellow officer or an innocent bystander, and correlates to the basic gun safety principle that an officer is responsible for every bullet fired from the moment it leaves the muzzle until it hits the ground. Shooting multiple times until the threat no longer exists is a matter of officer safety in that a single bullet rarely stops a suspect instantly or prevents him from continuing to try to harm the officer.

The decisional shooting training is reinforced during every officer's mandatory quarterly shooting qualifications, which take place on the shooting range using moving targets, or silhouettes. The targets move both toward and away from the officer, and also turn to face both toward and away from him. Sometimes the targets are "armed" and sometimes they are not. The officer is required to assess the potential threat of the target and, if deadly force is justified, to fire multiple times at center mass. If an officer shoots at a target that turns out to be "unarmed," the officer is disqualified, and must go through the exercise again. Likewise, if an officer shoots and either misses the target altogether or designated areas on the target (which would incapacitate the suspect), the officer is disqualified and must repeat the exercise. Officers are also put through various simulation drills with the moving targets, including scenarios where their weapon has malfunctioned and the officer must identify and repair the malfunction, as well as respond appropriately to the threat, within a maximum time limit.

Other relevant training that officers receive includes classroom lectures and hands-on exercises on how to effectively and safely communicate (with fellow officers and the suspect), move and shoot at the same time. In the Academy, all recruit officers also attend a building search techniques course that teaches them a number of skills needed to safely search and clear a structure such as an apartment or house, including how to negotiate doors, doorways and windows; how to search effectively using a flashlight while still wielding a gun; and how to coordinate search efforts with other police officers. The Academy conducts this training in a reconstructed building called the "scenario house," where the recruit officers practice their building search techniques under a variety of circumstances, including where a possible armed intruder is present and must be identified and brought under the officer's control.

D. Whether Officer Ford Violated the Use of Force Policy

As a general matter, I believe that the proper approach to analyzing whether an officer-involved shooting was justified 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.

1. Were the Tactics Utilized by Officer Ford Reasonable?

There have been a number of questions raised by the public about the tactics utilized by the officers in their efforts to apprehend Vincent Martinez. I have reviewed those tactics closely and am satisfied that, for the most part, the tactics used were reasonable and appropriate, and that any tactical errors that might arguably have been committed were not contributing factors to the death of Frank Lobato.

When the officers first arrived on scene, they acted appropriately in first parking out of the sight of the location, then securing the premises by having Officer Ford cover the rear of the building, requesting a hold on the radio airwaves on their particular channel, and attempting to contact anyone inside. When those efforts were unsuccessful, Officer Shiller, who was standing at the front of the residence, announced over the radio that the dispatcher could "release the air." Unfortunately, to some officers such an announcement could be interpreted to mean that the call is over, either because the suspect was not located or was captured. That was Officer Ford's interpretation, which prompted him to leave his post and return briefly to the front of the residence,

unknowingly allowing Vincent Martinez to escape out the second floor window. In a perfect world, either Officer Shiller would have communicated to Officer Ford to remain at his post or Officer Ford would have clarified by radio the status of the call before leaving his post, but I cannot say that their failures to do so were unreasonable under the circumstances.

As to the tactical decision to enter the apartment in the first instance, I am comfortable that this decision was reasonable. Obviously, we can now say with hindsight that there was not an urgent need for the officers to make entry into the apartment given that Vincent Martinez has subsequently made statements that he escaped when the rear of the building was briefly left uncovered. However, the information given to sergeants Addison and Kyle by the officers on scene was that the rear of the building had been covered at all times and that the information they had received from residents of the housing complex about whether Mr. Martinez might have escaped was conflicting. In all likelihood, this information influenced to some degree the sergeants' decision to enter the apartment. Nevertheless, absent convincing evidence that Mr. Martinez had escaped already, the sergeants and officers on scene had a legitimate reason to search the apartment in order for Ms. Sandoval and her children to be able to safely go back to their home.

As to the tactical decision to make entry through the open second story window using a ladder, I am likewise satisfied that this tactic, although unusual, was reasonable under the circumstances. While it is arguable that the tactic was a risky one, I believe that it was made out of a legitimate concern for the well being of Cathy Sandoval and her children, knowing that if they kicked in the front or back doors instead, it would be some time before repairs could be made and, in the meantime, the family would necessarily be displaced from the residence, thereby adding to their trauma.

As to the safety of this tactic, I believe that Sergeants Addison and Kyle took every reasonable precaution to ensure that this window entry was conducted as safely as possible. They first sent Officer Ford up the ladder from an indirect angle, with the officers on the ground providing cover, so that he could look in through the window and assess the risk of making entry into that room, with minimal concerns for his safety while on the ladder. They reminded the officers who were going inside to announce their presence repeatedly, reminded them about the possible presence of the uncle and made sure that the officers were equipped with Tasers. They then instructed the officers posted at the front door to again start knocking and announcing themselves to distract anyone inside, then repositioned the ladder for entry and directed Officer Herrick to climb partway up the ladder and take a position on a nearby awning. From there, he was able to provide cover for Officer Sharla to safely enter through the window and clear the room while Officer Herrick and then Officer Ford made entry.

As I have pointed out previously, it is not possible to train police officers for every single situation that may arise. Instead, the Department trains them on fundamental principles that will enable them to perform their duties in the safest and most efficient manner possible. Sergeant Addison and Sergeant Kyle utilized those principles by considering the potential benefits and risks of the window entry and carefully planning out the entry with the safety of the officers as a foremost concern. The entry was then carried out by the officers flawlessly.

Further, I would point out that the tactical decision to enter the residence through the second floor window was not a causative factor in the deadly shooting that occurred several minutes later. It is evident to me from the investigation materials that, from the minute the officers arrived and began trying to make contact with anyone inside until immediately prior to the shooting, Frank Lobato was either ignoring the officers' commands for anyone inside to make their presence known or, for some other reason, was not responding. Either way, there is no reason to believe that Mr. Lobato would have responded to the officers had they kicked in a door downstairs, or even entered with a key, rather than climbing up a ladder through an upstairs window. Therefore, I cannot say that this tactic had any effect on the outcome of this call.

Another question is whether the officers should have contacted the Metro/SWAT unit rather than make entry into the apartment window or the bedroom door where Mr. Lobato was subsequently shot. I wholeheartedly believe that the circumstances presented did not meet the Department's criteria for calling in SWAT (special weapons and tactical response team). In addition to the requirements that a serious crime must have been committed and a potential threat to the lives or safety of others must exist, there must be a reasonable belief or actual knowledge that the suspect is armed, which the officers' did not have here; and the suspect must have concealed himself and refused to submit to an arrest, neither of which had occurred.

There is no doubt in my mind that the officers who responded to the scene and the sergeants who guided them were more than adequately trained and experienced in handling this type of routine call, and the fact that their efforts ultimately culminated in a tragic death, does not give me pause to believe that, in these particular circumstances, they were in over their heads and in need of specialized assistance.

I also believe that the officers' positioning outside the bedroom door before Mr. Lobato was shot and their method of entry into that bedroom were tactically appropriate.

2. Was Officer Ford's Perception of an Imminent Threat Reasonable?

It is my conclusion that Officer Ford's belief that Frank Lobato posed an imminent threat of serious bodily injury or death to him that justified deadly force was simply not reasonable under the circumstances presented. Based on my review of the evidence, it is apparent to me that this belief was greatly influenced by his unreasonable and illogical perceptions that existed even before the closed door to the bedroom was pushed open. According to his own statements just hours after the shooting, once it became clear that no one inside the bedroom was responding to the officers' announcements of their presence, Officer Ford concluded that he would be facing only one of two possible scenarios as soon as the bedroom door swung open: either the bedroom would be empty, or the person or persons inside would try to ambush him. It is my opinion that it was unreasonable for Officer Ford to have formulated such a narrow list of possible scenarios given the facts that were or should have been known to him at that time, and that by doing so, he set the stage for a tragically mistaken shooting.

First and foremost, in order to hold such a perception, Officer Ford had to disregard almost entirely the information given to him that someone identified only as an "uncle" was likely to be inside the apartment as well. Officer Ford was aware that the remainder of the apartment had been cleared or could be reasonably observed and that the only area unchecked was this bedroom. In addition, Officer Ford was aware that there was at

least some evidence that a person answering the suspect's description had been observed jumping from a rear window, whereas there was never any information that an older male had left the apartment by any means. Further, while officers are trained to always exercise some degree of caution when dealing with family members or associates of a suspect, there were no indications that Frank Lobato had been involved in the assault and false imprisonment of Cathy Sandoval.

Yet another oversight on the part of Officer Ford in forming this unreasonable perception was the absence of any information that there might be guns in the residence. Cathy Sandoval had not been assaulted by a weapon, and she assured the officers that, to the best of her knowledge, there were no guns or other weapons inside other than ordinary kitchen knives.

I also cannot accept Officer Ford's statements to the effect that the only explanation for why someone inside the bedroom would not respond to the officers' shouted commands to come out with their hands up was that the person intended to ambush the officers as soon as they opened the door. The person inside could have been unresponsive for any number of reasons short of being a desperate criminal willing to kill a police officer. While the lack of any response from inside the bedroom was certainly reason for the officers to be cautious in entering the bedroom, I wholeheartedly believe that Officer Ford's mindset, even before the door was opened, that any movement seen inside the bedroom necessarily signaled a deadly ambush significantly contributed moments later to his unreasonable belief that Frank Lobato posed an imminent danger to him and his fellow officers.

Given that mindset, it isn't all that surprising that, when the door swung open and Frank Lobato began to sit up from the bed, Officer Ford fired his weapon. Whether he was surprised or not, however, does not resolve the issue of whether his response was reasonable. Officer Ford's statements later that evening indicate that, when Frank Lobato allegedly bolted upright with a shiny object in his hand that appeared to be a gun, Officer Ford, fearing he was about to be shot, instantly reacted by ducking and consciously firing one time at "center mass" (the torso area).

I am not completely convinced, however, that Officer Ford fired his weapon intentionally. I believe there is a reasonable possibility that Officer Ford may have simply been startled by Frank Lobato's movements, or interpreted those movements as a deadly ambush and momentarily reacted while his finger was on the trigger of his weapon, causing him to unintentionally squeeze the trigger while simultaneously ducking. This is a reaction that is sometimes referred to as a "startled response." My theory in this regard, which was first espoused by Lieutenant Priest in his reconstruction analysis, is supported not only by Officer Ford's own description of his movements at the time he fired his weapon and the forensic evidence, but also the unusual occurrence of his discharging only one bullet. It would also explain why Officer Ford fired at a person who did not resemble the suspect in size, age or general appearance, and why he fired without first assessing what the shiny object was in the subject's right hand. Even taking into account the statement alleged to have been made by Officer Ford immediately after the shooting, "I thought he had a gun," I do not believe that such a statement in and of itself necessarily indicates that the shooting was intentional.

However, even if I accept Officer Ford's version of the events that he intentionally fired his weapon out of fear that he was about to be shot by Frank Lobato, I must still

conclude that his subjective perception of being in imminent danger was objectively unreasonable. A police officer in this day and age cannot reasonably perceive imminent danger simply because he catches a glimpse of a “shiny object” in someone’s hand, and even the fact that he does so in a tense and rapidly evolving situation does not necessarily make his perception objectively reasonable. His perception of that object as a gun must be reasonable, and in my opinion, it was not. Once again, I have to consider what information was known or should have been known to Officer Ford when he concluded that Mr. Lobato was seconds away from shooting a gun such that Officer Ford needed to fire first to defend himself. At that time, Officer Ford knew or should have known that there was a possibility that a party other than the suspect was in the apartment, that the logical place for that third party to be was inside the bedroom with the closed door, that it was possible that the actual suspect might have already fled the apartment, and that Ms. Sandoval had said there was no gun in the apartment. Consequently, it was incumbent on Officer Ford to reasonably assess the object that he believed Frank Lobato was holding in his right hand before he fired his weapon.

Whether he fired intentionally or unintentionally is not a conclusion that I have to reach in this case, as either way, I believe that the Use of Force Policy was violated when Officer Ford discharged his weapon. In both instances he unreasonably perceived that Frank Lobato posed an imminent threat of death or serious bodily injury and responded by using deadly force, whether intentionally or unintentionally. Either way, he failed to follow his extensive training, which teaches that an officer’s desire and instinct to survive cannot overshadow his responsibility to use deadly force only when reasonably necessary.

Like all of his fellow officers in this Department, Officer Ford was trained that he should not consciously discharge his firearm until he has reasonably assessed the perceived threat. A shiny object may be something as harmless as a cell phone, a soda can, or any other number of objects common to the environment that he is in. Similarly, the person holding that shiny object may turn out to be someone with absolutely no intent whatsoever to do that officer harm. For those reasons, police officers are expected to refrain from firing their weapons until they have reasonably assessed the source of their fear as one that poses an imminent threat of death or serious bodily injury, and reasonably determined that the use of deadly force is necessary.

Before moving on to the third issue to be considered in determining whether Officer Ford violated the Use of Force Policy, I want to address two other questions that have arisen or will arise in many people’s minds about this shooting, the first of which is whether there really was a soda can in Frank Lobato’s hand when he was shot. Any objective and unbiased investigation must consider that possibility. Officer Ford has stated that after firing his weapon, he immediately heard an object fall to the ground and subsequently concluded that the soda can lying on the floor next to the bed must have been the object that Frank Lobato had been holding. The other two officers did not hear an object fall to the floor, and were not in a position to observe whether Mr. Lobato was holding the can. As I noted previously, there was some liquid on the floor next to the soda can, but no liquid was found spilled onto the bed or its coverings. There were no discernible fingerprints on the soda can and no saliva could be detected by laboratory analysis for possible DNA testing, however, based on my experience, the lack of fingerprints and lack of saliva on the soda can neither proves nor disproves that the can was in the possession of Mr. Lobato at the time of the shooting. It should also be noted that a number of soda cans of the same brand were found in the bedroom and in other

parts of the residence. Under the circumstances, I therefore must conclude that there is not sufficient evidence for me to refute Officer Ford's version of these events.

The second question that will weigh on the minds of some is whether Officer Ford's descriptions of Frank Lobato's physical movements when the door was opened is consistent with the forensic evidence and, if not, why not. The primary discrepancy relates to Frank Lobato's body position when he was shot. The forensic evidence based on the bullet's trajectory indicates that Mr. Lobato was raised out of the bed only about thirty (30) degrees when he was shot. Officer Ford told homicide investigators that Mr. Lobato bolted upright from a horizontal position on the bed to essentially a sitting position, with his left hand on the blanket that had been covering him and something shiny being raised up in his right hand, looked directly at Officer Ford and said "what the f***?" Officer Ford stated that he then fired his weapon as he squatted down to avoid being shot and immediately saw Mr. Lobato lay back down on the bed, but was unsure whether he was just complying or had been struck by the bullet. Again, no other officer was in a position to see Mr. Lobato's movements just before he was shot, nor did they report hearing Mr. Lobato say anything before he was shot. I believe that it is more likely than not that Mr. Lobato was just beginning to rise up from the bed when the shot was fired. The discrepancy between Officer Ford's version and the physical evidence might be explained by a mistake in Officer Ford's perceptions and/or recollections of the events, which were no doubt traumatic to him.

3. Was Officer Ford's Decision to Use Deadly Force in Reaction to the Perceived Threat Reasonable?

A police officer is entitled to use deadly force when he reasonably perceives that he is facing an imminent threat of death or serious bodily harm. Here, because I believe that Officer Ford's assessment of the threat posed by Mr. Lobato was unreasonable, I must conclude that his use of deadly force was also unreasonable.

E. Legality of the Entry into the Residence

One issue that has been raised in regard to this unfortunate shooting incident is the legality of the entry into the apartment by the three officers. It is my belief that the officers reasonably and in good faith believed that they were acting within the law when they entered Ms. Sandoval's apartment based on her consent. While the officers did not have a search warrant, the Fourteenth Amendment of the federal and state constitutions recognize that warrantless searches of a home are permissible under certain circumstances, one of which is when the entry and search is conducted with the consent of the owner, tenant or occupant of the premises. In this case, in her first contact with the officers, Cathy Sandoval advised them that the apartment was leased in her name, and that Vincent Martinez lived there with her. By law, either of those individuals could have given consent to enter and search the premises, regardless of the wishes of the other. After the officers were unsuccessful trying to make contact with Mr. Martinez by pounding on doors and loudly announcing their presence, transcripts of the I-Calls made that day reflect that Officer Shiller contacted Sergeant Addison to request permission to enter the apartment by kicking down a door or going through an open second story window. Sergeant Addison advised Officer Shiller to stand by, and then proceeded to the McDonald's restaurant to meet with Ms. Sandoval to discuss the issue.

Sergeant Addison confirmed with Ms. Sandoval that she did not have a key in her possession and that the telephone inside the apartment had been disabled. He then explained to Ms. Sandoval that, even though the officers had been unsuccessful in their efforts to contact persons in the apartment, they believed that Mr. Martinez might still be inside because they had heard sounds of movement inside, the downstairs TV was still on, and there was no clear evidence that Mr. Martinez had left either before or after the officers' arrival. Ms. Sandoval thereafter gave Sergeant Addison verbal consent for the officers to enter the apartment to conduct a search, at which point Sergeant Addison and Sergeant Kyle proceeded to 1234 W. 10th Avenue to plan and oversee the consensual entry and search.

F. Additional Issues

I believe that it might be beneficial for me to specifically address some comments that I have heard repeatedly from members of the Department and members of the public both in support of and in opposition to the imposition of discipline in this case. If nothing else, perhaps doing so will demonstrate that I have given each of these arguments full consideration.

1. "Officer Ford should not be disciplined because the circumstances he faced were tense, uncertain and rapidly evolving."

As stated previously, the Use of Force Policy already contemplates that a higher level of force may be deemed reasonable when an officer is faced with circumstances that are "tense, uncertain and rapidly evolving" than would be the case if the officer had ample time to contemplate his options. However, the issue here is not the reasonableness of the level of force employed but, rather, the reasonableness of Officer Ford's decision to employ force in the first instance based on his perception that the shiny object he saw in Frank Lobato's hand was a weapon. I cannot support the position that a police officer's reaction to tense, uncertain and rapidly evolving circumstances should be beyond reproach simply for that reason, especially when the result is the death of an unarmed person.

2. "As long as a police officer subjectively perceives a threat of imminent danger and can later articulate why he held that perception, the shooting is justified."

This is a misperception that is not consistent with the Use of Force Policy or the criminal law on justified shootings. To the contrary, the test is whether the officer's perception of the threat as imminent is objectively reasonable under the totality of circumstances. While I would certainly like to think that all of Denver's police officers' subjective perceptions in the face of danger would be deemed objectively reasonable, this shooting incident is a perfect example of an occasion when that is not the case. I do not believe that an objectively reasonable officer would have completely ruled out the possibility that the uncle expected to be in the residence might be inside the bedroom yet pose no threat. Neither do I believe that an objectively reasonable officer would have discharged his firearm immediately upon seeing movement and a shiny object without being reasonably certain that the shiny object was a gun.

3. “It is unfair to review a police officer’s actions with the benefit of 20/20 hindsight.”

In response to this argument, I must first reiterate that it is my responsibility to review and analyze all facets of an officer-involved shooting death, and to impose discipline if I determine that the officer acted inappropriately. Obviously, I must do so after the fact, based on all of the information made available to me. However, I can assure all concerned that in analyzing the reasonableness of Officer Ford’s decision to use deadly force, I have been careful to attribute to Officer Ford only that limited information that was known, or should have been known, to him at that time under the circumstances presented.

4. “Anytime a police officer shoots and kills someone who the officer mistakenly believes to be armed, that officer should automatically be fired.”

This is a rigid approach with which I simply cannot agree. When a member of this Department reasonably perceives that he is facing an imminent threat of death or serious injury, and reacts to that danger in a reasonable manner, we will support that officer even if it later turns out that his perception was mistaken. That is not the case here today, but it is and will continue to be the philosophy of this Department.

It is important to keep in mind that law enforcement is a very difficult and demanding profession. It is, after all, one of very few professions in which a momentary lapse in judgment can result in the officer’s death. At the same time, police officers are given awesome powers which include, in effect, the power to take the life of another human being when justified, and members of this police force must keep in mind that such awesome powers come with equally awesome responsibilities.

V. DISCIPLINE IMPOSED

A. Comparative Discipline

The Denver City Charter, § 9-4-15 (F) requires me, in essence, to ensure that any discipline that I impose be consistent with discipline received by other members of the Department under “similar circumstances.” This legislative provision requiring me to impose discipline that is consistent with the disciplinary actions taken under similar circumstances by previous Managers of Safety, with which I may wholeheartedly disagree, is quite problematic in my opinion and difficult to apply. Nevertheless, it is a provision of the Charter with which I must comply, and have complied.

The timeframe that is generally used for reviewing comparative discipline cases is three years prior to the date that the disciplinary order was issued; in other words, three years prior to today’s date. Not surprisingly, there are no prior incidents in the past three years where an officer has shot and killed a subject due to either a startled response or because the officer mistakenly believed that the subject was pointing a gun at him. In fact, there have been no sustained violations of the Use of Force Policy for a use of deadly force in the past three years, if not longer.

The only occasion within the past three years where an officer was disciplined as a result of a police shooting was when I suspended Officer James Turney in April 2004. However, that case involved different rule violations and a unique set of facts; and, in any event, it cannot be considered by me because my decision was overturned by a Hearing Officer and is now on appeal to the Civil Service Commission. The sum result is that there were no comparable discipline cases for me to consider in deciding what penalty to impose against Officer Ford and, to that extent, I am writing on a clean slate.

B. Principles and Purposes of Discipline

Determining the proper discipline in a given case can be difficult. Among other things, I believe that it must be fair and rational; take into consideration the particular facts and circumstances of the case, including any aggravating or mitigating factors; and reflect the values, goals and priorities of the Denver Police Department. It must also consider both the individual being disciplined as well as the Department's obligations to all of its officers and the community it is sworn to protect. Additionally, it must effectively address the harm resulting from the misconduct.

Discipline must also have a purpose. That purpose, in any given case, could include correcting inappropriate behavior, setting an example for others, defining a standard of accountability, reinforcing training or deterring future misconduct. It is not the purpose of discipline to in some way compensate the victim, but rather, to ensure that the mission of the Police Department is properly carried out.

C. Analysis of Discipline Imposed

In reviewing this case, I have carefully considered the purpose of the Department's Use of Force Policy; how the Policy reflects upon the mission, values and priorities of the Department; and the harm that resulted from its violation. That harm includes not only the death of Frank Lobato but also the injurious impact the shooting of an unarmed man has on the reputation of the Denver Police Department. When the life of a citizen is taken because of a mistake in judgment by one of our officers, it undermines the trust that the community has in the Department and can compromise the Department's ability to carry out its mission. In addition, it should not be overlooked that taking a man's life is the last thing that any police officer ever wants to do.

I have also considered whether there are any mitigating factors that should be taken into consideration, and believe that there are. While I have determined that the circumstances presented to Officer Ford did not create a reasonable perception that Frank Lobato posed an imminent threat such that the use of deadly force was justified, I do believe that those circumstances should be considered as mitigating factors. Officer Ford was placed in a potentially dangerous situation which required him to enter into a home for purposes of locating and arresting a suspected felon who was known to be both violent and intoxicated.

Further, while I have determined that it was not objectively reasonable for Officer Ford to believe that Frank Lobato's actions posed an imminent threat of harm, it is apparent to me that Officer Ford did subjectively believe that his life was in danger at that time, and either fired unintentionally or failed to properly assess the nature of the threat prior to firing. Either way, his actions were a mistake, but they were neither reckless nor deliberate.

Finally, while we will never know with certainty why Frank Lobato did not respond to the officers' repeated knocking and yelling through doors and windows, it is difficult to conclude that there was any valid reason for doing so. The vast majority of the adult population would not have slept through the noise these officers produced both outside and inside of the residence and, as I have stated, it does not appear that Mr. Lobato had any physical impairment that would have prevented him from hearing their commands and identifying himself to officers. While his failure, if not refusal, to respond to the officer's commands certainly did not justify his death, it does warrant at least some consideration as a mitigating factor.

In serious discipline cases where termination has been contemplated (as I did in this case), but other factors have mitigated against termination, the discipline imposed has generally been in excess of thirty (30) to sixty (60) days. I do not believe that a suspension of thirty (30) days or less effectively meets the purpose of discipline under the facts and circumstances of this case. It is my belief that a suspension of ninety (90) days is appropriate because it acknowledges the significant harm that has resulted from this violation of the Use of Force Policy, it reflects the necessity to hold the Department and its members accountable and to reinforce training, and it demonstrates that this Department is willing to take the steps necessary to ensure that similar violations will not happen in the future.

I further believe that the discipline I have imposed will send a message to Officer Ford and to other officers that this Department expects them to fire their weapon only as a conscious decision, and only after properly assessing a perceived threat. Simply seeing unexpected movement, even seeing a shiny object that may or may not be a deadly weapon may provide an explanation for their decision, but it does not necessarily constitute justification. Law enforcement officers must take whatever action is necessary to assess the threat before firing. That is what they are trained to do, and that is my expectation of them.

Many will ask why I chose a lengthy suspension rather than dismissal, given the fact that an unarmed man lost his life. My first response to that question is that the harm that has resulted from an officer's unreasonable use of force is but one factor in the analysis that I must undertake. There are other factors to be considered as well, which I have discussed above, including any mitigating factors. Without question, dismissal has to be considered when a police officer fatally shoots a citizen without justification, but it need not be an automatic response.⁴ There might be other circumstances where an officer shoots at someone simply out of anger, or for some other wholly unjustified reason, but either misses or only causes minor injury, and that officer might very well be dismissed even though the outcome was less tragic than here. But no such aggravating circumstances exist in this case. Officer Ford made a mistake, and that mistake had a tragic result, but I do not believe that dismissal under the circumstances is warranted.

⁴ By law, the only circumstances under which dismissal is mandatory in the Denver Police Department is when a police officer is convicted of a felony, is disqualified by law from carrying a firearm, and/or is convicted of an offense for which he is de-certified by the Colorado Peace Officer Standards and Training Board.

CONCLUSION

In closing, I first want to extend my sympathies to the family and friends of Frank Lobato on behalf of the Denver Police Department and the City and County of Denver. I also want to assure those family members and friends, as well as the entire community, that this tragedy will not simply be put behind us now that disciplinary action has been taken. I will continue to do everything in my power as the Manager of Safety to ensure that the police officers in this Department fully understand and appreciate the mistakes that were made in this case, in the hope that this tragedy is never repeated. I will continue to promote high standards in the hiring and training of Denver's police officers and will continue to hold them appropriately accountable.

At the same time, I want to express to the members of this Department my continued support and appreciation for their hard work, their courage and their dedication to protecting the citizens of Denver. These officers truly do risk their lives every single day that they put on their uniform. I can only assure them that my faith in them has not wavered, and that we will learn from these mistakes and move forward.

Finally, I want to say that the disciplinary decision I have announced today was the result of a very careful review of the evidence and extensive deliberations on my part. I say that only to assure all of you that I take the responsibility of administering discipline very seriously. I believe sincerely that the decision I have reached is fair, reasonable and just. As always, my decision will be deemed too harsh by some and too lenient by others, and by law it is subject to appeal, but I can only do what I believe is right, and I am confident that is what I have done.

ISSUED BY:

Alvin J. LaCabe, Jr.
Manager of Safety

Date