

## CITY AND COUNTY OF DENVER

### DEPARTMENT OF SAFETY FIRE • POLICE • SHERIFF

Office of Manager  
1331 Cherokee Street  
Room 302  
Denver, CO 80204-2720  
Phone: (720) 913-6020  
Fax: (720) 913-7028

### **PUBLIC STATEMENT OF THE MANAGER OF SAFETY REGARDING THE IN-CUSTODY DEATH OF MARVIN L. BOOKER AT THE VAN CISE-SIMONET DETENTION CENTER ON JULY 9, 2010**

#### **I. BRIEF SYNOPSIS**

On the night of July 8, 2010, Mr. Marvin Booker was arrested by the Denver Police Department pursuant to a court order commanding he be taken into custody for failing to appear in court on a previous charge. Subsequently, Mr. Booker was released to the custody of the Denver Sheriff Department who transported him to the Downtown Detention Center (“DDC”), 490 West Colfax Avenue, to be booked and processed accordingly.

In the early morning hours of July 9, 2010, while at the DDC and going through the book-in process, Mr. Booker was ordered by a deputy sheriff to enter a holding cell after he had refused to cooperate fully in the process. Mr. Booker did not comply with that order and when the deputy attempted to enforce that order, a violent struggle lasting approximately three minutes ensued. During the course of the struggle, five deputy sheriffs attempted to control Mr. Booker as he strenuously resisted being placed on the floor, being handcuffed or otherwise submitting to the deputies. The deputies eventually resorted to the application of a carotid compression technique to the neck of Mr. Booker and the use of a taser and another restraint device to end the resistance. Mr. Booker was then carried to a holding cell by these deputies and it was subsequently discovered that he was not breathing. The deputies summoned medical assistance from nurses at the DDC who attempted unsuccessfully to revive Mr. Booker. He was subsequently transported by emergency medical personnel to the Denver Health Medical Center where he was pronounced dead.

The tragic death of Mr. Booker has raised many questions and concerns within Mr. Booker’s family, the Department of Safety and the community at large as to whether the force used against Mr. Booker was appropriate and justified and, if not, whether criminal charges should be brought or disciplinary sanctions imposed upon the involved deputies.

The question relating to criminal charges was answered on September 28, 2010 when Denver District Attorney Mitchell Morrissey released a statement declining to file criminal charges against the deputies, indicating, in part:

After reviewing the totality of the evidence developed in this investigation, I conclude that no criminal charge can be proved against any of the

involved deputies under these facts. In fact, the deputies were justified in using the degree of force used which was reasonable, necessary and appropriate under the specific facts of this case.<sup>1</sup>

Following the decision of the District Attorney, the case was turned over to the Denver Sheriff Department Internal Affairs Bureau for further investigation and eventually a determination by the Manager of Safety's Office as to whether the involved deputies were in violation of the Department's Use of Force policy or any other rules, regulations or orders of the Department which would justify disciplinary sanctions against the deputies.

After a thorough and independent review of the broadened investigation and considering the recommendations of the Office of the Independent Monitor and the Director of Corrections, this Office has concluded that the involved deputies did not violate the Sheriff Department's Use of Force policy or any other Department rules with regard to the use of inappropriate force and, therefore, disciplinary sanctions will not be ordered.<sup>2</sup>

The purpose of this public statement is to summarize the facts, evidence and legal standards used in reaching this decision.

## **II. BACKGROUND ISSUES**

**A.** In April of 2004, the Manager of Safety's Office instituted a practice of issuing a public statement in all cases involving the use of force by uniformed members of the Department of Safety in the performance of their duties, which resulted in the death of the individual against whom the force was used. Among the purposes of issuing such statements were to inform the public of the basis of disciplinary decisions involving such serious cases and to provide a level of transparency and public accountability which up until that time had not been provided to the citizens of Denver with regard to internal investigations and disciplinary matters.

Since 2004, the Manager of Safety's Office has issued 19 such statements. However, it is important for the public to know that none of those statements have involved uses of force by members of the Denver Sheriff Department. While the reasons for this may be varied, generally this is because Denver Police officers much more frequently encounter individuals in uncontrolled settings, many times armed with deadly weapons, and the involved police officer uses deadly force based upon the belief that it is necessary to defend himself/herself or a third party from the use of deadly physical force.

---

<sup>1</sup> The full text of the District Attorney's decision statement is available at [www.denverda.org](http://www.denverda.org).

<sup>2</sup> The Director of Corrections considered whether one of the deputies, Sergeant Rodriguez, failed to write a written report after discharging a taser as required by Department policy. The Director of Corrections found that Sergeant Rodriguez was advised that she should not complete any further reports or handle the taser unless instructed to do so by the Denver Police Department who was then conducting the investigation. In addition, the Director found that the information that would have been disclosed in the taser report was, in fact, disclosed during the course of the Denver Police investigation. Therefore, Sergeant Rodriguez was not found in violation of the policy. This Office agreed with that finding and took no further action.

In contrast, Denver sheriff deputies generally encounter violent, assaultive and resistant individuals in more controlled settings such as a jail or detention center where the person is not armed with a deadly weapon, but nonetheless poses a serious threat to deputies or other inmates or who must be restrained in order to maintain order and discipline inside the facility. Consequently, while deputy sheriffs are certainly trained in the use of deadly force, greater emphasis is placed on tactics and less lethal options to control inmate conduct without the use of force likely to result in death or serious bodily injury.<sup>3</sup>

**B.** The Manager of Safety's Office is certainly aware and respectfully acknowledges the concerns of Mr. Booker's family and the many positive attributes of Mr. Booker's life, including his relationship with his family, his and his family's dedication to the church, Mr. Booker's reputation as a respected "street preacher," his involvement in civic and social concerns and his service in the United States Army.

In addition, the Manager's Office certainly understands and shares in the concerns of the public regarding incidents of the inappropriate use of force and the devastating effect they can have on the public's trust in and perception of its law enforcement officers as well as their trust in and perception of those responsible for selecting, training and disciplining those officers.

Nevertheless, all concerned must understand that in reaching a decision in this case, the Manager of Safety's Office is legally and ethically bound to base its decision only on a careful and reasonable interpretation of the facts and evidence in this case, the actions of Mr. Booker and the involved deputies on the morning of the incident, the rules and policies of the Denver Sheriff Department in effect at the time of this incident and the applicable legal standards which must be satisfied in order to fairly impose disciplinary sanctions on the involved deputies.

### **III. ADDITIONAL INFORMATION TO ASSIST IN REVIEWING THE FACTS OF THIS CASE**

The following additional information/material is designed to assist in reviewing and understanding the facts and evidence in this case.

#### **A. Three diagrams of the physical layout of the DDC intake area:**

1. Attachment A is a diagram of the physical layout of the DDC intake area depicting the various stages of the book-in process.
2. Attachment B is a diagram of the physical layout of the DDC intake area which contains measurements which were used to approximate distances relevant to an understanding of the facts of the case such as the approximate distance a witness was from the use of force incident while observing it.

---

<sup>3</sup> A review of Sheriff Department records and conversations between the Manager of Safety's Office and present and past Directors of Correction failed to reveal any uses of force by Denver deputy sheriffs in recent history which resulted in death or serious bodily injury to an inmate/detainee.

3. Attachment C is a diagram of the physical layout of the DDC intake area which denotes the approximate location of the use of force incident and the location of certain witnesses when observing the incident.

## **B. General Arrest and Book-in Procedures**

When an individual is arrested by the Denver Police Department, that person must be transported to the DDC to be “booked” and processed by Sheriff Department personnel. The arresting officer may in some circumstances transport the arrestee directly to the DDC or if there is a Sheriff Department “scout” car available, may transport the arrestee to the officer’s district station where the arrestee is held until turned over to the Sheriff Department scout car. (The scout car procedure was used with Mr. Booker.)

Once the scout car arrives at the DDC, it enters the inmate processing area through the vehicle sallyport and the scout car deputies escort the arrestee inside the secure area. (See bottom right portion of Attachment A.)

The Intake Processing Unit is designed around a team concept and the processing of arrestees is completed through a coordinated effort of a number of deputies and staff members. The first step in the process is accomplished in the initial search area (bottom right portion of Attachment A). The arrestee is searched for contraband and property such as money, jewelry, wallets, belts, etc. Property taken from the arrestee is placed in a bag which is subsequently labeled and heatsealed. The arrestee is allowed to remain in his or her<sup>4</sup> own clothing. The arrestee must then walk through a magnetometer to determine whether he is still in possession of any seizable items or dangerous weapons.

At this point, the arrestee is taken to the adjacent “pre-booking” area and his “paperwork” provided to deputies assigned there. Based upon the number of arrestees being processed, the “pre-booking” either begins immediately or the arrestee is placed in a secure holding cell to await his turn to begin processing. (The holding cells are to the right of the magnetometer and marked I-1 [Intake – I] through I-8)

When the pre-booking deputies are ready to begin the process with a particular arrestee, the arrestee is removed from the holding cell and escorted to the Pre-Book desk. The “pre-book” step is designed to gather basic information from the arrestee so that a booking number can be generated in the Department’s computerized Jail Management System. The arrestee is entered into a “queue” with every effort made to complete the remaining steps in the book-in process in the order received at the DDC, unless circumstances (such as the need for immediate medical attention) dictate otherwise.

At this point, the arrestee is told that he will not be placed back in the holding cell but is free to have a seat to await his name being called to complete the other steps in the book-in process. The arrestee is informed that he will be allowed to remain in the

---

<sup>4</sup> Both male and female arrestees are brought into the Intake Processing Unit. For ease of reference, arrestees will be referred to in the male vernacular.

“cooperative seating area” as long as he “cooperates,” follows all instructions from deputies and otherwise conducts himself in an acceptable manner. The arrestee is also instructed to watch a short video in the cooperative seating area that explains the book-in process and what the arrestee should expect to happen. The video constantly runs on a 24 hour basis and has text superimposed on it similar to closed captioning. The video explains that this type of book-in process is different from a traditional process and that the arrestee is:

[A]llowed to sit comfortably during the book-in process as long as you remain in control of your own behavior and follow all rules given by deputy sheriffs and staff . . .

The video then depicts one of the holding cells and explains:

There is [sic], however, more restrictive alternatives for those who fail to follow simple commands and become disruptive during the book-in process. If you refuse to cooperate at any time during the book-in process, you will be placed in restrictive housing until the book-in process can be completed safely for both you and staff . . .

The book-in process depends on your cooperation and self control. Officers and staff will be talking to you throughout the process and will be asking you questions. We are here to do our job as safely and professionally as possible. To achieve this, your compliance with officers and staff is essential . . .

As depicted in Attachment A, the cooperative seating area is approximately 1,320 square feet and designed to seat 105 arrestees. It is sometimes referred to as “open seating” or “the pit” because it is recessed from the main floor and surrounded by a “waist high” railing except for areas with stairs for free entry and exit. It is equipped with telephone facilities from which arrestees can place collect calls and three (3) televisions, one of which plays the informational video. The area is designed to allow arrestees to freely move about, interact with other arrestees, proceed unescorted to the various stages of the book-in process and use telephone, drinking water and restroom facilities on their own as long as they are conducting themselves appropriately.

The deputies are not armed in the jail because of the danger that would be posed if an inmate disarmed a deputy. Thus, deputies must rely on other control tactics to maintain security. Among the primary control tactics used by the deputies are verbal commands and segregation of an arrestee from the general population, when warranted. For example, if an arrestee is being disruptive or aggressive, a deputy may chose to place the arrestee into one of the holding cells.

As their names come up in the queue, arrestees are called to the various stages of the book-in process unescorted and between each stage they are allowed to return to the open seating area on their own. As a general rule, they are next called to the photograph/fingerprint area (as depicted in Attachment A on the upper west side of the cooperative seating area) where a full set of fingerprints and identification photographs are taken.

The arrestee is then called to the nurse's station (depicted in Attachment A just south of the photo/print area) where the screening nurse asks questions regarding his medical condition, history, etc. or need for medical attention.

The next step in the process is the "full book-in" which is located to the north of the cooperative seating area. It is this part of the process which generally takes the longest and where the arrestee has the most interaction with deputies. As depicted in Attachment A, the area is divided into four stations. Station 1 is normally dedicated to gathering information needed to "classify" the arrestee to help determine his housing if he will not make bond immediately. Therefore, as a general rule, the arrestee is called to either station 2, 3 or 4 first. At this station, the deputy is seated on the north side of the desk and the inmate is required to sit on the south side facing the deputy. The deputy asks the arrestee detailed questions while entering the information into a computer. The deputy also discusses the arrestee's charges in more detail, options for bond, the arrestee's next scheduled court date and whether the arrestee will be able to post bond. Also, by this time the arrestee's heatsealed property bag has been delivered to the booking deputy and it is opened and inventoried by the deputy in the arrestee's presence. A property inventory sheet is then prepared and signed by the arrestee. If the arrestee is not able to post bond or is ineligible, he is eventually sent to station 1 to discuss issues with regard to where he may be housed in the facility and an identification wristband is prepared.

It is critical to note that while conducting the full book-in process, deputies must sit at a computer terminal. As a safety measure and to avoid the deputy being at a tactical disadvantage should the arrestee become disruptive, deputies are required to instruct the arrestee to sit down also. Deputies are also trained that sitting face to face is a way to promote professional and cooperative dialogue between the arrestee and the deputy.

Once the full book-in process is completed, the arrestee is allowed to return on his own to the cooperative seating area to await the opportunity to post bond and be released or if not posting bond, to be called to the shower/dress area where his clothing is taken, inventoried and bagged. He is then required to shower, issued a jail uniform, and escorted to the appropriate housing area.

### **C. The Direct Supervision Model**

It is essential for anyone reviewing this public statement to understand the goals and purposes of the above described intake and book-in process and how it differs from other models used by the Denver Sheriff Department in the past.

The present practices are derived from what is referred to as the "Direct Supervision" model of jail management which allows for less restrictive treatment of inmates and more interaction between inmates and deputies. The model also takes into consideration research by the National Institute of Corrections indicating that only a small percentage of inmates need to be held in more restrictive cells because of their misconduct. When the Sheriff Department designed the new Downtown Detention Center (which began processing arrestees at the end of April of 2010, only two months before the incident involving Mr. Booker), it studied models in other jurisdictions across

the country and decided on this new model as being more progressive and humane. The model is based on the principle of allowing arrestees greater movement and greater access to facilities such as telephones, drinking water and restrooms and not restricting them in “holding tanks” (as was the past practice) which are often overcrowded and may combine individuals arrested for a variety of offenses ranging from relatively minor to extremely serious. Jurisdictions that had implemented this new model reported decreases in aggressive confrontations between arrestees as well as decreases in aggressive confrontations between arrestees and jail personnel. Arrestees were allowed greater movement as long as they demonstrated by their conduct that they would fully cooperate in the book-in process.

In contrast, when an arrestee was not cooperative or became disruptive of the book-in process, it was imperative that they be immediately removed to a secure cell in order to maintain discipline and control and to not allow the disruptive arrestee to pose a safety or security risk to other arrestees or officers. An immediate removal to a more secure cell also decreased the potential of the need for officers to use physical force against the non-cooperating arrestee.

In designing, implementing and training its deputies on this new model, the Denver Sheriff Department stressed the advantages of allowing arrestees greater movement, interaction and access to facilities but also emphasized the need to immediately remove arrestees who were non-cooperative.

#### **D. Video Surveillance and Recording**

The newly designed DDC and its less restrictive intake process also allows for greater video surveillance of the actions of both arrestees and deputy sheriffs. As a general practice, video cameras are not placed inside holding cells unless those cells are specifically designated as observation cells for arrestees who have demonstrated the need for more intensive surveillance (such as arrestees who have threatened suicide). However, video cameras have been strategically placed in other locations throughout the entire intake area which allows for greater scrutiny of the book-in process, the cooperative seating area and the activities of all persons in the intake area other than those in the intake holding cells. Additionally, the recordings taken by these surveillance cameras are “time stamped” which allows for a more accurate determination of the times involved in a particular incident.

However, the limitations of even extensive video surveillance must be kept in mind. The video cameras in the DDC are static – which means they don’t move and, consequently, continually record the same view or angle. Therefore, it is necessary to review an incident from cameras recording from many different angles. Secondly, surveillance cameras are sometimes limited in depicting the full impact of an event because they do not record sound and often important details are either unobservable or undetectable because of the movements and positions of the participants in an incident. In addition, the cameras do not record sound.

Therefore, it was necessary in this case, as in all cases, to carefully review the statements and perceptions of all witnesses and carefully consider all other facts and evidence along with the video recordings in order to reach a fair and informed decision.

#### **IV. DETAILED FACTUAL BACKGROUND**

The following is a detailed recitation of the facts of this case. These facts were drawn from the following: interviews and/or statements of the subject deputies, Faun Gomez, James Grimes, Ken Robinette, Kyle Sharp and Sergeant Carrie Rodriguez; interviews and/or statements of approximately 40 inmates who witnessed the incident; interviews and/or statements of other DSD personnel who witnessed the event, Denver Health and Hospital nurses who witnessed the event, Community Corrections employee Johnny Magunia, DSD training staff personnel, DSD deputies who responded after the event, and interviews and/or statements of other medical personnel; the entirety of the criminal investigation file and Internal Affairs investigation file; a study of the incident scene and physical evidence recovered; hours of video surveillance recordings of Mr. Booker during the DDC book-in process and of the use of force incident in question; and, a review of other records and reports including the autopsy of Marvin Booker and additional statements of the medical examiner, Dr. John D. Carver, who performed the autopsy. Relevant portions of these interviews and reports are referenced or quoted throughout this public statement.

##### **The Events of July 8 through 9, 2010**

On July 8, 2010, at approximately 7:30 p.m., Mr. Booker was arrested by Officer Douglas E. Grove of the Denver Police Department ("DPD") on a warrant for failing to appear in court related to a charge for possession of drug paraphernalia. Officer Grove drove Mr. Booker to the District 2 police station and described Mr. Booker as "very agitated" during transport. Later, a Denver Sheriff Department "scout car" picked up Mr. Booker and another arrestee at the police station and drove them to the city jail, the DDC, for intake and processing. Sheriff Deputies Carlson and Knight were assigned to the scout car that evening. When Deputy Knight first contacted Mr. Booker at the police station, Mr. Booker was swinging his arms and yelling and cursing. According to Deputy Knight, Deputy Carlson was able to calm Mr. Booker down by reviewing Mr. Booker's charging paperwork with him and explaining it to him. Deputy Carlson knew Mr. Booker by name and had dealt with him several times before.

Deputies Carlson and Knight brought Mr. Booker to the Intake Processing Unit of the jail. Mr. Booker was pat searched and placed in cell I-4 to await pre-booking (2142 hours on the video). About an hour later, Mr. Booker was escorted from the cell and taken to the initial booking desk and "pre-booked" into the DDC (2256 hours according to the video). Then, Mr. Booker was directed to the Cooperative Seating Area ("the pit") to await the rest of the screening and book-in process.

The Intake Processing Unit was busy that night, but calm. Inmates were talking in the pit and watching the informational video. Mr. Booker walked around a bit, got some water and used the bathroom. Mostly, Mr. Booker slept while waiting for his turn at the different booking stations. Deputy Steed was the pit observation deputy that night and he noticed Mr. Booker sleeping with his shoes off and his feet on the trash can. Deputy Steed tapped Mr. Booker on the shoulder and told him to take his feet off the trash can and put his shoes on. Mr. Booker removed his feet from the trash can and said, "Okay, big man, okay, big man" two or three times.

Around 1:45 a.m. on July 9, 2010, Mr. Booker was called to the fingerprinting and photographing station (0146 hours according to the video). Johnny Magunia's office is near this station. Mr. Magunia is not employed by DSD. He works for Community Corrections, a division of the Department of Safety, which assists inmates in determining their eligibility for release on bond. According to Mr. Magunia, Mr. Booker was angry and belligerent with the deputies who were fingerprinting and photographing him. According to Deputy Lovato, when Deputy Sawyer began photographing Mr. Booker, Mr. Booker was being a "smart Alec" and would not look at the camera. After a short time, Deputy Sawyer was able to get Mr. Booker to laugh and was then able to finish photographing him. Then, it was Deputy Lovato's turn to fingerprint Mr. Booker. Deputy Lovato said he continually spoke to Mr. Booker in order to keep him from acting out and to keep him moving through the system. Mr. Magunia described the deputies as professional and courteous towards Mr. Booker.

Later, Mr. Booker was called to medical screening by Nurse Gail George (0304 hours according to the video). Nurse George said Mr. Booker was angry and grumbling as he followed her into the medical office. She could not understand what he was saying. As Nurse George tried to ask Mr. Booker the standard questions from the health questionnaire, he cut her off before she finished her questions by shouting, "No." She asked him to please let her finish asking the questions before he answered her. As she continued through the questions, he became more hostile, slid to the front of his chair in an aggressive manner and shouted, "What part of 'no' don't you understand?" Nurse George ended the screening process and told Mr. Booker that if he did have any medical problems, he should let the medical department know. According to Nurse George, it is not uncommon for inmates to respond in the manner Mr. Booker did. Although Mr. Booker was belligerent and uncooperative, he did not show signs of mental illness. Nurse George also said he did not show signs of being under the influence of or withdrawal from drugs or alcohol. She said Mr. Booker appeared to just be agitated about answering the questions.

#### *Initial Interaction Between Deputy Gomez and Mr. Booker*

Deputy Gomez called Mr. Booker to the full booking desk (station #4) around 3:30 a.m. and asked him to sit down (0334:26 according to the video). Mr. Booker walked up to the desk but did not sit down. According to Deputy Gomez, Mr. Booker was agitated and said, "I don't have to fucking sit down. I don't have to do what you say." Since Mr. Booker was not being cooperative, Deputy Gomez got up from the desk and walked over to holding cell I-8 which was about 24 feet from her desk (0334:57 according to the video). She opened the cell and instructed Mr. Booker to enter the cell. Mr. Booker turned away from Deputy Gomez and walked towards the open seating in the pit area while making gestures with his arms. She called him back a couple of times but he ignored her. Deputy Gomez recalls that Mr. Booker said something about his shoes but she does not know what. She did not realize he did not have his shoes on until after the incident.

Deputy Gomez left the cell and followed behind Mr. Booker (0335:06 on the video), concerned that his failure to follow her directions was going to create a security issue given the open nature of the intake unit and the large number of unrestrained inmates in the pit. Deputy Gomez said something to the effect, "Stop sir. I need you to come with

me.” Mr. Booker said, “Fuck you, fuck you bitch” repeatedly. Deputy Gomez caught up with Mr. Booker as he reached the stair leading into the cooperative seating area. Deputy Gomez planned to reach towards Mr. Booker and place her hands on his shoulders and guide him to the cell. As she moved towards him, he jerked away from her and then began flailing and swinging his arms at her. Deputy Gomez tried to grab Mr. Booker and get him under control but could not do so.

A number of inmates confirmed this sequence of events. Inmate DM<sup>5</sup> stated that Mr. Booker was agitated, cursing and ignoring the staff’s repeated requests that he sit down. According to inmate DM, Mr. Booker was “bad mouthing and not complying with the staff’s orders.” (Inmate DM’s exact location at the time of the incident is unknown.) Inmate WL stated that he was just a few feet away from the incident. He said that he heard Deputy Gomez tell Mr. Booker, “You need to go to a holding cell” and Mr. Booker turned to go back towards the pit. Inmate WL said that Deputy Gomez grabbed Mr. Booker and Mr. Booker said, “Get the fuck off me, bitch” and he yanked away from her. Inmate CP, who was about 4 feet from the incident, said that Mr. Booker knocked the female deputy’s hands off of him. According to inmate ST, who was facing the incident from about 12 feet away, Mr. Booker was “freaking out” when Deputy Gomez grabbed him. Inmate MG said Mr. Booker was “acting out of control and aggressive.” He said that Deputy Gomez was instructing Mr. Booker to “calm down” and “stop resisting.” (Inmate MG’s location is unknown.)

Some of the inmates describe Mr. Booker’s resistance to be less forceful or confrontational. Inmate GP said Mr. Booker was a little bit resistant. (Inmate GP’s exact location at the time of the incident is unknown.) Inmate LB said that when Deputy Gomez grabbed Mr. Booker, he flinched away. (Inmate LB was sitting with his back towards the incident about 6 feet away, but he said he kept looking over his shoulder to see what was happening.) Inmate DJ said Mr. Booker threw his hands in the air in the face of the deputy. (Inmate DJ’s exact location is unknown.) Inmate VM said she heard someone say, “All he wants is his shoes.” Inmate VM said she was sitting facing away from the incident.

The weight of the evidence and the video confirm that Mr. Booker physically resisted Deputy Gomez’s control and flailed and thrashed his arms violently towards her. The video shows Deputy Gomez approach Mr. Booker from behind and attempt to seize his left arm with her right hand. He jerks his left arm away from her and swings that arm up in the air and he moves forward away from her. Deputy Gomez grasps at his left arm again and he turns towards her and yanks his arm away again in a swinging motion. As Deputy Gomez attempts to control his left arm for the third time, he jerks it in towards his body then swings it back out again towards Deputy Gomez.

The evidence also establishes that Mr. Booker was walking over towards his shoes and that a number of witnesses heard him say he wanted to get his shoes. This Office finds Deputy Gomez to be credible when she said she heard Mr. Booker say something about his shoes, but was not sure what, and that she did not know he did not have his

---

<sup>5</sup> For the purposes of this public statement, inmate witnesses are identified by initials only. The full identities of these witnesses are contained in the Denver Police Department and Denver Sheriff Department files related to this case.

shoes on until after the incident was over. According to witnesses, Mr. Booker was walking away from Deputy Gomez when he commented about his shoes and it is reasonable to conclude that she did not hear him clearly. In addition, because Mr. Booker had on what appeared to be black socks, it is not apparent from the video that he did not have his shoes on. Although some inmates have made statements that Mr. Booker was simply trying to get his shoes and that his resistance to Deputy Gomez was minimal, the video clearly contradicts that, as does the statements of inmates who were in a better position to see the incident.

The weight of the evidence supports the conclusion that Mr. Booker's resistance amounted to "defensive resistance" and "active aggression" under the Use of Force policy. The policy classifies different levels of resistance as: psychological intimidation; verbal noncompliance; passive resistance; defensive resistance; active aggression; and aggravated active aggression. Types of resistance can occur in combination with one another and are not mutually exclusive. In this case, Mr. Booker engaged in defensive resistance and active aggression. Defensive resistance is defined in the Use of Force policy as: "Physical actions that attempt to prevent officer's control including flight or attempt to flee, but do not involve attempts to harm the officer." Active aggression is defined as: "A threat or overt act of an assault, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent." (Use of Force policy, Department Order 5011.11.)

### *The Take-Down*

Resistance or aggression towards a deputy or an employee is logically deemed one of the highest levels of threat in a jail. Thus, Deputies Grimes, Robinette and Sharp responded to the altercation and attempted to assist Deputy Gomez and gain control of Mr. Booker and maintain order in the jail. Deputy Gomez and the other subject deputies were dressed in their deputy uniforms and were clearly identifiable as deputies. Sergeant Rodriguez also responded to observe and supervise the incident.

It is important to note that as this incident escalated, no witness, no participant in the incident and no single video can provide the entire perspective of what was happening. No one could see every movement and action during this fast-paced event because there were a number of deputies surrounding Mr. Booker and, depending on a witness' line of sight, other people or stationary objects obstructing the scene. Pursuant to policy, Sergeant Rodriguez circled the group observing and supervising the incident, but even she could not see everything that was happening every second.

Deputy Grimes described how the situation came to his attention. According to Deputy Grimes, he was seated at one of the full booking desks (station #1) and he looked up when he heard Mr. Booker say, "Fuck you, bitch." Deputy Gomez was approximately 16 feet away from Mr. Booker at this time. He saw Mr. Booker walking away with Deputy Gomez following behind him and ordering him to stop. According to Deputy Grimes, Booker responded to Deputy Gomez' directive by walking away. Deputy Grimes described Mr. Booker's actions:

Very - very animated with his movement when he's walking away, just "fuck you bitch" – I mean - just like that.

Deputy Grimes then saw Deputy Gomez grab Mr. Booker's arms and Mr. Booker flailing his arms violently. Deputy Grimes was not sure if Deputy Gomez had been hit or not but he thought an assault, and/or another assault, was imminent and he ran over towards Mr. Booker (0335:11 on the video). According to Deputy Grimes, he gave Mr. Booker orders to come with them. Mr. Booker continued to curse so Deputy Grimes grabbed him and attempted to pull him towards cell I-8. Deputy Grimes said that Mr. Booker was cursing and flailing and Deputy Grimes realized they were not going to be able to move him. Deputy Grimes was telling Booker to "stop resisting" and "get on the ground." Mr. Booker pulled away in an aggressive manner. Deputy Grimes pulled Mr. Booker again and Mr. Booker, remaining combative, grabbed the railing, attempting to remain upright.

Deputy Robinette described what he witnessed. He was sitting at another one of the full booking desks (station #2) approximately 14 feet from the altercation and he saw Mr. Booker flailing his arms perhaps in a swinging manner towards Deputy Gomez. Deputy Robinette said he did not know if Deputy Gomez had been struck or not. Deputy Robinette ran around the desk and went to assist Deputies Gomez and Grimes (0335:13 according to the video). Deputy Robinette attempted to grab Mr. Booker's body or arms but was unable to do so. He heard Mr. Booker say, "Fuck you, bitch" and the momentum of the group took them to the ground.

Deputy Sharp was seated on the south side of the cooperative seating area in the pre-book area approximately 45 feet from the altercation. He heard a commotion and loud voices in the pit area and looked up to see what appeared from his vantage point to be an inmate taking full swings at Deputy Gomez with both arms. He hopped the rail and ran through the middle of the pit to assist (0335:14 according to the video). Deputy Sharp tried to wrap an OPN<sup>6</sup> around Mr. Booker's wrist but it slipped out as the others took him to the ground.

Sergeant Rodriguez was also on the south side of the pit at Intake Control approximately 45 feet from the altercation. She heard Mr. Booker and Deputy Gomez yelling and saw Deputy Gomez trying to get Mr. Booker to go to the cell. By the time Sergeant Rodriguez got to the incident, the group was on the ground. Sergeant Rodriguez observed the incident and gave orders to Mr. Booker to stop resisting.

Generally, an immediate show of force with multiple deputies responding will subdue an inmate without further incident. However, as confirmed by a number of inmate witnesses, this did not occur as Mr. Booker resisted and struggled with the deputies. Inmate ST (who was seated facing the incident approximately 6 – 8 feet away once the group was on the ground) said that Mr. Booker was wrestling with the deputies. Inmates JN-D (location unknown) and LM (approximately 6 – 8 feet from the incident and watching it intently) said that the deputies were trying to handcuff Mr. Booker and he was resisting them. Inmate LM said that Mr. Booker kept trying to get his arms away from the deputies. Inmate JT (seated facing the incident approximately 6 – 8 feet away)

---

<sup>6</sup> "OPN" is an abbreviation for Orcutt Police Nanchaku. An OPN is a departmentally approved non-lethal controlling device used by law enforcement and correction officials. It is not used for impact but is used for control by wrapping the OPN around the wrists or ankles of a subject and applying pressure. This causes significant pain and compliance of the subject is generally gained very quickly.

confirmed this saying that the deputies were trying to get Mr. Booker's arms out from underneath his stomach but they could not get them as he struggled. Inmate LM stated that Mr. Booker was trying to get the deputies off of him and the deputies were putting their knees on him to try to control him.

In addition, inmate witnesses confirm that the deputies were repeatedly giving Mr. Booker verbal commands, telling Mr. Booker to stop resisting. (Inmate JH, who was seated approximately 15 – 16 feet from the incident, and inmate LM.) Inmate GQ said the deputies were telling Mr. Booker to relax. (According to inmate GQ, he was seated approximately 20 feet from the incident.) Inmate ST said that a female deputy was giving Mr. Booker commands to stop struggling.

Some of the inmate witnesses have commented that the number of deputies involved in the incident was excessive. However, such a reaction by the deputies was consistent with their training. Additionally, had fewer deputies responded, the incident may have lasted even longer and the need for greater force increased.

### *The Struggle*

The struggle moved across the floor and the group was ultimately positioned with Mr. Booker's head under inmate CP's chair. Inmate CP, identified as witness #4 on Attachment C, lifted his feet off of the ground and held them in the air while the struggle continued (0335:54 on the video). Inmate CP watched the struggle closely. Inmate CP said Mr. Booker was resisting arrest, moving his arms and body. Inmate CP said that the female deputy was trying to cuff Mr. Booker, other deputies were on his legs and arms and one had a "choke hold" on Mr. Booker.

The deputies' descriptions of the struggle and their positions and tactics are consistent with inmate CP's description, other witnesses' descriptions and the video. According to Deputy Grimes, he was on the floor struggling with Mr. Booker with many inmates seated around him and within leg and arm reach of his body. Deputy Grimes said that prisoners were literally lifting their feet as he was taking Mr. Booker to the ground. He said he knew other deputies were assisting him but he did not know who or how many since they were positioned behind him. Deputy Grimes said he was head to head with Mr. Booker and was trying to control his upper body. The video shows Deputy Grimes first attempted to control Mr. Booker by grasping his head in order to control it, then by attempting to hold his shoulders to the floor to control his upper body, then by attempting to grasp and control his left arm and hand to achieve handcuffing (0335:27 according to the video). All attempts were thwarted by Mr. Booker.

Deputy Grimes had been trained on the carotid hold<sup>7</sup> at the training academy and he attempted to use it on Mr. Booker after other attempts to control Mr. Booker's upper body failed (0335:36 according to the video). According to Deputy Grimes, throughout

---

<sup>7</sup> A "carotid hold" is a technique used in martial arts and law enforcement to disable an opponent. The hold applies pressure to the carotid arteries and the supply of oxygenated blood to the brain is diminished while concurrently sealing the jugular vein which returns the deoxygenated blood. The result is almost immediate dizziness and disorientation, and then ultimately temporary unconsciousness.

the struggle he was continually saying, "Stop resisting sir." Deputy Grimes released the carotid hold intermittently to see if Mr. Booker would relax but when he reduced the pressure, Mr. Booker would continue to resist. This is confirmed by the autopsy which found no injury to Mr. Booker's throat and trachea and as the District Attorney noted in his report regarding the incident, supports Deputy Grimes taking care in applying the carotid hold in a manner not to crush or damage Mr. Booker's wind pipe. Deputy Grimes said he was trying to watch Mr. Booker the best he could to see how Mr. Booker was responding and he could see Mr. Booker's head and neck move and could feel his body continue to move. He was concerned that given Mr. Booker's strength, level of stamina and resistance, if he gave up his position, Mr. Booker would hurt others. Deputy Grimes was surprised that that the carotid hold seemed to have no effect on Mr. Booker. Deputy Grimes said:

The carotid hold seemed to have no effect on Mr. Booker as he continued to spit as he was saying, 'fuck you, fuck you – motherfuckers.'

During the struggle, Deputies Robinette and Gomez attempted to gain control of Mr. Booker's arms in order to handcuff him while he continued to resist them. Deputy Robinette stated that he attempted a gooseneck<sup>8</sup> to Mr. Booker's right wrist but it was unsuccessful. Deputy Sharp stated that he attempted to control Mr. Booker's left leg with pain control by applying his OPNs to Mr. Booker's ankle but was unable to gain compliance from Mr. Booker. According to Sergeant Rodriguez:

He was physically trying to get away from the officers, he was – he was twisting his body, he was tucking his arm underneath his body. He was – he was doing everything he could not to put his hands behind his back.

Deputy Gomez was surprised that they were having such difficulty getting Mr. Booker under control. She stated:

It was surprising - I was shocked by how strong he was. I have never been in an altercation with somebody and had to fight that hard with somebody, especially of his stature . . . I've – I have worked – you know - scout car in the streets, and all sorts of altercations in the jail, and I've never had that hard of a time getting cuffs on anybody - even bigger people who were uncooperative.

Similarly, Deputy Grimes stated:

I yelled out to the officers behind me because I couldn't see him. I said 'Do you guys have cuffs on him yet, is he restrained?' I heard a female voice, which I assume was Gomez, she said, 'No, he's moving around too much.' So I would apply pressure again - again the whole time –

---

<sup>8</sup> A "gooseneck" is a departmentally approved pain compliance technique used frequently in martial arts. It involves hyperflexing the wrist by pushing or pulling it towards the inside of the forearm. It is considered a relatively safe law enforcement technique that does not cause significant injury but causes pain, allowing law enforcement to gain control of a subject.

throughout the whole time he's, 'fuck you fuck you' and he's still moving around I mean - I thought I was going to lose control of him, that's how much he was moving around, I'm not, obviously, I - I'm not a little guy . . . I've been in altercations before and I've fought guys half his age, and had guys be half as strong as he was, I mean, he was incredibly strong . . . This one clearly stands out because of the aggressiveness and how strong he was, how incredibly strong he was.

Almost all of the witnesses who saw the struggle said that the deputies' actions seemed appropriate. Inmate JH (seated facing the struggle approximately 15 – 16 feet away) said there were no abuses by the deputies. Inmate LS (no information about location) said he did not see the deputies do anything inappropriate to Mr. Booker. A number of inmates said that the deputies did not kick or punch Mr. Booker. These include inmate JF who said he was about one seating row away from the incident, inmate DM whose location is unknown, and inmate JN-D whose location is also unknown. Inmate RR said that one deputy had Mr. Booker in a "headlock" and another was trying to get Mr. Booker's legs into "black things." (Inmate RR moved into different seats during the incident.) Inmate DS (facing the incident from approximately 6 – 8 feet away) said one deputy had Mr. Booker by his head under the deputy's arm and other deputies were trying to contain Mr. Booker. Inmate LS (no information regarding location) said that the deputies were trying to hold Mr. Booker down and Mr. Booker was saying things but he could not remember what Mr. Booker said. Other deputies, nurses and Mr. Magunia (from Community Corrections) said nothing in the use of force looked out of the ordinary or inappropriate. The video shows the deputies methodically and in a controlled manner exercising the force options permitted by policy.

However, some inmates perceived the incident differently. Although their general description of events is consistent with the description of others, there are some inmates who criticize the actions of the deputies. For example, inmate MW said he thinks Mr. Booker was struggling to breathe but the deputies thought he was resisting and they fought it as such. Inmate MW was seated up at the full booking desk (station #2) during the altercation and was approximately 12 – 15 feet away from the incident. Inmate JY said he thought Mr. Booker was resisting because he was being killed not because he was trying to cause a problem. Inmate JY was approximately 15 feet from the struggle and was seated with his back towards the incident. He glanced over his shoulder periodically to see what was occurring. Inmate PW said the deputies did not seem prepared for this type of incident. He said they appeared to be caught "flat-footed." However, inmate PW said it was hard to see if Mr. Booker was resisting because so many people were around him. Inmate PW was seated approximately 15 feet away from the incident and his view of the incident was partially blocked by the rows of seating. He said he viewed the incident from both above the seats and below them. Some inmates said they did not hear Mr. Booker say anything during the struggle. A few said they heard him say, "Help," or "I can't breathe."

Eventually, Deputies Gomez and Robinette got Mr. Booker handcuffed but he continued to struggle. According to Deputy Sharp, he reduced the pressure from the OPNs once Mr. Booker was handcuffed and Mr. Booker immediately tried to kick him, using both feet. According to Deputy Grimes, every second that passed he kept

expecting Mr. Booker to stop tensing and stop resisting. Because Deputy Grimes was losing his grip on Mr. Booker, he asked Sergeant Rodriguez to tase Mr. Booker. According to Deputy Grimes:

I was within seconds of having to let go completely and I didn't know what was going to happen.

Deputy Grimes heard the Sergeant saying, "Sir, stop resisting, or I am going to have to tase you." Deputy Grimes stated that he told the sergeant, "Please, please I need you to tase him now." A number of inmates confirmed this. Inmate RR said he heard one deputy say, "He's still putting up a fight . . . Just tase him. Drive tase him."<sup>9</sup> Inmate JT knows Deputy Grimes by name and he heard him say that Mr. Booker was strong. Inmates DS and JF also confirm this sequence of events.

Deputy Lovato retrieved a taser from the lock box in the sergeant's office and handed it to Sergeant Rodriguez (0337:22 on the video). Inmate MG heard a female deputy say, "I have a taser, get a hold of yourself, or I will tase you." Inmate DM stated that the deputies repeatedly told Mr. Booker that if he did not calm down, they were going to tase him. Inmates LM and LS also heard such statements. Sergeant Rodriguez said she applied the taser to Mr. Booker even though he was handcuffed because she could see that Mr. Booker was continuing to resist and kick. Sergeant Rodriguez could not see clearly what was occurring at his upper body because Deputy Grimes' body was blocking her view. But she could tell that Mr. Booker was still resisting and she heard Deputy Grimes asking for help. According to Sergeant Rodriguez:

All I knew was that my officer was asking for more help because they still didn't have control of him and I could physically see Booker's legs still moving . . . I knew I had to do something, so I tased him.

Sergeant Rodriguez took the cartridge off of the taser, placed it directly against Mr. Booker's thigh, and "drive stunned" Mr. Booker once without firing the projectiles. According to Sergeant Rodriguez, Mr. Booker did not respond to the taser so she stopped after a few seconds and did not tase Mr. Booker again. According to Sergeant Rodriguez and Deputy Gomez, Deputy Grimes yelled, "He's still resisting" after the taser had been used. Inmate LM, who was watching the incident intently from about 6 feet away, said that Mr. Booker continued to resist after the taser was used on him.

A couple of inmates said that they thought that Mr. Booker was tased more than once (Inmates MB, WL and TE). Tasers automatically record firings and reports can be generated from the taser that provide the recorded firing data. The taser report from the

---

<sup>9</sup> A "drive tase" or "drive stun" consists of the taser being held against the subject without firing the projectiles. The drive stun mode causes localized pain in the area touched by the taser, but does not have a significant effect on the central nervous system, unlike when the projectiles are fired. When the projectiles are fired, the subject experiences neuromuscular incapacitation resulting in strong involuntary muscle contractions. The drive stun mode does not cause such muscle contractions and is intended to cause pain without incapacitating the target. Drive stunning is also known as "dry tasing," "contact tasing," or "drive tasing."

taser used in this case shows that the taser was discharged once for 8 seconds. The weight of the evidence supports that Sergeant Rodriguez tased Mr. Booker once for eight seconds.

Soon after the taser was used, Mr. Booker stopped resisting. Deputy Grimes then released his hold on Mr. Booker and got up from the floor (0338:04 on the video). Deputy Grimes said he thought Mr. Booker had stopped resisting after being tased, which is common. Deputy Sharp said he released the OPNs from Mr. Booker's ankle when he stopped resisting. Deputies Grimes and Sharp said Mr. Booker was no longer moving or talking after being tased and that it was their impression that he was complying. Deputy Gomez said when Deputy Grimes got up, she moved towards Mr. Booker's shoulder area and placed her shin across Mr. Booker's back and shoulders to keep him from rolling over and maintain control of him. She said she also wanted to make sure that he did not hit his head on the seat if he tried to get up. Inmate LS said when the deputies tased Mr. Booker, he went limp. Inmate GP said Mr. Booker was no longer breathing or moving after he was tased. It is unknown from a medical standpoint whether Mr. Booker was still alive at this time. However, the evidence supports a finding that the deputies thought he was conscious and alive at this time.

### *The Carry*

Sergeant Rodriguez asked Deputy Lovato to get some shackles so they could shackle Mr. Booker's legs to prevent him from kicking them when they carried him to the cell. When Deputy Lovato could not locate the shackles, Sergeant Rodriguez ordered the deputies to carry Mr. Booker to the cell. Mr. Booker was then lifted and carried to cell I-8 by Deputies Gomez, Grimes, Robinette and Sharp (0339:24 hours according to video.) Sergeant Rodriguez told the deputies to make sure they were carrying him correctly. She paid close attention to Mr. Booker's legs because she was afraid he might start kicking again. It was her belief that Mr. Booker was conscious when he was being carried, although she could not point to any specific indications of consciousness. Her perception was that Mr. Booker had decided not to fight anymore and was allowing himself to be carried. Deputy Gomez described Mr. Booker as having muscle tension and control while being carried. She said she has carried someone before who was asleep and they feel different than someone who is conscious. She said Mr. Booker was conscious as they carried him and laid him in the cell. Deputy Grimes said he did not see anything to indicate that Mr. Booker was unconscious and that nothing about him was any different than other inmates he had carried in the past. It was Deputy Grimes' perception that Mr. Booker was complying and not resisting. Deputy Robinette said he saw nothing to indicate that Mr. Booker was under distress. Deputy Sharp explained that Mr. Booker did not act any differently than other inmates he has carried in the past. He said that Mr. Booker did not say anything and was not resistive.

Inmate AS said that he thought that Mr. Booker was dead when the deputies carried him to the cell. Inmate AS was seated very near the incident and would have had a good view of Mr. Booker as he was carried. It appears from the video that inmate AS did look at Mr. Booker as the deputies carried him past inmate AS. Inmate DM, whose location is unknown, said that when they picked Mr. Booker up, he was limp and drooling. Inmate WL said that when the deputies picked Mr. Booker up, he was limp

and did not look right. Inmate WL said he was a couple of feet away from the incident. Inmates RR and GS said that when they picked Mr. Booker up, he was limp. Inmate PW said that when the deputies picked Mr. Booker up, he was "listless . . . deadweight . . . his motor skills gone . . . he had no motor reaction . . . his head sank . . . there was drool coming out of his mouth." Inmate PW was approximately 15 feet away from the incident.

Again, there is no medical evidence to establish exactly when Mr. Booker stopped breathing. The weight of the evidence supports a finding that the deputies thought he was still alive as he was being carried. The inmates described Mr. Booker as limp, but this is generally to be expected after a prolonged struggle and was reasonably interpreted by the deputies as an indication that he was exhausted and did not want to struggle anymore. In addition, Mr. Booker's subsequent actions in the cell support a finding that he was still alive at that time even though it may have appeared to some of the inmates that he was not breathing while being carried.

### *The Cell*

Mr. Booker was carried into the cell and laid on the floor face down (0339:38 hours according to video). There is no video camera footage of the inside of the cell but there is video that shows the cell door and provides a partial view of the inside of the cell. The deputies and some inmates stated that the deputies "laid" or "placed" Mr. Booker on the floor of the cell (Inmates PW and JY). However, at least two other inmates stated that the deputies "threw" Mr. Booker to the cell floor (Inmates TE and LB). The partial view on the video confirms that the deputies laid or placed Mr. Booker on the cell floor and did not throw him down (0339:42 on the video).

Once in the cell, Sergeant Rodriguez directed that Mr. Booker's handcuffs be removed. She advised Mr. Booker from the back of the cell that she still had the taser. She also told him that the deputies were going to uncuff him and when his hands were free, he was to place them by his side. According to Sergeant Rodriguez, after the handcuffs were removed, Mr. Booker put his hands by his side on his own. She said the officers backed out of the cell (0340:58 on the video) as she watched to see if he was going to become combative again. Mr. Booker remained still so she told him she was exiting the cell and shut the door (0341:11 on the video). Again, it was her impression that Mr. Booker simply did not want to fight anymore and that there was nothing to indicate that he was not breathing at this time.

Similarly, Deputy Gomez said that Mr. Booker placed his hands at his side when the handcuffs were removed and grunted a little when he did so. He then remained still, which she took to mean that he understood the directions not to move as they exited the cell. Deputy Grimes said that other deputies were giving Mr. Booker verbal commands in the cell. He said that Mr. Booker did not respond to the commands, which is not unusual. Deputy Sharp said he held Mr. Booker's legs while they uncuffed him and that deputies were giving Mr. Booker orders not to move and to remain on the floor until they left the cell.

Deputy Robinette said he knelt on Mr. Booker's back as the deputies were uncuffing him. Deputy Robinette says that he placed Mr. Booker's left and right arms on the floor after the handcuffs were removed. This is contrary to the other deputies' statements that Mr. Booker placed his hands on the ground on his own volition. However, Deputy Robinette also said that there was nothing to indicate that something was wrong with Mr. Booker at this time. The evidence supports the conclusion that the deputies were reasonable in believing that Mr. Booker was still alive at this time.

Pursuant to policy, after she left the cell Sergeant Rodriguez went to the nurse's office where she informed a nurse that there had been a use of force incident and asked the nurse to go evaluate the inmate. About one minute after shutting the cell door, Sergeant Rodriguez can be seen on video going towards the nurse's office (0342:03 on the video captioned 1 Interview South View). Sergeant Rodriguez said that she did not leave a deputy to observe Mr. Booker because that it is not required by policy nor is it a practice that she's ever followed or observed.

Within 18 seconds of Sergeant Rodriguez closing the door, Deputy Sharp walked by the cell on his way back to his post and noticed that Mr. Booker had not moved (0341:29 hours according to the video). He thought this was unusual because, in general, when deputies leave a cell after a use of force, the inmate usually jumps up and gets situated in the cell. Deputy Sharp stared at Mr. Booker's back and could not see any movement. (Inmate JY, who was seated approximately 11 – 12 feet from the cell, says he told Deputy Sharp that Mr. Booker was not moving but Deputy Sharp does not recall this and it does not appear from the video that inmate JY said anything to Deputy Sharp at this time.) Deputy Sharp called Deputy Grimes to the cell and asked Deputy Grimes if it appeared that Mr. Booker was breathing. Deputy Grimes did not see Mr. Booker's back moving and he called for a nurse and sergeant. Deputy Grimes stated that his first instinct was to immediately open the door but policy required him to call for a Sergeant. Deputy Sharp left to get the nurse. Deputy Grimes did not want to walk away from the cell so he shouted to get the attention of the nurses (0342:20 on the video). Sergeant Rodriguez grabbed the taser on her way back to the cell as a precaution in case Mr. Booker became combative again.

### *The Medical Response*

Within 32 seconds of Deputies Grimes and Sharp calling for the nurse, Sergeant Rodriguez, Nurse George, Deputy Grimes, Deputy Sharp, and Deputy Gomez entered the cell (0342:53 on the video). They rolled Mr. Booker over and saw he was nonresponsive. Nurse George called for Nurse Cryer and began chest compressions. Nurse George told a deputy to call 9-1-1 and to call the medical unit and tell them that help was needed. Deputy Grimes signaled for an additional nurse and Nurse Cryer grabbed the emergency response bag and the automated external defibrillator (AED) and responded to the cell about a minute later (0343:52 hours according to the video). The AED was attached and Nurse George began ventilation using an Air-shields Manual Breathing Unit (AMBU) bag while Nurse Cryer took over chest compressions. A third nurse responded with an oxygen tank and entered the cell (0347 hours according to the video). The oxygen was attached to the AMBU bag. The nurses were able to get and maintain an open airway while ventilating Mr. Booker. Nurse George said that the

AED never detected a shockable rhythm while it was attached to Mr. Booker and Mr. Booker never began breathing on his own or regained a pulse while she was rendering care. Two more nurses arrived shortly thereafter. Nurse Dandurand said that life support procedures were underway when he arrived and everything that could be done medically was being done. Within minutes, the Denver Fire Department arrived and took over the care of Mr. Booker (0348:17 hours according to the video). At 0350:02 hours, Denver Health and Medical Center (DHMC) paramedics arrived and transported Mr. Booker to DHMC where he was pronounced dead at approximately 0433 hours.

### **Witness Statements - Summaries**

Responding deputies, members of the Denver Police Department and DSD Internal Affairs contacted numerous witnesses and inmates who were in the area on the night of this incident. Some of the witnesses' comments have been discussed in detail above and thus will not be reiterated here. Other witnesses whose comments were not extensively discussed above will be briefly summarized. Due to the large number of witnesses, not all of the witnesses' statements are summarized below. However, all of the statements are contained in the investigative files in this case and were thoroughly reviewed by the Manager of Safety's Office in reaching its decision.

#### **Denver Health Medical Center Nurses**

**Nurse Gail George** – Nurse George's interactions with Mr. Booker during the medical screening are described above. Nurse George also witnessed the use of force event. She has seen approximately 75 use of force incidents and nothing in this case seemed inappropriate. There was no punching, hitting or kicking; rather, the deputies were only restraining Mr. Booker. She heard a deputy request a taser in a normal tone, not an angry tone.

**Nurse Lawrence Douglas** – Nurse Douglas was in the medical office for a short time and observed Mr. Booker being loud and boisterous. Nurse Douglas also witnessed the use of force incident. He has witnessed dozens of use of force incidents in his career and nothing about this incident appeared inappropriate. The deputies were restraining Mr. Booker on the ground and the sergeant was circling the group telling Mr. Booker to stop resisting or she would tase him.

**Nurse Susan Cryer** – Nurse Cryer heard noise and went to see if there was a medical issue. She saw several deputies trying to restrain an inmate. She said one deputy was primarily trying to hold the inmate down while others were trying to place handcuffs on him. She has witnessed approximately three or four use of force incidents and based on those experiences, did not perceive anything out of the ordinary about this one. When it appeared the deputies had the inmate restrained, she returned to her office. She knew the deputies would have a nurse check the inmate once it was safe to do so.

**Nurse Dale Dandurand** – Nurse Dandurand responded to cell I-8 after Mr. Booker was found non-responsive, and that everything that could be done for him medically was being done.

## **Community Corrections Employee**

**Johnny Magunia** – Some of Mr. Magunia's comments are discussed above. Mr. Magunia heard a disturbance in the pit area and saw some deputies restraining an inmate. He has seen 4 – 6 use of force incidents in the last year and nothing about this one seemed out of the ordinary or inappropriate. He saw the deputies attempting to control Mr. Booker's arms and legs and giving verbal commands to comply. He was unable to see what the inmate was doing.

## **Non-involved Deputies**

**Deputy J. Armijo** – Deputy Armijo saw the altercation occurring in the pit, an adequate number of deputies handling the incident and a supervisor overseeing it, so he remained at his post.

**Deputy A. Brown** – Deputy Brown said when deputies began to respond to the incident, he decided to stay at his post. Later, he looked up and saw inmates close to the altercation at which time he got up and told them to move.

**Deputy W. Lovato** – Some of Deputy Lovato's statements have already been discussed above. In addition to those statements, Deputy Lovato said that Sergeant Rodriguez only asked him to get the taser one time and he did not hesitate to do so, despite one inmate's statement to the contrary.

**Sergeant H. Minter** – Sergeant Minter said that after the incident, inmates in the pit became increasingly more upset. Two inmates in particular were creating a disturbance so he removed them from the pit.

## **Training Staff Deputies**

**Deputy S. Marr** – Deputy Marr has approximately eighteen years of service with DSD and has been the use of force and defensive tactics instructor for sixteen years. Deputy Marr reviewed the videos of the incident. He said that based on his training and experience and what he could see in the overall video, there is nothing the deputies did that he would deem inappropriate. He said it appeared to him that Mr. Booker was assaultive or was violently resisting Deputy Gomez and, therefore, he feels the carotid restraint was an "appropriate option . . . depending on the perception of the deputy."

**Deputy J. Szumowski** – Deputy Szumowski is the taser instructor for DSD. He reviewed video of the incident but could not clearly see the taser being applied. In his opinion, and based on his limited observation, he did not see an inappropriate use of the taser during the incident.

## **Inmates**

Approximately 40 inmates were present in the area at the time of the incident. As discussed above, while the general descriptions of the event appears to be relatively consistent among the inmates, some of the inmates believe that the deputies did nothing wrong and some of them believe that the deputies used unnecessary and

inappropriate force. Because of the configuration of the seating area, some inmates were in a better position to witness the incident than others. In addition, it appears from the video that some inmates were more attentive to the incident than others. It must also be understood that use of force incidents by their nature are violent and disturbing. In weighing the evidence, this Office considered the varying inmates' opportunities for observation, other witness statements, and the videos.

**Inmate LB** - LB stated he was facing away from the incident but kept looking over his shoulder to see what was happening. LB stated a female deputy instructed Mr. Booker to go into a cell but Booker told her that he needed to get his shoes. According to inmate LB, the deputy then grabbed Mr. Booker who flinched. At that point, 5 or 6 deputies tackled Booker and one of the male deputies put Booker in a choke hold. A sergeant told him to stop resisting or she would tase him. Inmate LB said that Mr. Booker called out, "help me." He stated that he then saw deputies "hog tie" Mr. Booker and throw him in the cell. The video depicts how Mr. Booker was cuffed and he was not cuffed in a manner that is typically described as hog tied. (LB is #1 on Attachment C and was approximately 7 feet away from the struggle.)

**Inmate MB** – MB stated that when Mr. Booker turned around to get his shoes, a deputy told him, "no." Then, she saw the deputies tase and choke Mr. Booker. According to inmate MB, Mr. Booker did not struggle or fight with the deputies. (Location of MB is unknown.)

**Inmate TE** – Inmate TE said that Mr. Booker was trying to get his shoes when he got into an altercation with a "blond haired lady" deputy and she called for back-up. Inmate TE said he saw one sergeant and five deputies grab and yell at Mr. Booker. According to TE, when Mr. Booker went to the ground, he was unconscious but deputies kept yelling for him to stop resisting. Inmate TE said that he heard Mr. Booker get tased twice. He stated that deputies had their knees on Mr. Booker's neck. He stated that Mr. Booker didn't say anything because "after they threw him on the ground, the man was gone." Statements by other witnesses and the video itself directly contradict this. (Location of TE is unknown.)

**Inmate JF** – JF said he was seated about two rows away from Mr. Booker at the DDC. He stated that he heard Mr. Booker yell out, "I need my shoes" as he began to walk down the stairs towards his shoes. A female deputy followed after him and grabbed him by the arm and Mr. Booker pulled away. According to inmate JF, the female deputy along with two other female deputies and three male deputies "grabbed" Mr. Booker who yelled out, "help me." One of the deputies called out to "tase him" which was done for approximately 30 seconds. Inmate JF stated that he saw deputies put Booker in a "headlock" and saw a deputy put his knee on Mr. Booker's back. He did not see anyone kick or punch Mr. Booker. Deputies then handcuffed Mr. Booker and moved him into another room. Shortly thereafter a nurse came running to the room with a "heart machine" and someone called out, "call 9-1-1." (Location of JF is unknown.)

**Inmate LG** – Inmate LG states that she viewed the incident through the chairs. She said several deputies took Mr. Booker to the ground and he was not resisting. (Location of LG is unknown.)

**Inmate MG** – Inmate MG stated that he saw Booker “acting out of control and aggressive.” A female deputy stated to Booker, “I have a taser, get a hold of yourself or I will tase you.” He stated that the deputy did tase Mr. Booker and after that, Mr. Booker went to his room. (Location of MG is unknown.)

**Inmate JH** – JH stated that Mr. Booker was agitated the entire time he was at the DDC. He heard a commotion when Mr. Booker was at the top of the stairs. He heard a female deputy say, “take him down,” at which point approximately 5 deputies responded. Inmate JH said there were no abuses by the deputies. A male and a female officer told Booker to “stop resisting” while another male deputy asked for a taser. According to inmate JH, a female used the taser on Booker and told him to “stop resisting.” One deputy stated that Mr. Booker was not breathing and the nurses responded. (JH is #2 on Attachment C and was approximately 16 – 20 feet from the struggle.)

**Inmate WL** – Inmate WL said he heard Mr. Booker say, “Get the fuck off me, bitch,” to a deputy. He said 6 or 7 deputies took Mr. Booker to the ground pretty quickly. He said he heard a deputy tase Mr. Booker 5 to 6 times. He saw the deputies pick Mr. Booker up and carry him to a cell and Mr. Booker was limp and did not look right. WL stated that he had been sitting across from where Mr. Booker was sitting. (Location of WL is unknown.)

**Inmate DM** – Inmate DM said Mr. Booker was “bad mouthing and not complying with the staff’s orders.” He said that Mr. Booker was agitated, cursing and ignoring the staff’s repeated requests for him to sit down. He said they repeatedly told him that if he did not calm down, they were going to tase him, which they ended up doing. Inmate DM said he did not see any of the guards punch, kick or use any other type of weapon on Mr. Booker. He said when they picked Mr. Booker up, he was limp and drooling. (Location of DM is unknown.)

**Inmate LM** – Inmate LM was very near the altercation and from the video, it appears that she watched it intently. She said that Mr. Booker resisted Deputy Gomez and that other deputies came to help. She said that one male deputy was on Mr. Booker’s arm and Mr. Booker was resisting and trying to get his arms away from the deputies. Inmate LM said the deputies had their knees on Booker to try to control him. She said a female kept telling him to stop resisting or she would use the taser. Inmate LM said that Mr. Booker was trying to get deputies off of him. (LM is #3 on Attachment C and was approximately 6 feet away while watching the altercation.)

**Inmate JN-D** – Inmate JN-D said that Mr. Booker started to argue with a female deputy and she tried to grab him and lead him to a cell. Inmate JN-D said Mr. Booker pulled away and other deputies came to help. He said that the deputies did not punch or kick Mr. Booker. He said Mr. Booker was resisting and they were trying to handcuff him. (Location of JN-D is unknown.)

**Inmate CP** – Inmate CP said the struggle occurred under his seat and Mr. Booker was resisting arrest, moving his arms and body. Inmate CP said a couple of deputies were on his legs and arms and one had him in a choke hold. After the taser was used, Mr. Booker went limp and inmate CP moved to another seat. (CP is identified as #4 on Attachment C and was approximately 4 feet away when the group was initially struggling and then the struggle moved under his chair.)

**Inmate GP** – Inmate GP said he saw a deputy continuously hold Mr. Booker in a tight headlock and then watched as he was tased and no longer moving or breathing. (Location of GP is unknown.)

**Inmate IQ** – Inmate IQ said he saw a female deputy yelling at Mr. Booker to get back to her desk. Inmate IQ said Mr. Booker wanted to get his shoes. He said the female deputy grabbed Mr. Booker and other deputies came after him. Inmate IQ said the deputies put Mr. Booker on the ground and one of them stated choking Mr. Booker, yelling, “Tase him. Tase him.” Inmate IQ said Mr. Booker was tased for at least 20 seconds. He said he heard Mr. Booker yelling, “Help.” (IQ is identified as #5 on Attachment C and approximately 10 feet from the incident.)

**Inmate RR** – Inmate RR said he heard a female deputy tell Mr. Booker to do something and Mr. Booker pulled away. He saw one deputy hold Mr. Booker’s head in a headlock as others were trying to get his legs into “black things.” He heard a deputy say, “drive tase him.” And he heard the man say, “help me.” When they picked him up, he was limp. (Although RR did move around a lot, he is identified as #6 on Attachment C. The location identified is approximately 15 feet away from the incident.)

**Inmate DS** – Inmate DS was sitting very near the incident. He said deputies were trying to contain Mr. Booker and were saying he was strong. He said one deputy was applying pressure to Mr. Booker’s neck. He said the deputies used the taser on Mr. Booker and he was still kicking so they used the taser again. Inmate DS said he believes that the taser was too much for Mr. Booker. (DS is identified as #7 on Attachment C and was approximately 6 – 8 feet away from the struggle.)

**Inmate GS** – Inmate GS said she saw Mr. Booker jerk away from a deputy and then she saw eight deputies struggle with Mr. Booker. She said they were laughing about how strong he was and then tased him. The video and statements of other witnesses do not support the assertion that the deputies were laughing during the struggle.) Inmate GS said when they picked Mr. Booker up, he was limp. (Location of GS is unknown.)

**Inmate LS** – Inmate LS said he heard a commotion and saw six guards trying to hold down Mr. Booker. He said they did not kick or punch or do anything inappropriate. While this was going on, Mr. Booker was saying things. The deputies were telling the man to stop resisting or they were going to tase him. They tased him and he went limp. (Location of LS is unknown.)

**Inmate SS** – Inmate SS said he heard a deputy trying to get Mr. Booker into a cell and Mr. Booker did not comply. He saw the deputy grab Mr. Booker and Mr. Booker said, “Bitch, I want to get my shoes.” Other deputies responded to help the deputy and they took him to the ground and tased him. (Location of SS is unknown.)

**Inmate BT** – Inmate BT said he saw the deputies tackle and tase Mr. Booker. (Location of BT is unknown.)

**Inmate JT** – Inmate JT was very near the altercation as it occurred only a few feet in front of him. From the video, it appears that inmate JT was talking to another inmate and glancing at the television monitor during much of the incident. He said he knew Deputy Grimes by name and that Deputy Grimes had Mr. Booker in a choke hold and he heard Deputy Grimes say Mr. Booker was strong. He said other deputies were on Mr. Booker's legs and others were trying to get him handcuffed. Inmate JT said that deputies were trying to get Mr. Booker's arms out from underneath his stomach but they couldn't. (JT is identified as #8 on Attachment C. He was approximately 6 – 8 feet from the group when they were originally struggling on the ground; however, he later moved to a position further away.)

**Inmate ST** – The altercation occurred right in front of inmate ST. He was about 6 – 8 feet from the struggle. Inmate ST said that when Deputy Gomez grabbed Booker he was “freaking out.” He said the deputies took Mr. Booker to the ground and Mr. Booker was “wrestling” with the deputies. He said one deputy had Mr. Booker in a choke hold and others were holding him down on the ground. He said a female deputy gave Mr. Booker commands to stop struggling and then tased him. (ST was approximately 12 feet away when the incident began but as the struggle unfolded the group moved across the floor and ended up about 6 – 8 feet in front of him. ST is identified as #9 on Attachment C.)

**Inmate MW** – Inmate MW was up in the full book-in area (station #2) when the incident occurred. Inmate MW said he thinks Mr. Booker was struggling to breathe but that deputies thought he was resisting and fought against him as such. Inmate MW did not see anyone punch or kick Mr. Booker during the incident. He said Deputy Grimes had Mr. Booker in a “submission hold” (headlock) with all of his weight on Mr. Booker and that another deputy had his feet and others had his arms. Inmate MW said Mr. Booker called for help 2 or 3 times. Inmate MW thinks that Mr. Booker was under control when the sergeant called for the taser. Inmate MW said that Deputy Lovato seemed hesitant to get the taser when asked. (MW is identified as #10 on Attachment C and was approximately 12 – 15 feet away from the struggle.)

**Inmate PW** – Inmate PW said he viewed the incident from 8 to 12 feet away and could see it in his direct line of sight as well as by looking under the seats that were across from him. He said the deputies did not seem to be prepared for this type of incident and appeared to be caught “flat footed.” The deputies were trying to control Mr. Booker and telling him to stop resisting. Inmate PW said it was hard to see if Mr. Booker was resisting because so many people were around him. He doesn't remember hearing Mr. Booker say anything. Inmate PW said that when the deputies picked Mr. Booker up, he was “listless . . . deadweight . . . his motor skills gone . . . he had no motor reaction . . . his head sank . . . there was drool coming out of his mouth.” Inmate PW said Mr. Booker was laid on the ground in the cell and the female sergeant told him to stop resisting several times. Inmate PW states he could see into the cell and Mr. Booker was not moving or responding. (PW is identified as #11 on Attachment C which was approximately 15 feet from the incident.)

**Inmate JY** – Inmate JY said he saw Mr. Booker stand up and walk towards Deputy Gomez when she called him. Mr. Booker then turned away from Deputy Gomez and began to walk back towards his shoes. Deputy Gomez put Mr. Booker in a “bear hug,” grabbing him from behind. Inmate JY stated that Mr. Booker started “putting up a resistance” but not “boxing;” he “just trying to break away from her.” JY states that more deputies came to assist and “they were forcing him to the ground, he’s still resisting.” Mr. Booker was moving his arms, legs, and body trying to get away from the officers. Inmate JY said Booker was “resisting” because he was being killed, not because he was trying to cause a problem. A female sergeant called for a taser; when she got it, she used it on Mr. Booker. JY said another deputy had Mr. Booker in a “choke hold” and other deputies had a hold of his limbs, trying to get Mr. Booker handcuffed. Inmate JY said that during the incident he heard Booker say in a barely audible level, “I can’t breathe.” After Booker was tased for 5 – 10 seconds, deputies picked him up and put him in a cell and set him on the ground. JY stated that he told a deputy, “that guy’s not breathing.” The deputy called for a sergeant. After several seconds, the same deputy yelled for the sergeant to hurry. He states the nurse took about two minutes to arrive; a second nurse came by about two minutes later and started doing CPR. After a few more minutes the paramedics arrived. JY stated that the involved deputies were “hanging out” and giving each other “high five” motions. This Office carefully reviewed all videos and found no evidence of deputies giving “high fives.” (JY is identified as #12 on Attachment C and was approximately 18 feet from the altercation and 12 – 14 feet from cell I-8.)

## **V. CRIME SCENE INVESTIGATION / TASER TESTING / AND POST-MORTEM EXAMINATION**

### **Crime Scene Investigation**

At approximately 5:00 a.m., Denver Police Department Detective M.E. Vigil was contacted to respond to the DDC in regard to Mr. Booker’s death. When Detective Vigil arrived at the scene, he was met by other DPD personnel. There were also several other parties from DSD present, including Director Gary Wilson, individuals from Internal Affairs, Director Gregg LaBerge from the Crime Lab, personnel from the Monitor’s Office, the Manager of Safety and other personnel from the Manager of Safety’s Office. DPD Detectives took still photographs of the area involved and a visual inspection was conducted of the open seating area (“the pit”). There appeared to be no items of evidentiary value in the area. Detectives then observed the interior of holding cell I-8. There were medical intervention wrappers near the bench/seat in the cell and an empty milk carton near the toilet. The items were of no evidentiary value. Additional still photographs were taken and measurements were obtained from the intake area.

### **Post-Mortem Examination**

An autopsy of Mr. Booker was performed on July 9, 2010 by Dr. John Carver. Dr. Carver concluded, “The cause of death is cardiorespiratory arrest during physical restraint. The restraints consisted of weight applied to the decedent’s body while held prone on the floor, application of a carotid ‘sleeper’ hold to the decedent’s neck,

application of a taser to a lower extremity in 'stun drive' mode for 8 seconds, restriction of arm movement by cuffing his hands behind his back, and restriction of leg movement by use of an 'OPN' (nunchuck). Cardiac hypertrophy, emphysema, and use of cocaine are significant contributing factors. The manner of death is homicide."

It is essential for an understanding of the medical examiner's findings to understand that the term "homicide" as used by medical examiners, is a description of the physical manner of death. It does not mean that the person or persons who committed the act are "responsible," "at fault" or not "justified" in committing the act. It should not be confused with such terms as murder, manslaughter or criminally negligent homicide.

For example, if one person shoots another in self defense, the manner of death is homicide. However, the homicide would be excused or justified because a person has the right to defend himself/herself. Additionally, a person might shoot another with a gun, killing them. The manner of death would be homicide, but after further investigation, the act may be found to be "excusable" as an unintended accident.

In yet another example, a death may be classified as a homicide but other significant factors may exist which contributed to the death such that a person may not be legally responsible for the death or the extent to which the person's actions contributed to the death simply cannot be proved.

Therefore, in order to determine whether the deputies in this case are "responsible" and consequently should be disciplined, it is necessary to consider all the facts and circumstances along with applicable laws and policies to determine whether the actions taken by them were "justified" or if there were other significant factors which contributed to Mr. Booker's death. In any death investigation it is the role of the medical examiner to determine from an examination of the deceased and any other evidence available, the cause and manner of death. However, issues of "intent," "culpability," "responsibility," "justification" or "provable cause" must be determined by a careful and thorough review of all the evidence disclosed by an investigation and the application of relevant laws and policies.

It is also important to note that the autopsy report prompted a number of additional questions of the medical examiner, the answers to which were significant to the decision in this case. Among them were:

- Mr. Booker was "well muscled like a boxer."
- "To the extent Mr. Booker struggled against any of the physical restraints applied by sheriff's deputies, his own exertions may have contributed to development of a cardiac arrhythmia. The contributing factors explicitly described in the autopsy report are cardiac hypertrophy, emphysema and cocaine usage. Extreme physical exertion with these medical conditions and drug on board can precipitate a cardiac arrhythmia." The cocaine usage by Mr. Booker was described as "recent."

- “No bruises, lacerations, deep soft tissue injuries or broken bones were seen. . . Mr. Booker did have abrasions around his wrists (from application of cuffs) and ankles (from application of the ‘ONP’ device).”
- The medical examiner could not say to what degree, if any, the use of the taser contributed to Mr. Booker’s death.
- The medical examiner could not establish the degree to which any particular restraint applied by the deputies contributed to Mr. Booker’s death.

### **Taser Analysis**

As part of the criminal investigation, DPD conducted a forensic examination of the taser used in the incident (serial number X00-379203). DPD Corporal Steve Palka, an expert in taser usage, downloaded the taser firing data and determined that the taser used on Mr. Booker was discharged once for 8 seconds.

## **VI. ANALYSIS**

As a general matter, an administrative review analyzing whether a death occurring in a custodial setting in connection with a use of force was in violation of Departmental policy focuses on three areas: (1) the reasonableness of the tactics utilized by the deputies immediately prior to and during the use of force; (2) the reasonableness of the deputies’ assessment of the threat posed by the person in custody or the threat to order and discipline in the facility; and (3) the reasonableness of the use of force options selected by the involved deputies.

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 incident and the evidentiary standards 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 the deputies had no legal justification under the applicable criminal statutes. The administrative review process is much broader in scope and requires a determination of whether there exists a “preponderance of evidence” to show that the involved deputies violated the Department’s Use of Force policy or any other rules and regulations that were in effect at the time of the incident.

The task in this administrative review is to determine whether the evidence and circumstances make it more likely than not that these deputies reasonably believed that Mr. Booker presented a threat or engaged in conduct affecting order and discipline that justified the level of force he or she used during the incident. In making these determinations, consideration must be given to all the circumstances, including, without limitation, the information which was available to the involved deputies as well as any reasonable inferences arising from that information; the observations of the deputies and other witnesses; the logistics at the scene; the timing of the incident; the immediacy of the threat; the nature of the arrestee’s conduct and its effect on order and discipline; and the practicality and feasibility of employing other tactical options under the

circumstances. It is necessary to gauge the behavior of these deputies against what would be expected of an objectively reasonable deputy sheriff under similar circumstances.

#### **A. Reasonableness of the Deputies' Tactics**

This analysis requires consideration of all of the actions taken by the deputies to get Mr. Booker to comply with their orders without having to resort to force. It also requires consideration of actions the deputies took once they were engaged in force in attempting to de-escalate and/or cease the force once the threat had diminished or no longer existed. Deputies are not armed in a jail due to the risk that would arise if an inmate was able to disarm a deputy. Thus, deputies must rely on other methods to control inmates and maintain security. Deputies are taught to use the non-physical force tool of communication, both verbal and non-verbal, to help establish and maintain a controlled environment at any stage of a situation. However, the safety of the officer and the public must be the overriding concern and, if non-physical force options do not work, the deputies are taught that they may resort to force.

The deputies in this case used appropriate tactics in trying to avoid the use of force as they addressed this escalating situation with Mr. Booker. First, in confronting the situation, Deputy Gomez used non-physical communication tools to try to get Mr. Booker to cooperate with the intake procedures. She used body language to convey a "command presence" and gave direct verbal commands conveying specifically what she wanted Mr. Booker to do. When Mr. Booker would not sit down at the desk, she spoke plainly and said, "Please sit down." After he refused to comply, she made the tactical decision to place him in a cell rather than allow him to disobey her order. However, she did not touch him in any way. She walked over to a holding cell (I-8), opened the door and called him to the cell. When he refused to obey her orders and walked away to the pit, she walked briskly towards him, saying "I need you to come with me." Deputy Gomez appropriately used body language, including gestures and a confident stance, posture and gait. She used assertive statements and, as inmate MW said, she used a tone of authority. However, Mr. Booker was defiant and would not obey her commands.

As Deputy Grimes arrived to assist Deputy Gomez, he also used verbal communications (along with accepted control techniques), commanding Mr. Booker to come with him to the cell and to stop resisting. As Deputies Robinette and Sharp and Sergeant Rodriguez began to assist, they gave Mr. Booker verbal commands to stop resisting. This was confirmed by a number of inmates. Once on the ground, the deputies continued to tell Mr. Booker to stop resisting. Further, as they attempted to handcuff him, the deputies were giving him verbal commands such as, "give me your hands" and "stop resisting."

Likewise, after they were engaged in force, the deputies tried to de-escalate the force periodically to see if Mr. Booker would stop resisting. Deputy Grimes said that he released his hold on Mr. Booker's head and neck intermittently to see how he would react but Mr. Booker would continue to fight and resist. Deputy Sharp said that he released the pressure from the OPNs once Mr. Booker was handcuffed and Mr. Booker immediately tried to kick him.

Before Sergeant Rodriguez used the taser, she warned Mr. Booker repeatedly that she had the taser and was going to use it if he did not stop resisting. According to Sergeant Rodriguez, she said, "Sir, I've got a taser, you need to stop resisting. You need to comply with what the officers are telling you." This is confirmed by a number of inmates as well as the deputies.

In assessing whether the tactics used by the deputies to avoid and/or de-escalate the force were reasonable, this Office has considered the totality of the circumstances, including the information available to the deputies at the time and the specific actions of the deputies throughout the encounter. The tactical decisions and the repeated, direct and specific verbal commands were clearly appropriate. The deputies tried to de-escalate the situation and continually gave commands to an aggressive and defiant man who was clearly not obeying them. Mr. Booker both initiated the physical altercation and chose to escalate the situation by kicking, thrashing and otherwise actively resisting the deputies' efforts to gain control. He forced the deputies into a position where they had to take all necessary measures, including physical force, to maintain order in the jail. Mr. Booker, by his own actions, eliminated the opportunity for the involved deputies to handle this situation in any other manner. Taking all of the above into consideration, this Office concludes that appropriate tactics were used in attempting to avoid and then de-escalate the use of force and, in doing so, the deputies involved in this unfortunate event complied with their sworn duties and their training.

#### **B. The Reasonableness of the Assessment of the Threat and the Need to Use Physical Force to Maintain Order and Discipline**

This analysis requires consideration of whether the deputies' assessment of the threat and their conclusion that they needed to use physical force were reasonable. As the Department's Use of Force policy states, "The force option must be objectively reasonable and appropriate to the threat posed by the suspect/inmate and the seriousness of the immediate situation."

Thus, we must examine what the deputies knew at the time they were assessing the threat before them. The deputies knew that Mr. Booker had repeatedly disobeyed lawful orders and swung his arms in an assaultive manner towards Deputy Gomez. They knew that tactics to avoid the use of force and verbal commands were not working. In addition, Deputies Grimes and Sharp were unsure as to whether Mr. Booker had actually hit Deputy Gomez but from their vantage point and an assessment of the circumstances, believed that an assault of Deputy Gomez had either actually taken place or was imminent. Mr. Booker was actively resisting the deputies, struggling, kicking and cursing. Even as they were bringing him down to the ground, he grabbed the railing, trying to remain upright. On the ground, Mr. Booker was wrestling the deputies, physically trying to get away from them, and twisting and hiding his hands under his stomach. It was reasonable for the deputies to believe that Mr. Booker posed a serious threat to them and others and to the safety and security of the jail. Such an outright defiance of uniformed officers in a detention facility could reasonably be interpreted as the threatening actions of a person who feels he has nothing to lose. A person who is willing to engage in such conduct in an open area of a jail is rightfully

considered to be dangerous and to pose a serious security risk. As further evidence of the risk of harm which such defiance and resistance poses, it should be pointed out that Deputy Gomez was later taken to the hospital and treated for injuries to both of her knees.

In assessing the need to resort to force, the deputies also had to consider that the incident was unfolding in the open seating area of the jail where the deputies were far outnumbered by inmates who could also become similarly hostile and violent. The deputies were in a vulnerable position – struggling on the floor with Mr. Booker – and could be easy targets for other inmates who might physically outmatch them. The deputies could reasonably conclude that they needed to use physical force on Mr. Booker in order to maintain order and control in the jail.

In further assessing the threat, the deputies also knew they were dealing with someone who was much stronger than he appeared. Both Deputies Gomez and Grimes made statements to this effect and inmates confirm hearing Deputy Grimes saying how strong Mr. Booker was. Based on the autopsy, the medical examiner commented to the District Attorney that Mr. Booker was surprisingly “well muscled like a boxer” and apparently strong. (During this investigation, this Office confirmed with the medical examiner that he made such a comment.)

In addition, Mr. Booker’s unusual resistance to pain caused concern to at least one deputy. Deputy Sharp said that anytime someone is demonstrating that level of pain tolerance, he considers their conduct to amount to extreme resistance. As noted above, Mr. Booker seemed immune to the pain from the gooseneck hold, the OPNs, the carotid hold and the taser.

There was absolutely nothing about Marvin Booker’s behavior that would give deputies any indication that he was not a threat to them. The Department’s Use of Force policy instructs deputies to be aware of possible limitations an inmate may have. It states, “It is important for officers to bear in mind that there are many reasons a suspect/inmate may be resisting or may be unresponsive. A person’s reasoning ability, including but not limited to a mental condition, mental impairment, developmental disability, physical limitation, language, drug interaction, or emotional crisis, are some examples.” We now know that Mr. Booker had an enlarged heart, emphysema and had recently used cocaine. But the deputies did not know this at the time. The deputies were not familiar with Mr. Booker prior to this incident and were unaware of any medical or mental health issues, physical limitations, alcohol or drug use by Mr. Booker or any other inherent factors that would preclude the use of certain force options. All they knew in the tense, uncertain and rapidly evolving situation they were faced with was that Mr. Booker was violently resisting and angrily cursing at them. Their assessment that the risk Mr. Booker posed was high and that they needed to resort to force to control him was reasonable under the circumstances.

Even had the deputies known of Mr. Booker’s condition, the same tactics and level of force would likely have been reasonable and appropriate in this situation. The Use of Force policy provides that even if a deputy is aware of any limitations, the deputy still must consider the safety and security of the jail as paramount. According to the policy,

“An officer’s awareness of these possibilities [an inmate’s limitations], when time and circumstances permit, should then be balanced against the facts of the incident facing the officer when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” As the policy notes, “Above all, the safety of the public and the officer must be the overriding concern whenever the use of force is considered.”

Given all of the facts and circumstances in this case, this Office concludes that the deputies were reasonable in believing that Mr. Booker posed a threat of imminent physical harm first to Deputy Gomez and then to all of the deputies. The deputies were also reasonable in believing that Mr. Booker posed a threat to the security of the jail and that physical force was necessary to maintain order and discipline. The behavior of Mr. Booker mandated the conclusion that the deputies reached – they were facing a threat that required the use of force and escalating force in order to contain the threat.

### **C. The Reasonableness of the Use of Force Option**

This analysis requires consideration of the justification for the amount of force utilized by the deputies once they decided that force was necessary. It also requires consideration of whether the escalation of the level of force throughout the interaction, up to and including the use of the carotid hold and a taser, was reasonable.

The assessment of the reasonableness of the deputies’ use of force requires an analysis of the applicable policies and laws. The Department’s Use of Force policy provides:

It is the policy of the Denver Sheriff Department (DSD) that officers use physical force only as prescribed by the Colorado Revised Statutes (CRS) and internal Department standards to perform any legitimate law enforcement or detention related function. The amount of force used will be reasonable and appropriate in relation to the threat faced. In all cases, force will be de-escalated once the legitimate function is achieved or the resistance has ceased.

Two Colorado statutes apply specifically to this case. The first statute addresses the need to maintain order and discipline in detention facilities. It provides:

A superintendent or other authorized official of a jail, prison, or correctional institution may, in order to maintain order and discipline, use reasonable and appropriate physical force when, and to the extent that he reasonably believes it necessary to maintain order and discipline . . .

CRS §18-1-703(1)(b).

That statute also provides that deadly physical force may be used in a detention facility if necessary to prevent death or serious bodily injury. However, that portion of the statute is inapplicable here since the deputies did not use “deadly physical force,” such as the discharge of a firearm. It is important to note that just because a death occurs in connection with a use of force incident does not necessarily mean that deadly physical

force was used. Deadly physical force is defined by Colorado law as, "Force, the intended, natural and probable consequences of which is to produce death and which does, in fact, produce death." CRS §18-1-901(3)(d). The force options utilized by the deputies in this case are not classified as deadly physical force because death was not the intended, natural and probable consequence of such force.

The second statute that applies to the facts in this case addresses the use of physical force in defense of a person. It provides as follows:

. . . a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for the purpose.

CRS §18-1-704(1).

Both the law and the Department's Use of Force policy focuses on the "objective reasonableness" of a deputy's decision to use physical force under the "totality of circumstances" present at that time. The deputy 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 deputies often face circumstances that are "tense, uncertain and rapidly evolving," requiring them to make split-second decisions. In such circumstances, a higher level of force may be deemed reasonable than would be the case if the deputy had minutes or hours to make that choice. The policy also provides that the greater the level of threat facing the deputy, the greater the level of force that may be used by the deputy.

In assessing objective reasonableness, it must be understood that deputies are permitted to rely on appearances, even though sometimes appearances can be deceptive. Under the Department's Use of Force policy, as well as the statutes governing the use of force, a deputy is not deemed to have used excessive force simply because it is later determined that the deputy was mistaken in his belief that an inmate posed an imminent threat of unlawful physical force. A deputy need only base a decision to use force on an "apparent necessity," not an "actual necessity." Thus, a deputy is entitled to act on appearances. However, in so doing, it is the deputy's responsibility to draw reasonable conclusions from the facts and surrounding circumstances.

The DSD Use of Force policy further provides, in part, as follows:

Law enforcement requires that at times an officer must exercise control of a violent, assaultive, or resisting individual to make an arrest, to detain a person, or to protect the officer, other officers, or members of the general public from risk of imminent harm. Each situation is unique. Sound judgment and the circumstance of each situation will dictate the force option the officer deems necessary. Officers may either escalate or de-escalate the use of force as the situation progresses or circumstances change.

The Use of Force policy lists a number of force or control options that are available to officers. These include:

1. Command Presence
2. Verbal Commands/Voice
3. Control Holds and/or Compliance Holds
4. Strikes and/or Kicks
5. Restraint Devices (i.e., OPNs, others)
6. Carotid Restraint (Carotid Compression Technique)
7. Chemical Agents (i.e., OC Spray, others)
8. Electronic Restraint Devices (Taser, others)
9. Deadly Force

The policy states that the above list is not intended to suggest the order in which the force and/or control options should be used in any situation or incident. In addition, officers need not attempt to exhaust each force or control option before moving to the next, so long as the option is reasonable and appropriate under the circumstances. Further, deputies are taught that these techniques do not work on “all of the people, all of the time.” As the training materials state, “Unfortunately, with the subject’s various levels of skill, ability, pain tolerance, intoxication factors, etc., there are just no such techniques available.” Therefore, the deputies are taught techniques that have been proven to work on “most of the people, most of the time,” with the understanding that the deputies may have to escalate the level of force when a technique proves to be ineffective.

Each of the deputies involved in the restraint of Mr. Booker received training in the use of force and other policies and procedures as recruits at the Training Academy. Sergeant Rodriguez, Deputy Gomez and Deputy Grimes also received additional in-service training.

The deputies in this case acted appropriately when they resorted to force since the non-physical force tactics used by Deputy Gomez clearly had not worked. Deputy Gomez told Mr. Booker to sit down and then told him to go to the cell. Then, as she walked towards him, she told him she needed him to come with her to the cell. Deputies are taught that if they have made assertive statements and an inmate does not comply, the deputy must follow through. In addition, as a matter of common sense, it would have been manifestly unreasonable to simply leave Mr. Booker in the open seating area and hope that he would change his mind and decide to comply with Deputy Gomez’s directions. With over 40 other unrestrained inmates in the open seating area, the deputies had to ensure that the inmates understand that complying with orders is not optional. Enforcing compliance with orders and maintaining the respect of inmates is an important method for retaining authority and control and keeping the jail secure.

After the non-physical communication did not work, Deputy Gomez attempted to use a control hold or compliance hold to direct Mr. Booker towards the cell. When she reached out to grab Mr. Booker, he swung his arms violently at her. Deputy Gomez said she believes she was in the right position when she attempted to grab hold of Mr. Booker and believes she was using self defense tactics appropriately, but she was unable to gain control of him.

As Deputy Grimes arrived to assist Deputy Gomez, and Mr. Booker ignored his verbal commands, Deputy Grimes attempted to control Mr. Booker and gain compliance by use of an "arm bar" controlled hold which he had been trained to use. He grabbed Mr. Booker in an attempt to pull him towards the cell but immediately felt the tightness and strength of Mr. Booker and realized they were not going to be able to move him. As Deputies Robinette and Sharp and Sergeant Rodriguez arrived on the scene, they were giving Mr. Booker verbal commands but to no avail. So, pursuant to training, the deputies brought Mr. Booker to the ground and attempted to handcuff him. Deputies are taught that if an inmate is violently resisting them, it is likely easiest to get them handcuffed if they are on the ground in the prone position. If more than one deputy is available, it is best to have one deputy control the inmate's left hand, one control his right hand, one control his legs and one control his head and neck area. Restraining an inmate in this manner can help to protect the inmate from harm and, if successful, lead to the avoidance of a greater level of force. Through struggling and grappling, the deputies eventually got Mr. Booker in the prone position and each took their own position pursuant to training. They attempted to handcuff Mr. Booker while constantly giving verbal commands such as, "give me your hands" and "stop resisting."

Mr. Booker did not simply defy the deputies' commands, he aggressively fought them. He flailed his arms violently towards Deputy Gomez and he kicked at and physically resisted the other deputies. Deputy Lovato said that while the deputies were trying to handcuff Mr. Booker, he was shaking as if he was using all of his strength to resist them. According to Deputy Lovato, he was "putting up a hell of a fight." A number of inmate witnesses further confirmed Mr. Booker's continued resistance throughout the struggle. While this type of behavior by an inmate generally justifies the use of force by deputies, when that behavior takes place in an open seating area of a jail, force is imperative. The deputies could not simply trust that an aggressive inmate would just eventually calm down on his own accord. They had to restrain him and get him into an isolation cell away from the other inmates and deputies.

As Mr. Booker continued to resist, the deputies used other force options such as compliance holds, restraint devices and their own body weight to gain leverage and/or control of Mr. Booker. As discussed above, Deputy Robinette attempted a gooseneck compliance hold (discussed at footnote 7), but failed. Deputy Sharp attempted unsuccessfully to gain pain compliance through the use of OPNs (discussed at footnote 5), but Mr. Booker was resistant to the pain. Deputies Gomez, Grimes and Robinette each used their body weight at different times to gain leverage and/or control of Mr. Booker, but that did not work. The use of a chemical agent was not an option given the number of people in the area.

Deputies are trained that they may use the carotid hold technique as an acceptable option “to incapacitate a combative or physically resistive person whose conduct rises to a level of assaultive.” As discussed above, the carotid restraint was used by Deputy Grimes and was described by the inmates variously as a “headlock” or a “choke hold.” When an officer applies the carotid restraint, it compresses the carotid arteries and the supply of oxygenated blood to the brain is diminished while concurrently sealing the jugular vein which returns the deoxygenated blood. The result is temporary unconsciousness. Deputies are trained that the time for the technique to be applied until unconsciousness is generally 5 – 15 seconds and the time for a subject to regain consciousness is generally 20 – 30 seconds. These times may vary if the subject is under the influence of drugs or alcohol.

As the situation became more volatile and as Deputy Grimes and Mr. Booker’s heads were positioned under another inmate’s feet, Deputy Grimes attempted to apply the carotid hold to Mr. Booker. Because of their positioning and Mr. Booker’s continued resistance, Deputy Grimes could not get a good hold on Mr. Booker. Mr. Booker never lost consciousness while Deputy Grimes was applying or attempting to apply the carotid hold. As all deputies and many inmates confirm, Mr. Booker continued to struggle, speak and spit during the incident. Intermittently, Deputy Grimes released his hold on Mr. Booker and when he did so, Mr. Booker’s resistance would continue and/or escalate.

Eventually, Deputies Gomez and Robinette got the handcuffs on Mr. Booker but he continued to struggle even with the handcuffs on. As Deputy Sharp released the pressure from the OPNs, Mr. Booker kicked violently. Whenever Deputy Grimes released the carotid hold, Mr. Booker would continue resisting. Deputy Grimes said he was getting tired. According to Deputy Grimes:

I started seriously weakening and my fear was if I let go completely, it was just going to go haywire.

Deputy Grimes requested that someone get a taser. Deputy Grimes explained as follows:

I heard someone say something about the taser, like should we get the taser and I shouted out, ‘Yes, yes, please get the taser, get the taser.’ Again, keeping in mind I’ve got these guys with their feet over my head and the back side of my body under . . . , my legs sticking out . . . and this was . . . and if I remember right, there were people seated here and here. . . . Inmates seated all around us.

As the deputies moved through their use of force and control options nothing worked. Mr. Booker continued resisting. Sergeant Rodriguez asked Deputy Lovato to get the taser for her. Once she had the taser, she again used verbal commands. According to Deputy Grimes:

I heard the sergeant say, 'Sir, stop resisting or I am going to have to tase you.' I said, 'Sarg, please, please I need you to tase him now.' I was losing my grip. I was within seconds of having to let go completely and I didn't know what was going to happen.

According to Sergeant Rodriguez:

I said, 'Sir, I've got a taser, you need to stop resisting. You need to comply with what the officers are telling you.' I could still physically see him moving . . . so that's when I made the decision . . . I also had Officer Grimes yelling at me that he's still resisting. I couldn't tell if Booker was trying to bite Grimes, if he was pulling at him. I didn't know exactly what he was doing. All I knew was that my officer was asking for more help because they still didn't have control of him and I could physically see Booker's legs still moving. I knew I had to do something, so I tased him.

Deputies are taught that if a person is defensively resistant or actively aggressive, they are justified in using the taser. Sergeant Rodriguez discharged the taser once for 8 seconds to the lower extremity in the less painful drive stun mode. This is confirmed by Sergeant Rodriguez's statements as well as an inspection of the taser itself. A taser can be used either in a probe application or in a drive stun application. As discussed previously, the taser is most effective in a probe application but the type of application is left to the deputy and is dictated by the situation. A drive stun application is delivered by removing the probe cartridge from the taser and the taser is applied to a pressure point and discharged. According to training materials, a drive stun is more of a pain compliance technique and causes less neuromuscular incapacitation than the probe application of the taser. Deputy James Szumowski, the taser instructor for DSD, said that when a drive stun application is delivered to someone that is laying face down, it can be delivered anywhere that is open and available to the deputy to include the back and the legs, avoiding the neck, head and spinal column.

After deploying the taser, Sergeant Rodriguez watched for Mr. Booker's reaction and looked for a change in behavior as required by the training materials. According to Sergeant Rodriguez and other witnesses noted above, the taser appeared to have no effect on Mr. Booker. Thus, Sergeant Rodriguez stopped the taser and did not use it again when she realized it did not have any effect on him. She acted in accordance with training that instructs deputies not to use the taser for pain compliance if circumstances dictate that pain is ineffective. Deputy Szumowski reviewed the video and said that he did not observe an inappropriate use of the taser in the video.

Shortly after the taser was discharged, Mr. Booker stopped resisting. As the law and common sense dictate, deputies are trained to de-escalate force as resistance is lessened. Thus, Deputy Sharp released the OPNs and Deputy Grimes released the hold on Mr. Booker and got up from the ground. At that point, Deputy Gomez moved into position and placed her shin across Mr. Booker's shoulders with about 10% of her body weight because she didn't want him to roll over or sit up and hit his head on the seat above him. The deputies then carried Mr. Booker to the cell pursuant to training. Sergeant Rodriguez made sure they had enough manpower and that the deputies were supporting and carrying him correctly.

Pursuant to training, the deputies laid Mr. Booker face down in cell I-8. Deputies are taught to be extremely cautious with someone who has just engaged in a use of force with deputies. Thus, Sergeant Rodriguez properly kept the taser with her and informed Mr. Booker that she still had the taser. The deputies were cautious as they removed his handcuffs. They told him that when the handcuffs were removed, he should place his hands at his side. They told him to remain still until they left the cell. The deputies then backed out of the cell as they are trained to do.

The use of force policy further requires that after a use of force incident, the inmate is to be screened medically. Thus, after the incident, Sergeant Rodriguez walked over to the nurses' station to get a nurse for the screening. As noted above, Sergeant Rodriguez can be seen on the video heading towards the nurse's office approximately one minute after she shut the cell door (0342:03 on the video captioned 1 Interview South View). As she was getting a nurse, Deputies Sharp and Grimes began requesting that the nurse respond immediately because it appeared that Mr. Booker was not breathing. Pursuant to policy, Deputy Grimes did not open the cell door until the sergeant arrived. Department policies prohibit a deputy from entering a cell containing an inmate who has posed a threat to the safety of others without a sergeant present. The medical staff then acted appropriately by administering life support and requesting that 9-1-1 be called.

This Office finds that the facts and the circumstances surrounding this event lead to the conclusion that the decision to use force and the escalation of force by the deputies was reasonable and appropriate. Even though the policy did not require the deputies to go through the list of force options in the order of the least amount of force necessary to control Mr. Booker up through escalating levels of force, that is in fact what they did. They began with non-physical force through asserting a command presence and continued throughout the incident with verbal commands. They then went through the physical force options in the general order in which they are listed in the policy. They escalated the level of force as Mr. Booker continued to put up resistance. Deputy Robinette said Mr. Booker's resistance was "extreme" and that on a scale of one to ten, he would rate it as a ten.

Deputy Grimes attempted the carotid restraint only after verbal commands, a show of force, and pain compliance techniques did not work. Deputy Grimes said he resorted to the carotid hold because of Mr. Booker's strength, level of resistance and stamina. He hoped through the use of the carotid hold that he would gain control of Mr. Booker or render him unconscious. Deputy Grimes requested the use of a taser only after he felt like he could no longer hold onto Mr. Booker. Sergeant Rodriguez warned Mr. Booker repeatedly that if he did not stop resisting, she would tase him and only after he refused to stop resisting, did she actually use the taser. And, even then, Sergeant Rodriguez used the taser in the drive stun mode so as not to create neuromuscular incapacitation but only in an attempt to gain compliance. In addition, Sergeant Rodriguez placed the taser on Mr. Booker's thigh in the preferred target zone and away from his head, neck and spine.

The deputies reasonably resorted to physical force and escalated it as appropriate. Mr. Booker began this entire incident by openly defying Deputy Gomez and swinging his arms towards her, barely missing her head. His behavior throughout this encounter

was meant to defy the deputies, to be aggressive and noncompliant. The Department Use of Force policy specifically recognizes that force may be necessary and unavoidable in situations like this. It states, "Law enforcement requires that at times an officer must exercise control of a violent, assaultive, or resisting individual to make an arrest, to detain a person, or to protect the officer, other officers, or member of the general public from risk of imminent harm." In this case, it was the deputies' duty to try to gain control of Mr. Booker for their own safety as well of the safety of other inmates, deputies and medical personnel. The deputies' assessment of the situation and the level of force they used in attempting to gain compliance from Mr. Booker were objectively reasonable.

#### **D. Summary of Findings**

It is the finding of this Office that the actions of Deputies Gomez, Grimes, Sharp and Robinette as well as Sergeant Rodriguez on July 9, 2010 were reasonable and necessary to defend against the threat of physical force posed by Marvin Booker. The actions of these deputies were direct and appropriate responses to what they reasonably believed to be the use of and imminent threat of physical violence by Mr. Booker. This Office further finds that the actions of these deputies were reasonable and necessary to maintain order and discipline in the Denver Sheriff Department Downtown Detention Center. Given these findings, this Office concludes that all five deputies were in compliance with the provisions of the Denver Sheriff Department Use of Force policy.

#### **VII. ADDITIONAL ISSUES**

The facts of this case have raised questions by some relating to the issue of precisely when Mr. Booker stopped breathing, whether the deputies carried him to the holding cell after he stopped breathing, and whether laying Mr. Booker on his stomach in the holding cell as opposed to sitting him up contributed to his death.

To help resolve these questions it should be noted that the medical examiner did not and could not determine exactly when Mr. Booker stopped breathing. Nor did the medical examiner find that laying Mr. Booker on his stomach in the cell as opposed to sitting him up was a significant factor contributing to his death.

The evidence in this case indicated that the deputies reasonably believed that Mr. Booker was still alive when they brought him into the cell and when they left, and all of their actions were consistent with that belief. However, even assuming that Mr. Booker had expired while still on the floor of the open seating area, that would not have changed this Office's finding that the force used was reasonable and not in violation of Department policy under the circumstances.

**VIII. CONCLUSION**

In closing, it is important for this Office to assure the members of the Booker family, the Sheriff Department and the community that it has reviewed and analyzed this case carefully. The conclusions that were reached by this Office are consistent with those of the District Attorney's Office, the Director of Corrections, and the Independent Monitor only because they are driven by the facts of this case and the application of appropriate law and policy. This office takes its duties and responsibilities very seriously and will not hesitate to hold members of the Department of Safety accountable for their misconduct when it believes that the alleged misconduct can be proven and that discipline up to and including termination is appropriate. However, where discipline is not appropriate, this Office is legally and ethically bound to say so.

No doubt the death of Mr. Booker is tragic. It was not intended by anyone. The deputies in carrying out their duties, did what they reasonably believed was necessary and consistent with their training and the Department's Use of Force policy. The death of Mr. Booker was not the natural and probable consequence of the type of force used by the deputies in this case but was impacted by significant contributing factors.

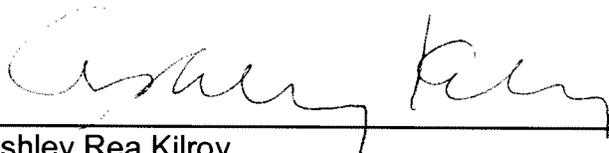
Nevertheless, this Office's finding that the involved deputies were not in violation of Department policy should not end the Department's concern with this incident. From every tragedy there is something to be learned. This Office will work with the Director of Corrections to examine whether changes in policy, procedures or training should be considered. Members of the Department should always remember that their primary mission is the care and custody of detainees. As noted earlier, instances of the use of force by Denver Sheriff Department members which result in serious bodily injury or death are rare. We should all work to assure the community that they will remain so.



Charles F. Garcia  
Manager of Safety



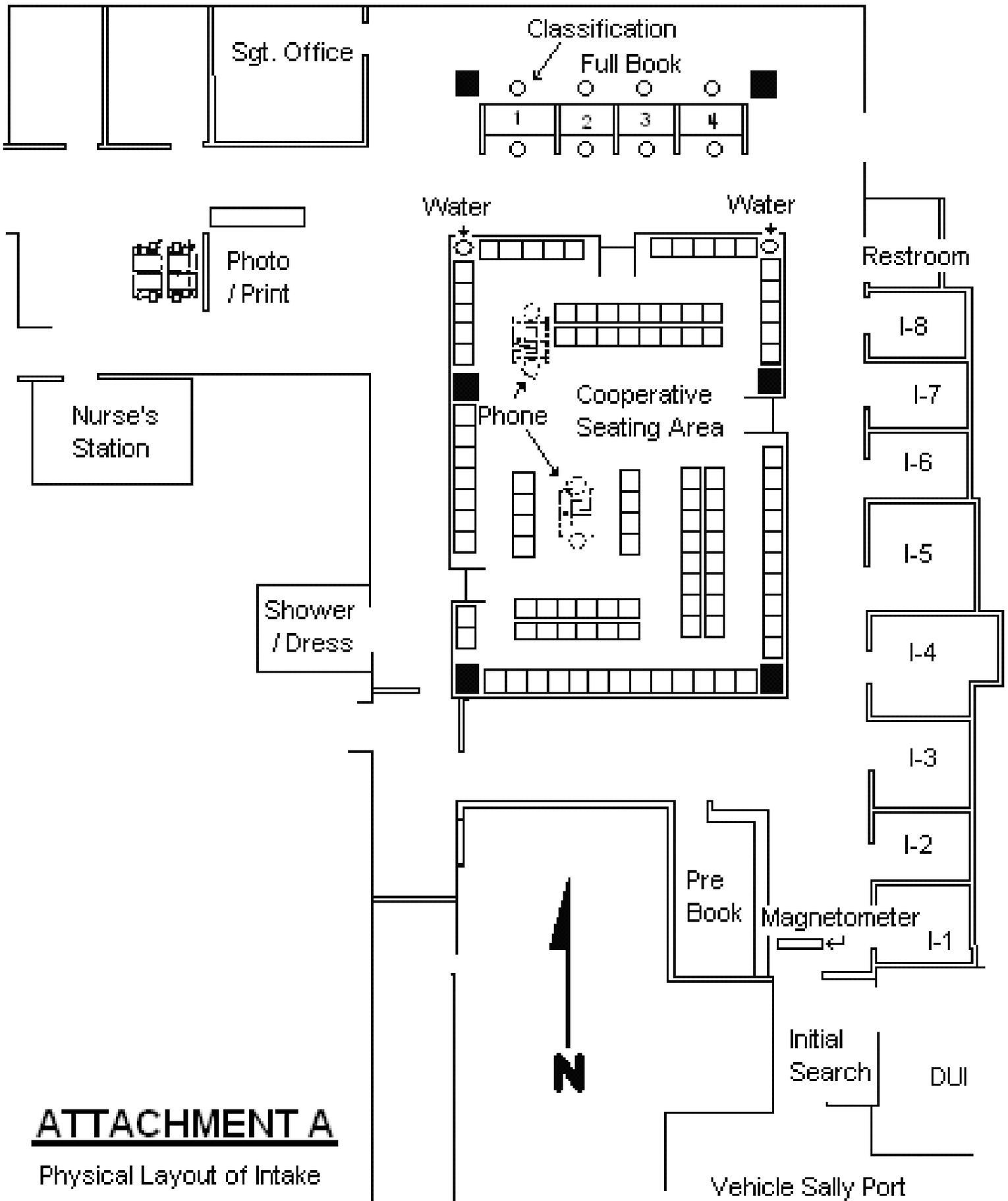
Date



Ashley Rea Kilroy  
Deputy Manager of Safety

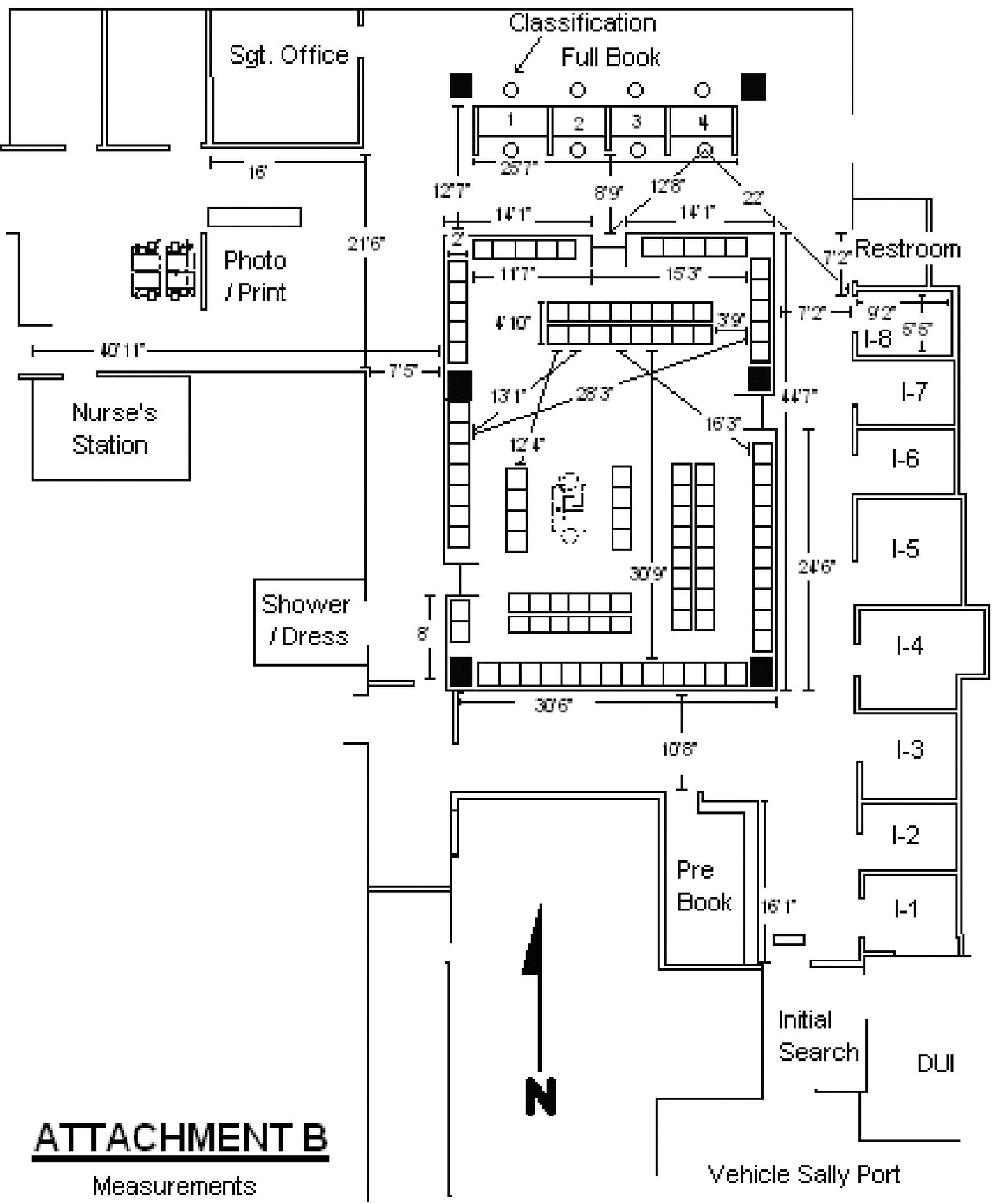


Date

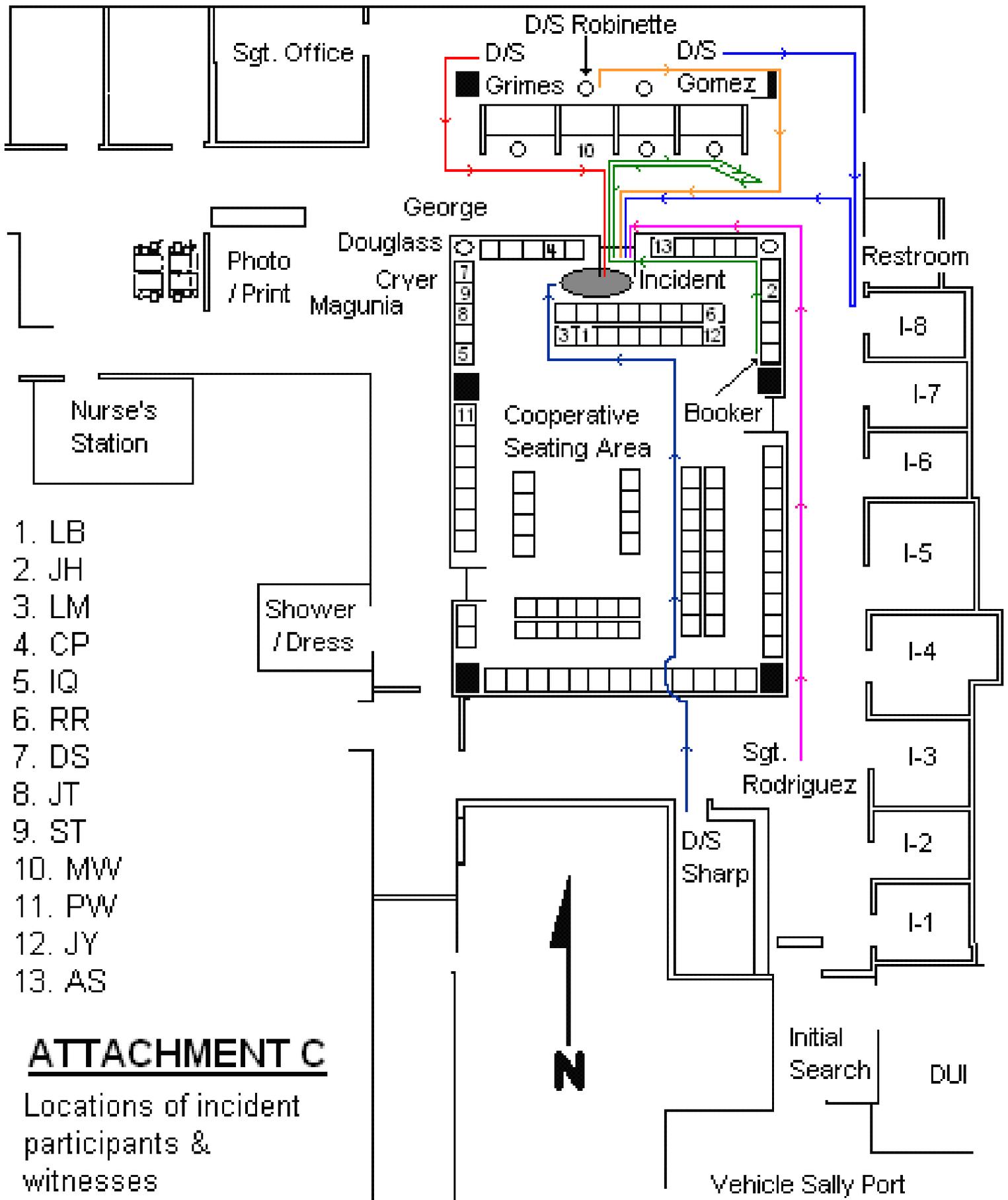


**ATTACHMENT A**

Physical Layout of Intake



**ATTACHMENT B**  
Measurements



- 1. LB
- 2. JH
- 3. LM
- 4. CP
- 5. IQ
- 6. RR
- 7. DS
- 8. JT
- 9. ST
- 10. MVW
- 11. PW
- 12. JY
- 13. AS

**ATTACHMENT C**

Locations of incident participants & witnesses