June 26, 2011

This is in response to the Proposed Termination of Employment letter I received at my home on June 22, 2011 which was hand delivered by Deputy Chief Campbell.

In the letter you have stated that 'I was found not guilty of the criminal charges of second degree murder and first degree manslaughter. However, the jury also determined that I did not prove by a preponderance of the evidence that my use of force was lawful'.

This assumption regarding whether my use of force was lawful was based on the jury's decision not to grant me financial restitution for my court costs.

First of all, it is my understanding that you can only ask for restitution in self defense cases. The judge would not have had to allow me to ask for restitution unless it was determined this was a self defense case.

On April 26, 2010 just after my not guilty verdict on both charges was rendered, my Attorney David Allen, asked Judge Knight if we would be allowed to ask for restitution and he did grant this. Mr. Allen also asked that the jury be given written instructions as to what was required in order to grant restitution. The judge denied the request and the jury was instructed to make their decisions based on verbal instructions only. They were told to make their decisions based on 'subjective and objective findings'.

On April 27, 2010 we were summoned back to the court room for the jury's decision regarding granting restitution. We were then informed by Judge Knight that he had been asked by the foreman of the jury twice for clarification of the instructions they were given and for written instructions to aide them in their decision process. Judge Knight stated that this request had been denied twice.

The jury had to make their decision without all of the information they had requested, and did not grant restitution.

Because they did not allow restitution, the conclusion was 'jumped to' that they must have decided that my force was not lawful. I feel is it not fair to jump to that conclusion without reviewing the facts that took place in the courtroom on April 27, 2010 and ignoring the jury's request for more information so they could come to an informed decision.

I feel that this jury wanted to do their best to make an informed decision and were denied that when they were denied written instructions as to what was being asked of them, and their request for clarification of the definitions of "subjective and objective' findings.

It is also stated in the Proposed Termination of Employment letter that you feel I violated policy as described in Section 15.4 regarding Use of Deadly Force.

The statement reads “An officer may employ deadly force only in those situations where the officer objectively and reasonably believes there is an imminent threat of death or serious physical injury to the officer or to another person, based on the totality of the circumstances known to the officer at the time.”

On June 10, 2009 I fully believed that Officer Klocker and myself were in imminent danger of being ran over by a high powered sports car, operated by an extremely uncooperative and intoxicated male. Tests later showed his blood alcohol content to be 0.26 or greater.

In addition to this section 15.4 also states Deadly force may be employed “When necessarily used by a peace officer to overcome actual resistance….” The whole statement also includes “resistance to the execution of legal process, mandate, or order of a court or officer, or in the discharge of a legal duty.”

On June 10, 2009 I felt I had a legal obligation to prevent Mr. Meservey from illegally operating his vehicle as it is a criminal offense to drive under the influence of alcohol. Mr. Meservey had resisted my verbal commands to turn off the engine and exit the vehicle. Further objective signs of his resistance include, starting his vehicle after being ordered not to, refusing to turn off the engine when ordered to, revving the engine, and putting the car in gear.

Section 15.4 also states “When necessarily used by a peace officer…To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony.”

On June 10, 2009 Mr. Meservey was committing a crime once he started his vehicle, in his intoxicated condition. I further believe he was attempting to commit a felony, as I truly felt Officer Klocker and myself were in danger of being ran over, which would be a crime of attempted vehicular assault.

RCW46.61.522 defines “Vehicular assault” as:

1) A person is guilty of vehicular assault if he or she operates or drives any vehicle:
    a) In a reckless manner and causes substantial bodily harm to another ; or
    b) While under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, and causes substantial bodily harm to another; or
    c) With disregard for the safety of others and causes substantial bodily harm to another.

2) Vehicular assault is a class B felony punishable under chapter 9A20 RCW.
3) As used in this section, “substantial bodily harm” has the same meaning as in RCW9A04.110.

As vehicular assault is defined above I felt Mr. Meservey was in the process of attempting vehicular assault by his actions. He was driving a vehicle under the influence of alcohol and had disregard for the safety of himself and others.

The two 911 calls, from 2 different individuals, that night also indicated this was an extremely intoxicated person who was unfit to drive and was attempting to drive his vehicle and may cause harm

to others. On the tape a female states she viewed him as an “extremely intoxicated guy” and that she was afraid he “was going to get in his car and kill somebody.”

The letter I received also states “When considering using deadly force to arrest or apprehend any person, officers must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or others. Among circumstances which may be considered as a ‘threat of serious physical harm’ are:

> -The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could be reasonably construed as threatening.”

One June 10, 2009 I truly felt that the vehicle, in this case, was a deadly weapon in the hands of a drunk driver. It has been proven that a vehicle can be used as a deadly weapon.

> -There is probable cause to believe the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.”

Mr. Meservey committed a crime once he started his vehicle while in intoxicated. I felt then his actions were threatening the safety of myself or others. Even though I was unaware of it at the time, I learned later that his actions of driving into the fence had actually caused some harm to another individual when she was knocked down by the fence as it moved from the impact of his car. Fortunately she was not seriously injured but this does show Mr. Meservey’s disregard for the safety of others.

> -A warning is given prior to the use of deadly force, if practicable.”

I had already verbally attempted to get Mr. Meservey to comply, which he ignored. I then applied the taser in an attempt to get him to comply. He then put the car in gear and attempted to drive the vehicle. I fired when the vehicle started reversing back at me and I felt myself and Officer Klocker were in imminent danger. Due to the vehicle noise of Mr. Meservey revving the engine, the vehicle movement, and rapidly evolving situation, I was unable to give a verbal warning.

> -Firing into a moving vehicle is generally prohibited, except where the officer reasonably believes that there is an imminent threat of death or serious physical injury to the officer or to a third party if the officer does not do so and that it is the only reasonable means of protecting the officer and/or a third party. Given that any officers likelihood of successfully preventing the escape of the subject in any moving motor vehicle is very low, an officer chooses to fire at a fleeing vehicle must be fully prepared to justify his extreme action.

On June 10, 2009 the vehicle was not fleeing. It was coming back at me, trying to occupy the same space I was in. Due to my location between the suspect’s vehicle and an SUV there was nowhere for me to go and I was at great risk of being hit. At the time I thought Officer Klocker was located at the right rear corner of the suspect’s vehicle, providing cover for me, as we are trained to do, putting his life at risk also.

The letter I received also reviews “Training and Experience”

In the letter it is stated that I have ‘received 40 hours annually of refresher courses that included segments focused on defensive tactics and handgun skills training.’ The actual time segment spent on defensive tactics is approximately 5 hours annually of the 40 hours. The last 2 times I have attended these refresher courses, the defensive tactics segment consisted of riot control training that was limited to marching in formation as a team. Five hours a year on defensive tactics is insufficient. Furthermore in all of the academy training, the 5 hour annual training, and the fire arms training, not once have we trained on getting an uncooperative, intoxicated male out of a locked car. We were however, trained NOT to reach into a car with a running engine and to NOT try to grab the keys or the individual, as this could result in our being dragged by the car, and it exposes our gun to the suspect.

In this case, the suspect was driving a corvette which is a low sitting vehicle, the driver sits low and the window opening is small. According to the medical examiner report, Mr. Meservey weighed 174 pounds and was 5 ft 10 inches in height. Given the body mechanics involved, the center of gravity required, and taking into account the size of the man, trying to pull the driver out the window was not a viable option. It would have been physically impossible for me to drag him out of the car window.

It is stated in the letter that ‘one of the fundamentals of law enforcement training is to seek cover or concealment to protect yourself from a threat. In lieu of cover, you are trained to move in a manner that minimizes your exposure to a threat. You are also trained to establish an appropriate distance between yourself and a threat. Those basic concepts are regularly reinforced through firearms and defensive tactics training. Engaging or facing a threat is unacceptable when doing so tends to create a need to use deadly force.’

<u>Normally, I would agree to this in situations where we know that there is going to be a threat.</u> Standard procedure is to seek cover or concealment in cases where a specific type of threat has been identified. In most police contacts the threat is unknown. We as officers respond to calls and have to make contact with individuals to determine if a crime is being committed. In this case, the call came out as an intoxicated driver. As is standard practice, I have to make contact with that driver to determine if there is probable cause that a crime is being committed. To determine if there is probable cause I have to contact the driver, gather objective findings such as slurred speech, odor of alcohol, view behavior changes or any other findings that may substantiate that the individual is intoxicated. It would be impossible to obtain this information from a cover position. On June 10, 2009 I was positioned at the driver side door of Mr. Meservey’s corvette. The car was locked, as I had tried to open his door. I was positioned between the corvette and the SUV. When Mr. Meservey moved the car forward, I still had the SUV on my left and Mr. Meservey’s car to my right. I was unable to move to my left because of the SUV. I jumped backwards and observed the corvette starting to come backwards. With the SUV to my left and the corvette coming back at me I felt I was in imminent danger of being hit. I also thought Officer Klocker was in danger of being hit as I thought he was still positioned behind the corvette.

Through the investigation, I learned that there was a parking curb in front of the corvette. There has been a question raised regarding the curbing that the corvette went over when Mr. Meservey put the

car in drive. At the time the car was coming backward; I could hear the engine revving and saw white reverse lights. With a car in reverse and accelerating his engine, Mr. Meservey could have easily gone backward over the parking curb just as he had done driving over it going forward. Keep in mind, the detectives found that the gear shift in the car was between neutral and reverse. Indicating he was attempting to change gears while accelerating the engine. Detective Wells testified that the vehicle was NOT high centered on the parking curb, therefore, making it physically possible for the car to reverse back over the parking curb, just as it had successfully gone forward over the parking curb.

In regards to the segment of 'experience'. Reference has been made regarding my previous experience in 2006 where I witnessed Officer Bakke being struck by a vehicle while she was in the same physical position I was in on June 10, 2009. The question has been raised as to why I did not shoot at the car in 2006 while it was reversing and struck Officer Bakke and why I did shoot at the reversing corvette in 2009. We all learn from our past experiences. In the 2006 incident I had not previously seen someone get hit while positioned between two vehicles. I realized after the 2006 incident just how dangerous it is and if the driver had turned the steering wheel the other direction, I would have been the one crushed. Police work requires that we contact the drivers, therefore we have to, at times, walk between two vehicles. We have been trained that it is safer not only for officer safety but for safety of the suspect to keep the suspect in their vehicle until it is time for an arrest to be made. As officers, we are NOT required to be injured first before we can protect ourselves.

In the 2006 incident Officer Bakke had been struck, the car continued backwards and I realized she was no longer in danger from the car, even though I was still unaware of her physical condition. Shooting at the suspect at that point would have been considered retaliation. I did however, fire at the suspect when I realized Officer Dawson was in danger of being hit by the vehicle.

Response to section regarding my 'Criminal Trial Testimony'

In regards to your concern about the non use of the asp during June 10,2009 incident, section 15.4 of the policy book states that 'the use of an officer of any hard object to intentionally strike a blow to a person's head is generally prohibited, except in certain extreme situations of self defense or defense of others. An officer applying a blow to a person's head must be prepared to justify this extreme action. ..'

First of all, I felt the use of the taser was a much less lethal tool to use than the asp to try to get Mr. Meservey to comply. My multiple verbal attempts to 'Turn off the engine and get out of the car" had failed. While being tased he managed to put the car in gear and drive it forward. At this point with the car in motion an asp application was impossible, as the engine was revving and the car starting coming back towards me.

In regards my testimony regarding not communicating with Officer Klocker, the prosecutor indicated that I should have said "Hey, Steve, I'm having a hard time with this guy, why don't you bust out the window and tase him." First of all Officer Klocker should have already realized I was having trouble with the suspect due to my asking him to come back to the area and 'stand by'. All officers realize this means

they will need assistance. He was aware of the location of my patrol car and the limited lighting situation but failed to bring his patrol car up and further block in the suspect and illuminate the area with his patrol car. He instead chose to park his patrol car out on the street and walk in. I heard someone walking towards me and saw it was Officer Klocker, he did not communicate with me that he was there. As a cover officer, Officer Klocker was there to assist me. During Officer Klocker's testimony he stated he thought of five different possible 'plans of action' but failed to execute even one of them. He also failed to communicate with me any of these plans. It should have been obvious to him that I was dealing directly with the suspect who was not complying. As a cover officer it is often appropriate to take action when the primary officer is focused on the suspect and the situation.

During his testimony, Officer Klocker stated that one of his initial concerns was for the possible damage to city property if Mr. Meservey were to back up and hit my patrol car. His initial thought was to possibly move my patrol car. As the cover officer, his job was to assist me. My concern is that if he had followed through with his initial instinct and moved my patrol car, he would have then been assisting the suspect in getting away by providing a larger opening in order for him to leave instead of assisting me .

It would have been more appropriate for Officer Klocker to communicate with me, as I was dealing with Mr. Meservey. If he had executed any one of his plans the outcome may have been different.

During my testimony I was asked why I did not ask Officer Klocker if he was carrying OC. Again, I was dealing with a non-compliant suspect, it would have been more appropriate for Officer Klocker to let me know what tools he had available to him than for me to ask him about each possibility. I was giving instructions/orders to Mr. Meservey and when he failed to comply, I chose to use the taser in an attempt to gain control of the situation. The ineffectiveness of the taser on Mr. Meservey and the escalating (or rapidly evolving) situation demanded my full attention. There were no other options once the car started moving.

On page 6, of the letter I received, you asked why I didn't seek cover when Mr. Meservey turned on the engine the second time. At the time Mr. Meservey started the engine for a second time, I was still trying to get him to comply using the verbal command "turn off the engine and get out of the car". When I saw him reach for the gear shift I took out my taser and tased him. I was surprised he was able to fight through the tasing and managed to get the car in gear.

On page 7 of the letter, you state my position as being offset from the left rear corner of the corvette and mere inches away from cover behind the SUV located next to the corvette. When I fired my weapon I still thought Officer Klocker was behind the corvette and in danger. The incident escalated so fast, it was impossible and unreasonable for me to take my eyes off the threat and to start looking for an exit.

During the 21 seconds from the time I 'closed the air' to the time I reported 'shots fired' a lot of events took place.

1. I told Mr. Meservey three times to 'Turn off the engine and get out of the car" each time waiting for him to respond to each command. Each time he responded verbally with swearing or "why the fuck should I?"

2. Mr. Meservey reached for the gear shift.

3. I applied the two taser applications, according to the taser download recording; this took place over 11 seconds.

4. Mr. Meservey manages to put the car in gear.

5. The car is driven forward and crashes into the chain link fence.

6. The car starts reversing toward me.

7. I fire my weapon.

8. I tried to get on my radio but realized I had a taser in one hand and my pistol in the other. I then looked around for a place to set my taser so I could use my radio, and placed my taser on the rear bumper of the SUV next to the corvette.

9. I got on the radio and advised that shots were fired.

This is a lot of activity in 21 seconds. If you are sitting in a quiet room and timing off 21 seconds it can seem like a long time. However, that was not the case. There was a lot of activity and actions that occurred within that 21 seconds on June 10, 2009. Each of my actions was a reaction to Mr. Meservey's actions.

On page 7 you state that Mr. Meservey did not make any attempt to engage me in a physical confrontation. He was however, attempting to commit a crime. He was attempting to drive his vehicle while intoxicated. It is a law enforcement officer's duty to prevent someone from driving drunk. A vehicle in the hands of an intoxicated driver, especially with a blood alcohol level of 0.26 or higher, can be a lethal weapon. Hundreds of people are killed every year due to drunk drivers.

On page 7 you state I did not warn Mr. Meservey prior to using deadly force. Our policy book section 15.4, Use of deadly force, states 'A warning is given prior to the use of deadly force, if practical.' In this case I had already tased him; he was revving the engine and reversing the car toward me. There was no time to give a warning.

On page 7 you state that Mr. Meservey had not physically harm the two females he had encountered earlier in the evening. However, remember, these were the same two females who had called 911 reporting an intoxicated male and they were afraid he "was going to get in his car and kill somebody."

On page 7 you state that Mr. Meservey's only resistance to my orders was confined to not exiting his vehicle and moving it forward into the fence. My response is Mr. Meservey was an intoxicated

individual who started his car and put it in gear, after being ordered to 'turn off the vehicle and get out of the car' multiple times. He was an intoxicated individual who was operating a vehicle which is a crime in the state of Washington. Not only was this a crime of DUI, but also attempted vehicular assault which is a felony when he put the car in reverse.

On page 8 there is a statement concerning shooting the driver of a moving vehicle. In the 2006 incident I fired four rounds into the suspect vehicle which had no effect whatsoever. I had several conversations with Fire Arms Instructor, Jim Duvall, in which he explained to me a small item like a bullet would have very little affect on a vehicle. He explained that you should shoot at the mechanism controlling the car i.e. the driver.

Regarding the statement that 'No felony was involved on Mr. Meservey's part,' Vehicular assault is a felony. When he put the car in gear and attempted to leave he put both myself and Officer Klocker in danger.

Regarding the sentence 'The highest priority of law enforcement is to protect human life and safety.' I totally agree. I was not only trying to protect myself and my fellow officer from danger, but also the public. An intoxicated driver is not only a danger to themselves but others.

Please note, on the first page of the letter I received, there is a statement that 'the OPS investigation was held in abeyance, to my benefit. I do not agree that this was to my benefit, but rather as a benefit to the city. If the OPS investigation had been done prior to the conclusion of the civil proceedings, the city would have been obligated to release their findings to the Civil case attorneys, possibly, forcing the city to pay out more than the $500,000. 00 amount that was settled on, had they found that either myself or Officer Klocker had acted inappropriately. It was your decision, not mine, to delay the internal investigation, as I would have preferred to have been back to work.

There is also a statement regarding the amount of money that city has had to pay out for costs for defense of the lawsuit and my criminal defense. To this I must respond, on the night of June 10, 2009 I was denied the protection of Garity, which is unusual as most officers are offered Garity and allowed to tell their side of the story after a shooting. In July 2009 I was notified by the EPOA attorneys that investigators were not going grant me Garity, they suspected I was going to be charged with a crime. I contacted, then Deputy Chief Lineberry, who told me that the union attorneys 'were over reacting and the case was going to be closed in three weeks." Three weeks later I attempted to contact Deputy Chief Lineberry to find out my status. I was put in touch with then Captain Campbell, who told me he would check on my status. He called me back and told me he had talked with Captain Templeman, who was in charge of the SMART team at the time, and explained that it would be okay for me to return to work in Administrative Services until the completion of the investigation. I returned to work mid August 2009, thinking everything would be fine. On September 18, 2009 the union attorneys informed me that the Snohomish County Prosecutors office intended to charge me with Manslaughter in the second degree. I hired David Allen to represent me. Mr. Allen contacted Mark Roe, on three separate occasions, in an attempt to allow me to tell my side of the incident. Mark Roe was not interested in protecting my

rights, or offering me Garity, which forced me to take the advice of my attorney and not talk to Mark Roe and therefore, I had to wait until this case went to trial to tell my side of the story.

Had the city and the prosecutor's office offered me Garity, I would have sat down and spoke to them then and possibly avoided the trial and the expense.

Further concerns:

On the night of June 10, 2009 Officer Klocker gave a statement to Detective Hatch which is documented on June 11, 2009 page 182 in which Officer Klocker states that "Officer Meade had told him alright, enough is enough. Get out of the vehicle. And uh, he repeated that command while we're you know perhaps two or three times before the vehicle then sat uh, went in motion."

Det. Hatch: So were, were those commands before the taser was deployed?

Officer Klocker: he told him to get out of the vehicle. Uh, he didn't comply. Uh, the taser was deployed. Uh, and then after the cycle the driver immediately recovered and he started the car and took off in it or attempted to.

So during Officer Klocker's statement that night he stated that I told Mr. Meservey "enough is enough, get out of the vehicle", before I deployed the taser. However, after Officer Klocker returned from his vacation in California he changed his statement to: just before shooting Mr. Meservey I said "something to the effect of 'enough is enough.. time to end this.'" This statement ended up being a direct quote printed by the media and one of the reasons I feel Mark Roe felt compelled to charge me with a crime.

During Officer Klocker's testimony he again stated that I had said this just prior to firing my weapon and that I had also turned away from the corvette and faced Officer Klocker before making the statement. First of all, I never made that statement and second of all, I never took my eyes off of the corvette or Mr. Meservey as that is where the point of threat was coming from prior to my firing my weapon.

I feel it is important to note that during my criminal trial, the city attorney Lou Peterson released a letter to my attorney David Allen. The letter had been written by Deputy Chief Atwood to Deputy Chief Lineberry. In the letter Deputy Chief Atwood had made notations that she had talked to two city prosecutors and a municipal court judge in regards to Officer Klocker. The notes indicated that Officer Klocker is suspected of lying on two court cases and that he had been warned twice about lying by the municipal court judge. Both prosecutors indicated that they would never call Officer Klocker again to testify in their cases. I find it amazing that neither of the Deputy Chiefs took the information to OPS to further investigate these allegations. The allegations from two prosecutors and a municipal court judge should have warranted an internal investigation.

I have a concern regarding Officer Klocker's testimony and his perception of when deadly force should be applied. He testified that he would never use deadly force. He later stated that he might use deadly force only if I had been hit by the vehicle and after he had checked to see if I was seriously injured. My concern is that if he has to check me first to see if I am seriously injured and the suspect is leaving, isn't it too late and wouldn't the use of deadly force at this point be retaliation?

I found it interesting that during the Prosecutor's closing statement at my Criminal Trial, Officer Klocker's name was not mentioned once. The five civilian witnesses that testified were all in agreement with my account of what took place that night. The only discrepancies came from Officer Klocker.

I find it interesting that during the civil proceedings the city attorney's main argument was that I had done nothing wrong and stated that Mr. Meservey was responsible for the outcome of events that night, as documented by the media.

The final outcome of the civil lawsuit was a settlement of $500,000.00, when initially Paul Luvera was asking for 15 million dollars in settlement. This leads me to believe that the findings from their investigation did not support their allegations that I had acted inappropriately.

I have been proud to serve our community as a law enforcement officer. I have had many successes in my career and met a lot of great people and made lifetime friends. It distresses me to feel that I have had a lack of support from the City of Everett Police Department administration, and how this whole incident has been handled.

It is my hope that you take my concerns in this document seriously and reconsider your proposed decision.

Thank you,

Officer Troy Meade 1142