



**EXHIBIT "A"**

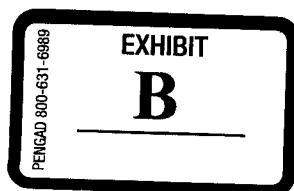
**The actual DVD will be hand delivered to the Court.**

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE SOUTHERN DISTRICT OF TEXAS  
 3 HOUSTON DIVISION  
 4 SUSAN CARNABY, )  
 )  
 4 )  
 vs. ) CA NO. 4:08-cv-01366  
 5 )  
 CITY OF HOUSTON, HPD )  
 6 OFFICER CECIL FOSTER and )  
 HPD OFFICER ANDREW J. )  
 7 WASHINGTON )  
 8 )  
 9 ORAL DEPOSITION  
 10 HPD OFFICER CHARLES H. STARKS  
 11 November 25, 2008  
 12 ORAL DEPOSITION OF HPD OFFICER CHARLES H. STARKS,  
 13 produced as a witness at the instance of the Plaintiff  
 14 and duly sworn, was taken in the above-styled and  
 15 numbered cause on November 25, 2008, from 10:13 a.m. to  
 16 12:48 p.m., before Susan T. Baker, CSR, RDR, Certified  
 17 Shorthand Reporter in and for the State of Texas,  
 18 reported by computerized stenotype machine at the  
 19 offices of Houston City Attorney, Houston City Hall  
 20 Annex, 900 Bagby, 4th Floor, Houston, Texas, pursuant to  
 21 the Federal Rules of Civil Procedure and the provisions  
 22 stated on the record or attached hereto.  
 23  
 24  
 25

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 13 1 36 Houston Police Department Homicide  
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 ALSO PRESENT:  
 13  
 14 Sgt. Andrew J. Washington  
 15  
 16  
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1 HPD OFFICER CHARLES H. STARKS,  
 2 having been first duly sworn, testified as follows:  
 3 EXAMINATION  
 4 BY MR. KALLINEN:  
 5 Q. Could you please state your full name for the  
 6 record?  
 7 A. Charles Homer Starks.  
 8 Q. And who is it that you work for presently?  
 9 A. I'm a City of Houston police officer.  
 10 Q. And what rank is that?  
 11 A. I'm a senior police officer.  
 12 Q. And how many years have you worked for the  
 13 Houston Police Department?  
 14 A. Eighteen years.  
 15 Q. And there's another officer in this room today.  
 16 What's the name of that officer?  
 17 A. Sergeant A. J. Washington, or Andrew  
 18 Washington.  
 19 Q. And how do you know Andrew Washington?  
 20 A. I've known him as a co-employee or a co-worker  
 21 since about 2002.  
 22 Q. Okay. On the day of the shooting of Roland  
 23 Carnaby, did he have any supervisory capacity over you?  
 24 A. Yes.  
 25 Q. Okay. And how about today, is Andrew



1 Washington, the person in the room here today -- is he  
 2 also a supervisor today over you?  
 3 A. He's not my immediate supervisor, but he is a  
 4 sergeant, and all police sergeants are supervisors over  
 5 me.  
 6 Q. Okay. What year did you first join the Houston  
 7 Police Department?  
 8 A. 1990.  
 9 Q. And prior to that, what was your job?  
 10 A. I was a college student. I worked at a  
 11 convenience store and worked in a grocery store.  
 12 Q. What is your date of birth?  
 13 MS. TEEHAN: Don't answer that question.  
 14 Mr. Kallinen, you know that you can't ask personal  
 15 information.  
 16 MR. KALLINEN: I can ask personal  
 17 information, just not -- just not that one; I don't know  
 18 why.  
 19 Q. (By Mr. Kallinen) But how old are you?  
 20 A. I am 39.  
 21 Q. Thirty-nine. And do you have a degree from  
 22 college?  
 23 A. No, sir.  
 24 Q. Okay. How many years of college did you have  
 25 prior to joining HPD?

1 Q. Okay. Do you remember the date?  
 2 A. It was -- (Witness reading.) April the 29th.  
 3 Q. What were you assigned to do that day?  
 4 A. Work general traffic enforcement upon the South  
 5 Freeway.  
 6 Q. And the South Freeway, that's 288?  
 7 A. Yes. I'd also had to attend an ALR hearing.  
 8 Q. Did you make it to the ALR hearing?  
 9 A. Yes, sir.  
 10 Q. And so did you make the initial stop on Roland  
 11 Carnaby?  
 12 A. Yes, sir, I did.  
 13 Q. Okay. Tell me how that came about. Why did  
 14 you stop Roland Carnaby?  
 15 A. I observed him speeding.  
 16 Q. And I know it's in some of the documents. How  
 17 fast are you saying he was going at that time?  
 18 A. Seventy-five in a sixty.  
 19 Q. And how many people had you stopped that day  
 20 for speeding in that same area?  
 21 A. None. He was the first one. I'd just finished  
 22 the ALR hearing and went out to that scene.  
 23 Q. Had you been in that area before?  
 24 A. I've worked the South Freeway on many  
 25 occasions.

1 A. I've got 112 hours, so...  
 2 Q. Do you have an associate's degree?  
 3 A. No, sir.  
 4 Q. And where did you go to college?  
 5 A. Sam Houston State University. I took two  
 6 classes at Tyler Junior College.  
 7 Q. And what did you -- what were your -- the  
 8 general subject matter of all your classes?  
 9 A. Law enforcement, police science.  
 10 Q. Have you worked in any other police departments  
 11 besides the City of Houston?  
 12 A. No, sir.  
 13 Q. Have you received any police -- training in  
 14 police procedures other than at the City of Houston?  
 15 A. Yes, sir.  
 16 Q. Where?  
 17 A. Texas A & M University Police Academy in 1989.  
 18 I have attended several off-campus schools. I was --  
 19 dealing with -- that involved mostly highway  
 20 interdiction matters. I attended a school in about 1998  
 21 that was sponsored by Metro Police Department in regards  
 22 to traffic stops.  
 23 Q. Do you recall the date that Roland Carnaby was  
 24 stopped for speeding?  
 25 A. I remember the stop.

1 Q. About how long?  
 2 A. Since 2002.  
 3 Q. So you worked that area for approximately six  
 4 years prior to the day that Roland Carnaby was stopped  
 5 for speeding?  
 6 A. About five years. It was from May of 2002  
 7 until April of 2008, so...  
 8 Q. Would you say that you've written hundreds of  
 9 citations for speeding on that -- in that time period?  
 10 A. I've written many speeding citations.  
 11 Q. Okay. And how many do you average in a day? I  
 12 know you don't have a quota, but how many do you  
 13 average, do you think, in a day?  
 14 A. That varies dramatically. I don't know what  
 15 the average would be.  
 16 Q. Okay. But every day that you're there, would  
 17 you say you write at least one speeding ticket?  
 18 A. No, not necessarily. I do write tickets on  
 19 most days that I'm there, but not every single day do I  
 20 write a speeding ticket.  
 21 Q. And why would that be, because people aren't  
 22 speeding or because you got other things to do?  
 23 A. Because there's other traffic violations other  
 24 than speeding.  
 25 Q. And what about an accident? Have you ever

1 Q. In those possibly 35 minutes that you had  
 2 Roland Carnaby stopped, did you ask him, "What is your  
 3 correct address?"  
 4 A. I did not.  
 5 Q. Did you ask him to produce any other ID except  
 6 his driver's license?  
 7 A. Yes.  
 8 Q. What did you ask him to produce?  
 9 A. The CIA document that he originally showed me  
 10 on the traffic stop.  
 11 Q. Do you know what a CIA contractor's badge looks  
 12 like?  
 13 A. I have no clue.  
 14 Q. Do you know what it takes to get into the --  
 15 the national headquarters of the CIA in Langley, what  
 16 kind of identification that takes?  
 17 A. No, sir.  
 18 Q. Do you know if Mr. Carnaby had ever been inside  
 19 the CIA headquarters in Langley, Virginia?  
 20 A. No, sir, I don't.  
 21 Q. Now, you had a chance to talk to somebody in  
 22 the HPD, Mr. Frank Zavala, remember?  
 23 A. Yes, sir.  
 24 Q. Okay. Now, Frank Zavala knew Mr. Carnaby  
 25 personally, didn't he?

1 really for sure if he was or not, that -- that he  
 2 personally believed that he was a CIA agent.  
 3 Q. Okay. Did you ever write Roland Carnaby a  
 4 speeding ticket?  
 5 A. No, sir.  
 6 Q. Even though he was speeding and there was 35  
 7 minutes, you never wrote him a speeding ticket?  
 8 A. No, sir.  
 9 Q. Besides speeding, did you notice anything that  
 10 was illegal about the vehicle he was driving?  
 11 A. I never had a chance to measure the window  
 12 tint, but I believe his window tint was illegal. He had  
 13 a red and blue strobe light on his dash. I believe that  
 14 was obstructing his view. As far as his vehicle itself,  
 15 those were the only violations that I -- that I saw  
 16 regarding his vehicle.  
 17 Q. Uh-huh. Did you write him a ticket for any of  
 18 those -- any of those potential violations, Class C  
 19 violations in the time, the 35 minutes that you-all had  
 20 Roland Carnaby stopped over there on 288?  
 21 A. I did not write him any tickets.  
 22 Q. Besides yourself, who was the other officers  
 23 who had Roland -- was there with you with Roland  
 24 Carnaby?  
 25 A. On 288?

1 A. That's what he told me.  
 2 Q. What is -- do you know anything about Frank  
 3 Zavala? He works for the HPD. How long has he been  
 4 with HPD?  
 5 A. I actually thought he was a sergeant when I was  
 6 talking to him. That was the first time I'd ever --  
 7 first time, in my recollection, I've ever talked to him,  
 8 and I've later learned that he was actually an officer.  
 9 Q. Uh-huh. So at the time, you --  
 10 A. But I -- I don't know him. I wouldn't know him  
 11 by sight.  
 12 Q. But when you talked to him, you believed he was  
 13 HPD, right?  
 14 A. Yes.  
 15 Q. And you believed that he actually knew Roland  
 16 Carnaby, correct?  
 17 A. Yes.  
 18 Q. Now what did Frank Zavala tell you about Roland  
 19 Carnaby when you-all -- you-all were stopped there, you  
 20 had him stopped for speeding on 288?  
 21 A. He explained to me that he thought that he was  
 22 a CIA agent. I questioned him about it, explained to  
 23 him I was skeptical and I asked him how he knew, and he  
 24 said that he really didn't know for sure. When I  
 25 questioned Officer Zavala, he stated to me he wasn't

1 Q. On 288.  
 2 A. Officer Foster.  
 3 Q. Any other officers?  
 4 A. No.  
 5 Q. So when Roland Carnaby eventually took off, it  
 6 was you and Foster who were there, right, correct?  
 7 A. At the time that he began to flee, myself and  
 8 Officer Foster were the only two police officers there.  
 9 Q. Okay. Now, prior to Roland Carnaby taking off  
 10 and you-all pursuing him on 288, did you see any guns  
 11 that Roland --  
 12 A. No.  
 13 Q. Okay. But you saw that he had a concealed  
 14 handgun license, correct, on your computer?  
 15 A. I never saw the concealed handgun license. The  
 16 computer informed me that he does.  
 17 Q. And how -- is your computer pretty accurate?  
 18 A. I don't know what the accuracy rate is on  
 19 computer regarding concealed handgun license.  
 20 Q. Did you believe he did have a concealed handgun  
 21 license, based on the information that came off of your  
 22 computer?  
 23 A. I did.  
 24 Q. And have you ever looked at the concealed  
 25 handgun license to see all the requirements that it

1 showing dash cameras like they show now. But the actual  
 2 training for a high-speed pursuit is not very effective  
 3 or not very --  
 4 Q. Okay.  
 5 A. It's not easy to do.  
 6 Q. But when you did the pursuit of Roland Carnaby,  
 7 you had been involved in at least 40 prior high-speed  
 8 vehicle pursuits, correct?  
 9 A. Yes.  
 10 Q. How many of those ended in the suspect getting  
 11 shot?  
 12 A. None.  
 13 Q. Why did Roland Carnaby eventually stop?  
 14 A. I've heard he ran out of gas. I don't have any  
 15 personal knowledge on why he stopped, but it's been  
 16 probably about June when I actually went and did the  
 17 Internal Affairs portion of this that I learned that he  
 18 had run out of gas. Before then, I had no reason -- I  
 19 had no reason why he stopped, and I believe he stopped  
 20 because I've been told he run out of -- he ran out of  
 21 gas.  
 22 Q. At the time of the pursuit, why did you believe  
 23 he stopped?  
 24 A. I did not know why he stopped. I remember  
 25 thinking that, "This isn't a spot that people would stop

1 A. I don't know.  
 2 MS. TEEHAN: Objection, relevance.  
 3 Q (By Mr. Kallinen) What is the oldest individual  
 4 that you have seen run from the police in high-speed  
 5 vehicle pursuit?  
 6 MS. TEEHAN: Relevance objection.  
 7 A. I don't know.  
 8 Q (By Mr. Kallinen) Was Roland Carnaby wanted?  
 9 Did he have any warrants out for his arrest at the time  
 10 that you were pursuing him?  
 11 A. I don't know. None of the databases that I  
 12 checked him through showed him to be a fugitive for any  
 13 crime.  
 14 Q. And you've arrested a lot of people for having  
 15 warrants out for their arrest when you stop them,  
 16 correct?  
 17 A. Correct.  
 18 Q. So that information is in your computer  
 19 databases that you check when you run the licenses,  
 20 correct?  
 21 A. Most information regarding traffic tickets is  
 22 not in our computer bases. We only check through the  
 23 City of Houston and the Southeast Texas Criminal  
 24 Information Center, which is a number of agencies around  
 25 the Houston area. If he were to get a ticket from any

1 at." Most people go to a place that's close to home;  
 2 they go to a place that's comfortable for them to get  
 3 out and run. Stopping on a bridge in the middle of --  
 4 basically, I want to say -- not the middle of nowhere,  
 5 but it's the service road to the West Loop on the bridge  
 6 over Buffalo Bayou. That caused me some concern that he  
 7 would stop at this point. But I did not know why he  
 8 did.  
 9 Q. How many miles did the pursuit last?  
 10 A. I don't know how many miles.  
 11 Q. How many minutes?  
 12 A. I don't know the exact time, but about --  
 13 around 10 to 15 minutes.  
 14 Q. Did running out of gas cross your mind as a  
 15 possibility?  
 16 A. No.  
 17 Q. Has anyone ever ran out of gas in the 40  
 18 pursuits that you've done prior to this?  
 19 A. I don't think so.  
 20 Q. Now, you say people sometimes stop their  
 21 vehicle after a high-speed pursuit and then run?  
 22 A. That's what happens most of the time.  
 23 Q. Most of the time. What is the oldest person  
 24 that you have seen run from a high-speed -- after a  
 25 high-speed pursuit?

1 agency that did not participate in that system, I would  
 2 not have known that he had any open warrants or not. I  
 3 will tell you --  
 4 Q. Actually, I was getting at -- and I'm going to  
 5 interrupt you. I was actually getting at other crimes  
 6 like murder, wanted for murder, rape, stuff like that,  
 7 beyond traffic violations. That would be -- if he's  
 8 wanted for that, that would be on there, on your  
 9 computer, right?  
 10 A. Not necessarily, but in most cases, it is.  
 11 There's such a thing as pocket warrants and --  
 12 Q. Sure.  
 13 A. -- other stuff that's not immediately entered  
 14 into that computer database. There's juvenile warrants  
 15 that's not entered into that database.  
 16 Q. He wasn't a juvenile?  
 17 A. He wasn't a juvenile. That information -- the  
 18 database is not always entirely comprehensive.  
 19 Q. Okay.  
 20 A. I did not suspect him to be a fugitive, if  
 21 that's -- I think that's what you're getting at. I did  
 22 not suspect him to be -- I did not suspect him to have a  
 23 warrant.  
 24 Q. Thank you.  
 25 THE WITNESS: Can we take a short bathroom

1 MR. KALLINEN: Leading, not relevant.  
 2 A. No.  
 3 Q (By Ms. Teehan) Okay. You've worked with FBI  
 4 agents in the past on various projects and situations,  
 5 correct?  
 6 MR. KALLINEN: Not relevant.  
 7 A. I have.  
 8 Q (By Ms. Teehan) Do you know if FBI agents carry  
 9 handguns?  
 10 MR. KALLINEN: Not relevant, hearsay.  
 11 A. They do.  
 12 Q (By Ms. Teehan) Do you know if they need to  
 13 have a concealed handgun license in order to carry their  
 14 weapon?  
 15 MR. KALLINEN: Calls for hearsay, not  
 16 relevant.  
 17 A. They do not.  
 18 Q (By Ms. Teehan) And you know this how?  
 19 MR. KALLINEN: Calls for hearsay, not  
 20 relevant.  
 21 A. The Texas Code of Criminal Procedure lists as  
 22 federal agents, not as peace officers, but it states  
 23 that they have the same duties and powers as peace  
 24 officers.  
 25 Q (By Ms. Teehan) And the Code of Criminal

1 what was going on on the passenger's side of  
 2 Mr. Carnaby's vehicle.  
 3 MR. KALLINEN: Objection, calls for --  
 4 it's leading.  
 5 A. I could see Sergeant Washington and Officer  
 6 Foster appeared be communicating to Mr. Carnaby through  
 7 his passenger window that was rolled down maybe 4  
 8 inches.  
 9 Q (By Ms. Teehan) Okay. That was going to be one  
 10 of my questions, because previous -- previously, you  
 11 said, "this much." You think that that was -- to you,  
 12 it looked like maybe about 4 inches?  
 13 MR. KALLINEN: Objection, leading.  
 14 A. Yes.  
 15 Q (By Ms. Teehan) Okay. Whether it was 4 inches,  
 16 5, 6, 2 inches, is it true that you observed a -- that  
 17 the window was rolled down to some extent?  
 18 MR. KALLINEN: Objection, leading, asked  
 19 and answered.  
 20 A. Yes.  
 21 Q (By Ms. Teehan) Okay. What did you think, if  
 22 anything, when you made that observation of Sergeant  
 23 Washington and Officer Foster and the window rolled  
 24 down?  
 25 MR. KALLINEN: Objection, speculation,

1 Procedure, is that something that is covered in your  
 2 training at the Academy with Houston Police Department?  
 3 MR. KALLINEN: Not relevant.  
 4 A. Parts of it is.  
 5 Q (By Ms. Teehan) Parts of it is. Okay.  
 6 Now, once the -- Mr. Carnaby's vehicle stopped  
 7 on the bridge over Buffalo Bayou on the West Loop  
 8 service road --  
 9 MR. KALLINEN: Assumes facts not in  
 10 evidence.  
 11 Q (By Ms. Teehan) Did -- let me reword this.  
 12 That was going to be long-winded and probably  
 13 incomprehensible.  
 14 You -- you told Mr. Kallinen at one point that  
 15 after everybody came to a stop on the West Loop service  
 16 road, you got out of your vehicle, and I think you said  
 17 at one point you walked around the back of your vehicle  
 18 and the back of Officer Foster's vehicle so that you  
 19 could see what was happening on the passenger side of  
 20 Mr. Carnaby's vehicle. Was that correct?  
 21 MR. KALLINEN: Objection, misstates his  
 22 prior testimony, very leading.  
 23 A. That's correct.  
 24 Q (By Ms. Teehan) Okay. And tell me again what  
 25 it was that you saw when you were attempting to observe

1 calls for -- calls for speculation and leading.  
 2 Q (By Ms. Teehan) What were your thoughts at that  
 3 point?  
 4 MR. KALLINEN: Calls for speculation,  
 5 leading.  
 6 A. I thought they were getting him out of the car  
 7 on the passenger side, out of Mr. Carnaby's truck.  
 8 Q (By Ms. Teehan) Okay. What led you to believe  
 9 that?  
 10 MR. KALLINEN: Objection.  
 11 A. An assumption.  
 12 Q (By Ms. Teehan) Okay. And then what happened  
 13 next, as far as your observations went?  
 14 MR. KALLINEN: Objection, calls for a  
 15 narrative.  
 16 A. I then walked back around to my driver's door  
 17 and then walked up to Mr. Carnaby's car from the  
 18 driver's side.  
 19 Q (By Ms. Teehan) All right. And why did you do  
 20 that, since you thought that they were getting him out  
 21 on the other side?  
 22 MR. KALLINEN: Objection, leading.  
 23 A. Mainly just to cover them or to assist them if  
 24 they needed any help in that way. Once I got to about  
 25 where my front fender was, to where my buddy bumper is

1 or the grille guard, I saw that he was not exiting the  
2 vehicle, and my decision to approach -- to continue up  
3 to the vehicle at that point changed, and I was going to  
4 attempt to communicate with Mr. Carnaby. That's why I  
5 went up and jiggled his door handle and tapped on his  
6 window and motioned for him to roll down his window, is  
7 I was wanting to establish communication on his side  
8 once I saw that he was not exiting the vehicle.

9 MR. KALLINEN: Objection, nonresponsive.

10 Q (By Ms. Teehan) And did he respond to your  
11 attempts to -- your attempts to establish communication?

12 MR. KALLINEN: Objection, leading, asked  
13 and answered.

14 A. No. He either did not hear me or see me.  
15 Completely ignored me for whatever reason.

16 Q (By Ms. Teehan) Then what did you do?

17 MR. KALLINEN: Objection, calls for  
18 narrative.

19 A. I retreated back to my police car.

20 Q (By Ms. Teehan) And then what was the next  
21 thing that you observed happening --

22 MR. KALLINEN: Objection, calls for  
23 narrative.

24 Q (By Ms. Teehan) -- as the scene unfolded?

25 A. Very quickly after that, Officer Termeulen told

1 A. Yes.

2 Q. And then what happened?

3 A. As he was approaching the driver's door, the  
4 door opened quickly. I observed Mr. Carnaby begin to  
5 exit his vehicle, but it appeared he had his hand -- his  
6 left hand reaching up well underneath his driver's seat.  
7 He then pulled his body completely out of the car, out  
8 of his truck, revealing his hands. I then heard two  
9 rapid gunshots. I don't know -- at that time, I did not  
10 know who had shot, but I had heard gunshots and observed  
11 Mr. Carnaby fall to the ground.

12 Q. As you're observing Mr. Carnaby getting out of  
13 his vehicle and reaching under his seats, what were your  
14 thoughts at that point about what was going on?

15 MR. KALLINEN: Objection, misstates prior  
16 testimony.

17 A. I thought he was reaching for a gun underneath  
18 his seat.

19 Q (By Ms. Teehan) Why did you think that?

20 MR. KALLINEN: Objection, calls for  
21 speculation, leading.

22 A. That was the only plausible explanation I could  
23 think of at that time why he would be reaching under his  
24 seat.

25 Q (By Ms. Teehan) At any time as the scene was

1 me, "They're breaking out the window." I then noticed  
2 that it appeared that somebody on the passenger side was  
3 beating on the car, hitting the car, because I could  
4 hear something striking the car.

5 Q. Did you know who that was?

6 A. No.

7 Q. Okay. Could you see either Sergeant Washington  
8 or Officer Foster at that point?

9 A. No.

10 Q. Were you ever able to see either Sergeant  
11 Washington or Officer Foster -- well, not ever, but  
12 within the next several seconds, did either one of them  
13 come into your sight?

14 A. Yes, Sergeant Washington rounded the front of  
15 Mr. Carnaby's car and approached it from the driver's  
16 side.

17 Q. Was -- was he making an approach sort of the  
18 same way that you had, to the driver's door?

19 MR. KALLINEN: Objection, calls for  
20 speculation, leading.

21 A. No, I'd approached from the rear of the  
22 vehicle, and he approached from the front.

23 Q (By Ms. Teehan) From the front, okay. Did  
24 Sergeant Washington get to the driver's side door of  
25 Mr. Carnaby's vehicle at that time?

1 unfolding, did you ever feel that you or any of the  
2 other officers there on the scene may have been in  
3 danger?

4 MR. KALLINEN: Objection, leading.

5 A. Yes.

6 Q (By Ms. Teehan) When did you think that and  
7 why?

8 MR. KALLINEN: Objection, leading.

9 A. I began to think that somewhat from the time  
10 that -- the original speeding stop, when he identified  
11 himself as a CIA agent, and I began to question -- I  
12 became very skeptical. I believed he was impersonating  
13 an officer then. I believed that there was some  
14 increased danger involving Mr. Carnaby from that point  
15 onward.

16 Q (By Ms. Teehan) All right. And then when you  
17 got to the location on the service road of the West Loop  
18 South, did you ever feel like you or any of the other  
19 officers over there on the scene may have been in danger  
20 from Mr. Carnaby?

21 MR. KALLINEN: Objection, leading.

22 A. Yes, I believed he was an armed felon refusing  
23 to obey commands from the police. I believe that  
24 greatly increased the amount of danger that was involved  
25 in this stop.

1 Q (By Ms. Teehan) Okay. Did you have any  
2 heightened sense of danger as you were observing  
3 Mr. Carnaby exiting his vehicle?

4 A. Yes.

5 Q. And why was that?

6 MR. KALLINEN: Objection, leading, calls  
7 for narrative.

8 A. I thought he was -- I thought he was reaching  
9 for a gun underneath his seat when he exited. The only  
10 reason he would be reaching for a gun underneath his  
11 seat is to shoot at officers at the scene.

12 Q (By Ms. Teehan) Besides the CIA identification  
13 that Mr. Carnaby flashed at you at the initial traffic  
14 stop, was there anything else that sort of set your  
15 radar off as far as he was concerned?

16 MR. KALLINEN: Objection, leading.

17 A. I don't understand what you're --

18 Q (By Ms. Teehan) Well, I suppose that's too  
19 literal. You're probably thinking of your radar in your  
20 vehicle. But I mean, was there anything else that  
21 made -- gave you a sense that everything wasn't kosher,  
22 perhaps, with Mr. Carnaby, besides the CIA ID that he  
23 was showing you?

24 MR. KALLINEN: Objection, leading.

25 A. There were numerous indicators that I saw that

1 handle his documents, stating national security.

2 I then obtained his driver's license, I went  
3 back to my car. By the time I went back to the car, I'd  
4 called on the traffic previous to stopping him on my  
5 in-car computer. I received a response on his vehicle.  
6 I saw that his vehicle was registered to the National  
7 Security Command Center, and I thought that was -- I  
8 thought that was unusual, due to the fact that most  
9 federal agents I stop, if not all federal agents I've  
10 stopped, the license plate comes back to a discreet  
11 address, such as a P.O. box or an address that's in the  
12 neighborhood, something like that. It doesn't come back  
13 registered to, you know, National Security Command  
14 Center, or the Federal Bureau of Investigations or ATF.  
15 They don't typically come back to this type of response.

16 I then looked at the -- I noticed that at the  
17 same time, that the address on the response was to an  
18 address on Broadway in Pearland at 10223 Broadway,  
19 Number P as in Paul, 391, and I thought it would be  
20 unusual for something called a National Security Command  
21 Center -- at that time, I thought that would be a strip  
22 center. I thought that would be unusual for an agency  
23 like that to be in a strip center.

24 I -- at one point, I saw the back of his truck,  
25 and he had a license plate bracket around his license

1 led me to believe that he was impersonating a peace  
2 officer or impersonating a federal agent.

3 Q (By Ms. Teehan) Can you remember what any of  
4 those are -- or were, rather?

5 A. Yes. When I first stopped him, before he even  
6 stopped, I saw that he had a red and blue strobe light  
7 similar to what police officers have on the dash of his  
8 truck. When I approached him, he identified himself as  
9 a CIA agent, and I remember thinking, "Why would a CIA  
10 agent need a red and blue light on his car?" I then  
11 very quickly became skeptical of the fact that he would  
12 be a CIA agent. I noticed his demeanor was different  
13 than what most police officers I stop are. He appeared  
14 to be trying too hard, to me, to show me that he was a  
15 police officer, whereas most federal agents talk down to  
16 like a traffic officer. They talk like they're a step  
17 above an officer, tend to talk down, where he seemed to  
18 be playing himself up to where he was a special agent.

19 When I began to question him about his  
20 affiliation with the CIA, I noticed that his  
21 identification went from down -- up -- holding up, to  
22 down to his lap, and I noticed his hands started to  
23 shake. I asked for a verification telephone number, and  
24 he was unable to provide me with one. I asked to  
25 inspect his documents closer, and he refused to let me

1 plate that said "Blackwater." And that's a para-  
2 military security firm that the federal government  
3 sometimes uses. And I thought it would be unusual for a  
4 CIA agent to be advertising for a civilian security  
5 agency.

6 I think that a civilian security agency would  
7 not be as prestigious as being a CIA agent, and not  
8 only -- for two reasons, I thought that was unusual:  
9 Number one, that it's not as prestigious as being a CIA  
10 agent; and number two, I thought a CIA agent would be  
11 clandestine, not want anybody to know about their  
12 involvement with the government.

13 I then ran a computer check on Mr. Carnaby, and  
14 I found out that he had a concealed handgun license, and  
15 I found that he had the -- a criminal history, and all  
16 of those -- it wasn't just one of those items, but a  
17 combination of those items led me to believe that he was  
18 impersonating an agent.

19 MR. KALLINEN: Objection, nonresponsive,  
20 and now that I've listened to the answer, entails  
21 hearsay.

22 Q (By Ms. Teehan) And at what point in the 30- to  
23 35-minute stop -- well, maybe not what point -- let's  
24 strike that.

25 Was there anything in particular that occurred

1 during the initial traffic stop that you feel was the  
 2 cause of Mr. Carnaby fleeing the scene?  
 3 MR. KALLINEN: Objection, leading. Asked  
 4 and answered.  
 5 A. I really don't know -- at the time, I did not  
 6 know why he was fleeing the scene. I assumed he was  
 7 fleeing to, number one, get away; and number two, to  
 8 give him an opportunity to destroy evidence, that ID,  
 9 that's what I was thinking was the reason that he was  
 10 running.  
 11 Q (By Ms. Teehan) Had you said anything to him or  
 12 had any exchange with him immediately before he took  
 13 off?  
 14 A. Yes.  
 15 Q. What was that?  
 16 A. The -- the final approach I had to his vehicle,  
 17 I advised him that one of my supervisors was on the way  
 18 to the scene. I then instructed him to exit the  
 19 vehicle. He looked at me. He said something to the  
 20 effect of, "Don't do this to me." I instructed him to  
 21 exit the vehicle again. He said something that I didn't  
 22 understand what he said. I then asked him if he was  
 23 armed. When I asked him if he was armed, that's when he  
 24 actually fled.  
 25 Q. Okay. You said that one of the things that you

1 and it does show an object being ejected out of the  
 2 driver's side of Mr. Carnaby's vehicle.  
 3 Q (By Ms. Teehan) Are you able to tell what that  
 4 object is or was?  
 5 MR. KALLINEN: Objection, leading and  
 6 asked and answered, calling for speculation.  
 7 A. I know what I believe it to be.  
 8 Q (By Ms. Teehan) Okay. But were -- are you able  
 9 to tell what it was on the video?  
 10 MR. KALLINEN: Speculation and leading.  
 11 A. It appears to be a cellophane or clear plastic  
 12 baggie containing a white substance.  
 13 Q (By Ms. Teehan) In your 19 years on HPD, have  
 14 you ever seen a clear plastic baggie containing a white  
 15 substance come out of any vehicle that you're behind and  
 16 trying to stop?  
 17 MR. KALLINEN: Leading and calls for  
 18 speculation.  
 19 A. In 18 years.  
 20 Q (By Ms. Teehan) Eighteen, I'm sorry.  
 21 A. I have.  
 22 MS. TEEHAN: I think that's all the  
 23 questions I have at the moment. I'll reserve the rest  
 24 of mine till trial. Maybe. I might have another after  
 25 Mr. Kallinen gets through.

1 suspected when -- when he took off, was that he was  
 2 taking off in order to somehow destroy the evidence of  
 3 CIA identification?  
 4 MR. KALLINEN: Asked -- leading.  
 5 A. Yes.  
 6 Q (By Ms. Teehan) Yes. Did you -- did you ever  
 7 notice him throwing it out the window during the chase  
 8 or throwing anything out the window?  
 9 MR. KALLINEN: Objection, leading.  
 10 A. I did not.  
 11 Q (By Ms. Teehan) Okay. Do you have knowledge of  
 12 him having thrown anything out the window of his vehicle  
 13 during the chase?  
 14 MR. KALLINEN: Objection, calls for  
 15 hearsay testimony, leading.  
 16 A. Yes.  
 17 Q (By Ms. Teehan) Okay. And what knowledge do  
 18 you have?  
 19 MR. KALLINEN: Objection, calls for  
 20 hearsay testimony and is leading.  
 21 A. During the pursuit, Officer Foster came over  
 22 the police radio as we were northbound on the South  
 23 Freeway approaching near Dixie, and he stated that  
 24 Mr. Carnaby had thrown something out of his truck. I've  
 25 subsequently seen Officer Foster's dash camera video,

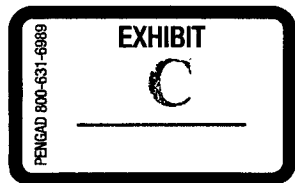
1 FURTHER EXAMINATION  
 2 BY MR. KALLINEN  
 3 Q. Why is it important to recover things thrown  
 4 out of windows during high-speed chases?  
 5 MS. TEEHAN: Objection, assumes facts not  
 6 in evidence.  
 7 A. It would depend on what the object was.  
 8 Q (By Mr. Kallinen) Let's say you don't know.  
 9 Why even bother to check?  
 10 A. It's possibly evidence. It's possibly  
 11 contraband.  
 12 Q. Okay. How many officers were called to the  
 13 scene to find out that -- what was thrown out the  
 14 window?  
 15 MS. TEEHAN: Objection, speculation.  
 16 A. During the pursuit?  
 17 Q (By Mr. Kallinen) Uh-huh.  
 18 A. I advised Officer Breaux to go back and attempt  
 19 to recover the object. After the pursuit was over,  
 20 there was a -- they actually shut down the freeway, and  
 21 even though I wasn't there, I've understood that they --  
 22 they shut down the freeway, and several motorcycle  
 23 officers and truck enforcement officers scoured the  
 24 freeway, looking for what may have been thrown out or  
 25 what was thrown out of the vehicle.

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE SOUTHERN DISTRICT OF TEXAS  
 3 HOUSTON DIVISION  
 4 SUSAN CARNABY, )  
 INDIVIDUALLY, and AS )  
 5 REPRESENTATIVE OF THE )  
 ESTATE OF ROLAND CARNABY, )  
 6 DECEASED, )  
 )  
 Plaintiff, )  
 )  
 7 VS. ) CIVIL ACTION NO.  
 ) 4:08-cv-01366  
 8 CITY OF HOUSTON, HPD )  
 OFFICER CECIL FOSTER and )  
 9 HPD OFFICER ANDREW J. )  
 WASHINGTON, )  
 10 )  
 Defendants. )  
 11  
 12 -----  
 13 ORAL DEPOSITION OF  
 14 CECIL FOSTER  
 15 October 30, 2008  
 16 Volume 1  
 17 -----  
 18 ORAL DEPOSITION OF CECIL FOSTER, produced as a  
 19 witness at the instance of the PLAINTIFF, and duly  
 20 sworn, was taken in the above-styled and numbered cause  
 21 on the 30th of October, 2008, from 10:45 P.M. to  
 22 1:27 P.M., before Natalie D. Goodson, CSR in and for the  
 23 State of Texas, reported by machine shorthand, at the  
 24 offices of Ms. L. A. Teehan, Senior Assistant City  
 25 Attorney, City Hall Annex, 900 Bagby Street, 4th Floor,

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 8 FOR THE DEFENDANTS:  
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 10 900 Bagby  
 4th Floor  
 11 Houston, Texas 77001-0368  
 (832) 393-6467  
 12  
 13 ALSO PRESENT:  
 14  
 Robert Coutts  
 15 Andrew J. Washington  
 16  
 17  
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1 Houston, Texas, pursuant to the Federal Rules of Civil  
 2 Procedure and the provisions stated on the record or  
 3 attached hereto.  
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1 A. Yes, they did.  
 2 Q. (By Ms. Teehan) Okay. And was it -- was it a  
 3 drug-sniffing dog that was employed?  
 4 A. Yes, it was.  
 5 MR. KALLINEN: Objection, calls for  
 6 speculation.  
 7 Q. (By Ms. Teehan) As opposed to, like, an  
 8 explosive --  
 9 A. That is correct.  
 10 Q. -- type of dog. Okay.  
 11 And do you know if that canine unit  
 12 discovered any evidence of drugs in the vehicle?  
 13 A. The canine --  
 14 MR. KALLINEN: Objection, calls for  
 15 speculation.  
 16 A. The canine dog said there was -- behind the  
 17 left rear tire displayed the presence of drugs.  
 18 Q. (By Ms. Teehan) Okay. And correct me if I'm  
 19 wrong, but isn't that where you told me just a little  
 20 while ago that that's where that bag of white substance  
 21 hit on the car when it was thrown out the window?  
 22 A. Yes, it was.  
 23 Q. Are you a trained medic?  
 24 MR. KALLINEN: Objection, irrelevant.  
 25 A. No, I'm not.

1 video and your motion is -- can't really be taken down  
 2 by the court reporter. But you were just making some  
 3 physical movements to illustrate what was going on; and  
 4 you said that Mr. Carnaby came up and was pointing, and  
 5 you had both of your hands together held out in front of  
 6 you. Is that right?  
 7 A. That's correct.  
 8 Q. Okay. And is that to you -- what does that  
 9 signify to you when somebody's --  
 10 A. That there's a weapon in their hands and  
 11 they're pointing the weapon.  
 12 MS. TEEHAN: I'll pass the witness.  
 13 FURTHER EXAMINATION  
 14 BY MR. KALLINEN:  
 15 Q. I've just got a couple questions.  
 16 You had -- on cross-examination when --  
 17 when your lawyer was questioning you just now, you  
 18 stated that the loudspeaker would not have helped, is  
 19 that --  
 20 A. Right.  
 21 Q. -- correct?  
 22 And is that something you learned as a  
 23 policy and practice from the City of Houston? That's  
 24 why you know that?  
 25 A. No.

1 Q. (By Ms. Teehan) Okay. Are you a trained  
 2 emergency medical technician?  
 3 A. No, I'm not.  
 4 Q. At the time -- at the moment that you pulled  
 5 the trigger and fired your weapon at Mr. Carnaby, what  
 6 were you seeing?  
 7 MR. KALLINEN: Objection, asked and  
 8 answered, calls for specu -- calls -- go ahead.  
 9 A. He exited the vehicle, came back in, was  
 10 reaching under the front driver's-side seat. At that  
 11 point, I'm hollering, "No, no. Show me your hands.  
 12 Show me your hands." Sergeant Washington was going back  
 13 around the front of the car; and now I'm seeing  
 14 Mr. Carnaby looking up at Sergeant Washington. He was  
 15 following him as he was coming around the car; and the  
 16 closer he got to him, the more frantic he was reaching  
 17 under the seat. By the time Sergeant Washington got  
 18 around is when I saw Mr. Carnaby dove up -- raise up  
 19 real quick and he pointed his arms out. I saw something  
 20 gray in his hand, which I thought was a pistol, that he  
 21 was pointing in the direction of Sergeant Washington,  
 22 which I felt he was going to shoot Sergeant Washington  
 23 or turn around and shoot me; and I fired my weapon.  
 24 MR. KALLINEN: Objection, narrative.  
 25 Q. (By Ms. Teehan) And just because we're not on

1 Q. Okay. So if the loudspeaker wouldn't have  
 2 helped that's your -- you -- you decided that it  
 3 wouldn't help?  
 4 A. That's correct.  
 5 Q. Do you know what the policy and practice of the  
 6 City of Houston is regarding using loudspeakers to get  
 7 suspects out of vehicles?  
 8 A. No.  
 9 Q. That was just your personal opinion?  
 10 A. At the time -- in this situation, it would not  
 11 have helped.  
 12 Q. Now, when you were talking there, you said  
 13 Roland Carnaby just -- gestured that Roland Carnaby had  
 14 both his arms out in front of him like he was going to  
 15 shoot Sergeant Washington. Is that what your  
 16 testimony --  
 17 A. Yes, sir. That's correct.  
 18 Q. So he had his -- he had his two arms directly  
 19 out in front of him, and his hands were together?  
 20 A. That's correct.  
 21 Q. And so at that point did he -- you see that he  
 22 had something in his -- in between his hands? Were his  
 23 hands clasped together?  
 24 A. They were just out like this. I don't know if  
 25 they were clasped, but they were grabbing around

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1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE SOUTHERN DISTRICT OF TEXAS  
 3 HOUSTON DIVISION  
 4 SUSAN CARNABY, )  
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 8 CITY OF HOUSTON, HPD )  
 OFFICER CECIL FOSTER and )  
 9 HPD OFFICER ANDREW J. )  
 WASHINGTON, )  
 10 )  
 Defendants. )

11 -----  
 12 ORAL DEPOSITION OF  
 13 ANDREW J. WASHINGTON  
 14 October 30, 2008  
 15 Volume 1  
 16 -----  
 17

18 ORAL DEPOSITION OF ANDREW J. WASHINGTON, produced  
 19 as a witness at the instance of the PLAINTIFF, and duly  
 20 sworn, was taken in the above-styled and numbered cause  
 21 on the 30th of October, 2008, from 2:41 P.M. to  
 22 4:05 P.M., before Natalie D. Goodson, CSR in and for the  
 23 State of Texas, reported by machine shorthand, at the  
 24 offices of Ms. L. A. Teehan, Senior Assistant City  
 25 Attorney, City Hall Annex, 900 Bagby Street, 4th Floor,

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1 APPEARANCES

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 10 900 Bagby  
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 11 Houston, Texas 77001-0368  
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14 ALSO PRESENT:

15 Robert Coutts  
 16 Cecil Foster  
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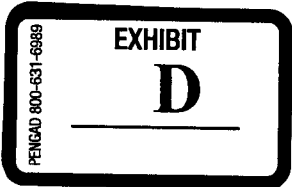
15 Witness Statement of Andrew J. Washington

16 CERTIFIED QUESTIONS

17 NO. PAGE/LINE

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1 A. No.

2 Q. -- at that point in time?

3 A. No, not that I recall. He didn't unlock the

4 door.

5 Q. And then I guess, according to your testimony,

6 at some -- at some point the window went back up, right?

7 A. Yes.

8 Q. All right. Did you continue trying to

9 communicate with him after the window went up?

10 A. Yes.

11 Q. And did -- were you continuing to give

12 Mr. Carnaby commands about "I need to see your hands" or

13 things along those lines?

14 A. Yes.

15 MR. KALLINEN: Objection, leading.

16 Q. (By Ms. Teehan) And at any point did he comply

17 with any of your commands?

18 MR. KALLINEN: Objection, leading.

19 A. No.

20 Q. (By Ms. Teehan) Now, when you -- when you went

21 around Mr. Carnaby's vehicle -- around the front of the

22 vehicle to the driver's side, was that after Officer

23 Foster broke the window or -- or were you making your

24 way around while that activity was in progress?

25 MR. KALLINEN: Objection, leading.

1 doesn't stand up erect where his hands are up. He

2 immediately goes back in the vehicle, and as I'm coming

3 around -- I'm not sure what point it was -- we're kind

4 of, like, eyeball to eyeball while he's watching me and

5 I'm watching him as I come around the vehicle. Then I

6 see him come up and I see -- as I said, I see a dark,

7 shiny object in his hand.

8 Q. Okay. And what did -- what were your immediate

9 thoughts at that point?

10 A. That he had a weapon.

11 MR. KALLINEN: Objection, leading.

12 Q. (By Ms. Teehan) I'm sorry?

13 MR. KALLINEN: Objection, leading.

14 MS. TEEHAN: "I'm sorry" is not even a

15 question.

16 MR. KALLINEN: Well, you're implying you

17 want him to answer the previous question; so the

18 objection to that is "leading."

19 MS. TEEHAN: You know, you should just --

20 you should just -- you should just lodge a running

21 objection so that you're not interrupting me so rudely

22 as I'm going on since I can't even say, "What time is

23 it?" without you saying, "Objection, leading."

24 MR. KALLINEN: All your questions so far

25 that I've said "leading" to have been leading. I'm

1 A. When Officer Foster -- after I gave him

2 permission to break the window -- I think he hit it four

3 or five times; and after the window shattered, he put

4 the baton down and unholstered his weapon again and I'm

5 still telling him, "Let me see your hands." I didn't

6 ask him to exit the vehicle. I didn't -- I continued to

7 say, "Let me see your hands."

8 Q. (By Ms. Teehan) Okay. And is that when you

9 started to make your way around the vehicle?

10 MR. KALLINEN: Objection, leading.

11 A. No.

12 Q. (By Ms. Teehan) Okay. When did you start

13 making your way around the vehicle?

14 MR. KALLINEN: Objection, leading.

15 A. After I observed him start to exit the vehicle.

16 Q. (By Ms. Teehan) Okay. And tell me -- tell me

17 what you were seeing at -- or tell the ladies and

18 gentlemen of the jury what you were seeing as you're

19 making your way around the vehicle. What were you

20 looking at? What were your observations?

21 A. As I'm coming around the -- he -- like I said,

22 either side of -- he started to exit the vehicle; and as

23 I'm coming around the front of the vehicle, he has his

24 head up. He's watching. He's -- he's looking at me.

25 Then he gets out. He doesn't -- I'm mistaken. He

1 going to lodge the objections. You can't -- you can't

2 stop the plaintiff from lodging their objections, as

3 much as you'd like to, to get these leading questions

4 in.

5 A. I can tell you the whole story from my point of

6 view.

7 Q. (By Ms. Teehan) Okay. Before you do that,

8 Sergeant, would you please tell the ladies and gentlemen

9 of the jury what you observed and what your perceptions

10 were of the events that happened after you started

11 walking around the front of Mr. Carnaby's vehicle on

12 April 29th, 2008.

13 MR. KALLINEN: Objection, leading and asked

14 and answered.

15 A. Well --

16 Q. (By Ms. Teehan) Go ahead.

17 MR. KALLINEN: Objection, leading and asked

18 and answered.

19 A. -- I assumed he was surrendering; and as I

20 said, I go around the vehicle. At that point in time,

21 he goes back and starts reaching under the seat; and

22 while he's reaching, he's looking directly at me. I'm

23 looking at him; and he's crouched down, reaching in the

24 vehicle. As he comes up, I see an object in his hand

25 that I perceive to be a weapon.



# Houston Fire Department

500 Jefferson, suite 1500 Houston, TX 77002 (713) 495-4200

Ref # : 0804290234

Notes

Patient: 1 of 1

**CARNOBY, ROLAND**

## CALL

Incident # 0804290234  
 Call Type SHOOTING / GUNSHOT  
 Scene 1101 W LOOP S + WOODWAY  
 EXIT RAMP  
 City HOUSTON TX,  
 Unit S011/A  
 Delays To Scene DISTANCE  
 Dispatched From OUTSIDE TERRITORY  
 Crew JORGENSEN, SHAWN  
 SPRATT, MICHAEL JR

## PATIENT

Patient Name CARNOBY, ROLAND  
 Sex M  
 DOB 11/24/1955 Age 52 yr  
 Weight lb Ethnic UNK  
 Address UNKNOWN  
 City, State, Zip HOUSTON, TX 99999  
 Physician  
 Pref. Hosp BEN TAUB  
 Phone # 713-999-9999  
 Drivers Licence 9999999

## DATE & TIMES

Notified 10:40, 04/29/2008  
 Departed Qtrs 10:40 @ mi  
 At Scene 10:50 @ mi  
 At Patient 10:50  
 Departed Scene @ mi  
 Contact  
 At Destination  
 In Service  
 At Quarters @ mi  
 Trip Distance @ mi

## Hx PRESENT

<u>Subject</u>	<u>Description / Details</u>
CAUSE	SHOOTING
COMPLAINT	SHOT/GSW Nothing Further
SYMPTOMS	BLEEDING

SQ011 AOSTF NEWS CAMERAS PRESENT, HELICOPTERS CIRCLING, MANY POLICE CRUISERS WITH OFFICERS ON SCENE. PT FOUND IN CARE OF POLICE, HANDCUFFED AND LAYING ON HIS SIDE. PT GSW TO LOWER BACK NEXT TO SPINE. PT COMBATIVE ON SCENE. PT UNHANDCUFFED TO MOVE PT TO BACKBOARD. PT BECAME COMBATIVE AND FLIPPED HIMSELF OVER ON BACKBOARD. PT LEFT FACE DOWN TO BE TRANSFERRED TO A011. IN THE BACK OF A011 PT WAS ROLLED TO HIS BACK. PT THEN HANDCUFFED TO STRETCHER. 2 LINES STARTED 18 G EACH ARM A.C. ENROUTE PT BECAME APNEIC/PULSELESS. PT BVM WITH O2. 3 LEAD NSR PEA. PT CPR STARTED. 1-2 MINUTES OUT FROM HOSPITAL 1 BECAME ASYSTOLIC. CPR CONTINUED INTO HOSPITAL, WHERE PT CALLED BY ER.

## Hx PAST

<u>Subject</u>	<u>Description / Details</u>
ALLERGIES	UNKNOWN
MEDS	UNKNOWN
PREEXIST	UNKNOWN

STATE OF TEXAS  
 COUNTY OF HARRIS

I, Phil Boriskie, Fire Chief, Houston Fire Department, Houston, Texas do hereby certify that the foregoing is a true and correct copy of the original record now in my lawful custody and possession as appears on record in my office.

Witness my official hand and seal of office,

this 21st day of July, 2008

Phil Boriskie, Fire Chief, Houston Texas

By [Signature], Deputy



# INTERNAL INVESTIGATIONS COMMAND

## INTERNAL AFFAIRS DIVISION



### CONFIDENTIAL FILE

ISSUE RECORD # 31830-2008



carnaby002325

## **INVESTIGATIVE FILE INDEX**

### **Complaint of Discharge Firearm-Citizen Death**

#### **Issue Record #31830-2008**

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- II. RECORD OF COMPLAINT
- III. INVESTIGATION – R. B. Chavez, Sergeant
- IV. STATEMENTS
  - Supervisory Special Agent Dennis J. Franks, Witness
  - Rodney B. Hill
  - Francisco Zavala
  - Virginia A. Brasher
  - John T. Clarke
  - Dudley C. Breaux
  - Erik ter Meulen
  - Reginald Senegal
  - James Tyler
  - Charles S. Starks
  - Cecil A. Foster
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- V. INCIDENT REPORT – 62576608-G
- VI. MISCELLANEOUS
  - Call Out Notification/Noteworthy
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  - Units Histories
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  - Medical Examiner's Investigator Report
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  - Significant Event Forms
  - Vehicle Pursuit Form
  - Copy of CIA Credentials and Correspondence from CIA
  - Pearland Police and Brazoria County Sheriff's Office Reports
  - Anonymous Letter Addressed to Chief Hurtt
  - Houston Chronicle Articles
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- Racial Profiling Receipt
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- HPD Firearms Lab Evidence Receipt
- HPD Firearms Examination Report
- Mobile Digital Terminal Computer Records
- 3.5" Computer Disks
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- CD/DVD Media
- Letters of Notification to Officers
- Photographs
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**CHAPTER 143 REQUIREMENTS  
ISSUE RECORD #31830-2008**

**I. COMPLAINT INFORMATION: Chief of Police**

**DATE OF INCIDENT:** April 29, 2008      **DATE OF DISCOVERY:** April 29, 2008

**HOW DISCOVERY DATE WAS DETERMINED:** Call Out

**DATE COMPLAINT WAS NOTARIZED:** N/A

**II. NOTIFICATION(S)****FORMAL IAD NOTIFICATION OF RECEIPT OF COMPLAINT**

	<b>OFFICER (S) NAME</b>	<b>DATE RECEIVED</b>	<b>BY WHOM</b>	<b>HOW NOTIFIED</b>
1.	Rodney B. Hill	May 8, 2008	Sgt. R. B. Chavez	Interoffice Mail
2.	Francisco Zavala	May 8, 2008	Sgt. R. B. Chavez	Interoffice Mail
3.	Virginia Brasher	May 13, 2008	Sgt. R. B. Chavez	Interoffice Mail
4.	John T. Clarke	May 8, 2008	Sgt. R. B. Chavez	Interoffice Mail
5.	Dudley C. Breaux	May 5, 2008	Sgt. R. B. Chavez	Interoffice Mail
6.	Eric ter Meulen	May 1, 2008	Sgt. R. B. Chavez	Interoffice Mail
7.	Reginald Senegal	May 14, 2008	Sgt. R. B. Chavez	In Person
8.	James P. Tyler	May 27, 2008	Sgt. R. B. Chavez	In Person
9.	Charles H. Starks	May 1, 2008	Sgt. R. B. Chavez	Interoffice Mail
10.	Cecil A. Foster	May 1, 2008	Sgt. R. B. Chavez	Interoffice Mail
11.	Andrew J. Washington	May 1, 2008	Sgt. R. B. Chavez	Interoffice Mail

**48-HOUR NOTICE(S)**

	<b>OFFICER (S) NAME</b>	<b>DATE RECEIVED</b>	<b>BY WHOM</b>	<b>DATE OFFICER'S LETTER RECEIVED</b>
1.	Rodney B. Hill	May 20, 2008	Sgt. R. B. Chavez	May 22, 2008
2.	Francisco Zavala	May 15, 2008	Sgt. R. B. Chavez	May 19, 2008
3.	Virginia Brasher	May 22, 2008	Sgt. R. B. Chavez	May 23, 2008
4.	John T. Clarke	May 30, 2008	Sgt. R. B. Chavez	June 3, 2008
5.	Dudley C. Breaux	May 21, 2008	Sgt. R. B. Chavez	May 27, 2008
6.	Eric ter Mullen	May 15, 2008	Sgt. R. B. Chavez	May 19, 2008
7.	Reginald Senegal	May 14, 2008	Sgt. R. B. Chavez	May 18, 2008
8.	James P. Tyler	May 27, 2008	Sgt. R. B. Chavez	May 29, 2008
9.	Charles H. Starks	June 5, 2008	Sgt. R. D. Garza	June 11, 2008

10.	Cecil A. Foster	June 16, 2008	Sgt. R. B. Chavez	June 19, 2008
11.	Andrew J. Washington	June 16, 2008	Sgt. R. B. Chavez	June 19, 2008

**NATURE OF COMPLAINT**

	<b>COMPLAINANT(S) NAME</b>	<b>DATE RECEIVED</b>	<b>BY WHOM</b>	<b>TYPE OF DOCUMENT</b>
1.	Chief of Police	April 29, 2008	Sgt. S. S. Swartz	Issue Record Form

# CITY OF HOUSTON

INTER OFFICE CORRESPONDENCE

TO: Harold L. Hurtt  
Chief of Police

FROM: D. R. Alexander, Lieutenant  
Internal Affairs Division

VIA: J. A. Lampignano, Captain  
Internal Affairs Division

DATE: August 7, 2008

B. J. Lumpkin, Assistant Chief  
Internal Investigations Command

SUBJECT: **Complaint of Discharge of Firearms  
Citizen Death  
Issue Record #31830-2008**

## INVESTIGATIVE SUMMARY

Attached please find the investigative report and investigation summary responding to a **Discharge of Firearms /Citizen Death**. The complaint alleges that Officer Cecil A. Foster, Employee #99228, and Sergeant Andrew J. Washington, Employee #87617, of the Tactical Support Command, Traffic Division, while working patrol in uniform, intentionally discharged their service weapons at Roland V. Carnaby. The injuries Mr. Carnaby suffered took his life. This incident took place at approximately 1038 hours in the 200 block of the West Loop North on April 29, 2008. The investigation was assigned to Sergeant Robert B. Chavez, Employee #95441, of the Internal Affairs Division and revealed the following information.

At approximately 0947 hours, Officer Charles H. Starks, Employee #94991, of the Tactical Support Command, Traffic Division, stopped Mr. Carnaby for speeding in the 11700 block of the South Freeway. Mr. Carnaby identified himself as an agent with the Central Intelligence Agency (CIA) and showed the officer official-looking credentials that gave the impression that Mr. Carnaby worked for the CIA. Mr. Carnaby said he would not let the officer examine the CIA identification for "national security" reasons, but did relinquish his driver's license. Officer Starks said he ran a computer check and found that Mr. Carnaby had a concealed handgun license and a prior disorderly conduct arrest out of Montgomery County, Texas, in 1992.

Officer Starks was able to articulate numerous indicators that led him to believe that Roland Carnaby might be impersonating a federal officer; therefore, he called the Houston Police Department's Criminal Intelligence Division (CID) and spoke to Sergeant Rodney B. Hill, Employee #57024. Sergeant Hill asked to speak to Mr. Carnaby. Sergeant Hill said he asked Mr. Carnaby some questions about the CIA and concluded that he did not believe Mr. Carnaby was an agent. Sergeant Hill advised Officer Starks to issue Mr. Carnaby a citation and write a report and that he would call someone in the Federal Bureau of Investigations (FBI) to see if they knew Roland Carnaby. Officer Starks said he called CID to determine if Mr. Carnaby was or was not a federal agent and was told his status as an agent was unconfirmed and in doubt. It was not until later that Sergeant Hill's contact in the FBI advised him that Mr. Carnaby had been in trouble in the past for this same behavior and that he was not a CIA agent.



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Officer Starks said he knew the Major Offenders Division was the appropriate division to contact regarding police impersonators so he called to see what, if anything, they wanted to do with Mr. Carnaby. Sergeant Virginia A. Brasher, Employee #67903, of the Major Offenders Division, took the call. Sergeant Brasher contacted Sergeant John T. Clarke, Employee #61559, of the Major Offenders Division, FBI Interjurisdictional Squad, and explained the situation. Sergeant Clark advised that the suspect was not a CIA agent and if the officer arrested Mr. Carnaby on a traffic offense that he would take a hold. The CIA was interested in inspecting the credentials and so the officer was instructed to tag the credentials as well. Officer Starks had called for backup and Officer Foster was present as news that Mr. Carnaby was not a federal agent was received. Officer Foster had already called Sergeant Washington who advised that he was en route. Officer Starks decided to have Mr. Carnaby exit the vehicle to obtain the CIA credentials. Mr. Carnaby refused to comply, drove off and a pursuit ensued.

Officer Foster and Officer Starks began chasing Mr. Carnaby from the 11000 block of the South Freeway. Information was relayed over the radio during the chase that Mr. Carnaby was a police impersonator and that he was armed. Additional units were requested. Sergeant Washington intercepted the pursuit as it traveled northbound on Interstate 45. The vehicle finally stopped on its own volition atop a bridge on the West Loop Service Road at Buffalo Bayou. Officers approached the passenger's side of the vehicle and demanded Mr. Carnaby exit. When Mr. Carnaby rolled up his dark tinted passenger's side window, officers broke the glass. Mr. Carnaby opened his driver's door, exited, reached back down to the front floorboard and reemerged holding a metallic object in his left hand. Officer Foster and Sergeant Washington each fired their service weapons almost simultaneously as Mr. Carnaby turned with the object in his hand. Both discharged one round. Mr. Carnaby was struck one time by the round fired from Officer Foster's weapon and died as a result. Two dashboard mounted video cameras and video footage from an overhead news helicopter captured the incident on film.

### CONCLUSION

A Glock 9mm, Sig Sauer 9mm and one Remington 870 Express Magnum shotgun was recovered from Mr. Carnaby's vehicle. Mr. Carnaby had no weapon on his person. Mr. Carnaby's gray and black Blackberry telephone was recovered on the ground near his fallen body.

Dr. Wolfe of the Harris County Medical Examiner's Office conducted an autopsy on the body of Mr. Roland Carnaby under #ML08-1420. Dr. Wolfe ruled that Mr. Carnaby died from a single perforating gunshot wound. The physical evidence and witnesses' statements support the conclusion. This finding was consistent with the homicide investigation.

The *Employee Personal Firearms Record* and *Firearms Qualification Report* indicate that Sergeant Washington and Officer Foster's service weapons were properly registered and their qualification was current at the time of the incident.

Officer Starks described numerous indicators that led him to believe that Roland Carnaby was impersonating a federal officer: Mr. Carnaby refused to let Officer Starks examine the CIA credentials. Mr. Carnaby was unable to provide a telephone number or other means to verify his

employment. A red and blue strobe light was on the dash of his vehicle. His demeanor towards Officer Starks was different than other law enforcement officers encountered in the past. The vehicle was registered to the "National Security Command Center" located in a strip center at 10223 Broadway. Mr. Carnaby had a Texas concealed handgun license when federal agents can legally carry a handgun without a license. Mr. Carnaby had a criminal history which showed an alias name.

Mr. Carnaby was not a federal agent and presented credentials to the contrary. The credentials would not be authentic and therefore, was evidence of a forged government document. Mr. Carnaby was clearly subject to being arrested. After refusing to exit his vehicle, Mr. Carnaby drove away. Officer Starks justified the pursuit stating he believed Mr. Carnaby was an armed felon. He believed that Mr. Carnaby was a police impersonator stopping people on traffic. He needed the CIA identification card that Mr. Carnaby possessed to file a forgery charge and needed that identification card to seek a federal arrest warrant. Officer Starks believed that the address on Mr. Carnaby's driver's license and his registration was also fictitious. He said he believed that Mr. Carnaby would destroy the identification card to make any future prosecution almost impossible.

The pursuing officers, in good faith, reasonably believed that under the circumstances, the need to apprehend Mr. Carnaby outweighed the risk of harm to the public in initiating this pursuit. Radio transmissions clearly demonstrate that the officers constantly evaluated the risk and factors involved while pursuing. Once the pursuit ended, however, the officers were required to utilize appropriate officer safety tactics regarding high-risk vehicle approaches as outlined in **GENERAL ORDER 600-34, HIGH-RISK VEHICLE APPROACHES**, which states, in part, once the vehicle has stopped:

#### PROCEDURES

- a. Attempt to establish verbal communications with suspects while maintaining a position of advantage.
- b. If verbal communications can be established, have the suspects exit the vehicle one at a time.
- c. Each suspect should be secured before others are made to exit the suspect vehicle.
- d. If the suspect(s) flee from the vehicle, officers will use their discretion in making an apprehension in accordance with existing department procedures.

High-risk vehicle approach situations occur when suspects in a vehicle are confronted by officers and are believed to possess deadly weapons or have engaged officers in a fresh pursuit; both of which applied in this situation. An armed suspect in a vehicle has a superior tactical position with respect to officers attempting an approach. In addition, an approaching officer's line of sight may be disrupted by window tinting or the vehicle itself. The inability to view the occupants of a vehicle poses an extreme hazard to approaching officers. Before approaching a vehicle considered as high-risk, officers must first attempt to establish verbal communications. Officers will also maintain a position of advantage during this attempt.

It is clear from all of the evidence that Mr. Carnaby came to an abrupt stop on the bridge over Buffalo Bayou. Sergeant Washington was not able to stop in time and drove past the suspect vehicle. Officer Starks and Officer Foster managed to stop, but found themselves within a few feet of Mr. Carnaby's vehicle with no room to back up or maneuver. Officer Starks said:

*I was not able to stop quick enough to be in proper position for a felony stop. I was about twenty feet too close to the suspect's vehicle. I saw that Sgt. Washington had passed up the suspect's vehicle and that Officer Foster was too close. I tried to back my vehicle up to be in a better position, but I was unable to because I was too close to Officer Foster's vehicle. I saw Officer Foster open his driver door, preventing me from backing up any more. We were not able to set up to do a felony stop due to the suspect stopping as quickly as he did.*

Sergeant Washington exited his patrol car and took up a position in front of his vehicle. The sergeant said he could see Mr. Carnaby just sitting in his vehicle, so when he saw Officer Foster near the rear of the suspect's vehicle he too began to approach. Sergeant Washington said, "I could see the suspect as I approached the vehicle. I approached due to the fact I believed that the suspect was prepared to be taken into custody he was sitting in the car, talking on a cell phone. This is also the reason I did not order Officer Foster to retreat."

Officer Foster said he found himself in a poor tactical position so he moved to the passenger's side of his patrol car. He said he then passed the rear of the suspect's vehicle and saw Sergeant Washington coming towards him. Officer Foster wrote:

*This stop was like no other stop I had ever been personally involved in. With of [sic] the combination of events that were occurring quickly, the suspect coming to an abrupt stop, Sgt. Washington being in my line of fire, and fearing I would get pinned inside of my vehicle when Officer Starks backed up, I had to improvise my actions the best I could as this situation progressed. It is for these reasons I decided to approach the suspect's vehicle at a tactical position on the passenger's side.*

Officer Foster had to exercise discretion in choosing the appropriate action to take. Advancing upon a high-risk vehicle after obtaining a position of cover was imprudent and not consistent with the principles set forth in policies and procedures of the department regarding high-risk vehicle approaches. **GENERAL ORDER 200-8, CONDUCT AND AUTHORITY**, states in part:

**SOUND JUDGMENT**

Employee behavior will be limited to conduct which is reasonable and prudent. No employee will commit any act on-duty or off-duty in an official or private capacity, which tends to bring reproach, discredit, or embarrassment to the department. Employees are expected to exercise sound judgment at all times.

Officer Foster did not maintain a position of advantage and then attempt to first establish verbal communications with Mr. Carnaby. Officer Foster's decision to draw near the vehicle has to be based upon, among other things, sound judgment. There was an inadequate amount of exigent

circumstances articulated that would defend deviating from the department's regulations regarding this felony stop. Based upon the available evidence, a finding under **GENERAL ORDER 600-34, HIGH-RISK VEHICLE APPROACHES** and **GENERAL ORDER 200-8, CONDUCT AND AUTHORITY – SOUND JUDGMENT** against Officer Cecil A. Foster will be **SUSTAINED**.

Circumstances beyond his control placed Sergeant Washington in the inferior tactical position of being stopped in front of Mr. Carnaby's vehicle. Sergeant Washington wisely repositioned to the front passenger's side of his patrol car; thereby removing himself from a direct line of potential gunfire. From this stand Sergeant Washington said, "*When I observed Officer Foster near the rear of the suspect vehicle, I began to approach from a wide angle. This gave me as much distance from the suspect as possible while attempting to get back to the other officers and take command of the situation.*"

Sergeant Washington could have just as easily commanded the situation from the relative safety of being in front of his patrol car. His observation of Mr. Carnaby sitting in his vehicle talking on the cellular telephone does not mitigate allowing Officer Foster to depart from established protocol. There was no reason expressed which would compel Officer Foster to approach the vehicle immediately without first attempting to establish verbal communications with Mr. Carnaby. **GENERAL ORDER 200-8, CONDUCT AND AUTHORITY – SUPERVISORY CONDUCT**, addresses responsibilities of supervisors and states, in part:

#### **SUPERVISORY CONDUCT**

Supervisors who fail to take appropriate action when they are aware or should have been aware that an employee was in violation of the law or department policy will be held accountable.

Once Officer Foster was standing beside the front passenger's window talking to Mr. Carnaby, a high-risk vehicle approach was no longer a practical undertaking. Any officer that approached at that point would merely be providing close in protective cover for a fellow police officer attempting to make a physical arrest of a person suspected of being armed. Sergeant Washington made it clear that as the ranking supervisor he understood it was his responsibility to take charge and control/manage/direct events unfolding. An employee's behavior will be limited to conduct which is both reasonable and prudent. Sergeant Washington should have concentrated on the overall state of affairs and ordered Officer Foster to withdraw. Sergeant Washington did not exercise sound judgment. Therefore, based upon the available evidence, a finding under **GENERAL ORDER 600-34, HIGH-RISK VEHICLE APPROACHES** and **GENERAL ORDER 200-8, CONDUCT AND AUTHORITY – SUPERVISORY CONDUCT** and **SOUND JUDGMENT** against Sergeant Andrew J. Washington must be **SUSTAINED**.

A handgun poses an immediate and significant threat of serious bodily injury or death. Fearing for their lives, Officer Foster and Sergeant Washington each fired their service weapons as Mr. Carnaby exited and turned with an object in his hand. Mr. Carnaby was struck once, collapsed and died at the scene. As articulated in **GENERAL ORDER 600-17, USE OF FORCE**, deadly force is restricted to the following circumstances.

**USE OF DEADLY FORCE**

The use of deadly force will be limited to those circumstances in which employees reasonably believe it is necessary to protect themselves or others from the imminent threat of serious bodily injury or death.

The high-risk vehicle approach policy speaks to the Houston Police Department's concern for its employees' safety regarding bona fide dangerous vehicle encounters. The officers' deviation from departmental policy with regard to this high-risk vehicle approach did not diminish the fact that despite repeated instructions to place his hands where they could be seen, Mr. Carnaby exited his vehicle then reached back in and emerged with an object in his hand that the officers believed was a gun. Regardless of how close Sergeant Washington was while giving commands or how close the covering officers were, it was Mr. Carnaby's actions that dictated the officers' use of deadly force. The unseen weapon along with Mr. Carnaby's reaching to the floorboard and emerging with the object in his hand as he stood up and turned away from his vehicle, resulted in his death. From the evidence presented, the **USE OF DEADLY FORCE** by Sergeant Washington and Officer Foster was within the guidelines of department policy, the ordinances of the city of Houston, and the laws of the State of Texas. Sergeant Washington and Officer Foster's fear of serious bodily injury or death was reasonable under the circumstances at that time. Based upon the findings in this case, it is recommended that the **DISCHARGE OF A FIREARM** by Officer Cecil A. Foster and Sergeant Andrew J. Washington be classified as **INTENTIONAL/JUSTIFIED**.

On July 24, 2008, the 183<sup>rd</sup> Harris County Judicial Grand Jury "No billed" Sergeant Washington and Officer Foster in the shooting death of Roland V. Carnaby.

**RECOMMENDATION**

**OFFICER:** **CECIL A. FOSTER, EMPLOYEE #99228**  
TRAFFIC DIVISION

**ALLEGATIONS:** **HIGH-RISK VEHICLE APPROACHES – SUSTAINED**  
(G.O. 600-34, HIGH-RISK VEHICLE APPROACHES)

**SOUND JUDGMENT – SUSTAINED**  
(G.O. 200-08, CONDUCT AND AUTHORITY)

**DISCHARGE OF FIREARM – INTENTIONAL/JUSTIFIED**  
(G.O. 600-17, USE OF FORCE)

**SERGEANT:** **ANDREW J. WASHINGTON, EMPLOYEE #87617**  
TRAFFIC DIVISION

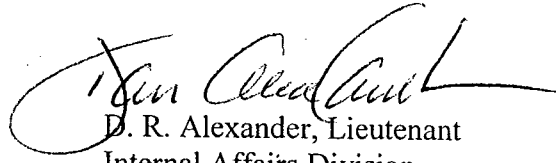
**ALLEGATIONS:**

**HIGH-RISK VEHICLE APPROACHES – SUSTAINED**  
(G.O. 600-34, HIGH-RISK VEHICLE APPROACHES)

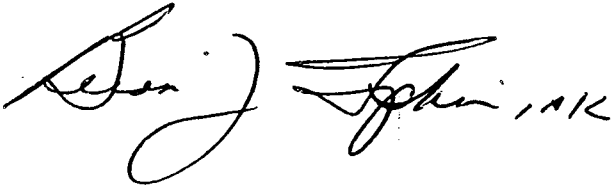
**SUPERVISORY CONDUCT – SUSTAINED**  
(G.O. 200-08, CONDUCT AND AUTHORITY)

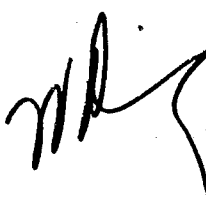
**SOUND JUDGMENT – SUSTAINED**  
(G.O. 200-08, CONDUCT AND AUTHORITY)

**DISCHARGE OF FIREARM – INTENTIONAL/JUSTIFIED**  
(G.O. 600-17, USE OF FORCE)

  
D. R. Alexander, Lieutenant  
Internal Affairs Division

  
J. A. Lampignano, Captain  
Internal Affairs Division



 8-28-08

**General Order****Houston Police Department**

ISSUE DATE

No.

October 28, 2005

600-34

REFERENCE: Supersedes General Order 600-  
dated November 17, 1987**SUBJECT: HIGH-RISK VEHICLE APPROACHES****POLICY**

Officers will have a back-up unit before attempting a high-risk vehicle stop or attempting the arrest of high-risk suspects who refuse to exit a vehicle. A supervisor will make the scene of all high-risk traffic stops.

Before approaching any vehicle considered high-risk, officers will first attempt to establish verbal communications with suspects. Officers will maintain a position of advantage during this attempt.

The high-risk suspect's actions will dictate any further course of action for officers on the scene based upon this and all related General Orders.

This General Order applies to all classified officers.

**1 BACKGROUND**

The department has identified two vehicle approach situations posing a high risk:

- a. Attempting apprehension of armed or possibly armed suspects.
- b. Attempting apprehension subsequent to a fresh pursuit where some or all of the occupants remain inside the vehicle.

Armed suspects in a vehicle have a superior tactical position with respect to officers attempting an approach. In addition, an approaching officer's line of sight may be disrupted by window tinting or the vehicle itself. The inability to view the occupants of a vehicle poses an extreme hazard to approaching officers as well as vehicle occupants.

**2 HIGH-RISK VEHICLE APPROACH SITUATIONS**

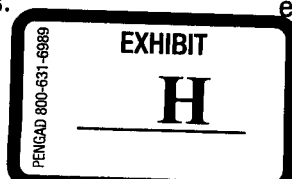
High-risk vehicle approach situations are when suspects in a vehicle are being confronted by officers and any of the following apply:

- a. Suspects are believed to possess deadly weapons.
- b. Suspects are believed to have been involved in criminal activity involving the use of deadly weapons.
- c. Suspects have engaged officers in fresh pursuit as defined by 600-04, **Motor Vehicle Pursuits**.

**3 PROCEDURES**

In the above situations officers will adhere to the following guidelines after the vehicle has stopped:

- a. Attempt to establish verbal communications with suspects while maintaining a position of advantage.
- b. If verbal communications can be established, have the suspects exit the vehicle one at a time.
- c. Each suspect should be secured before others are made to exit the suspect vehicle.
- d. If the suspect(s) flee from the vehicle, officers will use their discretion in making an apprehension in accordance with existing department procedures.
- e. If the suspect(s) flee in the vehicle, officers



will adhere to the guidelines set forth in General Order 600-17, **Use of Force**, section 3, *Use of Deadly Force*, subsection "Moving or Fleeing Vehicles," and General Order 600-04, **Motor Vehicle Pursuits**.

- f. If high-risk suspects refuse to comply with officers (i.e., remain inside the vehicle), and the suspects are known to be armed, officers will use the policy guidelines set forth in General Order 600-05, **Special Threat Situations**, section 3, *Plan of Action*, subsection "Patrol Officers."

#### **4 RELATED GENERAL ORDERS**

- 200-16, **Weapon Discharges by Officers**
- 500-01, **Effecting Arrests and Searches**
- 500-02, **Handling and Transporting Prisoners**
- 600-04, **Motor Vehicle Pursuits**
- 600-05, **Special Threat Situations**
- 600-07, **Police Handling of Dead Bodies Exposed to Public View**
- 600-17, **Use of Force**
- 800-07, **Criteria for Submitting Incident Reports**

  
**Harold L. Hurtt**  
**Chief of Police**

# General Order

## Houston Police Department



ISSUE DATE:

January 4, 2008

NO.

600-17

REFERENCE: Supersedes all prior conflicting Circulars, Directives, and General Order 600-17, dated March 26, 2007

**SUBJECT: USE OF FORCE**

### POLICY

When dealing with citizens, suspects, and prisoners, employees will limit their use of force and physical contact to only the amount reasonably necessary to protect themselves or others, to effect an arrest, or to bring an incident under control.

In every situation in which a firearm, soft-impact weapon, or a conducted energy device (CED) is discharged, even if the suspect is not struck, officers will notify the Command Center, write a detailed incident report, and the on-scene supervisor will make a supplement.

This General Order applies to all employees.

### DEFINITIONS

**Bodily Injury.** An injury causing physical pain, illness, or any impairment of the function of any bodily member or organ.

**Deadly Force.** Force intended or known to cause or in the manner of its use or intended use is capable of causing death or serious bodily injury.

**Force.** A physical power exerted to compel a person to comply with law enforcement objectives.

**Intermediate Weapons.** Within the context of this General Order, intermediate weapons are:

- Baton

- Oleoresin capsicum (OC) spray
- Soft-impact weapon (e.g., beanbag shotgun)
- CED (e.g., stun gun or TASER)

**Serious Bodily Injury.** An injury that creates a substantial risk of death, or causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

### 1 USE OF FORCE

Employees who use force against any person must be able to state in detail the specific reasons for using force.

The circumstances justifying the initial use of force may change during the course of an event. It is the duty of all employees to constantly assess the situation and adjust the use of force accordingly.

Employees will not display any weapon in an unprofessional or unsafe manner.

### 2 BATONS, OC SPRAY, AND SOFT-IMPACT WEAPONS

Before carrying or using any intermediate weapon, an officer must be currently certified with the weapon by the Training Division.

Intermediate weapons will be carried or used as issued or authorized by the department. No changes, alterations, or modifications are permitted.



carnaby000591

It is within the officer's discretion to determine when the use of an intermediate weapon is necessary and which intermediate weapon is appropriate for the situation. The Training Division is responsible for maintaining a list of approved intermediate weapons and carrying devices.

#### Batons

Officers will always carry a baton when:

- a. Responding to disturbance calls.
- b. Working an event where there are a large number of persons.

Supervisors responding to situations requiring a baton are responsible for ensuring each officer at the scene complies with this policy.

Unless deadly force is warranted, baton strikes will be made only to areas of the body below the shoulders and only with the degree of force necessary to counter resistance or establish control of the suspect. Strikes made with flashlights must be made in accordance with the same guidelines as those made with batons.

#### OC Spray

The department does not furnish employees with OC spray or equipment. However, once certified for on-duty use, employees are authorized to carry OC spray and equipment approved by the Training Division. Uniformed officers carrying OC will store the canisters on their duty belts in an appropriate case.

If a person is sprayed with OC, employees will immediately request medical personnel and a supervisor to respond to the scene.

#### Soft-Impact Weapons

On each shift, at least one officer in every patrol beat will be assigned a soft-impact weapon. Those officers will notify the dispatcher at the beginning of their shift.

Unless deadly force is warranted, officers will not target soft-impact weapons for munition impacts above a person's shoulders.

If a person is struck by a munition from a soft-impact weapon, officers will immediately request medical personnel and a supervisor to respond to the scene.

Officers in specialized divisions needing a soft-impact weapon will coordinate with an appropriate district patrol sergeant.

When a division is assigned soft-impact weapons, the division commander is responsible for ensuring the weapons are properly maintained at all times.

### 3 CONDUCTED ENERGY DEVICES

For information on the policies and procedures regarding CEDs, see General Order 400-26, **Conducted Energy Devices**.

### 4 USE OF DEADLY FORCE

The use of deadly force will be limited to those circumstances in which officers reasonably believe it is necessary to protect themselves or others from the imminent threat of serious bodily injury or death. Officers will consider their immediate surroundings and the safety of uninvolved citizens before using deadly force.

Employees will not justify the use of deadly force by intentionally placing themselves in imminent danger.

Officers are prohibited from using firearms in the following ways:

- a. Firing warning shots.
- b. Firing at fleeing suspects who do not represent an imminent threat to the life of the officer or another.
- c. Firing at suspects whose actions are a threat only to themselves (e.g., attempted suicide).

**Moving or Fleeing Vehicle**

Officers will not discharge a weapon:

- a. From a moving vehicle.
- b. At a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force.

Employees have a duty to seek cover when confronted with the possibility of injury from a moving or fleeing vehicle. Employees will make every effort to safely remove themselves from the path of the vehicle and reassess the threat level before discharging a weapon or taking further action.

In a circumstance in which the threat of deadly force is against only the officer or another person, and the deadly force consists only of the vehicle itself, the officer may discharge a firearm at the vehicle or its driver only if the conditions make evasive maneuvers by the officer or another person a practical impossibility.

For additional information, see General Orders 600-04, *Motor Vehicle Pursuits* and 600-34, *High-Risk Vehicle Approaches*.

**5 REPORTING AND DOCUMENTING USE OF FORCE BY AN EMPLOYEE**

**Reporting**

If an officer uses any form of force against a person resulting in any type of bodily injury, the officer will follow procedures as outlined in General Orders 200-16, *Weapon Discharges* and 400-26, *Conducted Energy Devices*.

If a civilian employee while on duty uses force against a person, the employee will immediately notify the employee's supervisor or other divisional supervisor. If the use of force occurs in a jail facility, an on-duty jail supervisor will be notified immediately.

**Documentation**

Except as noted in General Order 200-16, section 2, *Outside City of Houston*, an incident report will always be completed when any of the following occur:

- A baton or OC spray is used.
- A firearm or soft-impact weapon is discharged.
- Any form of force is used resulting in any type of bodily injury.

Documentation of CED usage is regulated by General Order 400-26.

Incident reports will contain the following:

a. The names and employee numbers of:

1. All employees on the scene at any time during the incident involving the use of force.
2. The supervisor assigned to the incident.
3. The supervisor in the lock-up or detention facility where the prisoner was booked.

b. The unit number of responding medical personnel.

c. The employee's specific reasons for using force.

d. The part of the person's body receiving the strike, hit, spray, or injury.

e. Location on the person's body of any known injury, even if the injury was not obtained as part of the incident.

If the on-scene investigation reveals violations of department policy regarding the use of force, the supervisor will contact the Internal Affairs Division for direction. However, during the hours of 1900 through 0700, the supervisor will contact the night commander.

In addition to the above requirements, Jail Division employees using any form of force will also document the incident according to Jail Division's standard operating procedures.

**Jail Booking**

Officers will notify an on-duty jail supervisor before booking a prisoner who has been injured, struck, hit, or sprayed by any weapon or other form of force

causing bodily injury. Such prisoners will not be booked into any lock-up facility or city jail unless approved by that supervisor.

**6 DEPARTMENT'S RESPONSE TO THE USE OF FORCE BY EMPLOYEES**

If an employee uses force resulting in serious bodily injury or death of any person, the on-scene supervisor will immediately notify the Command Center in accordance with General Order 200-10, **Notification and Emergency Management**.

The Command Center is responsible for ensuring all appropriate internal and external investigative units are notified.

The criminal and administrative investigations resulting from the use of such force will be conducted in accordance with General Orders 200-03, **Investigation of Employee Misconduct**, 200-16, **Weapon Discharges**, and 400-26, **Conducted Energy Devices**.

Employees who inflict serious bodily injury or death upon another person, or who suffer serious bodily injury during the performance of their duties are also responsible for compliance with General Order 200-04, **Assistance to Officers Inflicting or Suffering Injury**.

**7 RELATED GENERAL ORDERS**

- 200-03, **Investigation of Employee Misconduct**
- 200-04, **Assistance to Officers Inflicting or Suffering Injury**
- 200-10, **Notification and Emergency Management**
- 200-16, **Weapon Discharges**
- 400-26, **Conducted Energy Devices**

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**600-04, Motor Vehicle Pursuits**  
**600-34, High-Risk Vehicle Approaches**

**700-01, Property/Evidence Control**  
**Regulations**

**Harold L. Hurtt**  
**Chief of Police**