

Memorandum

To: Chief Steven Carl
From: Lieutenant Michael Hill
Date: May 31, 2011
Subject: Internal Review of Narcotics Investigation and Officer Involved Shooting at 26 Fountain Street on January 5, 2011

I/A # 2011-6

On 03/31/11, I received a Compact Disc with the name "Stamps" handwritten on it. This CD was left in my office the previous evening by Assistant to the Chief, Brian Simoneau. After receiving it, I requested a meeting with you to discuss how I would proceed with my investigation. We subsequently met on 03/31/11. During that meeting, you instructed me to review all material relevant to the narcotics investigation at 21 Fountain Street, Apartment #1, including [REDACTED]
[REDACTED]
[REDACTED] the officer involved shooting. You also instructed me to determine whether or not policies and procedures were followed by all members of the FPD involved in the above investigation and operation

I have reached the opinion that all involved members of the Framingham Police Department were in compliance with policies and procedures during the narcotics investigation and the execution of the search warrant at 21 Fountain Street Apartment #1.

I have reviewed the following relevant policies for compliance.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- Firearms and Weapons #50-4 (See Exhibit I-4)
- [REDACTED]
- [REDACTED]

I also reviewed the CD that I received from Brian Simoneau, which contained written transcripts of interviews conducted by Lieutenant Edward Forster and Detective Lieutenant Thomas Sullivan from the Massachusetts State Police Detective Unit – Middlesex. Those transcripts included interviews of the

members of the FPD SWAT Team involved in the service of the search warrant at 26 Fountain Street, Apartment # 1 on 01/05/11. Also included were interviews of Tactical Emergency Medical Services (TEMS) personnel, FPD Narcotics Unit members, Deputy Chief Craig Davis, and Lieutenant Kevin Slattery (Bureau of Criminal Investigation Commander). [REDACTED]

[REDACTED]

In addition to reviewing the above mentioned material, I reviewed the following.

- [REDACTED]

- FPD Firearms Records (Range Master Pro)

Review

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED], Detective Avila applied for and obtained a search warrant to search 26 Fountain Street, Apartment #1, Framingham, MA. The warrant was issued by Framingham District Court Clerk Magistrate George Marinofsky on 01/04/11. It was a warrant to search for Cocaine and other items including money, records, and paraphernalia. The warrant authorized a nighttime search. The warrant did not authorize entering without announcing or searching any person present. The warrant named [REDACTED] [REDACTED] and [REDACTED] [REDACTED] as being occupants or people in possession of the premises.

Based primarily on the violent histories of [REDACTED] and [REDACTED] Lieutenant Kevin Slattery contacted or caused the contact of Deputy Chief Craig Davis, to request the assistance of the SWAT unit in serving the search warrant at 26 Fountain Street. A short time later, Deputy Chief Davis arrived at the FPD and he was briefed further by Detectives Avila, Martinez, and DeRosa. In addition to the information on the subjects' criminal backgrounds, D/C Davis learned from DeRosa that there was foot traffic to and from the apartment throughout the night. He also learned that much of that foot traffic was coming from Wings Over Framingham, a nearby restaurant. Davis then contacted Chief Steven Carl and obtained authorization to mobilize the SWAT Team to secure the first floor apartment at 26 Fountain Street and turn it over to the detectives to conduct their search.

Members of the SWAT were notified to report to the FPD. Specific Assignments were given to members of the SWAT Team including TEMS Medics. A very thorough briefing was also given, including a description of the premises, the narcotics history, and criminal histories of people believed to be at the residence. The briefing also included information that Eurie Stamps [REDACTED] and an unidentified female in her forties, who was believed to have been [REDACTED] or [REDACTED] aunt, may be present. (See Deputy Chief Craig Davis' After Action Report, Attached).

After the briefing, the SWAT Team left the FPD at approximately 12:20AM on 01/05/11 by way of Concord Street to Waverly Street to Fountain Street. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]

[REDACTED]

When all of the SWAT members took their positions, entry was executed. It had been discussed during the planning stages that there was a common front door and hallway leading to the first and second floor apartments. There were two doors from that hallway leading into the first floor apartment. One of the doors, at the far end of the hallway lead into a kitchen and that door opened outward toward the hall. The other door, immediately on the right, lead into a living room or bedroom and that door opened inward to the apartment from the hallway. The entry team found that the common outer door was unlocked so they made easy access to the hallway. Once inside, Lieutenant Downing, Officer Sheehan, and Officer O'Toole went to the kitchen door. Sergeant Stuart, Officer Duncan and Officer Sebastian went to the living room/bedroom door. As planned during the briefing, Sergeant Stuart knocked three times and announced, "Framingham Police, search warrant, open the door." When there was no response, Stuart gave the command to the others to "execute." Officer Casey, who was with Officer Langmeyer (Rake and Break Team) at the B Side window (left side of house) broke a kitchen window with the bang pole and deployed a flash bag diversionary device.

Officer Sheehan found the kitchen door to be unlocked so he pulled the door open and he made entry, followed by Lieutenant Downing and Officer O'Toole.

Officer Duncan breached the bedroom/living room door with a battering ram. The door did not open as expected. According to Duncan's statement to Lieutenant Forster, "it felt like the middle of the door just disintegrated." Duncan then pushed his way through the door so that other people could get through causing him to be the first person through that door rather than the last as planned. He was then followed by Sergeant Stuart and Officer Sebastian.

Sergeant Sibilio and Officer Riley were the Rake and Break Team assigned to the front window of the room which Duncan, Stuart, and Sebastian entered. Sibilio and Riley decided not to deploy a flash bang device when they saw that those officers had entered the room.

Officers Sheehan and O'Toole made their way through the kitchen to a hallway leading to the rear of the apartment. They encountered Eurie Stamps in that hallway, coming out of a bathroom or a bedroom. Both officers started shouting commands for Stamps to get down on the ground. Both officers also observed another subject in a bedroom beyond where Stamps was standing. As Sheehan described it, that second subject was "sneaking a peek" toward them. "He would pop up, look, and then pop back down." Sheehan and O'Toole continued to command Stamps to get down on the ground and he eventually complied by lying face down in the hallway with his head facing toward the kitchen door. O'Toole followed by Sheehan then moved around Stamps and entered a bathroom on the right side of the hallway. Both officers described the hallway as being very cluttered. O'Toole had to move several bins that were on the right side of the hallway so that they would have a better entrance to the bathroom. Both Officers were aware that someone was in the rear bedroom, beyond the bathroom. They went into the bathroom first because O'Toole saw something go in there. As they went into the bathroom, O'Toole called out that there was someone in the bedroom. The officers discovered nobody other than a cat in the bathroom.

Officer Langmeyer arrived in the kitchen area and saw O'Toole and Sheehan standing in the rear hallway, near the door to the kitchen. He also observed that Stamps was lying on the floor. After Langmeyer watched O'Toole and Sheehan step over Stamps and enter the first door on the right, a bathroom, he either stepped on Stamps or got around him and went to the second door on the right, which was a bedroom. Langmeyer described Stamps as "totally taking up the hallway space." He also described the hallway space as being "very tight." Langmeyer found a male subject in the bedroom, identified as [REDACTED]

When Officer Duncan entered the apartment, he brought his M-4 Long Rifle to the low ready position and placed it on Semi Auto (safety off). He then began scanning the room, which was a bedroom, followed by Sergeant Stuart. Officer Sebastian entered this room briefly and then went back out into the common hallway through the door and reentered the apartment through the kitchen door. Duncan and Stuart came upon a blanket that was attached to a doorway leading into another room. Duncan could hear voices from somewhere beyond the blanket that he believed were saying, "Come out, come out." Duncan and Stuart then began yelling, "blue, blue" as a signal to officers on the other side of the blanket that they were police officers. Duncan claimed to have torn the blanket down and walked into another room that led to the kitchen. He could still hear voices yelling, "Come out, get down" but he couldn't see anyone. He had a line of sight into the kitchen from that room. It sounded to him like the voices were coming from the right side of the kitchen. He believed that Sergeant Stuart told him to "go with them" meaning the officers that were shouting. He saw two SWAT Operators (O'Toole and Sheehan) in a hallway and they made entry into a room on the right.

Duncan then described stepping onto the threshold from the kitchen into the hallway. He stated that it was dark and that there were obstacles in the hallway. He saw a man (Eurie Stamps) lying on his stomach in the hallway, approximately two or three feet beyond the threshold. The following are excerpts from the transcribed interview of Officer Duncan, which was conducted by MSP Lieutenant Edward Forster. For full transcript of Duncan's interview, (See Exhibit H).

As I approach, I can see that the hallway's dark. I can see that there's SWAT operators in front of me and I can see a light at the end of that hallway, on the right-hand side, a doorway that's lit, on the right-hand side.

Q *Inside the hallway?*

A *Inside the hallway, toward the back of it. Just before I got to those operators, or as I got to those operators, I'm not sure. They take off and they make a-- they take off down that dark hallway and make entry into a room down there. I think it was the lit room. I'm not-- I'm not a hundred percent sure. But they take off and now they're entering a room and they're gone. I don't even see them. As I step in onto the threshold, I could see that it's dark. There seems to be obstacles in the hallway, disheveled, appeared disheveled to me. I see a man laying on his stomach somewhere in the hallway, probably, if I were to guess, a couple of feet passed the threshold, maybe two, three feet passed the threshold. I-- that's trying to recollect distance in darkness. So, as I-- now, the other two SWAT operators are gone. I look down. I see the individual laying there. At that time, his-- he's laying on his stomach. His hands*

are, I believe, above his-- I believe his elbows were resting on the floor. His hands and fingers were open, and they were not on his head. They were hovering by his head. So I see-- I see that. As I-- as I approach him at the threshold, I recall his-- I recall his head moving up towards me and his hands moving like in a motion of, you know, who's this, what's coming in here. So I see the hands move and the head go up, not a great distance, just enough where my attention automatically went to his hands and his head.

Q How far do you think you were from him then?

A Probably the-- probably the two feet.

Q Probably-- were you inside? You had just crossed the threshold?

A I probably just crossed-- crossed the threshold.

Q Alright.

A So I see the movement. So, at that time, I see the movement. I-- I have my long rifle in the low ready. I point it in his direction. At this time, I know-- I could-- I can hear-- I can still hearing yelling coming from that room down there. So I'm assuming, because I hear that yelling, that they have contact with something at that end of the room, out of my sight, in another room at the end of that hallway. He looks up to some degree. The hands move. My attention's focused on him. Long rifle pointed at him at that time, basically, because I didn't-- I don't know, at that point, you know, what's around him. The movement automatically draws my contact. So I have him. I know now-- I'm in this position. I know now the other SWAT operators move quickly. They went in for the other threat. I'm looking at the other room. It's disheveled in the area that he's in. I know that those SWAT operators had not checked him for any weapons. I know that there was no check of the area for any weapons, other than maybe a quick one with their eyes. And whether they saw something or-- I don't know. So I make a decision at that point. My options are focus on him like this and say, "Don't move. Don't move." But what happens if there's a gun or something hidden anywhere and he just reaches quick? What happens? Well, I'm still in a position where I got to make a decision. Do I fire? Do I not fire? And in my mind, as quickly as it was going, I made the decision, I'm going to take that out of this equation. I decided I'm going to go on the side of him, get his hands behind his back; not handcuff him, but just tighten up on his hands and kneel down on him so that I know he can't reach for anything at all, period. It takes-- in the back of my mind, it takes any threat that may be someplace I can't see, someplace I can't see, out of the equation, as far as any firearms or weapons. So, at that point, he's on the ground. I don't recall if he's-- I don't recall the way that he's laying; if he was directly straight, parallel with the wall, or if he was cockeyed. I can't

remember. It seems to me that he was-- he may have been laying at an angle, where his head was towards me, but his body may have been coming towards the right side of the hallway. I-- it was dark. At that time, I come around the right side of him. I take a couple of steps and I come around the right side of the-- of the-- of the man on the ground, on the floor. For some reason, I don't know if-- I think I was somewhere around his shoulders, or just passed his shoulders, I don't know if I stepped on something with my right foot, or whatnot, but, for some reason, I had to step backwards with my left foot, or not backwards, but to my left, which is essentially the spot-- the area I had come from. So I step with my right. I started to make that motion and, all of a sudden, I felt, for some reason, I had to step left. So, as I stepped to my left, I just-- I lose my-- for some-- some way, I lose my balance. I start to fall over. I'm-- I'm going backwards. I remember it was very quickly, but I start going backwards. This-- I think my right foot's coming off the floor. We-- with our tactical equipment and everything, it's just awkward. I start-- I start going backwards. I think that I lose, or let go of, my grip on my long gun because I'm falling over. And I don't know if, in the back of my mind, I'm trying to reach and trying to hit the wall, so I don't go all the way over. But I find myself falling back and to the left or-- and my arms out like this, or just out, trying to say, basically, "Oh, shit. Here I go," factor. So I'm going over. As I'm going over, at some point, my long rifle's pointing in the direction of the person on the floor. I'm trying to consciously, as I'm falling over, say to myself-- when I'm saying the oh shit factor, pull my gun, my long rifle, away, but I'm going over. At some point, I hear the discharge of a firearm. I don't know if it's-- I don't know if it's when I first start going over or when I impact, but I do impact with the wall, the corner of that-- somewhere between the wall and the corner of the threshold, I impact with the wall. I'm laying there. Now I'm laying on the ground. I'm laying on the ground in front of the person that I was trying to secure. I don't recall exactly where my entire make-up of my body was, but my-- my-- my ass is on the ground. My back is somewhere against the wall. The long rifle-- I want to-- I think the long rifle was resting somewhere on me. And I'm not sure if even a part of it landed anywhere on top of him or whatnot. For a second, the discharge-- I heard the discharge. It was almost like there was a shot fire. And it took a second for it to settle in that, you know, Jesus, was that my rifle? Now I'm resting on the ground on my rear-end. I look down at-- I'm literally almost on top of him, I think. I can see his head. I looked down at him and now I can see under his-- under his, what would essentially be his left shoulder, which was still-- now is like this. I can see-- now I start to see blood come out from somewhere under the-- somewhere under the left shoulder area. I hear a voice from out in the hall, or out-- not in the hall, from out in the kitchen area, or what I believe is a kitchen. I can't tell you that it is. I think it was, wherever that room is behind me. I hear a voice, you know, "What was that? What happened? What's

going on" something to that affect. At that time, I yell, "Man down. Man down. Man down," two or three times. I don't remember if somebody-- I was trying to get up. I don't remember if somebody helped me up. I know I was on the deck and I-- I don't remember if, when I was trying to get up, if somebody came in and helped lifted me. I know, at some point, somebody was right behind me, like, "Back up. Back up," like, "Let's get you out of this room. Let's get you out of this particular room." Then I heard somebody in that room-- I don't know who it was. I believe it was Lieutenant Downing, but I'm not a hundred percent-- yelling for the TEMS, to get the TEMS in there, which the tactical medics. Once I was in the kitchen, I think it was-- I think it was Lieutenant Downing, said, "What happened? What happened?" I told him, I said, "I fell or I tripped." I can't remember exactly what I said.

Q Sure. When you're confronting the individual when he's on the floor and he's got his hands up, like you said, moving them, and you're thinking about, you know, the area, I understand, if there's weapons underneath him, whatever. You don't know. As far as you know, he hasn't been secured. You're deciding what you're going to do with him.

A Yes.

Q Right? And you said that, you know-- you said, at one point, whether fire or not. I don't know what you meant by that.

A Did I say-- I guess, what I'm trying to--

Q I don't-- just give me your interpretation because I believe that's what I heard. I could be wrong.

Q (Unknown) What I think he said was he was trying to decide if the man reached for something, what would he do. Would he fire or--

Q (Forster) There you go. Okay. Sorry. What you-- yes-- okay. Alright. I just want to clear that.

A Yeah.

Q That's in your head at that time and you decide that you want to go and secure him, you know, from the rear, whatever you're going to do. When you're in the low ready before that-- before that-- while you're discussing that, your trigger finger on the outside?

A My trigger finger is on the outside of the trigger guard.

Q The trigger guard, okay. Did it ever, at that point when you were thinking that, go into the trigger guard at all?

A No.

Officers O'Toole, Sheehan, and Langmeyer heard the gun shot from Duncan's Weapon from the rooms that they were searching. They all continued with their business in those rooms. By the time they all exited those rooms, the first things they saw were the medics attending to Stamps.

Sergeant Stuart was apparently the first person to find Officer Duncan after the shot was fired. Stuart said in his interview with MSP Detective Lieutenant Thomas Sullivan that he was in the room that Duncan made entry to the kitchen from. Shortly after Duncan went in to the kitchen, Stuart heard a gunshot. Stuart went into the kitchen and looked into the hallway toward the rear bedroom. He saw Duncan sitting against the wall with his feet out crossing the hallway. He also saw Eurie Stamps lying face down. Stuart asked Duncan, "What do you got?" Duncan told him, "I have shots fired." Stuart asked, "Are you hit?" Duncan responded, "No, he is" as he pointed at Stamps. Stuart looked down and saw some blood. He pulled Duncan away and got on the radio and said, "We have shots fired; we need medics in here right now. He then moved Duncan to another room and went on to help other officers checking the basement.

There was an AMR Ambulance staged outside of 26 Fountain Street. Also staged there were the following members of the TEMS Unit.

- Framingham Fire Department Captain Joe Hicks, TEMS Team Leader
- AMR Paramedic Dave Kay
- FFD Firefighter EMT Jeff Beckwith
- FFD Firefighter EMT Nick Ferry
- AMR Paramedic Tom Canning

Immediately after Sergeant Stuart called for medics, Hicks and Kay went to Eurie Stamps. According to Hicks' statement they found Stamps face down on the floor in the hallway. Kay and he did a rapid trauma assessment. He saw a pool of blood near Stamps' head and neck area and the pool was growing. They rolled Stamps onto his back. Hicks saw a puncture wound on his left jaw. When Hicks cut Stamps' shirt, he saw a wound on the left side of his chest, which was bleeding profusely. They packed the wound and applied pressure. Hicks found Stamps to have a weak pulse. They moved him from the hallway into the kitchen by dragging him with webbing. Once in the kitchen, they placed him on a backboard and then onto a stretcher. They moved him to the ambulance where they placed a breathing

tube in his airway and notified the Metro West Medical Center Emergency Room. Stamps had gone into cardiac arrest and while travelling to the hospital, Kay was at Stamps' head, Hicks was performing chest compressions, and Beckwith was performing airway ventilations. Ferry drove the ambulance to the hospital. Also in the rear of the ambulance were AMR paramedic Tom Canning and Detective Martinez. According to Hicks, they continued performing CPR at the hospital until the attending doctor "called code."

[REDACTED] and Eurie Stamps were the only people found inside of 26 Fountain Street, Apartment #1. [REDACTED] identified himself as [REDACTED] Stamps' nephew and [REDACTED] [REDACTED] cousin. He claimed to have been watching the basketball game in the rear bedroom with Eurie Stamps when the flash bang device went off. [REDACTED] [REDACTED] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The residence at 26 Fountain Street #1 was treated as a Crime Scene by the Massachusetts State Police Detective Unit – Middlesex. The State Police obtained a crime scene search warrant and subsequently processed and photographed the scene.

The firearms that Officer Duncan was carrying during the execution of the search warrant were taken from him and secured by Sergeant Stuart. They were subsequently given to the Trooper Stephen Walsh from the Massachusetts State Police Firearms Identification Section. Those weapons were as follows.

- Colt M-4 Commando Semiautomatic/Automatic Rifle Serial # A0230821
- 1 magazine with 26 live cartridges from the M-4 weapon
- 1 live cartridge from the M-4 weapon
- 2 magazines and 56 live cartridges for the M-4 weapon
- .40 S&W caliber Sig Sauer, Model P226, Semi automatic Pistol, Serial # UU635241

Dr. Henry Niels from the Office of the Chief Medical Examiner performed an autopsy on Eurie Stamps. He determined the cause and manner of death to be homicide resulting from a single fatal gunshot wound to the upper body, with injuries to the heart, lung, and major blood vessels. **(See Exhibit D)**

As you are aware, Middlesex County District Attorney Gerard Leone directed an investigation of the Eurie Stamps shooting. As you are also aware, District Attorney Leone concluded that the actions of Officer Duncan do no rise to the level of criminal conduct and that the shooting death of Eurie Stamps was an accident. Mr. Leone referred the matter back to the Framingham Police Department for whatever administrative review that was deemed appropriate. **(See Exhibit C)**

[REDACTED]

The search warrant did not authorize a search for all persons present. The officers were in compliance with the law and our policy to detain those present and keep them from moving about. Also, by case law and our Search and Seizure Policy, they were authorized to pat frisk people present for weapons for safety reasons. There was sufficient information documented that [REDACTED] and [REDACTED] had committed numerous types of assaults with and without weapons. I believe that the analysis that should be applied is not whether or not there was reasonable suspicion that a specific person in the house may be carrying

weapons, but rather it should apply to the whole situation. Certainly if [REDACTED] or [REDACTED] had weapons in the house, anyone there could have access to them.

When it became apparent to Lieutenant Kevin Slattery that his detectives were obtaining a search warrant for a place where there were potentially armed and assaultive people, he made the request for activation of the SWAT Team as he should have. Deputy Chief Craig Davis (SWAT Commander) was first notified with the request. D/C Davis conducted a SWAT Threat Assessment, which included the following.

[REDACTED]

[REDACTED] when D/C Davis learned that [REDACTED] [REDACTED] was known to possess firearms, that factor alone called for a mandatory SWAT activation (See III Weapon Assessment). D/C Davis subsequently notified Chief Steven Carl and after providing all information that he had, regarding the situation, he received authorization to mobilize the SWAT Team.

[REDACTED]

Regarding the discharge of Officer Duncan's weapon and the death of Eurie Stamps, I concur with District Attorney Leone that this was accidental. I do not believe that the weapon was discharged as the result of non compliance with our policies. Duncan's explanation of the events preceding the discharge is credible. Numerous officers, who passed through the hallway and climbed over Eurie Stamps before Duncan, described how cluttered, tight, and difficult it was to do so. [REDACTED]

[REDACTED] articulated valid reasons for him to consider Stamps to be a potential threat and for making the decision to secure his hands. Duncan, as well as all members of this Department who have been trained with the M-4 rifle,

was taught to have his finger on the outside of the trigger guard unless he was prepared to fire. Room clearing training has consisted of teaching officers to have the safety in the off mode (semi auto) when they are the first to enter a room and when they perceive a possible threat. Other officers and I were instructed in this manner during refresher training with the M-4 on 05/18/11 by Sergeant Vincent Stuart. Duncan claimed that his finger was on the outside of the trigger guard before he lost control of his weapon and tried to regain control of it. He also claimed that the weapon's safety was off (semi auto) mode.

The SWAT Team Policy mandates that newly assigned members complete at least 40 hours of tactical training. Office Duncan successfully completed [REDACTED]

The SWAT Team Policy also mandates that members attend a minimum of eight hours per month training and that all training will be documented. I obtained copies of SWAT training records for 2003-2010. [REDACTED] I was advised by D/C Davis that Duncan became a member of the SWAT Team during July or August of 2007. Upon reviewing the training records from 2007-2010, I found documentation that monthly trainings were conducted.

[REDACTED] Duncan's On-Duty Calendar shows that he was on his second of three days off, followed by two vacation days on 12/17/09.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Regarding the **Policy on Firearms and Weapons**, on 01/05/11, Officer Duncan was carrying two firearms. Those firearms were a Colt M-4 Commando Semiautomatic/Automatic Rifle Serial # A0230821 and a 40 S&W caliber Sig Sauer, Model P226, Semi automatic Pistol, Serial # UU635241. Framingham Police Department records indicate that both of those are Department weapons that were issued to Duncan.

[REDACTED]

The Firearms and Weapon policy requires yearly qualification with all issued weapons. Our training records indicated that Duncan qualified with the M-4 as follows.

- [REDACTED] [REDACTED]
- [REDACTED] [REDACTED] [REDACTED]
- [REDACTED] [REDACTED]
- [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Although this was a review of the actions of many officers during the course of the narcotics investigation and execution of the search warrant at 26 Fountain Street, unfortunately, a great deal of the focus is on Officer Paul Duncan. As you are aware, Officer Duncan has been a member of the Framingham Police Department since 01/03/06, [REDACTED]

[REDACTED]

In [REDACTED] (See Exhibit F)

Officer Duncan also received the following awards from you.

- Police Commendation Award 10/14/06
- Letter of Merit 11/11/07
- Police Commendation Award 02/01/08

Officer Duncan has also received numerous letters of appreciation from citizens and the Natick Chief of Police. (See Exhibit G)

There has only been one citizen's complaint against Officer Duncan. That was a complaint made by a citizen that a group of five motorcycle officers, including Duncan, took a 34 minute coffee break at Dunkin Donuts on Cochituate Road. That incident occurred on 06/10/09. [REDACTED]

[REDACTED] Officer Duncan has not been the subject of any other disciplinary matters.

As you are aware, we are constantly reviewing and revising our policies. We have been an accredited police agency with the Massachusetts Police Accreditation Commission (MPAC) since our initial assessment during March 2005. We were reaccredited during September 2009 and we are presently preparing for a third assessment. We are one of thirty police agencies in Massachusetts that have attained accreditation with MPAC. In order to achieve accreditation, we were required to meet approximately 330 standards that are set by MPAC. Most of those standards require that our Department has written policies, that we adhere to those policies, and that we show documentation that we adhere to those policies. The six policies that I reviewed in this report have been scrutinized by the assessors from MPAC on two occasions. On both occasions, they found that those as well as all of our policies met MPAC standards.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Memorandum

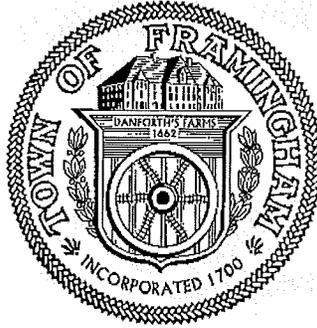
To: Chief Steven Carl
From: Lieutenant Michael Hill
Date: June 13, 2011
Subject: Supplement to Internal Review of 26 Fountain Street Incident

During the course of my investigation, I reviewed the **Policy on Use of Force, #100-4, (See Policy Attached to this Supplement)**. I believe that all members of the Framingham Police Department, including Officer Duncan, were in compliance with this policy on 01/05/11, while serving the search warrant at 21 Fountain Street, Apartment #1. It is my opinion, based on all evidence reviewed, that the degree of force used by our officers was objectively reasonable and necessary, depending on the facts and circumstances known to them at the time of the incident.

As the policy statement indicates, the purpose of the policy is to set guidelines to provide a basis on which to utilize judgment in making reasonable and prudent decisions, rather than to provide definitive answers to every situation in which use of force is appropriate.

Additionally, training on this policy has been conducted annually during Firearms In-service Training. The last Use of Force Training was conducted during the 2010 Fall Firearms Training, 09/13/10-09/22/10.

Thank you.



**Town of Framingham
Police Department**

Policy on Use of Force #100-4

Issue date: 11/06/06		
Type of policy: New ()	Amendment (X)	Re-Issue (x)
Effective date: 10/16/08		
Level: Public Safety ()	Police Division (X)	Town Wide ()

Policy Statement

Police officers are continually confronted with situations requiring or resulting in the use of various degrees of force to affect a lawful arrest, ensure public safety, or to protect persons from harm. The degree of force used, must be objectively reasonable and necessary, depending upon the facts and circumstances known to the officer at the time of the incident. The degree of force an officer is required, and therefore permitted, to use is dependent upon the amount of resistance or threat to safety the situation produces. All force used shall be held to the reasonable officer's standard as created in *Graham v. Connor*.

The objective of the use of force is to maintain and/or establish control over the situation. Control is achieved when a person complies with the officer's directions and/or the suspect is restrained or apprehended and no longer presents a threat to the officer or another.

Because there are an unlimited number of possibilities, allowing for a wide variety of circumstances, no written directive can offer definitive answers to every

situation in which the use of force might be appropriate. Rather this directive will set certain guidelines and provide an officer with a basis on which to utilize his or her judgment in making reasonable and prudent decisions.

References

None

Special Terms

Deadly Force. Deadly Force as used in this policy is defined as that degree of force which a reasonable and prudent person would consider likely to cause death or serious physical injury.

Less Than Lethal Force. Force which is not intended to cause death or serious physical injury however has the potential to.

Non-Deadly Force. Any use of force other than that which is considered deadly or less-lethal. This includes any physical effort used to control or restrain another, or to overcome the resistance of another.

Serious Bodily Injury. Serious bodily injury is defined as any bodily injury which creates a substantial risk of death; causes serious, permanent disfigurement; or results in extended loss or impairment of the function of any bodily member or organ.

Circumstances. The officer's perspective of the severity of any crime, the existence of an immediate safety threat to the officer or others, and the degree of compliance / non-compliance from the subject.

Subject Action (s). The subject action (s) as perceived by the reasonable officer.

Officer Response (s). The "balanced" response (s) appropriate for the reasonable officer's selection from the Use of Force Model's response categories, in order to maintain or gain subject compliance and control.

I. Policy

Members of this Department shall only use that amount of force that is objectively reasonable and necessary, based on the facts and circumstances known to the officer at the time force is used, to affect lawful objectives and effectively bring an incident under control, or to protect his/her life and/or the lives of others. The amount and degree of force which may be employed will be determined by the facts and surrounding circumstances, and must be a "balanced" response appropriate for the reasonable officer's selection from the Use of Force Model's response categories, in order to gain subject compliance and control.

The amount and degree of force which may be employed will be determined by the surrounding circumstances including, but not limited to:

- The nature of the offense/ perceived circumstances;
- The behavior of the subject against whom force is to be used/ perceived subject action(s);
- Actions by third parties who may be present;
- Physical odds against the officer; and
- The feasibility or availability of alternative actions.
- The facts known to the officer at the time of the incident;
- The need to make a decision in a tense, rapidly evolving situation.

II. USE OF FORCE MODEL

The Use of Force Model is described below displays the least to the most severe measures. Officers should employ a “balanced” response (s) appropriate for the reasonable officer’s selection from the Use of Force Model’s identified response categories, in order to maintain or gain subject compliance and control. Conversely, officers must never overlook the possibility of force de-escalation when possible.

Municipal Police Training Committee- Use of Force Model

The Use of Force Model was developed in 1991 by Dr. Franklin Graves, Federal Law Enforcement Training Center and Professor Gregory J. Connor, University of Illinois Police Training Institute. TM 1998, G. Connor. All rights reserved.

LEVEL 1

Subject Action (s).	Compliant. Represents the vast majority of officer / citizen confrontations in the form of cooperation and control. Such cooperation is generally established and maintained via, verbalization skills, etc.
Threat Perception.	Strategic. The broad "mind set" of the officer. The officer must maintain this functional foundation, centered upon strategies designed to enhance the status of safety.
Officer Response	Cooperative Controls Cooperative controls include contemporary controls developed to preserve officer safety and security, including: communication skills, restraint applications, etc. Remember the use of verbal persuasion can, in some cases, prevent and or minimize the need for physical force.

LEVEL 2

Subject Action (s).	Resistant (Passive). The preliminary level of citizen non-compliance. Here, the citizen, although non-compliant, offers no physical or mechanical energy enhancement toward the resistant effort.
Threat Perception.	Tactical. The officer perceives an increase in threat potential within the confrontational environment and tactical procedures are designated and deployed.
Officer Response	Contact Controls. Contact Controls include resistant countermeasures designed to guide or direct the non-compliant subject. These "hands on" tactics would include the elbow / wrist grasp, escort position, etc.

LEVEL 3

Subject Action (s).	Resistant (Active). The subject's non-compliance is increased in scope and / or intensity. The subject's non-compliance now includes energy enhanced physical or mechanical defiance.
Threat Perception.	Volatile. The officer perceives an activated level of alertness and threat potential. Here the officer is confronted with the presence or potential of critical dynamics, including threat intensity and severity within the enforcement encounter
Officer Response	Compliance Techniques. Compliance techniques include resistant countermeasures designed to counter the subject's enhanced degree of resistance. These tactics could include the wrist locks, chemical agents (to include PepperBall) , distraction techniques, takedowns etc. The ASP expandable baton may also be used as a non-impact/restraining come-along tool. The use of the TASER in Drive Stun mode is also categorized as a compliance technique.

LEVEL 4

Subject Action (s).	Assaultive (Bodily Harm). The officer's attempt to gain lawful compliance has culminated in a perceived or actual attack on the officer or others. The officer makes the reasonable assessment that such actions by the subject would <u>not</u> result in the officer's or other's death or serious bodily harm.
Threat Perception.	Harmful . An accelerated perception of threat directed upon the officer or others. In this regard the officer must deploy initial defensive force in the effort toward eventual subject compliance and control.
Officer Response	Defensive Tactics. Defensive tactics includes assaultive countermeasures designed to cease the subject's non-lethal assault on the officer or others, regain control, and assure continued compliance, tactics could include baton strikes, kicking techniques, striking techniques Lethal Impact Weapons (beanbag), and the Taser (when probes are deployed).

LEVEL 5

Subject Action (s).	Assaultive (Serious Bodily Harm / Death). The officer's attempt to gain lawful compliance has culminated in the perception of an attack or the potential for such an attack on the officer or others. The officer makes the reasonable assessment that such actions by the subject <u>could</u> result in serious bodily harm or death to the officer or others.
Threat Perception.	Lethal. Although this potentially lethal degree of threat is most infrequent, it remains most crucial for the continuation of officer safety and security.
Officer Response	Deadly Force. Deadly force includes assaultive countermeasures designed to cease an assault which is lethal or could cause great bodily harm on the officer or others. These tactics could include the use of a firearm, lethal baton strikes, etc.(See Deadly Force Section Below)

III. PROCEDURES: USE OF FORCE

1. Only issued or approved equipment will be carried on duty and used when applying any level of force. In the event an officer is faced with a situation where there is a substantial risk of physical injury or death to themselves or another, and access to approved tools and weapons is not available or tactically feasible, he or she may resort to using a tool of immediate opportunity.
2. Use of restraining devices is mandatory on all prisoners, unless in the officer's judgment unusual circumstances exist which make the use of restraining devices impossible or unnecessary (e.g. prisoner is handicapped, etc.). The mere **placing of handcuffs** on a prisoner will **not** be construed to be a use of physical force.
3. After any level of force is used, the officer will evaluate the need for medical attention or treatment for that person upon whom the force was used and arrange for such treatment when:
 - a. That person has a visible injury; or,
 - b. In the case of use of pepper spray, immediately after spraying a suspect, officers shall be alert to any indications that the individual needs medical care. This includes , but not limited to, breathing difficulties, gagging, profuse sweating and loss of consciousness; or
 - c. That person complains of injury or discomfort and requests medical attention.

NOTE: Any person deemed in need of immediate medical attention shall be transported in accordance with departmental policy on **Transporting Prisoners** to the nearest available medical facility or hospital. All medical treatment received shall be noted in the officer's report.

4. The officer shall promptly notify his immediate supervisor of the incident.
5. The officer shall attempt to locate and identify all witnesses, documenting their statements.

V. DEADLY FORCE: GENERAL CONSIDERATIONS AND GUIDELINES

The purpose of the following section is to set forth guidelines for members of this Department in making decisions regarding the use of Deadly Force. The guidelines have been developed with serious consideration for the safety of both the police officers and the public, and with the knowledge that police officers are often called upon to make split-second decisions in circumstances that are tense, uncertain, and rapidly evolving. The value of human life is immeasurable in our society. This Department places its highest value on the life and safety of its officers and the public. The department's policies and procedures are designed to ensure that this value guides police officers in their use of deadly force.

VI. PROCEDURES FOR THE USE OF DEADLY FORCE

A member of this Department is authorized to use deadly force to:

1. Protect himself or others from what he reasonably believes to be an immediate threat of death or serious physical injury; or
2. An officer may use deadly force to prevent the escape and effect the arrest of a person only when:
 - a. The arrest is for a felony; **and**
 - b. The crime for which the arrest is made involves the use or attempted use, or threatened use of deadly force; **and**
 - c. The officer reasonably believes that the force employed creates no substantial risk of injury to innocent persons; **and**
 - d. there is a substantial risk that the person to be arrested will cause death or serious physical injury if his apprehension is delayed.
 - e. Where feasible, and where such action does not expose the officers to risk, officers shall identify themselves as police officers and give some warning before using deadly force.

VII. FIREARMS PROCEDURES

In addition to the above-mentioned situations, a police officer may also discharge a weapon under the following circumstances:

1. For authorized demonstrations, training, or competition, with weapons authorized by the Department.
2. To destroy a dangerous animal or an animal so badly injured that it should be destroyed to prevent further suffering. Children should not be present
3. Officers who find it necessary to discharge firearms shall exercise due care for the safety of persons and property in the area and shall fire only when reasonably certain that there is no substantial risk to bystanders.

4. Because of the danger of unintentional death or injury, warning shots are prohibited.
5. Firearms shall not be used as signaling devices or to summon assistance, except in extreme circumstances where there is no other means to communicate
6. Firing to **disable** a vehicle is **prohibited**.
7. Officers **shall not** discharge a firearm **from within** a moving vehicle.
8. Officers shall move out of the path of any oncoming vehicle (unless there is no ability to retreat) instead of discharging a firearm at it or any of its occupants. Moving to cover, repositioning and or waiting for additional responding units to arrive and maintain a tactically superior police advantage maximizes officer safety and minimizes the necessity for using deadly force. Firearms **shall not be fired at a** moving or fleeing vehicle unless;
 - a. the officer or another person is currently being threatened with deadly force by means other than solely the moving vehicle *or*
 - b. there is no reasonable ability to retreat.

NOTE: The prohibitions in section **VII** exists for the following reasons: Officers should be aware of the potential inability of a bullet to penetrate the metal or glass surfaces of an automobile and the likelihood of ricocheting bullets. If the bullet(s) disable the operator, the vehicle may crash and cause injury to officers or other innocent persons. **Officers must realize that it is highly unlikely that a bullet will stop a moving vehicle.**

9. Firearms shall not be utilized when there is substantial risk to the safety of other persons, including risks associated with vehicle accidents.
10. Care shall be taken to ensure the safety of the general public in the vicinity.
11. An officer shall avoid the unnecessary display of firearms. However, in responding to any potentially dangerous situation (e.g., searching a building pursuant to a burglar alarm or approaching a business establishment on a report of a robbery in progress etc.) an officer may carry his/her firearm in a position that will facilitate its speedy, effective, and safe use.

VIII. USE OF FORCE REPORTING AND INVESTIGATION

1. Every employee who uses force (with or without a weapon) that results in injury or death, and/or who discharges a firearm (except for authorized demonstrations, training, or competition), or uses a non/less lethal weapon shall submit a report in a timely manner, subject to applicable law.
2. A separate Use Of Force Report shall be generated during the booking process (completed by the Booking Officer). The report will be filed separately by Records Personnel who will forward a copy to the Field Operations Commander for analysis.
 - If the subject is not processed during booking (i.e. bailed from hospital) or force was used during crowd control tactics, etc. a Use of Force (Ctrl +click to follow link) report will be generated manually from the FORMS folder in the "S" drive. The Use of Force report form will be completed by the officer applying the force who will submit the form along with his/her SOR report.
3. If injuries result from the use of force, every employee who witnessed the incident shall, subject to applicable law, submit a supplemental narrative to be included with the initial report,
4. Employees shall note all facts and circumstances involving any use of force and firearms/weapons discharge in the relevant incident report. This Report shall also contain:
 - a. The names and addresses of victims and witnesses;
 - b. The extent of treatment of injuries, if any;
 - c. The name of the treatment facility and physician administering treatment.
4. The **Patrol Supervisor** shall respond to the scene of an incident where an officer or other person is seriously injured. [S]he shall:
 - a. Ensure that all injured parties receive any necessary assistance, including medical treatment, and that any injuries are properly documented.
 - b. If an injury or complaint of pain exists, supervisors shall obtain photographs.

NOTE: A photograph showing no injury may be as important as one which shows injury.
 - c. Determine if an investigator should respond to the scene and the level of investigative services to be utilized (including photos, measurements and diagrams.)

d. File a report on the incident with the Shift Commander.

5. The **Shift Commander** shall:

- a. Ensure photographs are taken of any injuries (or complaint of injury)
- b. Review the report(s) describing the use of force, and all other related reports;
- c. Notify the Deputy Chief-Operations.
- d. Ensure that all witnesses and injured parties have been interviewed.
- e. Assign sufficient officers to secure the scene to preserve physical evidence and request the assistance of investigators and/or crime scene technicians as appropriate.
- f. Make arrangements for counseling assistance for the officer (**see *Critical Incident Stress policy***), or members of his family.
- g. Forward copies of all reports to the Deputy Chief-Operations

NOTE: In those incidents of the use of force where serious bodily injury or a death results, the District Attorney's Office will be notified forthwith.

6. The **Deputy Chief-Operations** shall be responsible for the following:

- a. Notify the Chief
- b. Ensure that a thorough investigation was conducted by a supervisor not involved with the incident and that all reports were properly prepared and submitted;
- c. Review all reports submitted;
- d. Maintain a separate file of all Use of Force incidents by officers for the purpose of conducting an annual analysis of all Use of Force for reports, recommending to the Chief further action if necessary (i.e. policy upgrades, training needs, equipment upgrades).

7. During the course of the investigation, information concerning the incident will be released to the public or news media only through the department's Public Information Officer (unless otherwise authorized by the Chief.)

IX. ADMINISTRATIVE RELIEF FROM DUTY DUE TO AN ACTION THAT RESULTS IN DEADLY FORCE

In every instance where the use of force or any action results in death or serious bodily injury to another person, the following steps shall be taken.

1. The supervisor shall impound the weapon involved immediately. In doing so, the investigating officer shall preserve the weapon in the condition in which [s]he finds it.
2. If necessary, the officer/employee involved shall be taken to Metro-West Medical Center for evaluation due to the abnormal stress placed on him/her in these circumstances.
3. The officer/employee involved will be placed on Administrative Duty Status pending administrative review. The involved officer's/employee's invocation of legal rights shall not affect the length of this status.
4. The involved officer/employee will be given the opportunity to call his/her family as soon as possible.
5. Assignment to Administrative Duty status shall be with no loss of pay or benefits.
6. Administrative duty is intended to serve two purposes:
 - a. To address the personal and emotional needs of an officer/employee involved in an action which results in injury or death; and
 - b. To assure the community that verification of all the facts surrounding such incidents are fully and professionally investigated.
8. Officers/employees on Administrative Duty shall, subject to applicable law, be reasonably available to investigators to assist, when necessary, in the investigation of the incident.
9. Whenever an officer/employee is involved in an incident that results in a serious injury or death, the officer/employee will be referred to the appropriate employee assistance program (see **Critical Incident Stress policy**).

X. POLICY TRAINING

This Use of Force policy will be issued and reviewed annually at Firearms In-Service training, whenever a new *type* of weapon is issued to them, and with any newly hired officers (during their field training orientation). The review and issuance of this policy will be documented.