

CIRCUIT COURT OF RALEIGH COUNTY
WEST VIRGINIA

MARY WEBB;

Plaintiff;

vs.

CIVIL ACTION NO. 08-C-406-H

RALEIGH COUNTY SHERIFF'S
DEPARTMENT, et al.

Defendants.

COUNTY OF CHAMPAIGN
STATE OF OHIO

PRELIMINARY EXPERT REPORT OF SAMUEL D. FAULKNER

I, Samuel D. Faulkner do depose and say the following:

I am a former Deputy Sheriff, commissioned with Portage County Sheriff's Office, in Ohio, a former City of Kent, Ohio Police Officer. In October of 1987 I started full time employment with the Ohio Peace Officer Training Academy (OPOTA), which is a section of the Ohio Attorney General's Office. My job title was Law Enforcement Training Specialist, in what is probably the most active training academy in the nation.

After coming to OPOTA, I held a commission with the Madison County Sheriff's Office. In 2000 until 2004, I held a commission, and worked uniform patrol duties two times per month with Port of Columbus Airport Authority Police Department. In 2004 I was commissioned as a Police Officer for the Village of Mechanicsburg and performed uniform patrol duties on a weekly basis. In 2006 I was promoted to the rank of Lieutenant with Mechanicsburg. In December 2008 I was appointed Chief of Police for the village. I took over full time police duties on February 1, 2009, after retiring from the Ohio Attorney General's Office on January 30, 2009.

While at OPOTA my primary areas of instruction include:

- * Use of Force
- * Defensive Tactics Instructor Course
- * ASP Baton Instructor Course
- * Fitness Specialist Course



- * Peace Officer Survival Training
- * Police Officer Tactical Awareness and Response Course
- * Introduction to Fitness and Survival Course
- * Tactical Vehicle "S.T.O.P.S." Course
- * Defensive Driving
- * Weapon Retention / Shot Avoidance
- * Developing A Winning Attitude
- * Developing A Street Ready Mind
- * Communications Response Tactics
- * Becoming A Leader Your Officers Want To Follow
- * State Discipline Chairperson in Defensive Tactics for Basic Peace Officer Training, State of Ohio
- * State Discipline Chairperson in Physical Conditioning for Basic Peace Officer Training, State of Ohio

The following is a partial listing of the organizations or institutions I have instructed:

- * Ohio Department of Natural Resources
- * Ohio Bureau of Criminal Identification and Investigation
- * Ohio State Highway Patrol
- * Kentucky Office of the Governor Criminal Justice Training
- * West Virginia State Police
- * Montana Attorney General's Office
- * Montana State Police
- * Federal IRS Investigators
- * State of Ohio Department of Rehabilitation and Corrections
- * Ohio Military Police
- * USMC Military Police
- * US Navy Military Police
- * International Association of Firearms Instructors (IALEFI)
- * Georgia Association of Firearms Instructors (GALEFI)
- * Maryland State Police
- * Michigan State Police
- * Personnel from a majority of the Police Departments and Sheriff's Offices throughout Ohio

The following is a partial listing of my publications:

- * Ohio Police Magazine
- * The Defensive Tactics News Letter
- * The State of Ohio Basic Training Curriculum for Defensive Tactics
- * The Action - Response Continuum
- * Law and Order Magazine
- * National Sheriff's Magazine
- * Tactical Edge Magazine

- * Police Science
- * The Buckeye Badge
- * Training Aids Digest
- * FBI Law Enforcement Bulletin
- * FBI Journal
- * American Journal of Criminal Justice Sciences
- * Numerous programs on the Law Enforcement Television Network
- * *Reasonable Force Defined*, a book published through the Ohio Attorney General's Office
- * The BACKUP
- * POLICE.Com1

The following are additional facts, honors, or works that are offered for the Court's consideration:

- * Author of the Force Model adopted for Advanced Peace Officer Training, Basic Peace Officer Training, Corrections Training, Private Security Training, and Bailiff's Training for the 'State of Ohio
- * Author of the force model adopted by the State of Ohio Department of Rehabilitation and Corrections
- * Expert Witness for the Ohio Peace Officer Training Commission, and the State of Ohio Attorney General's Office
- * Presenter/Discussant for the 1992, 1993, and 1997 Annual Meeting of the Academy of Criminal Justice Sciences
- * 1997 Research project with the U.S. Justice Department, National Institute of Justice defining reasonable responses for law enforcement to resistance, assault and aggression
- * Consultant to National Institute of Justice on Force Issues
- * Consultant to Calibre Press, Street Survival on Use of Force and Control Tactics
- * 1998 Research project with Stephen T. Holmes, Ph.D., University of Central Florida Department of Criminal Justice and Legal Services and the Ohio Department of Youth Services defining reasonable responses to juvenile resistance/aggression
- * Presented the force model to the United States National Standards in Training Association 2001 annual meeting
- * Presented the force model to the 2001 National Association of Attorney Generals (NAAG)
- * Presented the force model to CALEA, the Commission on Accreditation for Law Enforcement Agencies National Conference in 2001
- * Presented the force model to IPAC, CALEA in for Midwestern states

- * Presented the force model to the National Major Gang Taskforce Annual Conference
- * Presented the force model to AFSCME Corrections United at their 2007 national conference in Washington DC
- * Action - Response Survey featured on PoliceOne.com, 2007
- * Action - Response Survey featured on CorrectionsOne.com, 2007
- * Action - Response Survey featured in Force Science Review, 2008
- * Advisory Board of RedMan Training
- * Board of Examiners for ASP Expandable Baton
- * Chairman of the Advisory Board for ASP Expandable Baton
- * CEO of Response To Resistance, LLC

I have been retained in over 270 police related cases, providing case analysis, development, and expert witness testimony. I have been qualified in State and Federal Courts, in Defensive Tactics/Subject Control, and Police Procedures.

In formulating my opinions I have reviewed the following documents and materials:

1. Plaintiff's Complaint;
2. Joint Answer Filed on Behalf of all Named Defendants;
3. Raleigh County Sheriff's Office Investigative File pertaining to the Webb shooting;
4. Robert Wh. Hinzman Investigative Report;
 - Area map depicting residence occupation
 - Martha Blevins Statement
 - Eddie Underwood Statement
 - Dennis Wilson Statement
 - Howard Redden Statement
 - John Ellison Statement
 - Wanda Young Statement
 - Phil Honaker Statement
 - Bobbie Wilson Statement
 - Hazel Cline Statement
 - Teresa Wilson Statement
 - Janet McNeil Statement
 - Gladys Avancini Statement
 - Evidence Photos
 - Photos of Scene
 - Criminal History Summary
5. Transcribed Deposition of John E. Hajash; and

6. Transcribed Deposition of Gregory S. Kade.

----- BELIEF OVERVIEW OF EVENTS -----

On 07/04/06, Raleigh County Deputy Hajash was working uniform patrol duties and talking with Raleigh County Deputy Kade who was working a special off-duty work detail. Both deputies were in full departmental uniform at this time. At approximately 12:51 AM, Deputy Hajash was dispatched to a report of a subject outside shooting at his residence. Deputy Hajash responded and due to the serious nature of the call, Deputy Kade contacted dispatch to inform them that he was going on duty and was responding as backup for Deputy Hajash.

The deputies turned their overhead lights on and used their sirens when they approached higher traffic areas. When the deputies approached the area of the reported shooting they blacked out (turned off their sirens and light bars) their cars. The deputies then parked a distance away from the reported shooting area and approached the residence on foot. Deputy Hajash was armed with his service semi-automatic handgun. Deputy Kade also had his semi-automatic handgun but also decided to take the Remington 870 departmental shotgun. Both deputies stated that they could hear very loud music playing from down the street.

As the deputies walked down the street they could see a subject, later identified as Mr. Webb, walking in the driveway. Deputy Hajash said that from fifty to seventy yards away they could see Mr. Webb walking from his truck to the garage. As the deputies approached the residence they used a large tree in the next door neighbor's yard for cover. They then called dispatch and verified the address of the residence.

There was a truck in the driveway and the deputies could see Mr. Webb periodically messing with something inside of the truck. The deputies went to the front gate of the property but found it pad locked. The deputies did not want to take the chance of being heard jumping the fence, so they walked to the side of the residence. The deputies found a line of large scrubs traveling down the property and followed that for concealment.

When the deputies were half way down the shrub line the music abruptly stopped and everything was silent. Both deputies heard Mr. Webb loudly say, "What the hell." Deputy Kade stated that at the end of the shrub row they

stepped out and were suddenly faced with Mr. Webb. Deputy Hajash said, "We figured that was a good time to approach him because we didn't want to startle him with the music blaring and hearing." (Hajash deposition, pg. 78, lines 11-13) Deputy Kade estimated that the distance between the deputies and Mr. Webb was approximately thirty-one feet.

There was a dawn-to-dusk light in the driveway, so the deputies said there was good visibility. As the deputies stopped out, Deputy Kade stated, "Police, let us or let me see your hands." (Kade deposition, pg. 64, line 16-17) The deputy's announcement was at a high volume that Deputy Kade said would be sufficient for someone 20-25 yards away to hear clearly.

Mr. Webb turned to face the deputies. They saw that Mr. Webb was holding an AK-47. This surprised the deputies because they thought that they were responding to a subject with a handgun. The deputies said that the butt of Mr. Webb's weapon was in the pocket of his shoulder and he was raising the muzzle of the AK-47 to point that the deputies. Deputy Kade said on page 70, line 5 of his deposition, "I perceived it aimed in our direction." Deputy Hajash said, "Before he raised it, he eyeballed Deputy Kade for a couple of seconds." (Hajash deposition, Pg. 96, lines 5-6)

When describing Mr. Webb's actions, Deputy Hajash said, "He turned around and he was stopped and had the rifle down and looked at Kade like he knew where he was going to aim the rifle and then raised it." (Kade deposition, Pg. 96, lines 14-16) In response to the life-threatening action of Mr. Webb both deputies fired almost simultaneously. Deputy Kade, who had a shotgun, fired once and Deputy Hajash, armed with his service handgun, fired three times.

After being shot, Mr. Webb stumbled back while still holding the rifle and fell to the ground. Both deputies remained in the same positions while firing their weapons. Deputy Hajash said in page 88, lines 2-6 of his deposition, that when Mr. Webb was on the ground, "I could just see his shoulder and it looked like he was still holding the rifle. Like, he was laying on his back and was going to start shooting towards his feet which would have hit my legs and Deputy Kade's legs." In response to this continued threat, Deputy Hajash fired his third and final round.

When Deputy Kade and Deputy Hajash saw that Mr. Webb was no longer armed with his rifle, no further rounds were fired. The deputies immediately then called for EMS. Deputy Hajash approached Mr. Webb and saw that he was not breathing and there were no signs of life. The deputies

were still cautious because they did not know if there was anyone in the nearby garage. While Deputy Kade remained in the driveway, Deputy Hajash checked and cleared the garage.

While the deputies waited for EMS to arrive, Ms. Webb came out of the house. She saw Mr. Webb lying on the ground and asked, "Who shot who?" (Hajash deposition, pg. 101, line 9) The deputies did not approach the shooting scene and did not touch anything while they waited for EMS and other officers to arrive. Lt. Williams arrived a short time later and assumed control of the crime scene. Lt. Williams ordered the deputies to go back to their vehicles. Deputy Kade and Deputy Hajash were kept separated and interviewed separately. The deputies were questioned and gave a statement the evening of the incident and were questioned and gave a second statement a few days later.

Both deputies were given psychological counseling and evaluations prior to returning to work. Deputy Hajash is no longer employed as a deputy because he has problems dealing with the shooting incident. Deputy Kade is still employed as a deputy but the shooting incident has caused him to take a number of sick days. Deputy Kade said, "I use a lot of sick days just calling in and not wanting to go to work." (Kade deposition, pg. 96, lines 16-17)

---- STATEMENT OF OPINIONS ----

1. When Deputy Hajash and Deputy Kade were dispatched to a man with a gun call they fulfilled their duty and responded.
2. Deputy Kade followed a standard and accepted practice when he left a special detail to go on duty to aid a fellow deputy.
3. Deputy Hajash and Deputy Kade responded in the manner that deputies are trained to respond to high risk or priority call.
4. Arriving silently, blacking out cruiser and parking away from the call location are standard practices that are trained throughout the nation to all law enforcement officers arriving to a "man with a gun call."

5. The approach tactics used and the announcement given by Deputy Hajash and Deputy Kade complied with the training given to all law enforcement officers.
6. Deputy Kade's and Deputy Hajash's firearm response to Mr. Webb's life threatening actions was in compliance with national law enforcement training, policies and practices.
7. Deputy Kade's and Deputy Hajash's follow-up to the shooting incident was in compliance with law enforcement training and guidelines.

---- BASIS FOR OPINIONS ----

1. Deputy Kade and Deputy Hajash were certified law enforcement officers with the State of West Virginia. As such they have sworn an oath to uphold the laws of Raleigh County, the State of West Virginia and of the United States. They were dispatched to a man with a gun, shots fired call. This is definitely a high risk call and constitutes a significant threat for any deputy. This is the type of call that no one likes to respond to. These deputies placed duty above self and went when they were called. It is my opinion that when Deputy Hajash and Deputy Kade were dispatched to a man with a gun call they fulfilled their duty and responded.

2. It is a common practice for law enforcement officers throughout the nation to work special details for construction companies, businesses, restaurants, etc. Officers and deputies work in full uniform and retain full law enforcement authority. The logistics of the arrangement varies but the basic service is the same. With some special details the business hiring the deputy pays the deputy directly. Other times the deputy is hired through the Sheriff's Office. The Sheriff's Office is paid and they in turn remunerate the deputy.

Manpower is an issue that law enforcement faces throughout the nation. It is common practice throughout the nation and for Raleigh County deputies to leave a special detail and call dispatch to be placed into a duty status. Deputy Kade was working a special detail. Deputy Hajash was on duty and talking with Deputy Kade when Deputy Hajash was dispatched to a man with a gun call. Knowing that a man with a gun call is a high-risk call in which it

is risky for a one deputy respond, Deputy Kade contacted dispatch and informed him that he was going on duty to backup Deputy Hajash for this call. It is my opinion that Deputy Kade followed a standard and accepted practice when he left a special detail to go on duty to aid a fellow deputy.

3. It is my opinion that Deputy Hajash and Deputy Kade responded in the manner that deputies are trained to respond to high risk or priority call. The deputies traveled the route that they were most familiar with and that they felt would have the least traffic. The deputies turned on their overhead lights and used their sirens whenever there was a traffic pattern that might create a safety risk for the general public. This is in compliance with the training that all law enforcement officers receive in responding to a high-risk call.

4. Responding to high-risk calls is a part of the training that all law enforcement officers receive in basic training. It is reinforced by the field training officers when new law enforcement officers are hired and again in any high-risk in-service training updates. It is standard that when law enforcement respond to a "man with a gun" or a "shots fired" call to arrive silently and to black out. This means that the siren is to be turned off and so are the overhead lights. Deputies are also trained to park some distance from the call location and not to drive right up to the residence or business.

It even goes to the extent of advising deputies that whenever possible they should turn off all of their car lights and arrive in a totally blacked-out condition. If possible deputies should turn off their engines prior to arrival and silently coast to a stop. When deputies get out of their cars they are instructed to "bring their door to rest" rather than closing the door normally. This allows the officer to hopefully arrive unnoticed rather than alerting the subject that someone had arrived by the sound of a car door closing.

For twenty-one years I was employed as the lead subject control trainer for the State of Ohio through the Ohio Attorney General's Office. I trained thousands of officers in subject and vehicle approaches. I trained every officer that trained other officers in this area. In my tenure as trainer at the Ohio Peace Officer Training Academy I buried eighty-eight police officers that I had either directly or indirectly trained. I realize the risk

of a man with a gun call and it would be a severe officer safety violation for an officer just to pull up to a potential shooting scene announcing that they were an officer and illuminating themselves, making an easy and convenient target. It is my opinion that arriving silently, blacking out the cruiser and parking away from the call location are standard practices that are trained throughout the nation to all law enforcement officers arriving to a "man with a gun call."

5. The approach tactics used and the announcement given by Deputy Hajash and Deputy Kade complied with the training given to all law enforcement officers. The deputies heard loud music and called dispatch to double check the call location. The deputies used a large tree in a neighbor's yard for cover while they observed the scene. They saw Mr. Webb walking around in his driveway, going in and out of his truck. The deputies tried a gate in the front of Mr. Webb's yard but the gate was locked and they did not to risk making the noise that jumping over the gate might make.

There was a row of bushes on the side of Mr. Webb's property. The deputies used the shrub row for concealment so they could get closer to Mr. Webb without being seen. The deputies naturally wanted to observe the scene to try to see if there were any weapons and how many people they were dealing with before they approached.

By this time the music had stopped and there was complete silence. There was a dawn-to-dusk light in the area so things were well illuminated. When the deputies reached the end of the shrub line, they stepped out and issued a loud and clear warning to Mr. Webb. They said, "Police, show me your hands." The deputies kept their warning as simple as possible so as not to cause any confusion. The approach that the deputies made was about as by the book as it could get.

6. It is my opinion that Deputy Kade's and Deputy Hajash's firearm response to Mr. Webb's life threatening actions was in compliance with national law enforcement training, policies and practices. The bright-line case that all law enforcement officer are trained in and that all firearms policies are based on is *Tennessee v. Garner*, 471 U.S. 1 (1985). It states, "If the suspect threatens the officer with a weapon or if there is probable cause to believe the suspect has committed a crime involving the infliction or threatened infliction of serious physical

harm, deadly force may be used if necessary to prevent escape, and if feasible, some warning has been given."

This situation does not have anything to do with escape. Mr. Webb was given a warning, turned to face the deputies holding a rifle, looked at Deputy Kade for a few seconds and then raised an AK-47 to point at the deputies. The deputies were given a call of a subject shooting at a residence. That would make any reasonable officer believe there was a crime involving the infliction or threatened infliction of serious physical harm to others.

Mr. Webb was told by the deputies, "Police, show me your hands." Mr. Webb, while holding a rifle, turned to face the deputies, looked at them for a few seconds and then raised a shouldered AK-47 to point in their direction. Every law enforcement officer in the nation is trained that a firearms response is reasonable in relation to a life threatening action such as this. Mr. Webb had the ability of causing serious physical harm by holding an AK-47. Mr. Webb had the opportunity of causing serious physical harm by pointing the weapon toward the deputies. The officers were placed in jeopardy by the act of Mr. Webb not responding to the deputy's commands and pointing a rifle in their direction. The deputies had preclusion at that point because there is no other reasonable option than a firearms response when faced with the threat that Mr. Webb presented.

An easier way of explaining this to officers is found in the case of *Martinez v. County of Los Angeles*, 47 Cal. App. 4th 334 (1996). I use this in the classes that I teach relating to the use of deadly force. The case illuminates the factors the court said should be considered in an easily understood manner. "An officer is reasonable in using deadly force when he/she, A(1) confronts an armed subject, (2) in close proximity, (3) whose actions indicate an intent to attack. In these circumstances the courts cannot ask an officer to hold fire in order to ascertain whether the subject will, in fact, injure or murder the officer."

This wording has already become a part of many law enforcement agencies departmental policies. It is certainly applicable in this situation. The deputies were confronted by a subject armed with an AK-47. Mr. Webb and the deputies were in close proximity. Finally, when Mr. Webb looked at the deputies and decided to raise the rifle in their direction, it certainly made the deputies believe that Mr. Webb had the intent to attack. We do not know what was actually in Mr. Webb's mind or what his intention

were. However, we can not ask these deputies to hold fire, quite possibly asking them to surrender their lives as a result of excessive deliberation and/or hesitation.

The Garner decision is the case that all firearms policies are based on but the case that guides all of law enforcement's responses to resistance and assault is *Graham v. Connor*, 490 U.S. 386 (1989). That case states, "Today we make explicit what was implicit in the Garner's analysis, and hold that all claims that law enforcement officers have used excessive force -- deadly or not - in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than under a 'substantive due process' approach." The four factor test that is offered with that decision is:

1. Severity of the crime in question;
2. Apparent threat posed by the suspect;
3. Was the suspect attempting to flee or resist; and
4. Was the force 'objectively reasonable' when applied in a tense, fast evolving situation.

The initial crime was shots being fired at a residence. This would obviously be a serious crime. The apparent threat to the deputies was that Mr. Webb was going to shoot them. Mr. Webb was armed with an AK-47. With the rate of fire and the number of rounds that an AK-47 can fire the deputies would be at a definite disadvantage if a gun battle ensued. Mr. Webb was making no attempt to flee; he had looked at the deputies, purposefully raised his rifle and pointed it in the direction of the deputies. With the close proximity of Mr. Webb and the deputies, there is no question that the situation was tense and fast evolving.

The question remaining is whether the deputies' responses to Mr. Webb's actions were objectively reasonable. Ultimately it is the job of the jury or the court to decide the question of whether or not the responses that law enforcement officers used were reasonable. I wanted to be responsible in my training position in the Ohio Attorney General's Office. I was the lead Defensive Tactics/Subject Control for the state in the Ohio Peace Officer Training Academy. I conducted train-the-trainer for virtually any officer that has done any basic training in Ohio since 1987. I conducted a train-the-trainers course at the West Virginia State Police Academy in approximately 1989 and have trained all of their trainers since that time.

The research projects that I have conducted have a subject total of some sixty-thousand respondents. Some where in the range of fifty thousand respondents were from law enforcement and corrections. The remainder is from civilians, the people who law enforcement officers are sworn to protect and serve. All of the Defensive Tactics/Subject Control training that I do, and that the trainers at the West Virginia State Police Academy do is centered around this research.

Millions of federal research dollars have been spent over the past few years to better understand how police use and implement force. This cost outlay actually has produced little useful information to explain the dynamics of police and citizen confrontations. One reason for this failure is that the number of encounters in which law enforcement officers use force is rare. It is believed that force is used in fewer than 3 percent of all police-citizen encounters (Friedrich, 1997; Fife, 1995; Garner, 1995; Klockers, 1995; Reiss, 1967; Worden, 1995).

The *Police-Public Contact Survey*, of 1996 found that out of the estimated 45 million face-to-face contacts between police and the public, only 1 percent of those contacts resulted in force being threatened or used by the police (Greenfield, Langan, and Smith, 1997). The International Association of Chiefs of Police, in *Police Use of Force in America*, p. I-ii, (2001) found that nationwide, police officers use force at a rate of 3.61 times per 10,000 calls for service to the public. Put another way, police officers do not use force 99.9639% of the time. The U.S. Department of Justice, in *Use of Deadly Force in America*, p. vii, (Oct. 1999) stated that in only a fraction of all force cases - about 0.2% - do police officers use deadly force.

The standard that all law enforcement officers must follow in the use of any type of force against a citizen is derived from the Supreme Court case *Graham v. Connor*, 490 U.S. 386, 104 L.Ed 2d 443, 190 S.Ct. 1865 (1989). As the Supreme Court stated, "all claims that law enforcement officers have used excessive force - deadly or not- in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' approach." The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody an allowance for the fact that police officers are often forced to make split-

second judgments, in circumstances that are tense, uncertain and rapidly evolving about the amount of force that is necessary in a particular situation.

For the past eighteen years, I have conducted a series of national research projects to determine what law enforcement officers, as well as civilians and corrections officers, consider to be reasonable responses to the types of resistance, aggression and assaults officers must face. I have conducted another similar study with the U.S. Justice Department, National Institute of Justice on this topic. Most recently I have completed a research project involving the Ohio Department of Youth services in which we surveyed juvenile correction officers, juvenile probation and parole officers, law enforcement officers, and juvenile judges in order to ascertain what they felt were reasonable responses to resistance, aggression and assault by juvenile offenders.

The end result of these research projects is the Action - Response Continuum, a copy of which is included with this report. This continuum has become the recommended model for Basic Peace Officer Training, Advanced Peace Officer Training, Corrections Training, Private Security Training, and Bailiffs Training for the State of Ohio. Numerous Police departments and Sheriff's Offices throughout the United States also use it. It can also be found in the West Virginia State Police Policy. The Ohio Attorney General's Office has published my research in a book titled, *USE OF FORCE, DECISION MAKING AND LEGAL PRECEDENCE*. The book has been distributed throughout Ohio, as well as the rest of the nation.

When law enforcement officers and civilians were asked if a subject is attempting to use a weapon against an officer, would an officer be reasonable responding with deadly force the answer was an overwhelming yes. Law enforcement personnel had a 96.24% - YES response and civilians had a 96.35% - YES response. This question dealt with any deadly force option used against law enforcement, guns, knives, clubs, or life-threatening empty hand deadly assault. If the question had been an AK-47 at close quarters with the officers standing in the open with no cover available, I am certain the agreement would have been virtually unanimous. Any reasonable deputy, based on their legal and physical training would have believed that when faced with the threat that Mr. Webb presented, a firearms response would have been reasonable and the only actual response available.

7. Once Mr. Webb was down and no longer a threat to the deputies, they immediately called for EMS and their supervisors. They checked Mr. Webb but due to the nature of the injury and the fact that the deputies saw no signs of life, they did not disturb the crime scene. Deputy Kade remained in the area of the shooting to protect the scene and to provide cover for Deputy Hajash.

The deputies noticed that the garage door was open and had seen Mr. Webb go in and out of the garage, so Deputy Hajash went and checked the garage for any additional threats. Finding no additional threats, the deputies kept the crime scene secure until a supervisor arrived. The supervisor then took control of the scene and relieved the deputies. It is my opinion that Deputy Kade's and Deputy Hajash's follow-up to the shooting incident was in compliance with law enforcement training and guidelines.

It is my understanding that additional information may be ordered and produced in this case. Therefore I respectfully request that this be considered a preliminary account of my opinions based on the materials that I have reviewed. If any additional information is provided that materially alters any of the above opinions I will either make a written supplement to this paper, or make myself available to respond to the newly produced information during any scheduled deposition.

My fees for working on this case are a \$2,500.00 retainer to be used against the first ten hours of case work, \$250.00 per hour for all time spent past the initial ten hours, plus \$.46 per mile travel expense, and any actual lodging, food or other travel expenses. There is a deposition fee to the Plaintiff of \$1,500.00 based on a four-hour allotment of my time, plus the same travel fee schedule that is listed above.

Exhibits and demonstrative materials:

1. Personal resume;
2. Listing of the cases in which I have consulted or testified within the last four years; and
3. Action - Response Continuum.


Samuel D. Faulkner
July 27, 2009