

1 **ALAN M. SIMPSON, P.C. (Arizona State Bar #006203)**  
2 **Attorneys at Law**  
3 **7301 East Sundance Trail, Suite B201**  
4 **Carefree, Arizona 85377**  
5 **(480) 488-1119 Fax: (480) 772-4606**  
6 **e-mail: alan@alansimpson.net**

7 **E. Thomas Barham, Jr., (California State Bar #105381)**  
8 **LAW OFFICES OF BARHAM AND OSTROW**  
9 **3349 Cerritos Avenue**  
10 **Los Alamitos, California 90720**  
11 **(562) 598-2456 Fax: (562) 598-7572**  
12 **e-mail: tbarham@socal.rr.com and tombarham@verizon.net**

13 **Attorneys for Plaintiffs.**

14 **UNITED STATES DISTRICT COURT**  
15 **DISTRICT OF ARIZONA**  
16 **PHOENIX DIVISION**

17 **W. ERIC HULSTEDT, Permanent**  
18 **Guardian and Permanent Conservator**  
19 **of DAVID HULSTEDT, an adult,**  
20 **W. ERIC HULSTEDT, as Guardian ad**  
21 **litem for DAWN HULSTEDT, a minor,**  
22 **WALTER HULSTEDT and JANICE**  
23 **HULSTEDT,**  
24 **Plaintiffs,**  
25 **vs.**  
26 **CITY OF SCOTTSDALE, ARIZONA,**  
27 **RICHARD SLAVIN, JAMES DORER,**  
28 **DEVEN FELLOWS, MARCOS**  
**GARCIA, FRANK O'HALLORAN,**  
**HUGH LOCKERBY, MARK CLARK,**  
**DANIEL GREENE, BROOKE**  
**SCRITCHFIELD, MICHAEL HERTKO,**  
**MATTHEW MILLER, SCOTT SMITH,**  
**MARK TOSCHIK, WENDY FIELD,**  
**LARRY MARMIE, JR., EUGENE**  
**McCLANAHAN, BRIAN HARTMAN,**  
**BRIAN RAUCH, CHRISTINA**  
**TROTT and DOES 1-10,**  
**Defendants.**

**CASE NO: 09-1258-PHX-MHM**  
**FIRST AMENDED**  
**COMPLAINT FOR DAMAGES;**  
**42 U.S.C. §1983**  
**AND**  
**SUPPLEMENTAL CLAIMS**  
**BATTERY**  
**NEGLIGENCE**  
**NEGLIGENCE**  
**DEFAMATION**  
**INTENTIONAL INFLICTION OF**  
**EMOTIONAL DISTRESS**  
**NEGLIGENT INFLICTION OF**  
**EMOTIONAL DISTRESS**  
**LOSS OF CONSORTIUM**  
**[DEMAND FOR JURY TRIAL]**

## JURISDICTION AND PARTIES

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1. This is an action for money damages brought by Plaintiffs W. Eric Hulstedt (Eric), Permanent Guardian and Permanent Conservator of David Hulstedt (David), an adult, W. Eric Hulstedt as Guardian ad Litem for Dawn Hulstedt a minor, Walter Hulstedt (Walter) and Janice Hulstedt (Janice) pursuant to 42 U.S.C. §1983 and §1988, the Fourth and Fourteenth Amendments to the United States Constitution and pursuant to the laws of Arizona.
2. Jurisdiction is based upon 28 U.S.C. §1331, §1343 and on the supplemental jurisdiction of this Court to entertain claims arising under state law. 28 U.S.C. §1441(a).
3. The claim on which this action is based arose in Scottsdale, Arizona. Venue lies in this District. 28 U.S.C. §1391(b).
4. Plaintiffs seek recovery of damages from the CITY OF SCOTTSDALE (SCOTTSDALE), RICHARD SLAVIN (SLAVIN), JAMES DORER (DORER), DEVEN FELLOWS (FELLOWS), MARCOS GARCIA (GARCIA), FRANK O'HALLORAN (O'HALLORAN), HUGH LOCKERBY (LOCKERBY), MARK CLARK (CLARK), DANIEL GREENE (GREENE), BROOKE SCRITCHFIELD (SCRITCHFIELD), MICHAEL HERTKO (HERTKO), MATTHEW MILLER (MILLER), SCOTT SMITH (SMITH), MARK TOSCHIK (TOSCHIK), WENDY FIELD (FIELD), LARRY MARMIE, JR., (MARMIE), EUGENE McCLANAHAN (McCLANAHAN), BRIAN HARTMAN (HARTMAN), BRIAN RAUCH (RAUCH) and DOES 1 through 10, police officers of the Scottsdale Police Department and CHRISTINA TROTT (TROTT), a Scottsdale Police Department Dispatcher, in their individual capacities.
5. The true names of Defendant DOES 1 through 10, inclusive, are now unknown to Plaintiffs who therefore sue said Defendants by such fictitious names, but upon ascertaining the true identity of a DOE Defendant, Plaintiffs will substitute same, or seek leave to do so, in lieu of such fictitious name.

- 1 6. At all times mentioned in this First Amended Complaint, Defendants SLAVIN,  
2 DORER, FELLOWS, GARCIA, O'HALLORAN, LOCKERBY, CLARK,  
3 GREENE, SCRITCHFIELD, HERTKO, MILLER, SMITH, TOSCHIK, FIELD,  
4 MARMIE, McCLANAHAN, HARTMAN and RAUCH were duly appointed,  
5 qualified and acting police officers employed by the CITY OF SCOTTSDALE,  
6 a municipal corporation within the State of Arizona and at all times relevant to this  
7 matter each said defendant was acting within the course and scope of such  
8 employment and agency.
- 9 7. At all times mentioned in this First Amended Complaint, TROTT was duly  
10 appointed as a civilian employee of the Scottsdale Police Department (S.P.D.)  
11 acting in her official capacity as an employee of SCOTTSDALE, a municipal  
12 corporation within the State of Arizona and acting within the course and scope of  
13 such employment and agency.
- 14 8. At all times mentioned in this First Amended Complaint, SLAVIN, DORER,  
15 SMITH and O'HALLORAN were supervisory officers; SLAVIN, DORER and  
16 SMITH held the rank of Police Sergeant; O'HALLORAN held the rank of Police  
17 Lieutenant.
- 18 9. At all times mentioned in this First Amended Complaint, Defendants were acting  
19 under color of law, that is, under the color of the Constitution, statutes, laws,  
20 charter, ordinances, rules, regulations, customs and usages of the State of Arizona  
21 and the CITY OF SCOTTSDALE.
- 22 10. Plaintiff Walter Hulstedt is an individual over the age of 18. At all times herein  
23 mentioned, Walter was a resident in Maricopa County, Arizona, and father of  
24 David Hulstedt.
- 25 11. Plaintiff Janice Hulstedt is an individual over the age of 18. At all times herein  
26 mentioned, Janice was a resident in Maricopa County, Arizona, and mother of  
27 David Hulstedt.
- 28 12. Plaintiff W. Eric Hulstedt is an individual over the age of 18 and at all times

1 herein mentioned was a resident in Maricopa County, Arizona. On or about  
2 February 2, 2009 W. Eric Hulstedt, older brother of David Hulstedt, was  
3 appointed by the Superior Court of the State of Arizona in and for the County of  
4 Maricopa, to act as Permanent Guardian and Permanent Conservator of David  
5 Hulstedt, an adult with additional powers pursuant to A.R.S. §14-5312.01(B).

6 13. Dawn Hulstedt is a minor, whose date of birth is December 19, 2006. Dawn is  
7 appearing in this case by and through W. Eric Hulstedt who was duly appointed  
8 by the Superior Court of Maricopa County on April 28, 2009 to act as Dawn's  
9 Guardian for purposes of litigating her legal claims.

10 14. Dawn is the daughter of David and Rachael Hulstedt.

11 15. Walter and Janice are married to one another. Eric and David are adult children  
12 of Walter and Janice.

13 **FACTS RELEVANT TO ALL CLAIMS**

14 16. The events upon which this First Amended Complaint is based occurred within the  
15 Judicial District of Arizona beginning on or about November 7, 2008 at 6865 E.  
16 Morning Vista Lane, Scottsdale, Arizona 85266-6588 (Morning Vista home). The  
17 Morning Vista home is owned by Walter and Janice.

18 17. At all times relevant to this action, David was under the care of Adam Koelsch,  
19 M.D., a Board Certified Psychiatrist. Dr. Koelsch had not yet reached a diagnosis  
20 of David's condition; however, he had prescribed Klonopin, 0.5g., which David  
21 had been taking. Klonopin is used to treat panic disorders.

22 18. On November 7, 2008, David met with Dr. Koelsch at his office located in  
23 Scottsdale, Arizona. Janice drove David from the Morning Vista home to Dr.  
24 Koelsch's office, accompanied by Walter and Dawn. David complained of  
25 prolonged sleep deprivation and fear that he was being surveilled by government  
26 helicopters. David told Dr. Koelsch that he needed something for sleep and  
27 paranoia. Dr. Koelsch's notes from that visit state, in part, that "parents report of  
28 paranoid schizophrenia suggest that Risperdal may help." Dr. Koelsch prescribed

1 Rispedal.

2 **COMMUNICATIONS WITH DEFENDANT TROTT**

3 19. At approximately 12:20 p.m. Janice, Walter, David and Dawn returned to the  
4 Morning Vista home from the session with Dr. Koelsch.

5 20. At approximately 12:23 p.m. David contacted TROTT, a 9-1-1 operator at the  
6 S.P.D. David demanded that Arizona Governor Janet Napolitano come to the  
7 Morning Vista home. David informed TROTT there was a crisis at the scene.  
8 David did not elaborate on the nature of the crisis.

9 21. David's statements to TROTT were consistent with his paranoid delusions such  
10 that any reasonably well trained law enforcement communications employee  
11 would have realized that David was mentally ill.

12 22. David did not threaten harm to others or to himself.

13 23. After David hung up, TROTT called the Morning Vista home again and spoke  
14 with Janice. Janice did not know about David's prior call to the S.P.D. In  
15 response to TROTT'S questions, Janice explained that the baby [Dawn] was  
16 crying because her diaper needed to be changed. Janice also told TROTT that  
17 David and Walter were arguing.

18 24. At approximately 12:22 p.m. police officers were dispatched to the Morning Vista  
19 home for an "Unknown Problem." The computer assisted dispatch system (CAD)  
20 printout shows that the officers were provided with the information as follows:

21 Requests Governor to come to his house; baby crying. Male  
22 saying there is a crisis; baby crying next to phone; male would  
23 not answer questions; said there is a crisis at his house and to  
24 get her there right now; would not say if child was hurt;  
25 sounded like very small infant. Attempt to call back. No  
26 history there.

27 25. TROTT authored a CAD entry at 12:25:24 which reads, "female [will] not answer  
28 [questions]." Three minutes later, TROTT authored a CAD entry which reads;

1           “Female seems unable to answer questions.”

2 26. TROTT’S CAD entry was without factual merit because Janice assured TROTT  
3 that she was free to answer her questions and that her husband and son were  
4 shouting at one another as part of a family argument.

5 27. TROTT made additional entries in the CAD reading:

- 6 a.     “Female not answering”;
- 7 b.     “Female seems unable to answer questions”; and
- 8 c.     “Female seemed like she could not speak freely.”

9 28. TROTT’S CAD entries were false because Janet told TROTT that she was free to  
10 talk with her and answered each question TROTT posed.

11 29. TROTT was told by Janice that the “. . . child is not being hurt” and that “she (the  
12 child) is okay.”

13 30. TROTT commented to David that “I (TROTT) don’t want the baby to be hurt . .  
14 .” to which David responded that “. . . I don’t want the baby to be hurt either”.  
15 David continued to remark “But I just need the State Attorney General to come,  
16 in person, to my house.”

17 31. Janice did not tell TROTT that David had or was threatening to harm Dawn.

18 32. Walter did not tell TROTT that David had or was threatening to harm Dawn.

19 33. David did not threaten to harm Dawn when he spoke to TROTT.

20 34. TROTT authored a CAD entry reading:

21           “Son on the line refusing to give back the baby. . . . he will  
22           not give the baby up until Janet the governor gets here.”

23 35. TROTT asked Walter if: “He (David) was keeping you guys against your will?”  
24 Walter responded: “No, he’s not.”

25 36. No police response was warranted because David did not threaten anyone; Janice  
26 assured TROTT that her granddaughter (Dawn) was crying as infants do when  
27 their diaper needs to be changed and Janice did not ask for police help to resolve  
28 the argument between David and Walter.

1 37. TROTT'S CAD entries, cited above, conveyed a sinister connotation to an  
2 otherwise benign event. As a result officers did not attempt to either enter the  
3 Morning Vista home or to personally meet with David.

4 38. At 12:32:33 p.m., TROTT ordered Janice and Walter to leave their home and meet  
5 with uniformed officers who had been dispatched to the scene.

6 39. Janice and Walter obeyed TROTT'S order to leave their home, trusting that  
7 TROTT, as a S.P.D. official, was skilled in handling situations involving mentally  
8 ill persons.

9 40. David and Dawn were left alone inside the Morning Vista home.

10 **BARRICADE IN NAME ONLY**

11 41. Shortly after Janice and Walter met with officers outside their house, they were  
12 ordered to accompany officers to a location a considerable distance away from and  
13 out of sight of their Morning Vista home.

14 42. At 12:34 p.m. HERTKO declared "a barricade situation," involving a "918." In  
15 police jargon, "918" means a mentally ill person.

16 43. There were no barricades which in any way interfered with police access to the  
17 Morning Vista home.

18 44. The door leading into the Morning Vista home from the attached garage was  
19 unlocked.

20 45. None of the officers attempted to make or made entry into the home until after  
21 David was shot.

22 46. S.P.D. officers repeatedly denied Walter's requests to return to his Morning Vista  
23 home. Those requests began shortly after Walter and Janice met with responding  
24 officers and continued until moments before SLAVIN and DORER shot David.

25 47. Walter told officers that he needed to return to his Morning Vista home to obtain  
26 medication and meet with David.

27 48. O'HALLORAN, a supervisory officer, denied Walter's repeated requests to return  
28 to his Morning Vista home.

**OFFICERS' KNOWLEDGE OF DAVID'S MENTAL ILLNESS**

1  
2 49. At approximately 12:27 p.m. a radio broadcast informed officers that David was  
3 reportedly having a nervous breakdown.

4 50. S.P.D. officers learned prior to shooting David that he was under psychiatric  
5 treatment by Dr. Koelsch for paranoid delusions.

6 51. Prior to the shooting, S.P.D. officers learned that David believed that police were  
7 conspiring to kill him and knew that David was not armed with any firearms or  
8 other weapons.

9 52. At approximately 1:45 p.m., Sergeant Jason Stumpf spoke with Dr. Koelsch by  
10 telephone.

11 53. Sergeant Stumpf told Dr. Koelsch during the November 7, 2008 telephone  
12 conversation that David had barricaded himself in the house and was threatening  
13 to hurt his (David's) daughter.

14 54. Dr. Koelsch offered to call David and attempt to talk him down.

15 55. Sergeant Stumpf told Dr. Koelsch that he (Sergeant Stumpf) would call back if he  
16 thought it (a call to David by Dr. Koelsch) was appropriate.

17 56. No call was made back to Dr. Koelsch by any S.P.D. officer following the  
18 telephone conversation between Sergeant Stumpf and Dr. Koelsch.

19 57. Based on information and belief, Plaintiffs allege that O'HALLORAN, the  
20 operations commander, refused to allow Dr. Koelsch to intercede through a  
21 telephone communication between David and Dr. Koelsch.

22 **DEFENDANT DORER'S TACTICAL PLAN**

23 58. At approximately 12:50 p.m. DORER, a supervisory officer, radio communicated  
24 his tactical plan. That plan called for officers to enter the Morning Vista home  
25 through the attached garage door if there was any indication that Dawn was being  
26 harmed. Thereafter, officers staged around the perimeter of the house; they  
27 repeatedly reported that they heard the child crying but that she was not hysterical.  
28 There was never any suggestion that Dawn was being harmed while inside the

1 house.

2 59. The last S.P.D. radio transmission that reported that Dawn crying was made at  
3 approximately 1:22 p.m.

4 **OFFICERS INTERFERED WITH THE FAMILY'S ATTORNEY'S**  
5 **EFFORTS TO REASON WITH DAVID**

6 60. Walter telephoned David Rubin (Rubin), an attorney who had previously  
7 represented family members including David. Walter did so because he believed  
8 that Rubin might be able to reason with David and resolve the standoff.

9 61. David knew and trusted Rubin, who had represented Walter and other family  
10 members for many years.

11 62. Rubin spoke with David in an effort to calm him and bring the incident to an  
12 immediate conclusion.

13 63. A S.P.D. officer rudely interrupted Rubin's conversation with David. Rubin told  
14 the officer that he thought that he could resolve the situation by coming to the  
15 scene and speaking with David. The officer ordered Rubin to stop interfering with  
16 the police operation. Rubin obeyed the officer's order because he feared that he  
17 might face criminal charges if he continued speaking with David.

18 **OFFICERS KNEW THAT DAVID WAS UNARMED,**  
19 **HAD NO CRIMINAL HISTORY OR HISTORY OF VIOLENCE**

20 64. Officers did not see or report seeing David in possession of any form of a weapon  
21 at any time during the 100 minutes they were at the scene prior to DORER and  
22 SLAVIN shooting David.

23 65. S.P.D. officers learned, prior to the shooting, that David did not have any arrest  
24 history.

25 66. S.P.D. officers learned, prior to the shooting, that David did not have any history  
26 of violence toward his parents, Dawn or his wife.

27 67. David did not threaten to harm any S.P.D. officer at any time.

28 68. S.P.D. officers learned, prior to the shooting, that there was no ammunition for the

1 unloaded firearms hidden inside the Morning Vista home.

2 69. S.P.D. Officers learned, prior to the shooting, that David was unaware of the  
3 presence or location of the unloaded firearms hidden inside the Morning Vista  
4 home.

5 **OFFICERS INTERFERED WITH THE FAMILY'S**  
6 **EFFORTS TO RESOLVE THE STANDOFF**

7 70. Eric met with his parents (Walter and Janice) several blocks from the Morning  
8 Vista home where the officers had confined them. Eric arrived in response to  
9 David's repeated phone calls. David pleaded for Eric's help.

10 71. Before David was shot by SLAVIN and DORER, Eric repeatedly asked S.P.D.  
11 officers for permission to go to David.

12 72. O'HALLORAN, a supervisory officer, refused to allow Eric to meet with David.

13 73. Before David was shot by SLAVIN and DORER, Walter repeatedly asked S.P.D.  
14 officers for permission to go to David.

15 74. O'HALLORAN refused to allow Walter to meet with David.

16 75. Michael Burnidge, David's minister at the Northridge Community Church, came  
17 to the scene after receiving a call from the family. Reverend Burnidge was  
18 available to speak with David in an effort to resolve the standoff.

19 76. At approximately 1:40 p.m. O'HALLORAN learned that David was talking by  
20 cellular telephone to Eric. O'HALLORAN ordered subordinates to stop family  
21 members from communicating with David despite knowledge that David had  
22 agreed to give Dawn to Eric. O'HALLORAN told subordinates that he wanted  
23 to isolate David from all sources except the S.P.D.

24 77. David's paranoia increased after he was isolated from his parents, his brother,  
25 Reverend Burnidge and from attorney Rubin and by the presence of increasing  
26 numbers of uniformed officers, some clad in ballistic helmets, face shields,  
27 external armor, semi-automatic rifles and other regalia indicating readiness for  
28 armed assault.

**DAVID'S FRUSTRATED CONDITIONAL THREAT TO HARM DAWN**

1  
2 78. At 1:41:38 p.m. O'HALLORAN broadcasted a radio message stating:  
3 Inner perimeter. He has leveled a threat. He said that if his brother [Eric]  
4 doesn't come in, then he is going to pile drive his daughter into the ground.  
5 Negotiations are on line.

6 79. The 1:41:38 broadcast was the one and only radio transmission from any officer  
7 reporting that David had threatened Dawn's physical welfare. Officers had been  
8 at the scene since 12:32 p.m.

9 80. S.P.D. officers continued to prohibit Eric from going to the house to meet with  
10 David despite David's pleas for Eric and despite David's offer to hand Dawn over  
11 to Eric.

12 81. David never threatened to harm Eric or Walter.

13 82. At approximately 1:51 p.m. SLAVIN, a supervisory officer and member of the  
14 S.P.D. Special Weapons and Tactic (SWAT) unit, arrived at the scene; however,  
15 the SWAT unit had not been activated for the standoff.

16 **NEGOTIATORS' EFFORTS TO RESOLVE THE STANDOFF AND**  
17 **TACTICAL PLAN DEVELOPED BY INNER PERIMETER OFFICERS**

18 83. David spoke with S.P.D. negotiator William Antrim (Antrim) approximately nine  
19 times between 1:19 p.m. and 1:58 p.m. Antrim repeatedly assured David that they  
20 would not shoot him if he would just come outside with Dawn.

21 84. At approximately 2:00 p.m. MARMIE radioed that David agreed to come outside  
22 but that David was fearful of the officers he saw standing by a living room  
23 window at the front of the Morning Vista home.

24 85. SMITH, GREENE, GARCIA and FELLOWS were positioned approximately  
25 fifteen (15) feet east of the front door of the Morning Vista home.

26 86. MARMIE radioed to DORER that David wanted to go to the street.

27 87. MARMIE asked for some leeway in negotiating this issue.

28 88. DORER replied via radio that he would not permit David to get to the street

1 because the police K-9 he had requested was not yet on scene. DORER said that  
2 David might escape on foot.

3 89. In a plan developed by GARCIA, GREENE and FELLOWS, GARCIA had been  
4 designated as the sole officer to give David verbal commands. GARCIA'S role  
5 is known as "the contact officer."

6 90. GREENE was to provide "lethal cover" if deadly force was required.

7 91. FELLOWS was designated as the "hands on," "less than lethal force" officer,  
8 meaning that his job was to physically control David by using police approved  
9 techniques or utilize a TASER to temporarily disable David.

10 92. FELLOWS and GARCIA were also armed with TASERS.

11 93. A TASER is a less-than-lethal weapon capable of immediately immobilizing a  
12 person from a distance of as much as 35 feet.

13 94. SMITH required that his subordinates follow law enforcement training, such that  
14 only one officer acts as the "contact officer" when speaking to a mentally ill  
15 person.

16 95. SMITH and other officers at the scene knew at approximately 12:34:15 p.m.  
17 HERTKO radioed that David was a "918," which is police jargon for a mentally  
18 ill person. Arizona Peace Officers' Standards and Training (P.O.S.T.) Training  
19 Title 3.4 entitled *Mental Illness* instructs officers that when interacting with  
20 mentally disturbed or irrational persons:

- 21 a. Command and control techniques in criminal contacts can be counter  
22 productive when dealing with a subject who is mentally ill.
- 23 b. Do not threaten the individual.
- 24 c. **Avoid exciting** the individual and maintain control of your emotions. **Do**  
25 **not yell, it only confuses them.** (emphasis added)

26 96. David told GARCIA and the other officers that he wanted a clear passage to the  
27 street so that he could meet with his father.

28 97. DORER heard David's request, but refused to allow David to walk to the street.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**DEFENDANT SLAVIN’S ARRIVAL AND DEPLOYMENT  
AT THE SCENE**

98. At approximately 1:51 p.m. SLAVIN, a supervisory officer and member of the S.P.D. Special Weapons and Tactic (SWAT) unit, arrived at the scene; however, the SWAT unit had not been activated for the standoff.
99. SLAVIN parked his car and changed into his SWAT uniform.
100. SLAVIN was obtaining a diagram of the Morning Vista home when he heard radio communications stating that David was about to come outside.
101. SLAVIN decided to go towards the Morning Vista home. SLAVIN ran southbound on North 69<sup>th</sup> Street towards Morning Vista Lane.

**DAVID CAME OUTSIDE AFTER BEING GUARANTEED  
THAT HE WOULD NOT BE SHOT**

102. Negotiator Daniel Antrim (Antrim) told David that he had not done anything wrong and that they were there to help him.<sup>1</sup>
103. David told Antrim that he believed officers intended to kill him. Antrim assured David that they were not there to hurt anyone.
104. Antrim *guaranteed* David that they would not shoot him.
105. Either Antrim or William Hathaway (Hathaway) assured David that the S.P.D. would not shoot him because they are *professionals*.
106. Antrim or Hathaway assured David that shooting him was not part of their scenario.
107. David appeared alone in the open doorway for a brief period of time and asked officers to back away from the house. Dawn was not with him; no one attempted to seize him.
108. At approximately 2:02:33 p.m. David was outside the front door of the Morning

---

<sup>1</sup>No officer ever told David that he was under arrest.

1 Vista home; he was unarmed. He was wearing dark blue shorts and a light blue  
2 short sleeve shirt over a white t-shirt.

3 109. Dawn, who was napping, lay over David's right shoulder. The left side of Dawn's  
4 head was resting on the right side of David's face and neck; her feet were dangling  
5 below David's right shoulder. Dawn's hair covered both of her ears.

6 110. One or more of the officers yelled at David to raise his hands. David complied by  
7 picking Dawn up with both hands and raised her above his head.

8 111. Shortly after David came outside, SMITH took over from GARCIA as the  
9 "contact officer."

10 112. David stood facing SMITH and a group of three or more officers positioned on the  
11 walkway near the front door of the Morning Vista home.

12 113. David said that he wanted to go to the street. David walked approximately twelve  
13 (12) feet toward the street to the north. SMITH continued speaking to David.

14 114. David began to walk towards Morning Vista across the desert rock landscaping  
15 of the Morning Vista home.

16 115. David said that he wanted to go to the street to meet with his father and walked  
17 northward toward the street, knowing that Janice, Walter and Eric were up the  
18 street from the Morning Vista home. At least twelve S.P.D. cars were parked in  
19 clear view up the street.

20 **DORER BLOCKED DAVID'S PATH**

21 **DAVID TURNED BACK TOWARD THE HOUSE**

22 116. DORER took up a position on Morning Vista which blocked David's access to the  
23 street.

24 117. David turned around and took approximately three steps in the direction of the  
25 house.

26 **SLAVIN AND OTHERS BEGAN SHOUTING COMMANDS**

27 **AT DAVID**

28 118. SLAVIN saw David and began shouting, "Put that child down! You put her

1 down!” By shouting orders at David, SLAVIN violated P.O.S.T. *Mental Illness*  
2 training, 3.4, quoted in paragraph 95 above.

3 119. A number of contradictory commands were yelled at David. The commands  
4 included:

5 “Put your hands up!”

6 “Put the child down!”

7 “Put your hands in the air!”

8 “Put the baby down!”

9 **A LESS THAN LETHAL FORCE OPTION**

10 **WAS READILY AVAILABLE**

11 120. FELLOWS, who had his TASER drawn and prepared for use, was less than 25  
12 feet from David. GARCIA was also equipped with a TASER.

13 121. SMITH and his team were close enough to have “swarmed” David to prevent him  
14 from reentering the house.

15 **USE OF LETHAL FORCE**

16 122. David was shot in the back.

17 123. David was not armed.

18 124. None of the officers located within the inner perimeter at the Morning Vista home  
19 ever heard David threaten to hurt Dawn.

20 125. Between the time David came outside and the time he was shot, David did not  
21 make a single movement indicating that he was about to throw Dawn.

22 126. David was outside with Dawn for about 12 seconds before he was shot.

23 127. SMITH did not point his weapon at David at any time while David was outside  
24 holding Dawn.

25 128. SMITH was standing closer to David than either DORER or SLAVIN when  
26 DORER and SLAVIN shot David.

27 129. No verbal warning was given that lethal force was about to be used.

28 130. Two or three rifle bullet projectiles struck David. DORER and SLAVIN shot

1 David in the back using high velocity .223 caliber hollow point projectiles.

2 131. The wounds were as follows:

3 #1 Graze wound to the right upper back.

4 #2 Penetrating wound to the left flank of the torso (kidney area).

5 #3 Possible penetrating wound to the left upper buttock near the rectum.

6 132. David was instantly paralyzed from above his waist to his toes.

7 **DAWN HULSTEDT'S INJURIES**

8 133. David lurched forward after the first bullet tore into his body.

9 134. David lost hold of Dawn as he fell forward.

10 135. Dawn fell as though somersaulting to the ground.

11 136. Dawn was in a near vertical free fall for at least 5 feet.

12 137. Dawn's head struck the concrete walkway leading to the front door of the Morning  
13 Vista home.

14 138. Dawn was treated by paramedics and air evacuated to Phoenix Childrens' Hospital  
15 (PCH) where she was diagnosed with a "temporal skull fracture on the right" side,  
16 with "the fracture line extended to the medial aspect of the temporomandibular  
17 joint cavity with the widening of the suture entering into the right eustachian  
18 tube."

19 **DORER'S ALLEGED JUSTIFICATION FOR LETHAL FORCE**

20 139. After the shooting, DORER was interviewed by S.P.D. Detective Salazar.  
21 DORER told Detective Salazar that he fired his two rounds at David because he  
22 (DORER) was going to stop David from returning to the Morning Vista home.

23 140. DORER never told Salazar that he saw David make any motion which would  
24 indicate that David was about to throw Dawn to the ground before he shot David.

25 141. DORER told Salazar that he intentionally aimed low hoping to shoot David in the  
26 area of his kidneys.

27 **OBJECTIVE FACTS REGARDING DORER**

28 142. DORER heard David say that he believed that officers were going to kill him.

1 143. DORER never heard David threaten to harm Dawn.

2 144. DORER never heard Dawn scream as though she was in pain.

3 145. DORER did not warn David that he was about to shoot.

4 146. None of the Scottsdale officers surrounding the Morning Vista home reported that  
5 they heard Dawn crying in a manner which would indicate that she was being  
6 harmed.

7 147. DORER did not see any signs of trauma on Dawn prior to his use of lethal force  
8 against David.

9 148. DORER shot David from a distance of approximately 45 feet.

10 **AMATEUR VIDEOTAPE OF THE SHOOTING**

11 149. Michael Pospisil, a teenage neighbor residing at 6835 E. Morning Vista, began  
12 videotaping the scene at the Morning Vista home as David stood on the concrete  
13 walkway directly in line with the front door of the Morning Vista home facing a  
14 group of approximately four officers positioned on the concrete walkway.  
15 Pospisil's videotape shows that David faced those officers for nearly six (6)  
16 seconds.

17 150. Pospisil's amateur videotape of the shooting shows that David then turned to his  
18 left and lifted Dawn above his head as he walked toward Morning Vista Lane.  
19 David held Dawn in the same manner from point 5.80 seconds until 12.13 seconds  
20 of that video.

21 151. DORER fired his first bullet at 12.13 seconds into Pospisil's amateur videotape.

22 152. Dawn fell free from David's hands at 12.67 seconds into Pospisil's amateur  
23 videotape. Dawn was falling from a point just below David's shoulders as he  
24 lurched forward toward the ground.

25 153. DORER fired a second shot at 12.90 seconds into Pospisil's amateur videotape.  
26 At that point, the video shows only blue sky and some green shrubbery – rather  
27 than David, Dawn or any other relevant aspects of the scene.

28

**SLAVIN'S ALLEGED JUSTIFICATION FOR LETHAL FORCE**

154. When interviewed after the shooting, SLAVIN told S.P.D. Detective Salazar that he (SLAVIN) fired his first round when David was facing him.

155. SLAVIN reportedly told Detective Salazar that he fired his first round because he perceived that David began to pivot slightly to his right towards the east; at that point, David appeared to be rearing back as if David were going to throw Dawn like a beach ball.

156. SLAVIN told S.P.D. Detective Salazar that he fired a second round because he did not see an immediate response (stimulus) to the first round he fired at David.

157. SLAVIN told S.P.D. Detective Salazar that David fell to the ground in response to the shooting.

**OBJECTIVE FACTS REGARDING SLAVIN**

158. SLAVIN worked a seventeen (17) hour shift on November 6-7, 2008.

159. SLAVIN took Tylenol PM at approximately 2:45 a.m. on November 7, 2008.

160. SLAVIN slept for less than six hours after ending his seventeen (17) hour shift.

161. SLAVIN never heard David threaten Dawn.

162. SLAVIN ran from the command post to the position where he shot David; the distance was about 200 yards.

163. SLAVIN fired his rifle from a position near the northeast corner of 69<sup>th</sup> Street and Morning Vista Lane.

164. Approximately 85 feet separated SLAVIN from David when SLAVIN fired his rifle

165. SLAVIN did not have the assistance of a SWAT Spotter.

166. SLAVIN did not receive authorization to shoot David.

167. SLAVIN had not been briefed by negotiators Antrim and/or Hathaway about their promise to David such that David agreed to come outside.

168. SLAVIN claims that he saw SMITH and HEAT (High Enforcement Arrest Team) Officers McCLANAHAN, HARTMAN, TOSCHIK and about 3-4 other patrol

1 officers standing near David before he (SLAVIN) shot David.

2 169. SLAVIN did not know anything about the plan of action which was worked out  
3 by SMITH and his subordinates.

4 170. SLAVIN did not use his radio to communicate with any of the officers comprising  
5 the inner perimeter to find out about their tactical plan.

6 171. SLAVIN did not know anything about the plan of action worked out by  
7 FELLOWS, GARCIA and GREENE.

8 172. SLAVIN shot David in the back, but mistakenly believed that he (SLAVIN) shot  
9 David *center of mass* in the front of his body.

10 **AMATEUR VIDEOTAPE—FURTHER OBJECTIVE FACTS**

11 173. At 13.53 seconds into Pospisil's amateur videotape, SLAVIN fired his first bullet  
12 at David.

13 174. At 13.97 seconds into Pospisil's amateur videotape, SLAVIN fired his second  
14 bullet at David.

15 175. One of SLAVIN'S bullets entirely missed David.

16 176. SLAVIN fired both rounds after 12.67 seconds into Pospisil's amateur videotape,  
17 the time at which David released Dawn as he was falling to the ground as a result  
18 of DORER'S first bullet penetrating his body; therefore, both of SLAVIN's shots  
19 were fired after David was already falling.

20 **POST-SHOOTING USE OF FORCE**

21 177. SMITH, GARCIA, GREENE, FELLOWS, DORER and SLAVIN surged around  
22 David and Dawn.

23 178. David was laying in a supine position.

24 179. David's hands were in plain sight, resting on his abdomen.

25 180. David was bleeding from his wounds. David asked SMITH if Dawn was alright.

26 181. Police officers are trained to administer first aid to people with gunshot wounds.

27 182. First aid for wounds such as those suffered by David calls for stopping the  
28 bleeding, treating for shock and immobilizing the person's body.

- 1 183. None of the S.P.D. officers provided any first aid to David.
- 2 184. DORER ordered GARCIA and FELLOWS to handcuff David's hands behind his  
3 back, despite the fact that David was semi-conscious and not moving.
- 4 185. GARCIA and FELLOWS, in the presence of SLAVIN and DORER, retrieved  
5 plastic gloves and pulled them on before they touched David.
- 6 186. GARCIA and FELLOWS, in the presence of supervisory officers SLAVIN and  
7 DORER rolled David over and handcuffed him.
- 8 187. SLAVIN ordered GARCIA and FELLOWS to drag David from the scene.
- 9 188. Scottsdale Fire Paramedics and Fire Department personnel were rushing to the  
10 scene from the Command Post staging area after hearing gunshots and learning  
11 that there were injured people at the scene of the shooting.
- 12 189. GARCIA and FELLOWS, in the presence of SLAVIN and DORER, gripped  
13 David's arms above his elbows and lifted him upward until his torso was vertical.
- 14 190. David's unprotected knees were in constant contact with the ground as GARCIA  
15 and FELLOWS forcefully pulled David across sharp edged pebbles, comprising  
16 the desert landscaping in the front yard of the Morning Vista home, across river  
17 rocks and across the width of East Morning Vista Lane, then north on 69<sup>th</sup> Street  
18 until DORER radioed to deposit David "right there."
- 19 191. S.P.D. Detective Jennifer Paxton interviewed Firefighter Tammy Rosenhagen after  
20 the shooting. Rosenhagen said that she and Firefighter Donaldson met officers  
21 dragging David on the street at a point just south of the residence located at 29680  
22 North 69<sup>th</sup> Street. [S.P.D. Report, page 46]
- 23 192. The distance between the Morning Vista home and 29680 North 69<sup>th</sup> Street, where  
24 GARCIA and FELLOWS dropped David, is approximately 380 feet.
- 25 193. The skin was denuded from David's knees as a result of being dragged across  
26 crushed rocks, river rocks and asphalt by GARCIA and FELLOWS. GARCIA and  
27 FELLOWS were following orders they received from SLAVIN.
- 28

**WARRANTLESS ENTRY INTO HOME–PRIOR TO SHOOTING**

194. DORER directed MILLER, FIELD and HERTKO to enter the attached open three-car garage of the Morning Vista home and take up positions more than twenty feet inside. DORER made that order after hearing HERTKO’S radio transmission at 12:37 p.m.: “Has made no threats towards us or the child.” At approximately 12:55 p.m. DORER directed RAUCH to enter the garage to assist MILLER, FIELD and HERTKO.

195. DORER, MILLER, FIELD, HERTKO and RAUCH did not have a warrant to enter the Morning Vista home. They did not have probable cause to believe that David had committed a crime. They did not have exigent circumstances at the time they entered the garage at the Morning Vista home.

**WARRANTLESS ENTRY INTO HOME -PRIOR TO SHOOTING BY HEAT<sup>2</sup>**

196. Prior to the shooting, TOSCHIK, McCLANAHAN and HARTMAN entered the open garage and took up positions more than twenty feet inside.

197. TOSCHIK, McCLANAHAN and HARTMAN did not have a warrant to enter the Morning Vista home. They did not have probable cause to believe that David had committed a crime. They did not have exigent circumstances at the time they entered the garage at the Morning Vista home.

**WARRANTLESS ENTRY INTO HOME AFTER THE SHOOTING**

198. After David was shot, DORER, in his supervisory role, ordered SLAVIN to form a search team to clear the house.

199. DORER issued his order despite the fact that the totality of information known to the officers at the scene was that David and Dawn had been alone inside the house.

200. SLAVIN and SMITH, acting on DORER’S orders, entered and allegedly searched the Morning Vista home along with HERTKO, TOSCHIK, McCLANAHAN,

---

<sup>2</sup>HEAT stands for High Enforcement Arrest Team.

1 HARTMAN, MILLER and FIELD.

2 201. SMITH and MARMIE later entered the Morning Vista home and searched for  
3 prescription medications.

4 202. When SMITH, MARMIE, HERTKO, TOSCHIK, McCLANAHAN, HARTMAN,  
5 MILLER and FIELD entered the Morning Vista home they did not have  
6 permission, a search warrant or exigent circumstances authorizing entry into or  
7 search of the home.

8 203. When DORER ordered subordinate officers to enter the Morning Vista home he  
9 did not have permission, a search warrant or exigent circumstances authorizing  
10 entry into or search of the home.

11 204. After the house was "cleared" FELLOWS and some of the above named  
12 Defendants and/or DOE Defendants 4-7 remained inside the garage and inside the  
13 threshold of the home without permission, a search warrant or exigent  
14 circumstances.

15 **DAVID'S PHYSICAL INJURIES**

16 205. David was eventually treated by paramedics and air evacuated to Scottsdale  
17 Osborne Medical Center where he underwent extensive surgery which included  
18 removal of his right kidney, right adrenal gland and spleen.

19 206. As a proximate result of the ballistic wounds David was diagnosed as a "T-10  
20 paraplegic." He is sexually impotent and will require the use of both urinary and  
21 bowel colostomies for the rest of his life.

22 207. Extensive suturing was required to close the gaping wounds on David's knees.

23 208. David sustained an injury to the right side of his forehead from falling to the  
24 ground. It is presently unknown whether that injury caused a brain injury  
25 commonly referred to as closed head traumatic brain injury.

26 **AFFIDAVIT IN SUPPORT OF SEARCH WARRANT**

27 **AND SEARCH PURSUANT THERETO**

28 209. LOCKERBY prepared an affidavit in support of a search warrant for 6865 E.

1 Morning Vista Lane, Scottsdale, Arizona, which misrepresented material facts and  
2 omitted material facts. Among the most egregious misrepresentations are the  
3 following:

4 As David exited the residence, Sgt. Slavin #742 and Sgt.  
5 Dorer #504 were position in separate areas on Morning Vista  
6 Drive and observed David **holding Dawn upside down and**  
7 **above his head. It was also observed Officers that there**  
8 **was blood coming out of Dawn's ear. It was believed that**  
9 **the David may have had already hurt Dawn (Due to the**  
10 **prior statements) and was going to drop her on her head**  
11 **and onto the cement sidewalk.** [page 9, 1st paragraph][no  
12 effort made to correct grammatical errors in original] . . . Your  
13 Affiant believes that David may have assaulted 3 year old  
14 Dawn by **dropping her on her head while holding her**  
15 **upside down** causing her to have the skull fracture and  
16 bleeding from the ear. . .

17 210. Pospisil's amateur videotape of the events preceding the shooting clearly exposes  
18 the lie LOCKERBY told. Dawn was never held upside down.

19 211. Although not seen on the videotape, Dawn was not bleeding from either ear at any  
20 time before David dropped her after he was shot and was himself falling helplessly  
21 to the ground.

22 212. As a proximate result of LOCKERBY'S fabrications, a search warrant was issued.  
23 But for LOCKERBY'S fabrications, officers would not have been allowed to  
24 search Walter's and Janice's home or seize items of personal property from it.

#### 25 **DEFAMATORY STATEMENTS MARK CLARK**

26 213. CLARK issued a press release on the day of the shooting. The release of  
27 November 7, 2008 stated:

28 a. Police 911 received a call from this residence from the suspects father who

1 reported that they “had a crisis” and needed police.

2 b. Officers arrived on the scene with little more information. They found the  
3 suspect's mother and father in front of the house. They reported that their  
4 son was inside the house with his 3 yr old daughter and they feared that he  
5 may hurt the child. They reported that their son was behaving irrationally  
6 and had recent mental health issues. He refused to give them the baby. They  
7 indicated that earlier in the day he had threatened to drop the child from a  
8 window.

9 c. During negotiations, the suspect threatened to hurt the child, saying he  
10 would “pile-drive” her on the ground if his demands were not met.

11 d. After approximately 90 minutes of negotiations, the suspect agreed to come  
12 out. He walked out the front door with the child and refused officers  
13 commands to give up the child. He then raised the child over his head,  
14 leading officers to believe that he would carry out his threat to harm the  
15 child. Officers fired their weapons at the suspect and struck him at least 2  
16 times in the lower torso. The suspect let his arms down and released the  
17 child when she was about 1-2 feet from the ground. The child did not  
18 appear to be injured from the fall. He collapsed and the child was recovered  
19 by officers. She was taken to paramedics for immediate care. She appeared  
20 to have no physical injury, but was lethargic from an unknown cause. She  
21 was transported via air to Phx Children's Hospital where a head injury was  
22 discovered. (Detectives later found blood inside the residence which  
23 indicated that the child was injured while her father had her inside the  
24 house.)

25 **TRUE FACTS**

26 214. TROTT spoke with Janice, Walter and David. None of them sought police  
27 assistance at the scene.

28 215. Neither Janice nor Walter told any S.P.D. officer that they feared David would

1 hurt Dawn.

2 216. Neither Janice nor Walter told any S.P.D. officer that David had refused to give  
3 either of them the baby (Dawn).

4 217. In the management of the situation O'HALLORAN ordered David isolated from  
5 his family.

6 218. After the act of isolation, David allegedly threatened to pile drive Dawn unless  
7 Eric was permitted to come to the Morning Vista home.

8 219. David's only demand was that his family have contact with him.

9 220. David reportedly told Officer Antrim that he would hand over Dawn to his brother  
10 Eric.

11 221. Dawn fell from a height of above five (5) feet onto the concrete walkway. She  
12 sustained a skull fracture when her head hit the concrete walkway.

13 222. S.P.D. officers told responding medical personnel that Dawn had fallen from a  
14 distance of six (6) to eight (8) feet after her father was shot.

15 223. Officers did not find any blood inside the Morning Vista home.

16 224. CLARK knew or should have known the true facts, as set forth above in  
17 paragraphs 214-223 when he issued the November 7, 2009 Press Release.

18 225. On November 9, 2008 CLARK issued an updated Press Release which stated in  
19 part:

20 a. Her (Dawn's) head injury was not from the fall when police shot the  
21 suspect.

22 b. Officer at the scene reported that when Mr. Hulstedt emerged from the  
23 house (prior to the shooting), they saw blood coming from the girl's ear and  
24 there was blood on the suspect's shirt.

25 226. When CLARK issued the updated Press Release on November 9, 2008, he knew  
26 or should have known that Dawn's head injury was from her fall to the concrete  
27 walkway after her father was shot.

28 227. When CLARK issued the updated Press Release on November 9, 2008, he knew

1 or should have known that neither DORER, FELLOWS, GARCIA nor SLAVIN  
2 ever reported that they had seen any blood coming from Dawn's ear prior to her  
3 fall to the walkway.

4 228. CLARK was aware at the time of the November 9, 2008 updated Press Release  
5 that there was no blood from Dawn on David's shirt.

6 229. CLARK defamed David by making knowingly false statements to the electronic  
7 and print media.

8 230. CLARK has taken no action to correct the false and defamatory statements that he  
9 caused to be published by the press.

10 **DEFAMATORY STATEMENTS BY BROOKE SCRITCHFIELD**

11 231. On November 7, 2008, SCRITCHFIELD was directed to respond to the hospital  
12 where Dawn was being treated.

13 232. SCRITCHFIELD told medical personnel that Dawn had blood coming from her  
14 ear before she fell to the ground.

15 233. Amy Terreros (Terreros), Pediatric Nurse Practitioner at Phoenix Children's  
16 Hospital (PCH) was a part of the Forensic Team treating Dawn. On November 7,  
17 2008 SCRITCHFIELD provided inaccurate and false information to Terreros and  
18 other health care providers at PCH regarding the etiology of Dawn's head injury  
19 and the events leading up to that injury.

20 234. The false and inaccurate information SCRITCHFIELD provided included the  
21 following:

- 22 a. Dawn was apparently in a custody dispute confrontation at her  
23 grandparents' home.
- 24 b. David was threatening to hurt Dawn.
- 25 c. The paternal grandfather called the police.
- 26 d. There was an apparent hostage situation involving the family in which the  
27 father of the family was being abusive toward other family members.
- 28 e. Dawn was heard screaming during a 9-1-1 call.

- 1 f. A SWAT was sent to the house.
- 2 g. Several family members escaped from the house; some did not escape.
- 3 h. At one point, David came to the door, holding Dawn above his head with
- 4 two hands, threatening to slam her into the ground.
- 5 i. Officers saw blood coming out of Dawn's right ear when David came to the
- 6 door, holding Dawn above his head with two hands, threatening to slam her
- 7 into the ground.
- 8 j. Dawn's father (David) was holding her by her ankles and threatening to pile
- 9 drive her into the ground.
- 10 k. When it appeared that this was inevitable, the police fired several shots to
- 11 disable the father.
- 12 l. When David was shot, Dawn fell on top of his body which broke her fall to
- 13 the ground.

14 235. As a consequence to the false information SCRITCHFIELD provided to PCH, the  
15 PCH Forensic Team and PCH treating physicians decided that Dawn required a  
16 complete radiology scan to rule out evidence of any earlier child abuse. That  
17 procedure was done on November 7, 2008.

18 236. There was no medical evidence developed from the radiology studies that support  
19 any inference that Dawn had sustained any injury consistent with prior child  
20 abuse.

21 237. In the course of her involvement in this investigation SCRITCHFIELD obtained  
22 knowledge that:

- 23 a. Police did not find any blood inside of the Morning Vista home.
- 24 b. There was no mechanism for the injuries Dawn sustained that was located
- 25 within the Morning Vista home.
- 26 c. DORER, FELLOWS, GARCIA, SLAVIN and SMITH did not see blood
- 27 coming from Dawn's ear(s) before the shooting.
- 28 d. Medical personnel treating Dawn at scene had been told that Dawn had

- 1           fallen from a height of between 6-8 feet onto concrete.
- 2           e.     GARCIA saw Dawn fall onto the concrete walkway from David's
- 3           outstretched hands.
- 4           f.     There was no blood on the front of David's shirt.
- 5           g.     The true facts did not support GREENE'S claim that Dawn was dropped
- 6           from a height of 1-2 feet or that Dawn's fall was cushioned by falling onto
- 7           David.
- 8           h.     The shooting of David was captured on videotape.
- 9           i.     The video showed that Dawn was not held upside down or by her ankles.
- 10          j.     The video showed Dawn falling from David's grip after he was shot.
- 11          k.     David was holding Dawn with both hands slightly above his head, more
- 12          than six feet from the ground, when he was shot.
- 13          l.     David initially held onto Dawn as he was falling forward.
- 14          m.     Dawn dropped to the ground from David's hands from a distance of
- 15          approximately five (5) feet above the ground.
- 16 238. On November 8, 2008, the PCH Forensic Team reached the following
- 17          conclusions:
- 18          a.     Dawn's skull fracture was the result of a significant trauma.
- 19          b.     The skull fracture happened prior to the stand off with police.
- 20 239. On November 12, 2008, SCRITCHFIELD spoke with Nurse Practitioner Terreros
- 21          by telephone. Terreros told Scritchfield that the PCH Trauma Team met on
- 22          November 8, 2008 to consider the mode and manner of Dawn's skull fracture and
- 23          had concluded that the skull fracture happened prior to the stand off with police.
- 24 240. Terreros told SCRITCHFIELD that the Trauma Team had relied on the
- 25          information provided by SCRITCHFIELD, as set forth above in paragraph 234.
- 26 241. Rather than correct the false and inaccurate information she had provided to health
- 27          care providers at PCH, SCRITCHFIELD told Terreros that the information known
- 28          to her on November 12, 2008 was the same as what she had told PCH personnel

1 on November 7, 2008.

2 242. SCRITCHFIELD has never corrected the false and inaccurate information that  
3 she provided to health care providers at PCH on November 7, 2008, relevant to the  
4 mechanism of Dawn's skull fracture.

5 **DEFAMATORY STATEMENTS BY DEFENDANT DOES 8-10**

6 243. Records from the emergency department at Scottsdale Healthcare Osborn, dictated  
7 by Michael Pfleger, M.D., state in part:

- 8 a. The patient is a 37-year-old man who was allegedly had been using his son  
9 as a human shield<sup>3</sup> when he emerged from his home and the child, seeming  
10 to be injured, the patient was shot by SWAT and police several times.  
11 b. The patient himself provided no history whatsoever at this time.  
12 c. History is obtained solely through paramedics and police.

13 **SERVICE OF ARIZONA TORT CLAIMS ON STATE DEFENDANTS**

14 244. Plaintiffs complied with the requirements of A.R.S. §12-821.01, known as the tort  
15 claim statute, by serving written claims on the Defendants as set forth below:.

- 16 a. On April 7, 2009 Richard SLAVIN and Deven FELLOWS were served  
17 with a written tort claim notice.  
18 b. On April 28, 2009 James DORER and Daniel GREENE were served with  
19 written tort claim notices.  
20 c. On April 29, 2009 Mark CLARK, Hugh LOCKERBY, Christina TROTT  
21 and Brooke SCRITCHFIELD were served with written tort claim notices.  
22 d. On April 30 and May 6, 2009 Frank O'HALLORAN was served with a  
23 written tort claim notice.  
24 e. On May 4, 2009 Marcos GARCIA was served with a written tort claim  
25 notice.

---

27  
28 <sup>3</sup>This "human shield" theme appears repeatedly throughout the medical reports, one of which says that David lived at home with his two children prior to the incident.

**FIRST CLAIM FOR RELIEF**

**(Plaintiff W. Eric Hulstedt, Personal Conservator and Personal  
Guardian of David Hulstedt, Against Defendants DORER  
and SLAVIN )**

**42 U.S.C. §1983**

**VIOLATION OF DAVID'S FOURTH AMENDMENT RIGHTS  
(USE OF EXCESSIVE FORCE)**

245. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 243.

246. The conduct of DORER and SLAVIN violated the right of David to be secure in his person against unreasonable seizures and unreasonable use of force as guaranteed by the Fourth Amendment.

247. DORER'S and SLAVIN'S use of lethal force was unreasonable because they did not have probable cause to believe that David had committed a crime or that he posed a significant or imminent threat of death or serious physical injury to them or Dawn when they shot David.

248. DORER'S and SLAVIN'S use of lethal force was unreasonable because they did not warn David that they were about to shoot if he did not release Dawn, despite the fact that they had ample opportunity to do so.

249. DORER'S and SLAVIN'S use of lethal force was unreasonable, because they had non-lethal alternatives available to them which any reasonable law enforcement officer would have employed assuming that any force was necessary.

250. Despite the availability of reasonable non-lethal alternatives, DORER and SLAVIN unreasonably resorted to lethal force.

251. As a direct and proximate result of the actions of SLAVIN and DORER, as previously described, David incurred physical pain, suffering, emotional trauma and permanent injuries, disabilities and other damages in an amount according to proof at trial.

252. As a proximate result of Defendants' actions, David suffered special damages in

1 the form of lost income, medical expenses and attorney fees in an amount to be  
2 proved at trial.

3 253. The above described acts and omissions of SLAVIN and DORER were done  
4 knowingly, intentionally or recklessly and inflicted injury upon David Hulstedt in  
5 conscious, wanton and callous disregard of David's Constitutional rights; and by  
6 reason thereof, Plaintiff W. Eric Hulstedt, Conservator of David Hulstedt, claims  
7 exemplary and punitive damages from SLAVIN and DORER in an amount to be  
8 determined by the jury at time of trial.

9 **SECOND CLAIM FOR RELIEF**

10 **(Plaintiff W. Eric Hulstedt, Personal Conservator and Personal**  
11 **Guardian of David Hulstedt, Against Defendants DORER,**  
12 **SLAVIN, FELLOWS and GARCIA)**

13 **42 U.S.C. §1983**

14 **VIOLATION OF DAVID'S FOURTH AMENDMENT RIGHTS**  
15 **(USE OF EXCESSIVE FORCE)**

16 254. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 243.

17 255. After David was critically injured and bleeding from the wounds inflicted by  
18 SLAVIN and DORER, DORER ordered David handcuffed. SLAVIN then  
19 ordered FELLOWS and GARCIA to drag David up the street.

20 256. FELLOWS and GARCIA, in the presence of supervisory officer DORER, rolled  
21 David over, handcuffed him, then lifted him so that his knees were in contact with  
22 the ground, then proceeded to drag David across sharp edged ground cover and  
23 across rocks and asphalt as previously described thereby causing further injury to  
24 his knees and lower legs.

25 257. As a direct and proximate result of the actions of FELLOWS, GARCIA, SLAVIN  
26 and DORER, as previously described, David incurred physical pain, suffering,  
27 emotional trauma requiring the expenditure of money for medical care,  
28 hospitalization, services and other damages in an amount according to proof at

1 trial.

2 258. The above described acts and omissions of FELLOWS, GARCIA, SLAVIN and  
3 DORER were done knowingly, intentionally or recklessly and inflicted injury  
4 upon David in conscious, wanton and callous disregard of David's Constitutional  
5 rights; and by reason thereof, Plaintiff W. Eric Hulstedt, Conservator of David  
6 Hulstedt claims exemplary and punitive damages from FELLOWS, GARCIA,  
7 SLAVIN and DORER in an amount to be determined by the jury at time of trial.

8 **THIRD CLAIM FOR RELIEF**

9 **(Plaintiff W. Eric Hulstedt, Personal Conservatory and Personal**  
10 **Guardian of David Hulstedt, Against Defendants DORER,**  
11 **SLAVIN, FELLOWS, GARCIA, GREENE and DOES 1-3)**

12 **42 U.S.C. §1983**

13 **VIOLATION OF DAVID'S FOURTH AMENDMENT RIGHTS**  
14 **(ARREST WITHOUT PROBABLE CAUSE)**

15 259. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 243.

16 260. The conduct of Defendants violated the right of David to be secure in his person  
17 against unreasonable seizures.

18 261. When David finally complied with the negotiator's request to leave his home he  
19 was shot, was lethally wounded and handcuffed behind his back without probable  
20 cause to believe that David had committed any crime.

21 262. GREENE'S statement that he saw blood coming from Dawn's ear(s) prior to the  
22 shooting was fabricated to create, after the fact, probable cause to support the  
23 arrest. GREENE did not communicate his alleged observation to anyone until  
24 approximately 7 minutes after David was shot.

25 263. As a direct and proximate result of GARCIA'S, FELLOWS', DORER'S and  
26 SLAVIN'S actions as previously described, David incurred physical pain,  
27 suffering, emotional trauma requiring the expenditure of money for medical care,  
28 hospitalization, services, attorney fees incurred to prevent criminal prosecution

1 and other damages according to proof at trial.

2 264. The above described acts and omissions of DORER, SLAVIN, GREENE,  
3 GARCIA and FELLOWS were done knowingly, intentionally or recklessly and  
4 inflicted injury upon David in conscious, wanton and callous disregard of David's  
5 Constitutional rights; and by reason thereof, Plaintiff W. Eric Hulstedt,  
6 Conservator of David Hulstedt claims exemplary and punitive damages from  
7 DORER, SLAVIN, GARCIA, GREENE and FELLOWS in an amount to be  
8 determined by the jury at time of trial.

9 **FOURTH CLAIM FOR RELIEF**

10 **(Plaintiffs Walter Hulstedt and Janice Hulstedt**  
11 **Against Defendants DORER and SLAVIN)**

12 **42 U.S.C. §1983**

13 **VIOLATION OF PLAINTIFFS' FOURTEENTH AMENDMENT**  
14 **RIGHTS TO FAMILIAL SOCIETY AND COMPANIONSHIP**  
15 **OF DAVID HULSTEDT**

16 265. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 243.

17 266. The reckless, intentional and deliberate acts and omissions of DORER and  
18 SLAVIN were the direct and legal cause of the deprivation of Plaintiffs Walter's  
19 and Janice's constitutionally protected rights under the Fourteenth Amendment to  
20 the care, companionship and familial society of David, their son.

21 267. As a further proximate result of DORER'S and SLAVIN'S acts and omissions, in  
22 addition to the general damages previously alleged, Plaintiffs Walter and Janice  
23 suffered special damages in the form of payment of David's financial obligations,  
24 value of which will be proven at trial.

25 268. The acts and omissions of DORER and SLAVIN set forth in this First Amended  
26 Complaint were done by DORER and SLAVIN knowingly, intentionally and  
27 maliciously and for the purpose of harassment, oppression and infliction of injury  
28 upon Plaintiffs, and in reckless, wanton and callous disregard of Plaintiffs' safety,

1 security and civil rights; and by reason thereof, Plaintiffs Walter and Janice each  
2 claim exemplary and punitive damages from Defendants in a sum to be determined  
3 at the time of trial.

4 **FIFTH CLAIM FOR RELIEF**

5 **(Plaintiff W. Eric Hulstedt, Guardian at Litem for Dawn Hulstedt**  
6 **Against Defendants DORER and SLAVIN)**

7 **42 U.S.C. §1983**

8 **VIOLATION OF DAWN'S FOURTEENTH AMENDMENT**  
9 **RIGHTS TO FAMILIAL SOCIETY AND COMPANIONSHIP**  
10 **OF DAVID HULSTEDT**

11 269. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 243.

12 270. The reckless, intentional and deliberate acts and omissions of DORER and  
13 SLAVIN were the direct and legal cause of the deprivation of Dawn's  
14 constitutionally protected rights under the Fourteenth Amendment to the care,  
15 companionship and familial society of David, her father.

16 271. As a further proximate result of DORER'S and SLAVIN'S acts and omissions,  
17 Dawn suffered severe emotional distress and anxiety.

18 272. As a further proximate result of the injuries inflicted to David by DORER and  
19 SLAVIN the parent/child relationship between David and Dawn has been gravely  
20 impaired. David can no longer care for Dawn nor can he emotionally interact with  
21 her.

22 273. The acts and omissions of DORER and SLAVIN set forth in this First Amended  
23 Complaint were done by DORER and SLAVIN knowingly, intentionally and  
24 maliciously and for the purpose of harassment, oppression and infliction of injury  
25 upon Plaintiff, and in reckless, wanton and callous disregard of Plaintiff's safety,  
26 security and civil rights; and by reason thereof, Plaintiff claims exemplary and  
27 punitive damages from Defendants in a sum to be determined at the time of trial.

28

**SIXTH CLAIM FOR RELIEF**

**(Plaintiff W. Eric Hulstedt, Guardian ad Litem for Dawn Hulstedt**

**Against Defendants DORER and SLAVIN )**

**42 U.S.C. §1983**

**VIOLATION OF DAWN'S FOURTEENTH AMENDMENT RIGHTS**

274. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 243.

275. The conduct of DORER and SLAVIN violated Dawn's substantive due process rights to liberty.

276. Defendants' actions were arbitrary and egregious, such that Defendants' actions "shocks the conscience".

277. Defendants had insufficient reason to believe that David would harm Dawn or that David was armed or dangerous.

278. The incident at Plaintiffs' home had continued for approximately 1½ hours. Assuming any force was necessary, the Defendants had ample opportunity to use less than lethal force that would not have harmed Dawn.

279. There were no objective reason(s) to believe that Dawn had been injured or that David was about to injure Dawn.

280. David simply wanted to speak with his brother Eric or his father, Walter. He was not permitted to do so.

281. The officers were shouting contradictory demands at David. Someone was shouting "Put the baby down" others were shouting "Put your hands up"; David could not do both simultaneously.

282. SLAVIN and DORER both knew that if they shot David while he was holding Dawn above his head, Dawn was likely to be harmed by falling to the ground.

283. As a proximate result of Defendants' actions Dawn sustained physical and emotional injuries as previously described.

284. The acts and omissions of DORER and SLAVIN set forth in this First Amended Complaint were done by Defendants DORER and SLAVIN knowingly,

1 intentionally and maliciously and for the purpose of harassment, oppression and  
2 infliction of injury upon Dawn, and in reckless, wanton and callous disregard of  
3 Dawn's safety, security and civil rights; and by reason thereof, Dawn, through her  
4 Guardian ad Litem, claims exemplary and punitive damages from SLAVIN and  
5 DORER in a sum to be determined at the time of trial.

6 **SEVENTH CLAIM FOR RELIEF**

7 **(Plaintiffs Walter Hulstedt and Janice Hulstedt Against Defendants**  
8 **DORER, GREENE, SLAVIN, HERTKO, TOSCHIK, McCLANAHAN,**  
9 **HARTMAN, MARMIE, MILLER, SMITH, FIELD, LOCKERBY,**  
10 **FELLOWS, RAUCH and DOES 4-7)**

11 **42 U.S.C. §1983**

12 **VIOLATION OF PLAINTIFFS WALTER HULSTEDT'S AND**  
13 **JANICE HULSTEDT'S FOURTH AMENDMENT RIGHTS**

14 **SEARCH AND SEIZURE**

15 285. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 243.

16 286. DORER directed MILLER, FIELD and HERTKO to enter the attached, open  
17 three-car garage of the Morning Vista home and take up positions more than  
18 twenty feet inside. DORER made that order after hearing HERTKO'S radio  
19 transmission at 12:37 p.m.: "Has made no threats towards us or the child." At  
20 approximately 12:55 p.m. DORER directed RAUCH to enter the garage to assist  
21 MILLER, FIELD and HERTKO.

22 287. DORER, MILLER, FIELD, HERTKO and RAUCH did not have a warrant to  
23 enter the Morning Vista home. They did not have probable cause to believe that  
24 David had committed a crime. They did not have exigent circumstances at the  
25 time they entered the garage at the Morning Vista home.

26 288. Prior to the shooting, TOSCHIK, McCLANAHAN and HARTMAN (HEAT  
27 officers) entered the open garage and took up positions more than twenty feet  
28 inside.

- 1 289. TOSCHIK, McCLANAHAN and HARTMAN did not have a warrant to enter the  
2 Morning Vista home. They did not have probable cause to believe that David had  
3 committed a crime. They did not have exigent circumstances at the time they  
4 entered the garage at the Morning Vista home.
- 5 290. After David was shot, DORER, in his supervisory role, ordered SLAVIN to form  
6 a search team to clear the house after Walter and Janice were ordered to meet  
7 officers outside.
- 8 291. DORER issued his order despite the fact that the totality of information known to  
9 the officers at the scene was that David and Dawn had been alone inside the  
10 house.
- 11 292. SLAVIN and SMITH, acting on DORER'S orders, entered and searched the  
12 Morning Vista home along with HERTKO, TOSCHIK, McCLANAHAN,  
13 HARTMAN, MILLER and FIELD.
- 14 293. SMITH and MARMIE later entered the Morning Vista home and allegedly  
15 searched for prescription medications.
- 16 294. When SMITH, MARMIE, HERTKO, TOSCHIK, McCLANAHAN, HARTMAN,  
17 MILLER and FIELD entered the Morning Vista home they did not have  
18 permission, a search warrant or exigent circumstances authorizing entry into or  
19 search of the home.
- 20 295. When DORER ordered subordinate officers to enter the Morning Vista home he  
21 did not have permission, a search warrant or exigent circumstances authorizing  
22 entry into or search of the home.
- 23 296. After the house was "cleared" FELLOWS and some of the above named  
24 Defendants and/or DOE Defendants 4-7 remained inside the garage and inside the  
25 threshold of the home without permission, a search warrant or exigent  
26 circumstances.
- 27 297. Thereafter, LOCKERBY prepared an affidavit in support of a search warrant, as  
28 previously described, which misrepresented material facts and omitted material

1 facts.

2 298. Approximately seven minutes after David was shot, GREENE concocted and  
3 assisted Lieutenant Muilenberg in radioing the false story that officers saw blood  
4 coming from Dawn's ears prior to the shooting. In relevant part, GREENE and  
5 Muilenberg reported as follows:

6 Will you relay to the medics that they [the on scene officers]  
7 witnessed the blood coming out of the child's ears [plural]  
8 before the shots were fired. Before she fell down. So she was  
9 injured prior to coming to the ground. . . . You already saw  
10 blood coming out of her ears [plural].

11 299. GREENE'S statement was fiction because Dawn's hair covered both ears. Dawn  
12 sustained a skull fracture on the right side of her head from impact with the  
13 concrete walkway in front of the house. Blood oozed from Dawn's right ear after  
14 her skull was fractured. There was no bleeding from Dawn's left ear. Dawn fell  
15 to the ground only after David lost his grip on her as he fell to the ground after  
16 being shot. Finally, none of the officers at the scene, other than GREENE,  
17 claimed to have seen blood coming from either of Dawn's ears prior to the  
18 shooting.

19 300. GREENE'S false statements that he saw blood coming from Dawn's ear(s) prior  
20 to the shooting constituted part of the putative justification to support the issuance  
21 of a search warrant.

22 301. The acts and omissions of Defendants were done knowingly, intentionally and  
23 maliciously and for the purpose of harassment, oppression and infliction of injury  
24 upon Plaintiffs, and in reckless, wanton and callous disregard of Plaintiffs' safety,  
25 security and civil rights; and by reason thereof, Janice and Walter each claim  
26 exemplary and punitive damages from Defendants DORER, GREENE, SLAVIN,  
27 HERTKO, TOSCHIK, McCLANAHAN, HARTMAN, MARMIE, MILLER,  
28 SMITH, FIELD, LOCKERBY, FELLOWS, RAUCH and DOES 4-7 in a sum to

1 be determined at the time of trial.

2 **EIGHTH CLAIM FOR RELIEF**

3 **(Plaintiffs W. Eric Hulstedt, Personal Conservator and Personal**  
4 **Guardian of David Hulstedt, W. Eric Hulstedt, Guardian ad**  
5 **Lite m for Dawn Hulstedt, Janice Hulstedt and Walter Hulstedt**  
6 **Against Defendants O’HALLORAN, SMITH, DORER and SLAVIN )**

7 **42 U.S.C. §1983**

8 **SUPERVISORY LIABILITY**

9 302. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 243.

10 303. The acts of Defendants’ subordinates deprived David of his particular rights as  
11 previously described and deprived Dawn, Janice and Walter of the particular  
12 rights as previously described.

13 303. The O’HALLORAN, SMITH, DORER and SLAVIN directed their subordinates  
14 in the acts that deprived Plaintiffs of these rights or Defendants set in motion a  
15 series of acts by their subordinates that they knew or reasonably should have  
16 known would cause the subordinates to deprive Plaintiffs of these rights or  
17 Defendants knew or reasonably should have known that their subordinates were  
18 engaging in these acts and that their conduct would deprive the Plaintiffs of these  
19 rights, the Defendants failed to act to prevent their subordinates from engaging in  
20 such conduct.

21 304. The acts and omissions of Defendants were done knowingly, intentionally and  
22 maliciously and for the purpose of harassment, oppression and infliction of injury  
23 upon Plaintiffs, and in reckless, wanton and callous disregard of Plaintiffs’ safety,  
24 security and civil rights; and by reason thereof, Plaintiffs each claim exemplary  
25 and punitive damages from Defendants in a sum to be determined at the time of  
26 trial.

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**NINTH CLAIM FOR RELIEF**  
**(All Plaintiffs Against Defendant CITY OF SCOTTSDALE)**

**42 U.S.C. §1983**

**MUNICIPAL LIABILITY**

305. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 243.
306. The S.P.D. and the CITY OF SCOTTSDALE were deliberately indifferent to the proper training and supervision of its personnel in recognizing and effectively dealing with mentally ill persons such as David.
307. The S.P.D.'s and the CITY OF SCOTTSDALE'S deliberate indifference to properly train and supervise its personnel caused the deprivation of Plaintiffs' rights protected by the Constitution and laws of the United States.
308. Based on information and belief, Plaintiffs allege that after David was shot, his body dragged by FELLOWS and GARCIA and the home illegally entered and searched, Alan G. Rodell, Chief the Police for the Scottsdale Police Department, ratified the actions of DORER, SLAVIN, GARCIA, LOCKERBY, GREENE and FELLOWS, both publicly and within the Scottsdale Police Department.
309. The above described policies, customs and failure to train and supervise demonstrate a deliberate indifference on the part of policymakers of the CITY OF SCOTTSDALE to the constitutional rights of persons within the city, and were the cause of the violation of Plaintiffs' rights alleged herein.

**SUPPLEMENTAL CLAIMS**

**NINTH CLAIM FOR RELIEF**

**(Plaintiff W. Eric Hulstedt, Personal Conservator and Personal  
Guardian of David Hulstedt, Against Defendants DORER,  
SLAVIN, FELLOWS, GARCIA and CITY OF SCOTTSDALE)**

**BATTERY**

310. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 244.
311. Plaintiff filed his written claim for damages in the form and the manner prescribed

1 by law as set forth above.

2 312. By intentionally shooting and wounding David and thereafter dragging David as  
3 previously described, Defendants used unreasonable and excessive force.

4 313. DORER, SLAVIN, FELLOWS and GARCIA acted with disregard for the safety  
5 of David, thereby causing the extensive injuries and/or paralysis of David as  
6 previously described.

7 314. At all times relevant to this action, DORER, SLAVIN, FELLOWS and GARCIA  
8 were employees of the CITY OF SCOTTSDALE.

9 315. At all times relevant to this action, DORER, SLAVIN, FELLOWS and GARCIA  
10 were acting within the course and scope of their employment as employees of the  
11 CITY OF SCOTTSDALE.

12 316. The CITY OF SCOTTSDALE, as the employing entity, is liable for the actions of  
13 its employees under the doctrine of *respondeat superior*.

14 **TENTH CLAIM FOR RELIEF**

15 **(Plaintiffs W. Eric Hulstedt, Personal Conservator and Personal Guardian**  
16 **of David Hulstedt, W. Eric Hulstedt, as Guardian ad Litem for**  
17 **Dawn Hulstedt, Against Defendants SLAVIN, DORER,**  
18 **LOCKERBY, and the CITY OF SCOTTSDALE)**

19 **NEGLIGENCE**

20 317. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 244.

21 318. SLAVIN, DORER and LOCKERBY owed a duty to David to use due care.

22 319. SLAVIN and DORER breached the duty of due care when they shot and severely  
23 wounded David without legal justification causing injury to Dawn, as previously  
24 described.

25 320. LOCKERBY breached that duty of care when he prepared false and misleading  
26 investigative reports and when he submitted a false and misleading affidavit in  
27 support of a search warrant for the Morning Vista home.

28 321. The breach by these Defendants of their duty of care was the proximate or legal

1 cause of the resulting harm to David and Dawn.

2 322. As a direct and proximate result of the aforesaid, David and Dawn have suffered  
3 extreme harm and thereby general damages in an amount according to proof at  
4 trial.

5 323. As a proximate result of Defendants' actions, David suffered special damages in  
6 the form of lost income, medical expenses and attorney fees in an amount to be  
7 proved at trial.

8 324. At all times relevant to this action, SLAVIN, DORER and LOCKERBY were  
9 employees of the CITY OF SCOTTSDALE.

10 325. At all times relevant to this action, SLAVIN, DORER and LOCKERBY were  
11 acting within the course and scope of his employment as an employee of the CITY  
12 OF SCOTTSDALE.

13 326. The CITY OF SCOTTSDALE, as the employing entity, is liable for the actions of  
14 its employees under the doctrine of *respondeat superior*.

15 **ELEVENTH CLAIM FOR RELIEF**

16 **(Plaintiffs W. Eric Hulstedt, Personal Conservator and Personal**  
17 **Guardian of David Hulstedt, W. Eric Hulstedt, as Guardian ad Litem**  
18 **for Dawn Hulstedt, Walter Hulstedt and Janice Hulstedt Against**  
19 **Defendants TROTT and the CITY OF SCOTTSDALE)**

20 **NEGLIGENCE**

21 327. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 244.

22 328. TROTT, the 911 Operator, owed David, Janice, Walter and Dawn a duty to use  
23 due care in ascertaining the "crisis" at the Morning Vista home prior to ordering  
24 Plaintiffs from their home. TROTT was specifically told by Janice that the baby  
25 was crying because she needed a diaper change; at no time did Janice indicate that  
26 Dawn or any member of the family was in any danger.

27 329. TROTT breached her duty when she failed to determine that there was no problem  
28 which required police intervention and removal of Plaintiffs from their home.

1 330. The breach of TROTT'S duty was the proximate or legal cause of the resulting  
2 harm to David, Dawn, Walter and Janice.

3 331. As a direct and proximate result of the aforesaid, Walter, Janice, Dawn and David  
4 have suffered extreme harm and thereby general damages and special damages in  
5 an amount according to proof at trial.

6 332. At all times relevant to this action, TROTT was an employee of the CITY OF  
7 SCOTTSDALE.

8 333. At all times relevant to this action, TROTT was acting within the course and scope  
9 of her employment as an employee of the CITY OF SCOTTSDALE.

10 334. The CITY OF SCOTTSDALE, as the employing entity, is liable for the actions of  
11 its employees under the doctrine of *respondeat superior*.

12 **TWELFTH CLAIM FOR RELIEF**

13 **(Plaintiff W. Eric Hulstedt, Personal Conservator and Personal**  
14 **Guardian of David Hulstedt Against Defendants GREENE,**  
15 **CLARK, SCRITCHFIELD, CITY OF SCOTTSDALE and DOES 8-10)**

16 **DEFAMATION**

17 335. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 244.

18 336. CLARK made the statements to the electronic and print media as previously  
19 described.

20 337. The people watching the news on TV or reading the newspapers understood the  
21 statements to mean that David had committed a crime.

22 338. SCRITCHFIELD made the statements set forth above to PCH personnel.

23 339. The statements made by CLARK and SCRITCHFIELD were false.

24 340. CLARK published these statements to the media either knowing that they were  
25 false and defamatory or he published said statements to the media with reckless  
26 disregard of whether they were false or not.

27 341. SCRITCHFIELD published these statements to the PCH either knowing that they  
28 were false and defamatory or she published said statements with reckless disregard

1 of whether they were false or not.

2 342. DOE Defendants #8-10 made the statements set forth above to Scottsdale Osborn  
3 Health Care personnel.

4 343. DOE Defendants #8-10 published these statements to Scottsdale Osborn Health  
5 Care personnel either knowing that they were false and defamatory or he/she  
6 published said statements with reckless disregard of whether they were false or  
7 not.

8 344. Approximately seven minutes after David was shot, GREENE concocted and  
9 assisted Lieutenant Muilenberg in radioing the false story that officers saw blood  
10 coming from Dawn's ears prior to the shooting. In relevant part, GREENE and  
11 Muilenberg reported as follows:

12 Will you relay to the medics that they [the on scene officers]  
13 witnessed the blood coming out of the child's ears [plural]  
14 before the shots were fired. Before she fell down. So she was  
15 injured prior to coming to the ground. . . . You already saw  
16 blood coming out of her ears [plural].

17 345. GREENE'S statement was fiction because Dawn's hair covered both ears. Dawn  
18 sustained a skull fracture on the right side of her head from impact with the  
19 concrete walkway in front of the house. Blood oozed from Dawn's right ear after  
20 her skull was fractured. There was no bleeding from Dawn's left ear. Dawn fell  
21 to the ground only after David lost his grip on her as he fell to the ground after  
22 being shot. Finally, none of the officers at the scene, other than GREENE,  
23 claimed to have seen blood coming from either of Dawn's ears prior to the  
24 shooting.

25 346. A reasonable person with the same information available to CLARK,  
26 SCRITCHFIELD, GREENE and DOES 8-10 could not have reasonably believed  
27 that the statements made were true.

28 347. As a proximate result of CLARK'S, GREENE'S, SCRITCHFIELD'S and DOES'

1 8-10 wrongful conduct David experienced shame, mortification and hurt feelings;  
2 his reputation has been harmed and he has incurred expenses as a result of the  
3 defamatory statements.

4 348. When CLARK, GREENE, SCRITCHFIELD and DOES 8-10 made the above  
5 described statements they acted with malice, oppression and fraud entitling  
6 Plaintiff to recover punitive damages to punish CLARK, GREENE,  
7 SCRITCHFIELD and/or DOES 8-10.

8 349. At all times relevant to this action, CLARK, GREENE, SCRITCHFIELD and  
9 DOES 8-10 were employees of the CITY OF SCOTTSDALE.

10 350. At all times relevant to this action, CLARK, GREENE, SCRITCHFIELD and  
11 DOES 8-10 were acting within the course and scope of their employment as  
12 employees of the CITY OF SCOTTSDALE.

13 351. The CITY OF SCOTTSDALE, as the employing entity, is liable for the actions of  
14 its employees under the doctrine of *respondeat superior*; however the CITY is not  
15 obligated to pay punitive damages.

16 **THIRTEENTH CLAIM FOR RELIEF**

17 **(Plaintiff W. Eric Hulstedt, Personal Conservator and Personal**  
18 **Guardian of David Hulstedt Against Defendants DORER,**  
19 **SLAVIN, SCRITCHFIELD, CLARK, GREENE,**  
20 **LOCKERBY, FELLOWS, GARCIA and DOES 8-10)**

21 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

22 352. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 244.

23 353. Defendants' conduct, as previously described, was intentional and malicious and  
24 done for the purpose of causing David to suffer humiliation, mental anguish and  
25 severe emotional distress.

26 354. As a result of Defendants' actions David suffered damages as aforesaid.

27 355. The above described acts were done with malice, evidencing oppression thus  
28 entitling David to recover punitive damages to punish these Defendants.

1 356. At all times relevant to this action, Defendants were employees of the CITY OF  
2 SCOTTSDALE.

3 357. At all times relevant to this action, Defendants were acting within the course and  
4 scope of their employment as employees of the CITY OF SCOTTSDALE.

5 358. The CITY OF SCOTTSDALE, as the employing entity, is liable for the actions of  
6 its employees under the doctrine of *respondeat superior*; however the CITY is not  
7 obligated to pay punitive damages.

8 **FOURTEENTH CLAIM FOR RELIEF**

9 **(Plaintiff W. Eric Hulstedt, Guardian Ad Litem for Dawn Hulstedt**

10 **Against Defendants SLAVIN and DORER**

11 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

12 359. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 244.

13 360. When DORER and SLAVIN shot David, they were aware that he was holding  
14 Dawn and that Dawn was within the zone of danger.

15 361. Any reasonable person would have known that if David was shot, he would drop  
16 Dawn.

17 362. When DORER and SLAVIN shot David he dropped Dawn, who sustained a  
18 fracture to her skull.

19 363. Dawn also witnessed an injury to her father.

20 364. As a proximate result of the actions of SLAVIN and DORER, Dawn sustained  
21 damages for shock or mental anguish at witnessing an injury to David, her father.

22 365. Dawn suffered severe emotional and physical distress because of witnessing the  
23 injuries to her father.

24 366. SLAVIN and DORER should have realized that their conduct involved an  
25 unreasonable risk of causing severe emotional distress to Dawn.

26 367. At all times relevant to this action, SLAVIN and DORER were employees of the  
27 CITY OF SCOTTSDALE.

28 368. At all times relevant to this action, SLAVIN and DORER were acting within the

1 course and scope of their employment as employees of the CITY OF  
2 SCOTTSDALE.

3 369. The CITY OF SCOTTSDALE, as the employing entity, is liable for the actions of  
4 its employees under the doctrine of *respondeat superior*.

5 **FIFTEENTH CLAIM FOR RELIEF**

6 **(Plaintiffs W. Eric Hulstedt, Guardian Ad Litem for Dawn**

7 **Hulstedt, Janice Hulstedt and Walter Hulstedt Against Defendants**

8 **SLAVIN and DORER)**

9 **LOSS OF CONSORTIUM**

10 370. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 244.

11 371. As a proximate result of SLAVIN'S and DORER'S wrongful conduct Walter and  
12 Janice suffered loss of consortium when their son, David, was severely and  
13 permanently disabled thus substantially interfering with David's capacity to  
14 interact with Walter and Janice in a normally gratifying way.

15 372. As a proximate result of Defendants SLAVIN'S and DORER'S wrongful conduct  
16 Dawn suffered loss of consortium when her father David was severely and  
17 permanently disabled thus substantially interfering with David's capacity to  
18 interact with Dawn in a normally gratifying way.

19 **WHEREFORE, the Plaintiffs pray for judgment against each of the**  
20 **Defendants as follows:**

21 A. Compensatory damages to Plaintiff W. Eric Hulstedt, Permanent Guardian and  
22 Permanent Conservator David Hulstedt in an amount within the jurisdiction of this Court  
23 to be determined by the jury.

24 B. Compensatory damages to Plaintiff W. Eric Hulstedt, Guardian ad Litem for  
25 Dawn Hulstedt in an amount within the jurisdiction of this Court to be determined by the  
26 jury.

27 C. Compensatory damages to Plaintiff Janice Hulstedt in an amount within the  
28 jurisdiction of this Court to be determined by the jury.

1 D. Compensatory damages to Plaintiff Walter Hulstedt in an amount within the  
2 jurisdiction of this Court to be determined by the jury.

3 E. Exemplary damages against DEFENDANTS DORER, SLAVIN, FELLOWS,  
4 O'HALLORAN, GARCIA, GREENE, LOCKERBY, CLARK, SCRITCHFIELD,  
5 HERTKO, SMITH, MILLER, FIELD, MARMIE, McCLANAHAN, HARTMAN,  
6 RAUCH and TOSCHIK in an amount to be determined by the jury.

7 F. The prayer for exemplary damages applies only to the individual Defendants  
8 and not to the CITY OF SCOTTSDALE and not to any state claims except the Twelfth  
9 and Thirteenth Claims alleging Defamation against DEFENDANTS CLARK,  
10 STRITCHFIELD and GREENE and Intentional Infliction of Emotional Distress Against  
11 DEFENDANTS DORER, SLAVIN, SCRITCHFIELD, CLARK, GREENE,  
12 LOCKERBY, FELLOWS and GARCIA.

13 G. Attorneys' fees pursuant to 42 U.S.C. §1988, as to the federal claims.

14 H. Prejudgment interest, cost of suit, and such other relief as is appropriate in the  
15 judgment of the Court.

16 ALAN M. SIMPSON, P.C.

17  
18 DATED: October 7, 2009

19 By: /s/ Alan Simpson  
20 Alan M. Simpson  
21 Attorneys for Plaintiffs

22 **DEMAND FOR JURY TRIAL**

23 Plaintiffs demand a trial by jury.

24 ALAN M. SIMPSON, P.C.

25  
26 DATED: October 7, 2009

27 By: /s/ Alan Simpson  
28 Alan M. Simpson  
Attorneys for Plaintiffs