
February 6, 2024



**Iowa Attorney General's Review
of Officer Involved Death**

Incident of October 29–30, 2023

Hornick, Iowa

Woodbury County Sheriff's Office, Iowa State Patrol, Sioux County Sheriff's Office, Sioux City Police Department, Plymouth County Sheriff's Office, Cherokee Police Department, Le Mars Police Department, Iowa Division of Criminal Investigation

Subject Involved: Walter Sulsberger

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EXECUTIVE SUMMARY

Following its review of the investigation conducted by Iowa Division of Criminal Investigation, the Iowa Attorney General's Office concludes that the fatal shooting of Walter Sulsberger by law enforcement officers on October 30, 2023, was legally justified. Sulsberger's actions set in motion and continued the circumstances that gave rise to reasonable fears that the lives of every person in his vicinity were in grave danger. The use of deadly force was justified to put an end to that danger. The Attorney General's Office therefore concludes that criminal charges are not warranted and considers the investigation to be closed.

AUTHORITY AND PROCESS

Law enforcement officers fatally shot Walter Sulsberger during an incident that occurred on October 29 and 30, 2023, at 2595 County Road D25 (Old Highway 141), Hornick, Iowa. The incident involved the Woodbury County Sheriff's Office and multiple assisting law enforcement agencies and officers.

The Iowa Division of Criminal Investigation (DCI) investigated the incident, and its investigation is complete. DCI collected numerous statements and other evidence. The Attorney General's Office has authority under Iowa Code § 13.12 to assess any officer-involved death to determine whether criminal charges are warranted. The Office has had a full opportunity to review the findings of the investigation and discuss the investigation with the assigned agent. All law enforcement reports,

including any audio or video recordings, will be returned to the DCI when this report is issued.

PERTINENT FACTS

A. Summary.

Law enforcement originally responded to 911 calls at about 7:00 p.m. on October 29, 2023, reporting that many cattle were loose in the area surrounding a cattle feed operation located at the incident site. That feedlot was owned and operated by Todd Sulsberger. The matter quickly escalated following Todd's 7:31 p.m. 911 call during which he stated that his son, later identified as Walter Sulsberger, "is crazy and is going to shoot us," that "he's hit my pickup," and that "he's going to kill me." Communication from Todd was lost, and a single gunshot was heard about 1½ minutes into the call.

Over the course of the following five and a half hours, multiple law enforcement agencies responded to the scene. Both Sulsberger's wife and police officers and negotiators made contact with Sulsberger, during which he admitted to having killed his father. Sulsberger set multiple fires on the property, destroyed cattle gates, killed cattle, and positioned himself on a hill that was the highest point on the property with an automatic weapon and a cache of ammunition and equipment. He refused all efforts by both his wife and law enforcement to surrender peacefully, instead threatening that there would be "a parade" for any officer who

approached. Due to the extreme public danger posed and the lack of success in surrender negotiations, it was eventually determined at about 2:30 a.m. on October 30 that it would be necessary to approach Sulsberger to effectuate his arrest. When armored law-enforcement vehicles began to approach, Sulsberger opened fire on them with an automatic weapon. Law-enforcement teams returned fire and a gun battle ensued. Sulsberger was killed by multiple gunshot wounds. His father, Todd, was found dead in his truck in a ditch on the property having suffered a single gunshot wound to the head.

B. Timeline of incident.

1. Events leading up to Todd's shooting.

Todd Sulsberger owned a cattle feed operation at 2595 County Road D25 (Old Highway 141), Hornick, Iowa. He and his wife Deb lived at a nearby residence. Their son Walter Sulsberger (“Sulsberger”) had a business that did work for his father’s cattle operation, but his personal relationship with his father was reported to have become estranged. Sulsberger, his wife Kim, and their two minor children also lived near the cattle feedlot.

Sulsberger was reported to have been drinking heavily and to have become despondent and uncommunicative in the weeks leading up to October 29. That evening, he declined an invitation to attend an evening meal with his wife Kim’s family in Whiting, Iowa.

At about 6:55 p.m., drivers in the area of Todd's feedlot had begun to make 911 calls reporting that cattle were loose in the area and posed a danger to drivers. Woodbury County Sheriff's Deputies William Brooks, Nick Bauerly, and Daniel Luesebrink were dispatched to the scene, although they were each some distance away at the time.

While driving home from the meal in Whiting, Walter's minor son drove past the feedlot. He noticed that gates and fences on the property had been broken and that many cattle had escaped. As he began to herd the cattle toward the feedlot, he saw his father's JCB loader on top of a hill heading toward their home. He unsuccessfully attempted to call his father and Todd to alert them to the problem and to get their help. He called his mother Kim and told her what was happening. After receiving this call, Kim was able to reach Todd, who then left his home for the feedlot with his wife Deb in separate vehicles. Meanwhile, Susberger and Kim's son saw Sulsberger "fly by" him driving his white pickup truck.

When Todd and Deb arrived, they met and spoke to their grandson, and Todd entered the property while Deb and her grandson worked on corralling the cattle.

2. Sulsberger shoots his father.

At 7:31 p.m., 911 received a call from Todd. He reported his address at the feedlot; that his son, Sulsberger, was crazy; and that "[Sulsberger] is shooting at us." Todd then reported, "He's tore my whole yard up. He's

hit my truck. He's going to kill me." Communications from Todd then ceased. At about one minute and 25 seconds into the call came what sounded like a single gunshot. Though the line remained open, there were no further communications from Todd.

After Todd had entered the feed lot, Sulsberger's son heard several salvos of what sounded like automatic weapons fire. Other people helping with the cattle, including Deb, also heard the gunfire. At about 7:52 p.m., Sulsberger called his son and told him to "get out of there" and to go to Whiting. He then hung up.

After receiving the call from her son, Kim had begun driving to the feedlot. On the way, she was able to reach Sulsberger by phone and asked him where he was. Sulsberger told her that he was "up on the hill," had busted the fences, and had shot and killed Todd. He told her not to go to the feedlot and that he was going to commit suicide, and then he hung up. Kim then called 911 at about 8:06 p.m. and relayed this information.

Sheriff's deputies had begun to arrive at about this time. Kim and Walter's son left the area.

3. Law enforcement responds.

The Communications Center reported Todd's 911 call to the deputies who were then responding to the 911 loose-cattle calls but had not yet arrived at the scene. Deputy Brooks was the first officer to arrive at the scene. He observed many cattle in the area and several people and

vehicles trying to round them up. There was considerable confusion about what was happening. He then heard two volleys of automatic weapon fire, which he reported by radio.

Deputies Luesebrink and Bauerly arrived. The deputies were advised of Kim's 8:06 p.m. 911 call. The deputies secured the area, ordered civilians assisting with corralling the cattle to leave the scene, and requested additional backup.

Woodbury County Deputy Sergeant Brad Rose arrived on scene. He was put into contact with Kim by phone. She advised him that Sulsberger was on the top of a hill, had many weapons, was intoxicated, and was potentially suicidal. She advised that she had a phone application that enabled her to identify Sulsberger's location. Kim and Deputy Rose worked on attempting to identify Sulsberger's location. Throughout the remainder of the incident, Kim was in intermittent contact with both Sulsberger and with officers at the scene to assist with their attempts to locate Sulsberger and persuade him to surrender.

Woodbury County Sheriff Chad Sheehan arrived at the scene and was briefed. Based upon the circumstances described and confirmation that automatic weapons fire had occurred, he decided to activate the Woodbury County SWAT team. By this time, Sulsberger had lit several haystacks on the feedlot on fire. Law enforcement was concerned that these fires had been set as a military-type tactic to prevent detection, to create confusion, and to lure first responders. The Sioux City Police

Department SWAT team and its MRAP armored personnel vehicle were asked to assist.

Sheriff Sheehan was given Sulsberger's phone number and was able to reach him. The sheriff asked Sulsberger what it would take to end the situation peacefully. Sulsberger responded that they would have to come get him. When the sheriff told Sulsberger that they didn't want to have to do that, Sulsberger responded, "If you don't, one of your officers will have a parade."

The Iowa State Patrol ("ISP") SWAT team, its armored BearCat vehicle, and its Cessna airplane were summoned and responded to the scene. Multiple officers from surrounding law enforcement agencies also responded to assist. A command center was established, and the ISP aircraft was able to locate Sulsberger, who was in and around his pickup truck, which was parked on a hilltop on the feedlot property. Woodbury County Deputy Doug Boetger, who has extensive training and experience as a negotiator, was assigned to conduct negotiations with Sulsberger.

Negotiations with Sulsberger, both through Sulsberger's wife Kim and Deputy Boetger, continued over the course of the following five and a half hours. Sulsberger never asked for or demanded anything, but he refused to surrender. Law enforcement had determined from Sulsberger's statements that he was likely equipped with night- or thermal-vision equipment. They knew that he was armed with and had used a fully automatic rifle. At one point, law enforcement deployed a

drone to attempt to observe Sulsberger, who fired automatic weapon rounds, including tracer rounds, at it. These tracer rounds heightened concerns that Sulsberger was equipped with and using military-type equipment and munitions. The ISP aircraft had also seen Sulsberger carrying a box to a spot in front of his truck and digging it into the ground, creating concerns that he might have possessed and planted explosives.

4. Sulsberger is shot after opening fire on law enforcement with an automatic weapon.

Sulsberger refused all attempts to effectuate a peaceful surrender. By about 2:00 a.m. on October 30, the ISP aircraft's fuel supply was running low. Law enforcement was concerned about losing the ability to monitor Sulsberger's location, which might have enabled him to escape the area. Sulsberger had, by his own admission, killed his father, and he was intoxicated and suicidal. Extended negotiations had proven to be ineffective. Due to the extreme public safety risks, a decision was made to approach Sulsberger to attempt to capture him and end the standoff.

A four-man team from the Sioux City SWAT team (Officers Hemingson, Croft, Hollopeter and Frederickson) deployed on foot and took a position to Sulsberger's north to obtain visual contact, to provide tactical support, and to prevent his escape to a tree line to the north. The ISP BearCat and the Sioux City SWAT armored MRAP vehicles, were to approach Sulsberger from opposite ends of the road on which he was encamped. The ISP aircraft kept overwatch during the operation. Before

law enforcement began its approach, Deputy Boetger contacted Sulsberger and instructed him how to surrender when officers reached him. Sulsberger responded, “I don’t think so.”

At approximately 2:45 a.m. the armored vehicles began to approach Sulsberger. Sulsberger got out of his truck and knelt in a position overlooking the road on which the vehicles were advancing. As the two armored vehicles approached, Sulsberger began firing automatic weapons rounds at the ISP BearCat, which reported this fact by radio. Members of the ground Sioux City SWAT team, seeing, hearing, and hearing radio reports of the gunfire, returned fire. As the Sioux City MRAP neared, it was struck by bullets, and the officers in it could see bullet casings being ejected from Sulsberger’s gun. Officer Christopher Eral also returned fire from the vehicle’s turret and Sgt. Jake Noltze fired on Sulsberger’s position from the vehicle’s passenger door. After several minutes of this gun battle, a cease fire was ordered.

Sulsberger was prone in front of his truck. He was not moving or firing his weapon. The ISP BearCat approached Sulsberger and fired two non-lethal rounds at him with no response. At approximately 2:56 a.m., officers from the BearCat approached Sulsberger on foot and placed him in handcuffs. A medic from the BearCat attended to Sulsberger and determined that he was deceased. An autopsy disclosed that he had died from multiple gunshot wounds. Toxicology testing showed that he had a blood alcohol concentration of 0.147 g/dL.

C. Aftermath of the incident.

Law enforcement investigated the scene. Around Sulsberger's body were an AR-15 rifle with a drum magazine; various tactical warfare gear including night vision equipment, a helmet, armored plates, and large quantities of ammunition; and stripper clips, indicating that he had reloaded his weapon several times. Two handguns, ammunition, beer, and beer cans, among other items, were found in Sulsberger's truck. Both armored vehicles were damaged or disabled from having been struck by multiple bullets.

Shortly afterward, officers located Todd. He was deceased in his truck, which was overturned in a ditch. The front and rear of the pickup had several bullet holes. A loaded pistol magazine and an empty AR-15 rifle magazine were on the ground behind the pickup. Todd had suffered a single contact gunshot wound to his head causing his death, according to subsequent autopsy. No officers or other civilians were injured during the incident.

Ballistics analysis of Sulsberger's rifle confirmed that it had been illegally modified from semi-automatic to automatic fire functioning. A search of Sulsberger's home located many weapons, more than 25,000 rounds of ammunition of various calibers, ammunition-loading equipment and supplies, medical equipment, gas masks, night- and thermal-vision equipment, body armor, and military meals ready to eat.

APPLICABLE LAW

To be justified, the force used by the officers who fired the shots that killed Sulsberger must have been reasonable. Reasonable force is that force which a reasonable person, in like circumstances, would judge necessary to prevent an injury or loss. It can include deadly force if it is reasonable for a person to believe that such force is necessary to avoid injury or risk to the person's or another's life or safety, and it is reasonable to believe that such force is necessary to resist a like force or threat. Iowa Code §§ 704.1, 704.2 and 704.3.

In *Graham v. Connor*, 490 U.S. 386 (1989), the United States Supreme Court held that the use of deadly force by a police officer must be evaluated from the perspective of a reasonable police officer on the scene and in the same circumstances. Under *Graham*, reasonableness of police use of force cannot be evaluated from the perspective of a civilian or the perspective afforded by 20/20 hindsight. The Court further stated that the fact law enforcement officers are often required to react quickly in tense, uncertain, and rapidly evolving situations is a factor that must be considered in determining reasonableness. Since *Graham*, the Supreme Court has narrowed the analysis to focus on the exact moment that the force was applied.

ANALYSIS

The actions of all law enforcement officers involved in this incident, including all of those who fired their weapons upon him, were legally

justified. The decision to fire at Sulsberger was reasonable under the circumstances. Sulsberger set in motion and continued the circumstances that brought about his death. His actions gave rise to reasonable fears that the lives of everyone in his vicinity were in grave danger. Sulsberger admitted to the murder of his own father and, despite their restrained and prolonged efforts to resolve the incident peacefully, Sulsberger verbally threatened the lives of law-enforcement officers on the scene and repeatedly opened fire on them with a rifle illegally modified to automatic fire. Officers were justified in using deadly force against Sulsberger to end his continuing threat of lethal force that had already murdered Sulsberger's father before being turned against the officers themselves.

CONCLUSION

Having determined that all law enforcement officers involved acted with legal justification, the Iowa Attorney General's Office considers the criminal investigation into this incident to be closed.