



## John Hummel District Attorney

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**TO:** Residents of Deschutes County  
**FROM:** John Hummel, Deschutes County District Attorney  
**DATE:** July 6, 2016  
**RE:** Law Enforcement Use of Force Incident on May 31, 2016

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### INTRODUCTION

On May 31, 2016, at approximately 3:30 P.M. at the High Desert Museum in Deschutes County, Senior Oregon State Police Trooper Richard Brannin shot Nicholas Berger three times. These shots killed Berger. I find Brannin's decision to shoot Berger was legally justified; thus I will not be initiating criminal charges against Brannin.

### FACTS

On the day of the incident, Berger entered the High Desert Museum and began browsing through the gift shop. When he first entered the gift shop there were two employees present. After about 20 minutes, one of the employees left the store leaving one employee behind the counter. Berger walked behind the counter, grabbed the employee, and told her she was coming with him. Berger then began to escort the woman against her will out of the gift shop and toward the exit doors of the museum. The employee put up a valiant fight, and as she did so, Berger's actions became more violent toward her. He wrapped his arm around her neck in a choke hold and began dragging her through the museum. Patrons fled for the doors, 911 was called, and on numerous occasions, Berger threatened to injure and/or kill the employee if anyone intervened. The scene was generally terrifying and chaotic.

While most of the patrons fled, a few intervened to help, ultimately causing Berger to release the employee. Once he released his captive, Berger exited the main museum building and entered a courtyard area just outside the Desertarium exhibit. Shortly after entering this area, Berger cut his left forearm with a knife he was carrying. The wound he created was deep and caused significant bleeding.

Three museum employees arrived in the courtyard moments after Berger. They offered to assist him with his wound, but he refused and became more agitated. These employees report Berger saying he was a "piece of shit" and that he "just wanted to die." Berger also said he was ashamed for abducting the museum employee and asked them to tell his mother that he loved her.

One of the employees then observed through the glass doors into the main museum building that a law enforcement officer had arrived on scene. This employee pulled open the first of the two doors to allow the officer to enter the courtyard. As the door opened another employee said something to the effect of "the cops are here." Berger immediately went through the open door toward the officer. Berger had a knife in his hand.

The law enforcement officer was Oregon State Police Senior Trooper Richard Brannin. Brannin was the first law enforcement officer to arrive on scene. When he entered the museum building he was escorted by a museum employee to the hallway immediately adjacent to the glass doors to the courtyard where Berger stood with the three museum employees. Brannin held his position to assess the situation. He saw Berger with blood on his arm and other people in the vicinity. To Brannin, it looked like Berger was standing over something or someone, and Brannin feared it was the woman Berger had abducted. Brannin backed up a few steps to develop a plan and at that moment he saw the doors open and Berger walk through.

Brannin saw the knife in Berger's hand. Berger, at six feet, six inches, and weighing 400 pounds, advanced quickly toward Brannin, yelling "fucking shoot me." Brannin says Berger was out of control and flailing his arms. Brannin yelled "stop" and "drop the knife" but Berger kept advancing. Brannin was backing up to create space between him and Berger, but Berger kept coming. Brannin deployed his Taser, striking Berger in his torso, but Berger kept coming. Brannin shot a second Taser round, again striking Berger, but Berger kept advancing. Brannin continued to yell "stop" and "drop the knife" but Berger kept coming. Brannin was getting backed up against a wall and Berger was within two steps of him when Brannin pointed his rifle at Berger and shot him three times. Berger expired moments after he was shot.

Fragments from the top half of the knife blade that Berger held in front of him as he advanced toward Brannin were recovered from Berger's body during the subsequent autopsy. The blade had been sheared off by one of the bullets fired by Brannin.

In addition to the three museum employees in the courtyard, there were two museum employees inside the building near Brannin during the incident. These two employees inside and two of the employees outside witnessed the deployment of the Taser. No one other than Brannin and Berger witnessed the rifle shots. The accounts of all of these witnesses and Brannin are remarkably similar and are consistent with the physical evidence and the findings of the medical examiner who conducted the autopsy of Berger.

### **LEGAL ANALYSIS**

Oregon Revised Statute 161.219 is Oregon's law regarding the use of deadly physical force. This law applies equally to law enforcement and the general public. This statute authorizes a person to use deadly physical force against another person if the other person is about to use unlawful deadly physical force against them.

Brannin says when Berger continued to advance toward him in spite of being hit twice by Taser rounds he feared Berger was going to stab him. Brannin said that even if Berger did not have a knife, he feared that Berger could have killed him because of his massive size. Brannin said that he feared if he did not shoot Berger he would have died.

Based on all the available evidence, Brannin's belief that Berger was about to use deadly physical force against him is objectively reasonable. Because of this, Brannin's decision to use deadly physical force against Berger is authorized by Oregon law. Consequently, I will not initiate criminal charges against Senior Trooper Brannin.

## WHY?

This still leaves the question: “Why?” Why did Nicholas Berger, a 36 year old man with no prior criminal record, abduct a museum gift shop employee that he never met before? Why did he cut his arm in the courtyard? Why did he advance toward Senior Trooper Brannin yielding his knife? Why did he not stop and drop the knife when ordered to do so?

Berger was in crisis. His wife ended their relationship in January and the decision was not mutual. His wife applied for and received a restraining order against Berger. She alleged that Berger was addicted to methamphetamine and when he was under the influence of drugs he would talk about suicide. She said he had delusional thoughts about people watching their house.

Berger then moved to Oregon. He bounced around between houses and short-term jobs. He continued to struggle with addiction. His mother reports that he was addicted to OxyContin, heroin, and methadone. In fact, it was reported that on May 25, 2016, Berger stole a large amount of pain pills from a relative in Bend. Berger’s mother said that he was recently acting delusional on their phone calls – claiming that people were monitoring their conversations.

Berger’s mother last talked to him on May 30, 2016, the day before the incident at the High Desert Museum. Berger told his mother that nobody loved him and nobody would miss him if he was gone. The next day he went to the museum, abducted a gift-shop employee, slashed his arm with a knife, told museum employees he wanted to die, charged a police officer while holding a knife, and shouted that the officer should shoot him. And the autopsy revealed that at the time of this incident Berger had in his system: methamphetamine, amphetamine, hydrocodone, codeine, Zoloft, and Paxil.

I conclude that Berger was suffering from a mental health disorder that caused delusions. He was also struggling with addictions to multiple drugs, including methamphetamine and pain meds. And at the same time he was experiencing, at a minimum, situational depression (I am unqualified to offer an opinion as to whether he suffered from clinical depression) caused by the break-up of his marriage, and his bleak housing, employment, and financial situations. The confluence of these realities caused Berger to decide to end his life, and for unknown reasons, he chose “suicide by cop” as his method.

## CONCLUSION

Our community will not soon forget the events of May 31, 2016.

The employee who was abducted will recover from the physical pain caused by the violent wrenching of her neck, but the emotional trauma will be something she and her family will always carry with them.

In spite of what Nicholas Berger thought at the end, his friends and family did love him and they struggle with not only the loss of their family member, but the burden of knowing their loved one caused pain to others in his final moments of life.

All the employees and volunteers of the High Desert Museum, and all the visitors present during this incident will always remember that day. Many were heroic. The visitors who intervened, at great risk to their physical

safety, to convince Berger to release his captive, possibly saved her life. The three employees that talked to Berger in the courtyard displayed compassion, poise, and courage. And the employees who ran toward the shots to direct visitors to safety give new meaning to the term “dedicated employee.”

The Tri-County Major Incident Team, led in this case by Bend Police Department Detective Sergeant Devin Lewis, conducted a thorough and professional investigation and provided me with all the evidence I required to perform my analysis of the incident.

Deputy District Attorney Kandy Gies assisted me in my review and her experience and insight were invaluable.

Finally, Senior Trooper Brannin’s actions should make our community proud. When he arrived at the front door to the High Desert Museum he knew he was the only officer on the scene. He knew a woman was being held captive. He had reports that a gun or knife was involved. And he knew that his radio had poor coverage in that area of the county and would potentially have no coverage in the museum.<sup>1</sup> If his safety was his priority he would have waited for back-up and entered the museum with one or more colleagues. But he decided he had to act immediately to protect Berger’s captive, so he went in alone.

Once inside the museum, Brannin hustled to Berger’s location. Then he took the time necessary to assess the situation and develop a plan. This is when Berger charged him. At this point, Brannin would have been legally justified in immediately shooting Berger. But Brannin valued Berger’s life, so Brannin backed up, issued commands, used less lethal force via a Taser, then deployed a second Taser round. It was only as a last resort, as he was getting backed up against a wall while Berger continued to advance, that Brannin shot Berger.

Senior Trooper Brannin’s decision to enter that museum alone, with spotty radio coverage, to protect the life of the museum employee, and everyone else in that museum, was heroic. His decision to initially forego shooting Berger, when he would have been legally justified in immediately shooting, showed he has the empathy and respect for human life that all law enforcement officers should aspire to.

All law enforcement investigation reports in this matter are available to the public. Please contact me if you have questions about my decision in this case.

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<sup>1</sup> Deficient law enforcement radio communication equipment and coverage in Deschutes County is a public safety emergency and puts our first responders at risk. Management of the Deschutes County 911 Service District, in partnership with local law enforcement agencies, has been working hard to address this situation and is close to implementing a solution. Their efforts deserve the full support of the public.