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June 15, 2007

Chief William Lansdowne
San Diego Police Department
1401 Broadway
San Diego, CA 92101

Re: Fatal shooting of Noe Rojas-Godinez on February 10, 2007, by San Diego Police Officers Jack Pearson and Paul Galante. San Diego Police Case # 07-008923; DA Special Operations Case No. 07-012PS. Deputy District Attorney Assigned: G. Michael Still

Dear Chief Lansdowne:

We have reviewed the materials compiled by your department concerning the fatal shooting of Noe Rojas-Godinez by San Diego Police Officers Jack Pearson and Paul Galante on February 10, 2007. An investigator from our office responded to the scene soon after the incident and was briefed by your investigators.

Persons Involved
Noe Rojas-Godinez was a 17 year-old Mexican national born in Veracruz, Mexico.

Officers Jack Pearson and Paul Galante were assigned to the Southeastern Division – Patrol.

Background
The reports indicate that on the night of February 10, 2007, at 10:51 p.m., Officers Pearson and Galante were traveling eastbound on Kenwood Street approaching Pyramid Street when they saw a Jeep Cherokee run the stop sign southbound on Pyramid to westbound on Kenwood. Officer Pearson made a U-turn and followed the Jeep with the intention of stopping the driver. The Jeep turned northbound on Bollenbacher Street. The driver of the Jeep, subsequently identified as Rojas, crossed the double yellow line and tried to pass a truck that was ahead of him. Rojas then pulled into the driveway of the home at 671 Bollenbacher Street and shut off his headlights. Further investigation revealed that Mr. Rojas did not live at this home and did not know the residents.

Officer Pearson parked the patrol car in the street perpendicular to the driveway, blocking the Jeep. The officers got out of their patrol and walked up to Rojas as he sat in the driver's seat. Officer Pearson approached the driver's side and Officer Galante approached the passenger side. Officer Galante's mobility was hampered because there was only a small area for him to maneuver between the Jeep and a row of hedges that bordered the driveway.

Shooting Incident

Officer Pearson contacted Rojas at the driver's side door and asked him for his license and registration. Officer Pearson saw Rojas appeared nervous. Officer Galante walked up on the passenger side and illuminated the interior of the Jeep with his flashlight.

Officer Pearson told Rojas to put the car in park and turn off the ignition. Rojas turned off the ignition, however Officer Pearson noticed the automatic gearshift was in the reverse position. When Rojas took his foot off the brake, the Jeep rolled backwards. Officer Pearson told Rojas to put the vehicle in park. Officer Pearson believed Rojas understood him because Rojas' hand went towards the gearshift. Officer Pearson thought that the Jeep may have been stolen due to Rojas' apparent inexperience in operating it.

As Rojas reached for the gearshift with his right hand, Officer Galante saw what appeared to him to be a blue-steel revolver with a red tip sitting on a shelf near the glove box. Officer Galante yelled to Officer Pearson that there was a gun in the car and that it looked like it might be a toy. However, Officer Galante had previously known of a real gun recovered in the Southeast area approximately four weeks before that had a red-colored tip.

Officer Pearson said he only heard Officer Galante yell, "Gun!" To keep Rojas from grabbing the weapon, Officer Pearson reached his left hand through the open driver's window and grabbed Rojas' left hand. Rojas began to move his right hand and Officer Pearson struck Rojas once in the face. Rojas then moved to the right and Officer Pearson un-holstered his firearm and put the firearm to the side of Rojas' head and told Rojas that if he moved towards the gun, he would shoot him. Rojas then moved closer to Officer Pearson and Officer Pearson re-holstered his firearm and placed both of his hands on Rojas' wrists with the intent of pulling Rojas through the open driver's side window.

Rojas was able to break free from Officer Pearson's grasp and immediately started the Jeep with his right hand. Rojas revved the engine and started backing up. Officer Pearson pushed away from the Jeep and heard approximately three gunshots. Rojas continued backing up and rammed the Jeep into the patrol car, shattering the Jeep's rear window. After the collision the Jeep came forward towards Officer Pearson. Fearing Rojas was trying to run him over, or had run over Officer Galante, Officer Pearson drew his firearm and fired approximately 4-5 rounds at Rojas. Officer Pearson, in a subsequent interview, stated why he fired his weapon: "I thought he was going to run me over. I was afraid he was going to run me over. I didn't know if he had already run my partner over or not. The fact that I heard my partner yell 'gun,' the suspect rapidly accelerating in reverse, hearing gunshots and not knowing where they came from."

While standing between the Jeep and the hedges, Officer Galante saw the Jeep's tires smoking after Rojas revved the engine . Officer Galante was confined in a small area between the Jeep and the hedge row on the south side of the driveway. As the Jeep lunged forward, Officer Galante saw Rojas turning the front wheels toward him. Fearing he was going to be run over, and that Rojas could have picked up the handgun in the darkened Jeep, Officer Galante drew his firearm and fired at Rojas. Galante was inches from the Jeep when he fired approximately three

rounds through the front windshield as Rojas put the Jeep in reverse and rammed the patrol car. Officer Galante, in a subsequent interview, stated why he fired his weapon the first time: "Because I thought J.R. (Officer Pearson) or I were about to die. I thought the kid had picked up the gun, and he was going to shoot either him or me. Because he was reaching, I couldn't see what was going on in the vehicle at that time. I knew the gun was within arms reach and it looked like he was going to go for it."

Rojas then put the car in drive and drove forward towards Officer Galante standing in the driveway. Officer Galante, fearing that he would be hit by the Jeep, fired a second volley of shots at Rojas as the Jeep came towards him. Officer Galante, in a subsequent interview, stated why he fired his weapon the second time: "I had absolutely no recourse because the threat was still coming. I did not know if he had the gun or not. I could not move away from the vehicle in any type of manner that would allow me to keep sight of him. I thought he was either going to run over J.R. or me. It really didn't seem like he could care less."

Officer Pearson heard Officer Galante's magazine reload. Officer Pearson did not fire again because he knew Officer Galante was close to the Jeep and he did not want to hit Officer Galante. The Jeep missed Officer Galante but struck the garage door area of the home at 671 Bollenbacher. Rojas backed the Jeep up, turned and drove through the hedge row on the south side of the driveway, over the front lawn of the adjacent home at 661 Bollenbacher, and then crashed into a car parked on the street at the curb in front of 661 Bollenbacher. Rojas was hit by the officer's gunfire and pronounced dead at the scene.

Additional Investigation

The gun Officer Galante saw in the Jeep was in fact a plastic blue toy handgun with a red tip. Although there were no witnesses who actually saw what occurred, there were several residents who heard what happened. The witness accounts regarding the squealing of tires and the sequence of shots are consistent with the events described by the officers. Acceleration skid marks were observed on the driveway where the Jeep accelerated backwards into the officers' patrol car and then forward toward Officer Galante. The front passenger side of the patrol car, the right front lights, and the hood were damaged.

18 cartridge cases were recovered at the scene and compared to the officer's firearms. Ballistics comparisons determined that 15 cartridge cases were fired from Officer Galante's Sig Sauer P229 firearm, and three were fired from Officer Pearson's Sig Sauer firearm P226. There were 14 bullet strikes in the front windshield of the Jeep and two in the driver's side door. 13 of the windshield strikes appeared to come from the exterior passenger's side of the Jeep, consistent with Officer Galante's position. The two driver's side door strikes and one windshield strike appeared to come from the exterior driver's side of the Jeep, consistent with Officer Pearson's position.

On February 12, 2007, Dr. Christopher Swalwell of the San Diego County Medical Examiner's Office performed an autopsy on Rojas. Rojas had eight gunshot wounds to his body in the chin, neck, shoulder, both arms, chest, and thigh areas. The most serious wounds were to the neck and

chest, which severed major arteries and caused internal bleeding. Dr. Swalwell determined that the cause of death was from multiple gunshot wounds. Toxicological tests revealed a blood alcohol level of 0.12%, methamphetamine, and a small amount of its metabolite, amphetamine.

Legal Analysis

This review was conducted pursuant to the joint protocol between this Office and all San Diego County law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force. The review does not examine such issues as compliance with the policies and procedures of any law enforcement agency, ways to improve training or tactics, or any issues related to civil liability. Accordingly, such a review should not be interpreted as expressing an opinion on these matters.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person for whom he had reasonable cause to believe has committed a public offense. That section states the officer need not retreat or desist his effort to affect an arrest because of that person's resistance. Penal Code section 196 declares that homicide is justifiable when committed by public officers when necessarily committed in overcoming actual resistance in the discharge of any legal duty.

In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S. Ninth Circuit Court of Appeals, in the case of Scott v. Henrich (9th Cir. 1994) 39 F.3d 912, delineated those circumstances under which deadly force may be used:

> '[P]olice may use only such force as is objectively reasonable under the circumstances. An officer's use of deadly force is reasonable only if 'the officer has probable cause to believe that the suspect poses a significant threat of death or serious injury to the officer or others.' All determinations of unreasonable force 'must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.'" [Citations omitted.]

Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self-defense is available to any person. Homicide is justifiable in accordance with Penal Code section 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

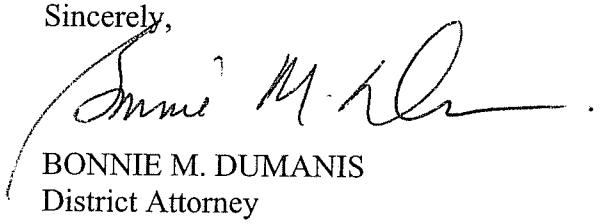
Conclusion

In this case, Officers Pearson and Galante were confronted by Rojas, whom they were investigating for a traffic violation and whom they had observed attempt to take potentially evasive driving maneuvers. Officer Galante saw what appeared to him to be a blue-steel revolver with a red tip, in Rojas' Jeep near the glove box and yelled that it might be a toy gun, to Officer Pearson. Officer Pearson only heard Officer Galante yell "Gun!" and attempted to obtain control of Rojas' hands. A struggle ensued wherein Rojas was able to break free of Officer Pearson's grasp, start the Jeep, rev the engine, put the Jeep into reverse, and ram the patrol car in an effort to flee from the officers and avoid arrest.

Fearing that he was going to be run over, and that Rojas could have picked up the handgun in the darkened Jeep, Officer Galante drew his firearm and fired at Rojas. After Rojas rammed the Jeep into the patrol car, the Jeep came forward towards Officer Pearson. Fearing that Rojas was going to run him over, and fearing that Rojas had run over Officer Galante, Officer Pearson drew his firearm and fired at Rojas. As Rojas drove the Jeep forward towards Officer Galante in the driveway, Officer Galante again feared he would be hit by the Jeep and fired a second volley of rounds at Rojas as the Jeep came towards him. Officer Pearson's and Officer Galante's decisions to use deadly force were reasonable under the circumstances, and they bear no criminal liability for their actions.

A copy of this letter, along with the materials submitted for our review will be retained in our files.

Sincerely,



BONNIE M. DUMANIS
District Attorney

BMD:jh
Cc: Captain Mary Cornicelli