JESUS RODRIGUEZ
ASSISTANT DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

BONNIE M. DUMANIS
DISTRICT ATTORNEY

San Diego
330 West Broadway
San Diego, CA 92101
(619) 531-4040

http://www.sandiegoda.com

August 4, 2008

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

Re: Fatal shooting of Maurice Antoine White on April 18, 2007, involving San Diego Police Officers Scott Spillane and Adam Sharki; San Diego Police Department case number 07-022406; DA Special Operations case number 07-044PS; Deputy District Attorney Assigned: Richard Monroy

Dear Chief Lansdowne

We have reviewed the materials compiled by your department concerning the fatal officer-involved shooting of Maurice Antoine White on April 18, 2007. A District Attorney Investigator responded to the scene soon after the incident and was briefed by your investigators. The case was turned over to the District Attorney's Office on May 21, 2007 for review.

Persons Involved

Mr. Maurice Antoine White was 29 years old. Mr. White was employed as a security guard and on the evening of April 18, he should have been working at a construction site near 54th and University Avenue, but Mr. White left his work site that night to participate in the commission of an armed robbery. At the time of this incident, Mr. White was armed with a Ruger .38 revolver loaded with six rounds of ammunition.

Officers Scott Spillane and Adam Sharki were assigned to routine uniformed patrol duties the night of the incident. They were working together in a marked San Diego Police car. Officer Spillane was driving and armed with a department issued Sig Sauer .9mm semi-automatic handgun. Officer Sharki was the passenger and armed with a Glock .40 caliber semi-automatic handgun.

Background

The homicide investigation revealed that on April 18, 2007, at about ten minutes after midnight, Officers Spillane and Sharki were traveling eastbound on University Avenue from Florida Street. As they passed by the F Street Bookstore, Officer Sharki saw the store's front door fly open and a Black male with a shaved head ran out of the store. Officer Sharki saw the man remove something that had covered his face and he was carrying a bag. The man ran off in a full sprint

west on University Avenue, and then around the corner and north on Florida Street. Suspecting a robbery had just occurred, the officers made a U-turn and followed after the man, but they lost sight of him as he ran around the corner.

As the officers drove north on Florida Street, they saw a Chevrolet Cavalier occupied by a single male adult pulling away from the curb. Suspecting the car and its occupant were connected to a robbery, the officers followed the car as it turned west onto Lincoln Street. As the driver reached a dead end, he pulled his car over and parked. The officers pulled in behind and illuminated the car with their spotlights.

Shooting Incident

Officer Spillane walked up to the car on the driver's side and spoke to the driver, Maurice White, as White sat in the driver's seat. Officer Spillane asked Mr. White if he had just come from the bookstore at the corner. White replied, "No." Spillane asked White a second time if he had just come from the store. White again replied, "No."

While Officer Spillane was talking to Mr. White at the driver's door, Officer Sharki, who had walked up on the passenger side of the car, was illuminating the interior of the car with his flashlight. Officer Sharki was able to see that Mr. White was armed, holding a chrome revolver in his right hand between his legs. When Officer Sharki saw Mr. White was armed with a handgun, he yelled out to his partner, "Gun!" and then to the driver, "Drop the gun!"

Before Officer Sharki or Officer Spillane could react, Mr. White was able to raise his weapon and fire two rounds at Officer Spillane through the open driver's window. Officer Spillane later recalled he felt a bullet fly past his head.

In response and in defense of Officer Spillane, Officer Sharki fired a total of sixteen rounds at Mr. White through the front windshield and passenger side windows. After he heard Officer Sharki yell that the driver had a gun, Officer Spillane began retreating backwards into the street while at the same time drawing his sidearm. In response to being fired upon, Officer Spillane returned fire, firing four times at Mr. White through the driver's door. Both officers then retreated to a position of safety at their patrol car where Officer Sharki reloaded his weapon.

When it appeared safe, both officers approached the car and saw that Mr. White had been hit several times. The .38 revolver that Mr. White was armed with was recovered from the floorboard of White's car. Paramedics responded to the scene to render aid, but Mr. White was pronounced dead at 12:17 a.m.

Additional Investigation

Shortly after the shooting, the officers learned that the bookstore had in fact been robbed. The crime scene investigation revealed the man the officers saw running from the bookstore had first run past Mr. White's car and yelled to him, "Go, go, go!" The robber then ran between two

apartment complexes dropping his gloves, clothing and a gun as he fled the scene. That individual was later identified as Tiano Durham. Mr. Durham was caught, prosecuted and convicted for his role in the robbery. On April 14, 2008, Mr. Durham pled guilty to a violation of Penal Code section 211 and received six years in state prison. The gun discarded by Mr. Durham was a Glock 9mm semi-automatic handgun reported stolen during a residential burglary in San Diego nine months earlier on July 18, 2006.

The .38 revolver that Mr. White was armed with was reported stolen from a residence in Chicot County Arkansas in 1997. Forensic analysis showed the .38 caliber weapon had two empty casings in its cylinders and four live rounds.

Three uninvolved civilian witnesses saw portions of the events as they transpired. Two witnesses saw the robber running from the store and yell to Mr. White to, "Go, go, go!" as he ran past Mr. White's car. One witness watched the contact between the officers and Mr. White, and actually saw Mr. White open fire on the officers. The witness accounts and physical evidence recovered during the investigation corroborate the officers' statements.

On April 19, 2007, Dr. John Lucas of the San Diego County Medical Examiner's Office performed an autopsy on Mr. White. Dr. Lucas determined that Mr. White died from a multiple gunshot wounds. The manner of death was determined to be a "Homicide."

Toxicological tests were also conducted. Those tests were positive for the presence of cannabis in Mr. White's system.

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.

In this case, uniformed San Diego Police Officers Scott Spillane and Adam Sharki were investigating a robbery they suspected had just occurred at the F Street Bookstore. An armed robbery had in fact occurred and there were two suspects involved in the crime. As the officers tried to locate the robber, they came upon the get-away driver. Mr. White was armed and waiting nearby to pick up the robber after the crime was committed. The officers' presence at the scene interrupted the robbery and prevented Mr. White from picking up his co-conspirator. As the two officers approached Mr. White's car, Officer Sharki noticed Mr. White was armed, so Officer Sharki called out to Officer Spillane. In response, Mr. White fired twice at Officer Spillane. The officers returned fire fatally wounding Mr. White.

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 says the officer need not retreat or end 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:

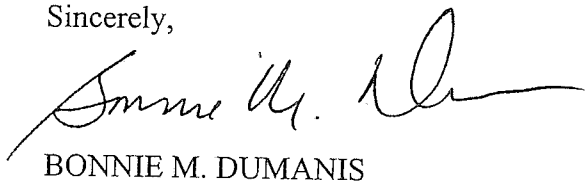
> '[P]olice may use only such force as is objectively reasonable under the circumstances. An officer's use of deadly force is reasonable only if 'the officer has probable cause to believe that the suspect poses a significant threat of death or serious injury to the officer or others.' All determinations 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.

Neither Officer Spillane nor Officer Sharki bear any criminal liability for their actions during this incident.

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:rm:jh
Cc: Captain Cesar Solis