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CHIEF OF POLICE

January 25, 2008

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

Re: Fatal shooting of Mr. Dominic Long on July 24, 2007 by San Diego Police Officer Travis Hamby; San Diego Police Case #07-044019; DA Special Operations Case No. 07-086PS; Deputy District Attorney Assigned: Robert J. Kearney

Dear Chief Lansdowne:

We have reviewed the reports and other materials compiled by your department concerning the fatal shooting of Dominic Long by the above-named officer on July 24, 2007. A District Attorney Investigator responded to the scene soon after the incident and was briefed by your investigators.

Persons Involved
Mr. Dominic Long was 32 years old. Mr. Long was transient and two days prior to this incident he told a police officer that he had only been in San Diego for two weeks. Mr. Long was staying under the overpass at I-5 and Clairemont Drive. According to Mr. Long's sister, he was schizophrenic and had been in and out of hospitals for years.

San Diego Police Officer Travis Hamby was assigned to patrol in the Northern Division.

Background
On Tuesday, July 24, 2007 at 10:13 a.m., San Diego Police received a report of a sexual assault that just occurred in the 1700 block of Mission Bay Drive. The victim, a 30 year-old female, reported she was walking along Mission Bay Drive with her children and her friend who was pushing her own child in a stroller. A Black male adult in his 30's with long dreadlocks, a scraggly beard, a dark shirt and camouflage pants that looked transient said, "hello" to her. The victim responded, "good morning." As they passed, the man put his hands on her buttocks and vaginal area, over her clothes. The victim told the man not to touch her. The man then walked away backwards, staring at the victim as she called the police.

The details of the crime as well as the suspect's physical description and direction of travel were dispatched to patrol units. The police helicopter and several patrol units responded to the call. The police helicopter arrived first and circled over Mission Bay Drive. Officer Hamby was the

first patrol officer to arrive on scene. He was in uniform and armed with a department issued Glock .40 caliber semi-automatic pistol. Officer Hamby was working alone and drove a marked police car. The observer in the helicopter spotted Mr. Long in the vicinity of the 1500 block of Mission Bay Drive and identified him as a possible suspect. The observer broadcasted Mr. Long's location and direction of travel. When Mr. Long saw the helicopter circling overhead, he ran towards the bottom of the Tecolote Creek Bridge.

When Officer Hamby arrived, he parked in the lot by the playground. Officer Hamby saw Mr. Long who matched the description of the suspect. Mr. Long began to walk up the embankment as Officer Hamby got out of his car. Officer Hamby began to walk toward Mr. Long. Officer Hamby waved and yelled for Mr. Long to come over to him. Mr. Long looked over at Officer Hamby. Mr. Long appeared agitated to Officer Hamby, and he was moving his arms as if he were upset or under the influence of drugs.

Shooting Incident

Officer Hamby reported that when they were about 30 feet apart, he saw Mr. Long run a few steps east toward the sidewalk. Officer Hamby reported over the radio that Mr. Long was running away. As Officer Hamby began to chase him, Mr. Long stopped, and turned back towards Officer Hamby. Mr. Long's feet were spread apart in what looked like a fighting stance to Officer Hamby. Mr. Long's left hand was clenched and he was waving at Officer Hamby with his right hand, in a manner that Officer Hamby interpreted to mean, "Come on, let's fight."

Officer Hamby estimated they were about 20 feet apart when he saw something short and sharp in Mr. Long's left hand. Upon seeing the sharp object, Officer Hamby drew his gun and told Mr. Long, "Don't move, don't come toward me, get on the ground!" Mr. Long kept waving his hand for Officer Hamby to come forward like he wanted to fight. Officer Hamby felt if he got too close that Mr. Long would stab or cut him. Officer Hamby stopped moving forward and stood his ground while pointing his gun at Mr. Long. Mr. Hamby again told Mr. Long to get on the ground.

Mr. Long started to move toward Officer Hamby. Officer Hamby yelled at him another time, "Don't come towards me!" Mr. Long moved about five feet closer to Officer Hamby. Mr. Long was now close enough to charge and injure or kill Officer Hamby. Officer Hamby said at that distance, even if he could fire a shot, he might miss or it may not be enough to stop Mr. Long from advancing. Based on his training, Officer Hamby felt that he was in mortal danger. As Mr. Long continued to move forward, Officer Hamby recalled firing his gun two or three times at Mr. Long. In a subsequent interview, Officer Hamby reported that when he fired his gun, he felt Mr. Long was going to hurt or kill him.

After he fired, Officer Hamby saw Mr. Long turn away, grab his chest and walk south onto the sidewalk. Officer Hamby continued to yell at Mr. Long to get on the ground. Mr. Long did not obey the commands and continued walking away. Officer Hamby reported that Mr. Long walked a few yards and fell down.

Officer Hamby could clearly see Mr. Long still holding the knife in his left hand. Officer Hamby gave numerous additional commands for Mr. Long to let go of the knife and to put his hands out to his side.

Within seconds, Officer Oliver arrived and gave Mr. Long instructions to let go of the knife, but there was no response. Officer Oliver unsuccessfully used her expandable baton to try and knock the knife out of Mr. Long's hand. Officer Oliver then secured Mr. Long's left arm, grabbed the knife and tossed it away from him. Mr. Long was then handcuffed. Emergency medical personnel were summoned and Mr. Long was pronounced dead at the scene shortly after their arrival.

Additional Information

The crime scene was secured and a scene investigation was completed. The investigation revealed Officer Hamby fired a total of four (4) rounds. Four shell casings were recovered from the dirt area near the parking lot, north of Tecolote Creek. The group of shell casings was approximately 70 feet from where Mr. Long's body was recovered. Moments after Officer Hamby fired at Mr. Long, the officers in the helicopter activated a video recorder. The recording captured the events after the shooting occurred and is consistent with Officer Hamby's and Officer Oliver's statements.

The victim positively identified Mr. Long as the assailant from a photograph taken from a previous report of sexual assault. On Sunday, July 22, 2007, two days before this incident occurred, Mr. Long approached a 22 year-old woman in the 3400 block of Clairemont Drive and sexually assaulted her. The woman described the assailant to the police as Black male with dreadlocks, carrying a backpack and wearing a beanie. Patrol officers found Mr. Long walking in the 3000 block of Clairemont Drive. The woman was brought to where Mr. Long was and she identified him as the person who assaulted her. However, because the woman was leaving San Diego the next day, she declined prosecution. During the detention, the officers identified Mr. Long, photographed him and found him in possession of a silver folding knife. After completing a Field Interview report, the officers released Mr. Long.

At the time of his death, Mr. Long was wearing a blue knit cap, camouflage shorts, a blue sweatshirt and tennis shoes. A white metal folding knife with a four inch long body and a two inch long blade was recovered at the scene. The blade was locked in the open position. The knife was recovered eleven feet from Mr. Long's body. The recovered knife was consistent with the knife Mr. Long possessed when contacted by the police two days earlier.

Homicide detectives interviewed several civilian witnesses who saw and/or heard portions of these events as they occurred.

Witness #1 was walking south from the Hilton on a path along Mission Bay with witnesses #2 and #3, when she saw a police helicopter overhead. When she reached the area of the Tecolote Creek Bridge, she saw a Black man running underneath the bridge. About the same time, she saw a police officer arrive. The man came back up from under the bridge and went towards the

officer. The officer had his gun drawn and the two were walking toward each other. Witness #1 said the man first backed off, and then went back towards the officer. The officer was yelling to the man, but witness #1 could not hear what he was saying. Then witness #1 saw the man coming toward the officer. Witness #1 said she was not close enough to see if the man had anything in his hands. She saw the officer firing his gun and recalled hearing three gunshots. She was unsure if the man was shot because he was standing for some time. The man then walked back towards the bridge and she didn't see him anymore. Witness #1 said she felt scared and wondered why the man did not just put his hands up. She did not get the sense the man was giving up or was going to stop.

Witness #2 was walking south from the Hilton on a path with witnesses #1 and #3 when she saw a police helicopter circling overhead. Witness #2 noticed a Black man running off the path from large tree to large tree in an effort to avoid being seen by the helicopter. She saw the man walk down an embankment as if he were going under the bridge. As a police car arrived on scene, witness #2 saw the man turn around and start walking toward the foot bridge. The officer parked the car, got out and drew his gun. Witness #2 estimated she was about 50 feet away from the officer when she heard the officer say something, but because of helicopter noise, she couldn't hear what was said. She could not tell if the man had a weapon, but did not see one at that time. Witness #2 saw the officer walk toward the man. The man turned onto the footbridge walking southbound, then stopped and took several steps toward the officer. She estimated the man and the officer were 20 feet apart when the officer fired four shots. The man stood for a moment and then fell to the ground. Witness #2 saw a female officer arrive and then both officers approached the man. After the man appeared to be secured, witness #2 approached the officers. She did not observe the officers remove or throw the knife.

Witness #3 was walking south from the Hilton on a path with witnesses #1 and #2 when she heard a helicopter overhead. When witness #3 reached the area of the bridge, she saw a Black man running and ducking under some trees. Witness #3 saw the man run under the bridge. At the same time a police car arrived and she saw the officer get out. The officer walked over toward the man. She assumed the officer was saying something to the man because the man came up from under the bridge. Witness #3 saw the officer draw his gun and point it at the man. The man was now facing the officer. Shortly thereafter, witness #3 heard gunshots. She estimated the distance between the man and the officer was 20 feet or less when the shots were fired. Witness #3 estimated she was 75 feet away from them at the time and that she couldn't hear what was being said. Witnesses #3 and #1 left the area and witness #2 remained.

Witness #4 was jogging with witness #5 near the Tecolote Creek Bridge when he saw a helicopter overhead. As he was crossing the bridge he saw a police car approach from the opposite direction and park on the north side of the bridge. The officer got out of his car and walked to the grass area. Witness #4 saw a man walking up to the dirt area from below the bridge. As the officer approached the man, he drew his weapon and pointed it at the man. The man continued to walk toward the officer. Witness #4 could not hear what the officer said but it appeared as if the officer was saying, "Stop!" Witness #4 did not see anything the man may have had in his hand. The officer fired three or four times. Witness #4 said the man did not

react to the gunshots, but turned and walked back onto the bridge where he collapsed. Witness #4 saw a female police officer arrive and assist the first officer. Witness #4 estimated that he was at least fifty feet away when he witnessed the incident.

Witness #5 was jogging across the bridge with witness #4 in Mission Bay when she saw a helicopter circling overhead. Just before getting across the bridge, witness #5 saw a police car park and the officer get out and walk towards the bridge. Witness #5 saw a person come up from under the bridge. Witness #5 could not tell if the man had a weapon but heard the officer yell something at the man. The man kept walking towards the officer. She heard three or four gunshots and turned around to look. Witness #5 estimated the distance between the man and the officer when the shots were fired to be the same as the width of one and a half parking stalls. After hearing the gunshots, witness #5 saw the man walk onto the bridge and collapse.

Witness #6 was jogging with witness #7 on the south side of the Tecolote Creek Bridge when he saw a police helicopter overhead. As he approached the bridge he saw a Black male with dreadlocks dropping or picking something up. As witness #6 began running across the bridge he saw a police car pull up on the opposite side of the bridge and park. The man ran up from the beach towards the park area. The officer got out of his car and drew his gun. The officer said something and the man stopped and looked at the officer. As the two were facing each other, it appeared the man reached for something in his backpack with his right hand. As soon as the man reached, the officer fired three or four times at the man. Witness #6 estimated the distance between the man and the officer was between twelve to twenty-five feet. Witness #6 saw the man turn and walk about seven to ten feet across the bridge and away from the officer. The man fell forward to the ground. Witness #6 saw a female police officer arrive, extend a stick and poke at the man lying on the bridge. Witness #6 said the man did not back away, nor did he act like a reasonable person would if a police officer was facing them with a weapon. Witness #6 said the police officer appeared in control, aware of his surroundings and in command of the situation.

Witness #7 was jogging with witness #6 near Mission Bay when he saw a police helicopter circling overhead. Witness #7 saw a man running back and forth along the shoreline and suspected the police were looking for him. A police car pulled into the parking lot and the officer got out of the car. The man was near the shore and witness #7 saw him run up towards the officer. It appeared that the man and officer confronted each other. The officer drew his gun and witness #7 believed he heard the officer yell for the man to, "Get down!" The man walked towards the officer. It appeared as though the man's right arm was moving toward his waist, but witness #7 was not sure because he was behind the man. Witness #7 did not see the man with a weapon. He heard three "pops," saw the man turn around and take a step and fall forward. Witness #7 said he was impressed with how the officer handled the situation.

Witness #8 was walking from the parking lot to a table when she saw a dark skinned man running. The man appeared to be homeless and looked like he was trying to escape or was scared. She saw the officer get out of his car and immediately point a "rifle," which she described as having a long barrel, at the man. Witness #8 estimated the man and the officer were

about ten feet apart. Initially, witness #8 said she lost sight of the man until she heard four gunshots, and then she saw the man still standing. Then she said the man was standing still and looked scared when the officer was pointing the rifle at him. She said the officer screamed, "Stop" at the same time he shot at the man with a rifle. Later, witness #8 said the man was walking at the officer when the officer was pointing the rifle at him. She reported that she didn't see anything in the man's hands.

On July 25, 2007, Deputy Medical Examiner Dr. Bethann Schaber performed an autopsy on Mr. Long. Dr. Schaber found that Mr. Long sustained a single penetrating gunshot wound to the left chest. The bullet perforated Mr. Long's heart, diaphragm, stomach and spleen. There was no exit wound and the bullet was recovered during the autopsy. The gunshot wound was fatal and listed as the cause of death. A toxicological examination revealed the presence of alcohol, measured at .06%.

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego 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 has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or desist his effort to effect 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 physical 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.]

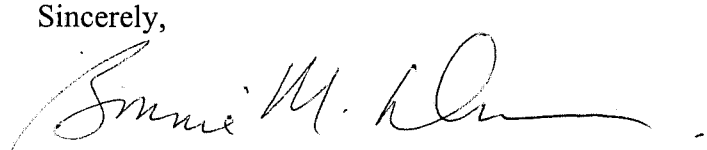
Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self-defense is available to any person. Homicide is justifiable in accordance with Penal Code 197 when resisting any attempt by a person to commit great bodily injury on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

Conclusions

San Diego Police Officer Travis Hamby was attempting to contact Mr. Long to investigate a sexual battery that had just occurred. Shortly after making contact with Mr. Long, Officer Hamby noticed that he had a sharp object in his hand. Mr. Long initially began to run, then stopped and began advancing with the sharp object toward Officer Hamby. When Mr. Long ignored a series of commands to stop and get on the ground, it became clear to Officer Hamby that Mr. Long did not intend to cooperate and posed a threat. As Mr. Long came closer, Officer Hamby feared for his own life and fired his gun in self-defense. Officer Hamby's actions under the circumstances confronting him were reasonable, and his use of deadly force was justified. As a result, Officer Hamby bears no criminal liability for his 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