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

April 14, 2008

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

Re: In-custody death of Mr. Darryl Lamark Johnson; arrested by San Diego Police officers on July 16, 2006 and died at Paradise Valley Hospital on July 23, 2006; SDPD Case #06-043178; DA Special Operations Case No. 06-088CD; Deputy District Attorney Assigned: Richard Monroy

Dear Chief Lansdowne:

We have reviewed the reports and materials submitted by your department concerning the arrest and in-custody death of Mr. Darryl Lamark Johnson.

Persons Involved
Mr. Darryl Lamark Johnson was 40 years old. He stood 5'8" and weighed 187 pounds. He was residing at 4936 Palin Street in San Diego.

San Diego Police personnel involved in Mr. Johnson's arrest were uniformed patrol officers Chris Tivanian, Michael Dewitt and Mark Brenner.

July 16, 2006 Incident
On Sunday evening, July 16, 2006 at 10:56 p.m., uniformed San Diego Police Officers Chris Tivanian and Michael DeWitt were operating a marked San Diego Police car when they saw a man, later identified as 40 year old Darryl Johnson, riding a bicycle without a light in the 4500 block of Logan Avenue. The officers decided to contact Mr. Johnson for the vehicle code violation and pulled up next to him. Mr. Johnson first stopped and got off his bike, but when Officer Tivanian approached, Mr. Johnson fled on foot with the bike at his side. Officer Tivanian chased Mr. Johnson on foot and was followed shortly afterwards by Officer Dewitt.

A security guard, who worked in a nearby apartment complex, witnessed the foot chase. The guard drew his sidearm, pointed it at Mr. Johnson and yelled out words to the effect of stop or he would shoot. Officer Tivanian tackled Mr. Johnson and began struggling with him on the ground. Officer Dewitt ran to Officer Tivanian's aid, grabbed Mr. Johnson and forced him down

to the ground. While Officers Tivanian and Dewitt struggled to control Mr. Johnson on the ground, Officer Brenner, who happened to be driving by, saw the struggle taking place on the sidewalk. Officer Brenner stopped his patrol car and ran to assist Officer's Tivanian and Dewitt in handcuffing Mr. Johnson.

During the struggle to control Mr. Johnson, Officer Tivanian tried to apply a Lateral Vascular Neck Restraint (LVNR), which is an agency and POST approved carotid artery sleeper hold. Because Mr. Johnson struggled violently with Officer Tivanian, the officer was unable to correctly apply the hold. Officer Tivanian wrote in a written report and detailed in his voluntary statement that because he was unable to correctly apply the hold, he held Mr. Johnson in a head lock for the time it took Officers Dewitt and Brenner to handcuff and place Mr. Johnson in maximum restraint.

In addition, Officer Dewitt detailed in his written report as well as during his voluntary statement the type and amount of force he used to subdue and handcuff Mr. Johnson. Officer Dewitt said he used elbow strikes to the back, hammer blows to the back, and knee strikes to the right thigh to force Mr. Johnson to physically submit so they could handcuff him and place him in restraints.

While the officers attempted to handcuff Mr. Johnson, the security guard used his foot to step on and pin Mr. Johnson's ankles to the ground, to stop Mr. Johnson from kicking at the officers.

During the struggle, Mr. Johnson suffered a cardio pulmonary arrest. He lost consciousness and stopped breathing. The officers summoned medical assistance and performed CPR until relieved by emergency medical personnel. Mr. Johnson was transported to Paradise Valley Hospital where he died seven days later on July 23, 2006.

Officers' Voluntary Interviews

All three officers involved prepared written reports and provided voluntary statements to investigators when requested. Officer Tivanian stated at about 11:00 p.m., he and Officer Dewitt saw a man, later identified as Darryl Johnson, riding a bike without a light. Officer Tivanian turned his patrol car and began following Mr. Johnson. Mr. Johnson made eye contact with the officers, got off the bike, picked it up, turned in opposite direction and began running away from them. Officer Tivanian saw the man trying to hop back up onto the bike as he ran. Officer Tivanian stopped the police car and began chasing Mr. Johnson on foot. Officer Tivanian said he was able to close the distance and catch up to Mr. Johnson when he heard someone yell, ***"I'll shoot you."***

Officer Tivanian didn't know who yelled out that statement, but thought it was the person he was chasing. Officer Tivanian dove and tackled Mr. Johnson on the sidewalk and remembered seeing a security guard pointing a gun at them as they fell to the ground. After tackling Mr. Johnson, Officer Tivanian wanted to get Mr. Johnson's hands under control. Officer Tivanian said he yelled, ***"Gimme your hands!"***

Officer Tivanian could feel that Mr. Johnson was bigger and stronger than he was. He also could feel Mr. Johnson trying to stand up. Officer Tivanian said he tried to apply a carotid restraint, (Lateral Vascular Carotid Restraint or LVNR). While struggling with Mr. Johnson on the ground, Officer Tivanian used his right arm and placed it around Mr. Johnson's neck. However, Officer Tivanian said he was unsuccessful in his attempt to apply the LVNR and couldn't apply the correct the hold.

When asked why he couldn't apply the LVNR, Officer Tivanian stated, ***"Just his movement and ability, he was just simply stronger than me. He's pushing up off the ground. His upper body is coming up off the ground. As I have him, essentially he's more, as I'm trying to put it on, he's moving his head around in my arm and getting up. And I just, ya know, I was doing the best I could, but I realized this, this isn't working... I'm just, just kinda hanging on for the ride and realizing, that, ya know, just stay where you're at and try and keep the upper body from getting up off the ground and keep him from pushing up. Try to use my body weight and use the position I have on him."***

Officer Tivanian said Officers Dewitt and Brenner arrived and helped him control Mr. Johnson. Officer Tivanian heard Officer Dewitt tell the man, "***Gimme your wrist."*** Officer Tivanian told Mr. Johnson twice, ***"Stop, stop resisting. Let them cuff you up."*** Officer Tivanian explained he and Mr. Johnson were physically close together and he told Mr. Johnson to ***"knock it off"*** and let the officers handcuff him.

Regarding his use of the LVNR, Officer Tivanian stated, ***"The first time I tried to apply the carotid, we were kind of in a parallel position to each other. And like I said it wasn't working. He was getting up off the ground. He was just too much... But I'm gonna hang on to what I have, which was more or less in a head lock... Then I tried a second time. I repositioned my body so that I was essentially forming an L shape with him to where I could get better, some more leverage."***

Officer Tivanian detailed in his report that he couldn't get his arm across (the front) of Mr. Johnson's neck, consequently he had Mr. Johnson in a head lock and he was trying to hang on. Officer Tivanian said Mr. Johnson was trying to bite his arm and stated, ***"He turned his head... and he was just trying to bite my arm... He had his mouth open and his tongue was out. He like licked my arm a time or two and I like pushed his head back, and just kinda like moved my arm down and continued to hang on***." Officer Tivanian said Mr. Johnson wasn't gasping for air but was breathing heavily and determinedly through his nose and was not choking.

Regarding when the man was handcuffed, Officer Tivanian stated, ***"I asked them a couple times, you guys got him? No! You guys got him? No! Okay, I'm hanging on. The next thing I know, Mark or Mike that said, okay, we're good, and that's when I let go."***

Officer Tivanian estimated the time from when Mr. Johnson was tackled to when he was able to release the head lock was less than two minutes. Other than the trying to apply the LVNR and placing Mr. Johnson in a head lock, Officer Tivanian said he didn't use any other force during this incident. After Mr. Johnson was secured, Officer Tivanian searched him and found cocaine and money in his pockets.

Officer Tivanian heard Officer Brenner yell out, ***"He's not breathing. We need to start CPR."*** Officer Tivanian saw Officers Brenner and Dewitt performing CPR and he assisted by adjusting Mr. Johnson's chin and lifting Mr. Johnson's head so they could get a clear airway. Officer Tivanian said he and Officer Brenner used their radios and called for an ambulance and performed CPR until paramedics arrived.

Officer Dewitt stated when Officer Tivanian pulled their patrol car in behind the bike; Mr. Johnson first stopped his bike, turned around and then looked over his shoulder at them. When Officer Tivanian got out of the car, Mr. Johnson took off running with the bike at his side. When Officer Tivanian began chasing the man on foot, Officer Dewitt got back into the car and started driving in the direction where Mr. Johnson and Officer Tivanian were running. Officer Dewitt pulled up next to where Officer Tivanian tackled Mr. Johnson and went to help. Officer Dewitt saw Officer Tivanian struggling with Mr. Johnson on the ground and Officer Tivanian holding onto Mr. Johnson's upper body as Mr. Johnson was trying to pull away. Officer Dewitt saw Mr. Johnson was bent at his waist with his knees on the ground and was trying to push himself up with his hands. Officer Dewitt threw his flashlight to the ground and grabbed Mr. Johnson around the waist, pushing Mr. Johnson's body down towards the pavement. Officer Dewitt heard Officer Tivanian yelling, ***"Gimme your hands! Gimme your hands!"***

Officer Dewitt reached up and grabbed Mr. Johnson's left hand, but Mr. Johnson wouldn't let him control the hand. Officer Dewitt said Mr. Johnson was trying to pull his hands underneath his body, so Officer Dewitt grabbed Mr. Johnson's arm and told Mr. Johnson to give him his hands. Officer Dewitt recalled Officer Brenner, who was driving by, stopped to help them and was able to control Mr. Johnson's right hand. Officer Dewitt said he and Officer Brenner together were able to pull Mr. Johnson's hands together and handcuff them.

Regarding the force used during the incident, Officer Dewitt stated, "***When I was fighting for his hand, I applied elbow strikes*** (with his right elbow) ***to his back... That's how I got control of his hand. Later on I remember Chris yelling don't bite me, don't bite me. And then that's when I remember applying the blows to his back with my fist."*** Officer Dewitt estimated the number of elbow strikes he used was less than ten. Officer Dewitt stated, "***I did the elbow strikes and grabbed his wrist. I was pulling on his wrist and he pulled his hand away from me underneath his body. I applied more blows, he extended his arm, and I grabbed his arm and brought it behind his back. That's when Officer Brenner said he his right wrist cuffed, so I pulled on his wrist and it was placed in the handcuffs... I remember applying blows with my closed right fists to his back, saying give me your hands. Give me your hands."*** Officer Dewitt estimated the number of blows to Mr. Johnson's back at less than ten. His goal was to force Mr. Johnson to release his hands.

Officer Dewitt also stated, ***"After he was handcuffed, Johnson was kicking his feet. I remember a security guard was doing something there, stepping on his feet or something, something to that affect…I remember him kicking his feet and I was telling him to calm down and he kept grabbing my hand and moving his body side to side and I gave him approximately three strikes with my right knee to his right thigh and told him to quit kicking his feet."***

Officer DeWitt used his cord cuff and laced it around Mr. Johnson's ankles and used his own strength to bend Mr. Johnson's legs backward because Mr. Johnson was straining to keep his legs straight. Officer Dewitt eventually clipped the cord cuff to Mr. Johnson's belt. Officer Dewitt recalled when the cord cuff was applied, all three officers let go and laid Mr. Johnson on his right side in a recovery position. Officer Dewitt saw Officer Tivanian search Mr. Johnson and remove a baggie with narcotics from Mr. Johnson's pocket. Officer Dewitt called for a sergeant to notify a supervisor that a maximum restraint technique had been applied. Officer Dewitt remembered Officer Brenner saying, ***"Hey Mike, he's not breathing."***

Officer Dewitt radioed for an ambulance and went to his car to obtain a CPR mask. They released the maximum restraints, kept the handcuffs attached, placed Mr. Johnson on his back, and began CPR. Officer Dewitt gave the breaths and Officer Brenner performed chest compressions. A review of the CAD history reveals an ambulance arrived within **6-7** minutes from the time it was requested.

Officer Dewitt said he did not use any impact weapons, (flashlight or expandable baton) during the struggle. When asked to describe the force used by the other officers, Dewitt stated, ***"I remember my partner controlling his head. Chris was facing away from us. Officer Brenner and I were just trying to get his hands handcuffed and his body restrained… I heard Officer Tivanian say, give me your hands, quit fighting, something to that affect. And I remember telling him, to give me your hands and calm down. I kept telling him to calm down… I heard him*** (Brenner) ***tell me I have his right wrist cuffed"*** and heard bystanders yelling, ***"Why are you choking him?"***

Officer Brenner was driving on Logan Avenue when he saw a uniformed officer fighting with someone on the ground. Officer Brenner said the man was trying to get up off the ground. Officer Brenner saw Officer Dewitt get out of his patrol car and run over to help Officer Tivanian. Officer Brenner saw Officer Dewitt grab the man around the stomach and all three, Tivanian, Dewitt and Mr. Johnson, fell to the ground. Officer Brenner parked his car and went to where the Tivanian and Dewitt were struggling to control Mr. Johnson on the ground. Officer Brenner saw Tivanian was holding Mr. Johnson around the upper body and shoulder while Dewitt was trying to control Mr. Johnson's lower body. Officer Brenner saw Mr. Johnson trying to get up off the ground by using his hands to push himself up. Officer Brenner heard Tivanian telling Mr. Johnson, ***"Just calm down. Relax. Just let us get you cuffed. Just calm down. Stop fighting."***

Officer Brenner tried to control Mr. Johnson's right hand. The way Mr. Johnson was holding his hands, Officer Brenner was unsure if Mr. Johnson had a weapon. By grabbing the right hand, Officer Brenner's goal was to take Mr. Johnson's support out from under him so Mr. Johnson could be handcuffed. Officer Brenner stated, ***"I mean, it was a struggle. He, he was a strong guy. So it was a, it basically took all my physical strength to get his right hand and, and try and get it... I may have had to pry it from underneath."***

Officer Brenner saw Officer Tivanian using his body weight and some type of control hold to restrain Mr. Johnson. Officer Brenner stated, "***His hold, whatever hold he had on him, was the only reason we had control of this guy. This guy was fighting. This, this was a, this was a fight. This was a good fight."***

Officer Brenner put Mr. Johnson's right hand into a wrist lock and tried to get him into an arm bar. Officer Brenner was eventually able to cuff Mr. Johnson's right hand while kneeling on his right side and controlling the hand. While on the ground in this position, Mr. Johnson started grabbing for items on Officer Brenner's utility belt, including his radio, pepper spray and flashlight. In order to get Mr. Johnson's hand behind his back, Officer Brenner used his fist and applied two or three hammer strikes to Mr. Johnson's elbow joint. At the same time he used his own physical strength to bend Mr. Johnson's elbow so he could place the right arm behind Mr. Johnson's back. Officer Brenner told Dewitt, ***"I've got his right hand. I got him in cuffs"*** and to bring Mr. Johnson's left hand back so he could cuff that hand as well. Officers Brenner and Dewitt physically forced Mr. Johnson's left hand behind his back and were eventually able to cuff both hands together.

Officer Brenner said the man was intentionally kicking at them and, ***"He kept trying to kick DeWitt in the head."*** Officer Brenner said Mr. Johnson was very strong and at one point he reapplied the wrist lock to get a better control of Mr. Johnson's upper body. Officer Brenner told Dewitt they needed to cord cuff Mr. Johnson to keep him from kicking. Officer Brenner saw Dewitt apply the cord cuff around Mr. Johnson's ankles, but they had to physically force his legs backward so the cord could be attached to Mr. Johnson's belt.

After Mr. Johnson was restrained, Officer Brenner said all three officers released their holds and rolled Mr. Johnson onto his right side into a recovery position. Officer Brenner stayed with Mr. Johnson to monitor his condition. When he looked down at Mr. Johnson's face, Officer Benner saw that Mr. Johnson was unconscious and checked for a pulse. Seeing Mr. Johnson wasn't breathing, Officer Brenner told Dewitt they needed to start CPR and used his radio to call for an ambulance. Officer Brenner said they removed the cord cuff, laid Mr. Johnson on his back and began performing CPR. Officer Brenner gave chest compressions while Dewitt gave mouth to mouth at a ratio of five compressions to one breath. While Officers Brenner and Dewitt were performing CPR, Tivanian assisted by holding Mr. Johnson's head and keeping the airway open.

Officer Brenner estimated he and Dewitt performed CPR for 5-6 minutes until they were relieved by fire personnel. Officer Brenner estimated the time from the beginning of the struggle to when Mr. Johnson was handcuffed at between one to five minutes. Officer Brenner estimated it took a longer period of time, but less than five minutes, from the time Mr. Johnson was handcuffed until the maximum restraining process was completed. He also estimated that 15 to 30 seconds elapsed between the maximum restraint process was completed until they began performing CPR.

Officer Brenner felt Mr. Johnson was trying to hurt them and there was some other reason Mr. Johnson was struggling so violently and that he wasn't just trying to get away. During the struggle, Officer Brenner saw a dozen people standing around. He said the crowd was anti-police and hostile. Officer Brenner heard vulgar comments being yelled at them such as ***"fuck the police"*** and ***"why are you even doing CPR, you just killed him!"*** Officer Brenner heard people yelling they were hitting Mr. Johnson with batons and had strangled him to death. Officer Brenner recalled Mr. Johnson was breathing heavily, as if he'd been running and was out of shape.

Interview with Mr. Sullivan

Mr. Sullivan was one of two armed security guards employed at the apartment complex where this incident occurred. Mr. Sullivan saw a man on a bike running away from police officers across the street. Initially, Mr. Sullivan saw one officer had Mr. Johnson in the middle of the street. The officer grabbed Mr. Johnson's shirt, but he got away from the officer and ran. Mr. Sullivan didn't know if Mr. Johnson had a weapon, so he drew his handgun and pointed it at Mr. Johnson as he ran towards him. The officer and Mr. Johnson were about ten feet away from Mr. Sullivan when the officer caught Mr. Johnson.

Mr. Sullivan recalled Mr. Johnson was kicking his feet and there were three officers on top him. Mr. Sullivan saw the officers were trying to get Mr. Johnson's hands out from underneath his body. Mr. Sullivan grabbed Mr. Johnson's feet but he continued to fight. Mr. Sullivan said he then used the balls of his feet to control Mr. Johnson's feet. Mr. Sullivan stated, "***I was standing on top of his feet with the balls of my feet holding him down and I was kinda gritting my teeth a little bit because he was very strong. He was fighting pretty hard. Between me and the other three officers that were dealing with him, I mean he was fighting really, he was really, really strong."***

Mr. Sullivan said the three officers were trying to get him restrained and, "***I heard something about choking him out. The guy kicked me across my legs. I saw the officers punch him but I don't know how many times. I saw one punch that hit the guy in the gut. I heard the Officers telling the guy to relax. The guy was very strong, possibly on dope. But there was a lot of scuffling going on. All of a sudden his body went limp. The officers noticed the guy went limp. I saw one of the officers immediately lift his shirt and check the guy's chest to see if he was breathing. They rubbed his chest and checked his pulse. I saw another officer go through his pockets and pull out a baggie of white substance and identification."***

Mr. Sullivan said a few seconds after Mr. Johnson was hobbled, he went limp. Mr. Sullivan saw the officers obtain a CPR mask and perform CPR on Mr. Johnson until the paramedics arrived. Mr. Sullivan said he didn't hit Mr. Johnson and the other security guard and he backed off when the officers had Mr. Johnson under control. Mr. Sullivan said one officer used his knee and kicked the man to get him subdued, but no one used any batons, flashlights or mace during the incident.

Interview with Fire Paramedic Shinn

Mr. Shin was one of the paramedics who responded. When Shinn arrived, he saw two police officers performing CPR. Shinn and his partner relieved the officers, intubated the man and began administering medication. Shinn said they were able to regain a pulse and Mr. Johnson began breathing on his own. Shinn said Mr. Johnson never regained consciousness and was transported to a hospital. Shinn saw no force being used by the officers when they arrived.

Witness Interviews

Ms. Hall was sitting on her couch when she heard a commotion and fighting and looked out her window. Ms. Hall saw four or five officers and security guard had wrestled a man to the ground. Ms. Hall stated, ***"The security guard was beating him too… He was like kneeing him."*** Ms. Hall said the officers were using their knees and their hands but she didn't see them hitting the man with their sticks or flashlights.

Ms. Hall stated, ***"The police they had just wrestled him to the ground… the police officers were telling the man put your hands behind your back… and then I heard one officer yell out I got one hand in the cuffs… and then like a couple of seconds or something later another officer yelled that he had the other hand in cuffs. And the man was just laying there. And then the officer started kneeing him and they were like beating his head against the ground. It was like, I think it was like four officers and then the security guard that works here, they were all beating the man."*** Hall saw another man ride up on a bike and say, ***"Man y'all shouldn't be beating him like that. He has heart problems."***

Ms. Hall recalled, ***"The man went unconscious… And then I guess they didn't realize that. But then eventually they stopped and one of the officers tried to shake the man, ya know try to stimulate him or something, and um, he didn't respond so one of the officers started doing CPR."*** Hall said the officers performed CPR for 5 to 10 minutes and that the beating went on for ***"At least five, maybe ten minutes."***

Ms. Castro was outside her home when she saw a police car driving behind a guy riding a bike. Ms. Castro saw the police chasing the man on the bike that first stopped but then ran away. Castro saw one officer chasing the man on foot, a second officer chase after them and eventually a third officer arrives. Ms. Castro saw the man let go of his bike, fall to the ground and the three officers jumped on and grab him. Castro stated, ***"They started to tie his feet. And they started kicking him. I mean it was dark so, I, I couldn't see but I, I saw like too much movement. They were kicking him."***

Regarding whether the man was fighting with the officers on the ground, Castro stated, ***"Like, he wasn't fighting like, like that. He was um, he was on, on, on the, on the ground because they already had his arms… I think they were, they were having trouble to ah, to tie his feet."***

Ms. Castro couldn't see when the man was handcuffed and didn't know if man was fighting with the officers before he was cuffed. Ms. Castro saw a security guard involved as well. Castro stated, "***He was grabbing his feet. Like putting his feet on his feet… To hold his feet… He was moving… and the police's were still hitting him. I don't know why. 'Cause I guess he was um, moving I guess still."***

Ms. Castro saw one officer grab the man around the neck and another officer was hitting the man in the stomach with his knee. Castro stated, ***"Once they, they, they tied his feet, they like, they like, they stopped. And then they, they got up. And the guy was like laying down. Like his hand, once they let him go his hand went weak."*** Castro saw the officers turn the man over and thought the man was dead. Ms. Castro heard people yelling, ***"They gave him CPR … and he wouldn't wake up."***

When asked why the man was fighting with the officers, Castro replied, ***"Well I don't know. I think he was trying to get away."*** Ms. Castro was asked if the officers had a hard time handcuffing the man. She replied, "***Yeah. I think yeah."***

Ms. Judge looked out her window and saw two security guards had a man ***"hemmed up."*** She then saw two police cars pull up and the officers take over what the security guards were doing. Judge stated, ***"The security guards were tussling with him, wrestling with him. One of the security guards stomped the man until the police came… He stomped him like on his ankles. His feet were tied. And I guess he kept moving his feet around or whatever and the security guard officer kept stepping on his like his ankle part. Kept stepping on him real hard… That was after the police came. And started wrastlin with him. He was like by the back gate, and his body was laying like on the ground. They had him like on his belly, his hands was behind his back and they had tied his leg up like hog tied him. And his leg kept moving and they stepped on him. The, the security guard did… All I saw was the fight in the middle of the street. When I got to the window, the man, they had already had the man right here on the sidewalk."***

When asked if the man had been handcuffed, Judge stated, ***"No, he was down, the two security guards was tussling with him. Like just trying to get him. They was, he was on the bottom and the security guards was on the top."***

Ms. Judge saw the police cars pull up and the officers jump out. Judge stated, ***"The police is doin what they normally do, is um, I guess trying to get him, ya know, the handcuffs on him or whatever. They end up putting the handcuffs on him."***

When asked if the man was still fighting after being handcuffed, Judge stated, ***"Ah, he was moving his body around. They already had the handcuffs on him, they had his legs tied up and yet he was still moving around. But then they had him choked out. They was choking him and my thing was his the way he was... the police officer had him choked out, the police officer had him in the front, one had him like up by his neck choking him. He was choking him so hard until his body was like rolling on top of his head, like pushing it down into the concrete. Then the other police officer was tying his feet... So after they had got him tied up I could see him like, like I said he was moving around. They was kneeing him, all in his rib cage, they was socking him in his, in his back or whatever, and I, the tall security guard that works, patrols the apartments was stepping like on his ankles."***

Ms. Judge heard the man scream and said he then passed out. Judge saw the officers search the man, go into his pockets and take some money out. Judge called the paramedics and saw the officers try to revive the man. Judges said, ***"They did CPR."***

Regarding her observations, Judge stated, ***"They was just beating this man to get him handcuffed... He was just squirming. He was on his belly with his hands behind his back and his legs were tied. Yeah he was like trying to move."***

Mr. Strane saw a man riding a bike and a police car cut him off. The man on the bike made a U-turn and ran away from the police with the bike at his side. Mr. Strane stated, ***"I guess he couldn't get on the bike fast enough. So he jumped off the bike and ran across the street to over here and the security guard drew down on him. ... Drew down on him and told him freeze. As the man slowed down, I guess he didn't want to get shot. As the man slowed down the police grabbed him and tussled him to the ground."***

Mr. Strane saw the first officer grab the man and a second police car arrive. Mr. Strane said three officers and two security guards were present. Mr. Strane recalled, ***"As they tussled with him on the ground ... It looked as if he was trying to resist arrest or whatever. I don't know what for though. The next thing ya know, they was on him and just beating him up. One had him in a head lock. ... I saw one police hitting him in the side ... with his fist. And then one grabbed him by the neck and had him in a headlock. Had his head down choking him... The security guard was assisting the police in keeping him down... And he was kicking his legs. I guess he was trying to get some air. So he was kicking his legs. The man was kicking his legs. And he was just steady stepping on his legs while one punched him, punched him, they kept punching him."***

Mr. Strane saw a third officer trying to hold the man down and handcuff him. Mr. Strane said the officer was, ***"Trying to put his arm behind his back, telling him, put your arm behind your back! ... After they was punching him, one of the police officers said, choke him out. Choke him out... They finally handcuffed him as he kept on moving his legs, they went to go get the strap and hog tied him. As they hog tied him, they, they still hitting, like he, still hitting him, and they was still choking him out. Choke him out! Choke him out!"***

Mr. Strane saw the man's body go weak and lifeless and the officers turn him over and, "***They was trying to give him CPR after that.***" Regarding why the man was fighting with the officers, he stated, ***"He was fighting for his life because he was getting choked out... Screaming ahh, ahh... Because dude had him by the throat."***

Ms. Scott was in her kitchen, heard sirens and looked outside. She saw an officer had a man down on the sidewalk kicking him and choking him. She saw two security guards stepping on the man's ankles and tussling with him. Scott saw the man was moving and heard the police say, ***"If you stop moving, we'll get off of you."***

Ms. Scott saw one officer had the man in a chokehold with his arm around his neck and he was crushing the man's face into the cement. She saw the officers handcuff the man, tie the man's legs, and connect the legs to his hands. Scott said the security guard was stepping on man's ankles as if he was trying to break them. Scott said the officers held the man down, kneed him in the stomach and kicked him in the knee cap. Scott was asked what the man was doing and she replied, "***Just trying to move around. He was tussling at first. Then he stopped when the police was like, "If you stop moving then we'll get off of you." So he stopped. But the man was choking him so hard that he just yelled out and then he just stopped moving."***

"They was just choking him. They kicking him and beating him and everybody on this side was yelling at 'em talking about why are you doing this to him, then he just passed out... But they didn't try to revive him or nothing. The police didn't revive him. The paramedics did."

Ms. Scott was asked what the officers did after the man went limp. She stated, ***"They didn't do nothing. They just stand there talking... Yeah he was handcuffed and his legs were tied to his hands."*** When asked how long the struggle went on for Scott stated, ***"For like a good hour... For like a good forty-five minutes... And another half hour until the paramedics arrived."*** When asked how long it took for the paramedics to arrive, she replied, ***"For like a good thirty minutes."***

Mr. Vaugh was outside smoking a cigarette. He stated, ***"Two security guards and three police officers had the dude right there by that pole. It took like fifteen minutes to get him down, they couldn't even hold him down. Okay so one police officer had him in a choke hold for over fifteen minutes. I'm sorry about ten, maybe twelve minutes. And then the two security guards backed up off of the dude because they over there really over doing their job. They hog tied him before they kick him and punched him and beat him. But they didn't beat him, they kicked him and punched him. Then they finally hog tied him and then the two police officers got up, one of the police officer backed up, and then it's like he's just there. He screamed and then that was it. And then they looked at each other and like he's not responding or nothing, ya know, he's just laying there. And then, so they looked at each other, so they pat on his chest... check his pulse, and then they looked at each other again, so this is like a whole thirty minutes now and they finally decided to do CPR on him. They did CPR on the man for over, I'm gonna say about, over fifteen minutes."***

Mr. Vaughn said he called 911, cussed the dispatcher out and stated, ***"This is damn near, almost an hour and a half now. 911 called my home collect! And said is the ambulance coming? And the fire truck was coming down the street. They was responding now. And that's when they finally got here. They finally got here and responded to him. And that's what happened. They choked that man to death!"***

Mr. Vaughn said he didn't know the man and, ***"I seen him running and they tackled him right there... I seen them punching him. One was punching him from this side. The other one was kicking him from this side. And then that's when they couldn't get him down so that's when they put him in a choke hold."*** Regarding why the man was fighting with the officers, Mr. Vaughn stated, ***"Actually I think he put up a fight in the beginning. Okay, but you know, but it's like, okay, you got Taser guns, you got mace, you don't do them. But they choked him so long to where he ran out."*** Mr. Vaughn was asked if he saw the man being cuffed. He replied, ***"They didn't never, yeah, okay yeah, after about fifteen minutes they hog tied him. With the feet, you know how they have the feet and the hands. They hog tied him."***

Mr. Vaughn was also asked why the man was hogtied. He replied, ***"Because they were trying to get him to calm down."*** Mr. Vaughn was asked if he heard the officers giving verbal commands. Mr. Vaughn stated, ***"Calm down. They were saying calm down. Basically that's about the only word I heard."*** Mr. Vaughn said the officer was choking the man for 15 to 20 minutes and it took the paramedics 45 minutes to arrive.

Radio Transmissions
The police radio transmissions were reviewed in detail. On July 16, 2006 at 10:56 p.m., the unit with Officers Tivanian and Dewitt notified their dispatcher, ***"Show us out with one 4600 Logan. Gimme 46 Sam over here please."*** One minute and forty-seven seconds later an officer radioed, ***"We need medics to our location. 40 year old Black male. Have them expedite. Not breathing."*** Three minutes and eighteen seconds after the original broadcast an officer radioed, ***"The medics are expediting correct?"*** Dispatch confirmed they were. Five minutes and three seconds after the original dispatch an officer radioed, ***"We need to confirm. Are the medics expediting?"*** The dispatcher said medical personnel were expediting, that she was going to double check and then notified the officers on scene the medical personnel were responding code three. Seven minutes and forty-six seconds after the original broadcast an officer radioed, ***"Delta, we're 97 and just advising CPR is in progress... Also the crowds getting a little mouthy and ah, hostile."*** Eight minutes and forty seconds after the initial broadcast an officer on scene radioed the paramedics had arrived.

911 Calls
All of the emergency 911 calls regarding this incident had been reviewed and evaluated.
At **10:57 p.m.**, Ms. Hall called 911 stating, ***"Your officers are sitting here. They beat this man unconscious and they already had the cuffs on him. And he was, he's not even resisting. They just beat him unconscious... This man is unconscious. Now they're trying to shake him and wake him up. That was uncalled for."***

At **10:58 p.m.**, an anonymous 911 caller stated, ***"Ah yes, can we get a paramedic over here at 45th and Logan. We have a, a guy down that was um, we have like four or five officers on him and they choke hold him out and he's just laying on the pavement now. So can we get paramedics over here? They're right here on 45th and Logan too. Right in front of the apartment complex."***

At **10:59 p.m.**, an anonymous 911 caller stated, ***"Please get an ambulance to forty, forty–fifth and Logan 'cause the police have choked somebody and it looks like he's dead. They ain't tryin to help him... He's on the ground. They tried to revive him, but they're not calling 911. And he's on the ground. It looks like he's dead..."***

At **10:59 p.m.**, an anonymous 911 caller stated, ***"Ah yeah, I'm outside of 4573 Logan Avenue and there's some officers out here, and they just arrested somebody but they like beat him like real bad and he ain't movin. We need some more people out here.*** Dispatcher told caller the officers were helping someone with some medical problems. Caller replied, ***"Nah, he just got beat like really beat. He's not movin or nothin."***

At **11:00 p.m.**, the police dispatcher called the fire department and requested the medical personnel expedite their response to 46th and Logan.

At **11:02 p.m.**, Ms. Hall called 911 stating, ***"Hi just calling about the police beating a man ... The man is dead now. They ... beat this man where he's, he's dead... This is fucking crazy. I don't mean to cuss, I'm sorry... I don't even know that man. I'm just looking out my window. Oh my God... Is there anyway you can tell them to have an ambulance on their way because they're still trying to do CPR."***

Investigation

A police homicide team conducted the investigation. The scene was photographed, physical evidence was collected, and the officers and witnesses were interviewed. In addition, photographs were taken of Officers Tivanian, Dewitt and Brenner the same evening the incident occurred. The photographs depict their physical condition and the condition of their uniforms, flashlights and batons. In addition, the officers' batons and flashlights were swabbed for DNA and submitted to the crime lab for analysis.

The photographs of Officer Tivanian reveal scuff marks on his uniform pants, right and left knees and right thigh. Scuff marks are visible on his left rear pants leg and there was a hole in the area of the knee. There were no injuries, bruising, bleeding or swelling visible on either Tivanian's hands. There was a scratch, some bruising and dirt on his right forearm and redness and bruising on his right elbow. Officer Tivanian's watch was undamaged. The watch revealed the photos were taken on July 17, 2007 at 01:37:36 in the morning, about two and a half hours after the incident occurred.

The photographs of Officer Dewitt reveal no visible injuries. Dirt was visible on the bottom of his shoes. Slight scuff marks were visible on the knee area of both pant legs. There were no injuries, bruising, cuts or scratches to the backs of either hand. A small red mark was present on his left index finger. He was wearing a wedding ring on his left ring finger. The ring appeared undamaged and there were no visible avulsions or tearing or bruising of the skin around the ring. Officer Dewitt's watch appeared undamaged and revealed the photos were taken at 01:06:49 that morning, about two hours after the incident.

The photographs of Officer Brenner reveal no visible injuries. There were no injuries, bruising, cuts or scratches to either of his hands. Slight scuff marks are visible on the right knee. His shoes appeared clean and polished.

Although there was no evidence of any internal or external physical injury caused by the use of impact weapon, the officers' batons and flashlights, as well as the cord cuff were all examined, photographed and swabbed for DNA. The photographs of these items show no visible signs of blood, skin or tissue that would indicate they were used as impact weapons during the struggle. DNA testing revealed Mr. Johnson's DNA was not present on any of the involved officers' batons or flashlights.

The items found in Mr. Johnson's possession were itemized and tested. Those items included a baggie containing 1.11 grams of rock cocaine, sixty-one dollars in cash, a cell phone and an identification card.

Mr. Johnson had an extensive criminal background dating back to 1989. Of particular note is an incident from March of 2003. On March 14, 2003, uniformed San Diego police officers Lujan and Brown stopped Mr. Johnson for speeding in the 5200 block of Logan Avenue. During the stop, the officers saw two baggies of rock cocaine in Mr. Johnson's car. When the officers tried to recover the narcotics from inside the car, Mr. Johnson tried to throw the drugs away, flee from the officers and then struggled violently with them to avoid being arrested. During the struggle, the officers used pepper spray to control Mr. Johnson and get him handcuffed. These circumstances are very similar to the instant case and would no doubt be relevant in any review of Mr. Johnson's behavior the night of July 16, 2006.

Autopsy

On July 24, 2006, Doctor Christopher Swalwell of the San Diego County Medical Examiner's Office performed an autopsy on Mr. Darryl Johnson and determined the cause of death was ***"Hypoxic Encephalopathy"*** due to ***"Cardio pulmonary arrest during prone law enforcement restraint."*** The manner of death was determined to be a homicide.

Dr. Swalwell determined there was evidence of severe hypoxic brain injury that resulted in Mr. Johnson's death. In simple terms, Mr. Johnson died from a lack of oxygen to the brain. In addition, there were a number of healing abrasions and hemorrhages in the back that were all consistent with the history, (a physical struggle) but ***"there were no significant internal injuries."***

An examination of the head and neck revealed the mouth and teeth were, ***"intact and without evidence of injury."*** There was no evidence of any external injury of the neck. There were no defined injuries of the tongue or any hemorrhages in the neck muscles. The hyoid bone was in tact, free of fractures and there was no evidence of any airway obstructions. The skull was in tact. There were no skull fractures and there were no epidural or subdural hemorrhages.

Photographs of Mr. Johnson were taken while he was being treated at Paradise Valley Hospital and during the autopsy. A detailed review of all of the hospital and autopsy photographs reveal no evidence of any external injuries caused by impact weapons, such as police batons or flashlights. Mr. Johnson was not beaten to death. There was no evidence of linear bruising or blunt force trauma visible on Mr. Johnson's head, neck, chest, abdomen or extremities that are consistent with blows sustained from batons or flashlights. In short, Mr. Johnson was not choked to death.

Abrasions were noted on the forehead, left brow, left cheek, right and left arms, both knees and both legs. There was a contusion of the left eyelid and both eyelids appeared slightly swollen. There were linear marks present on both wrists, which are consistent with having been made by handcuffs. These injuries are consistent with the force used to restrain Mr. Johnson. Toxicological screening tests from Paradise Valley Hospital revealed the presence of cannabinoids in Mr. Johnson's system.

Conclusions

In this case, a number of circumstances came together that contributed to Mr. Johnson's cardiac arrest and subsequent death, including his excited emotional state, his violent struggle with the arresting officers, the presence of marijuana in his system, and the fact he had to be forcibly restrained. The force used by the arresting officers, (elbow strikes, hammer blows, and knee strikes to non-vital areas, as well as the attempt to apply a Lateral Vascular Neck Restraint) are all agency and P.O.S.T. approved force options peace officers are trained to employ to control combative and resistive suspects. The voluntary statements by the officers and the observations of the witnesses confirm these force options were used to control and handcuff Mr. Johnson.

Based upon our review of the facts and circumstances surrounding Mr. Johnson's death, we conclude the law enforcement personnel involved in his arrest acted reasonably under the circumstances in their attempts to restrain him and they bear no criminal liability for their actions.

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 an in-custody death. The review does not examine

such issues as compliance with the policies and procedures of any law enforcement agency, ways to improve training, or any issues related to civil liability. Accordingly, such a review should not be interpreted as expressing an opinion on these matters.

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

By: _____
RICHARD MONROY
Deputy District Attorney
Chief, Special Operations Division

BMD:rm:jh
Cc: Captain Cesar Solis