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

March 5, 2009

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

Re: Death of Mr. Guadalupe Zavala on September 15, 2008 from the use of "Less-than-Lethal Force" by Officer Carlos Ronquillo on August 16, 2008. SDPD Case No. 08-052205; DA Special Operations Case No. 08-124PS; Deputy District Attorney assigned: Laura Gunn

Dear Chief Lansdowne:

We have reviewed the reports and other materials compiled by your department's Homicide Division concerning the death of Mr. Guadalupe Zavala on September 15, 2008, by the above officer's use of force on August 16, 2008. This case was presented to the District Attorney's Office for review on October 12, 2008.

Persons Involved
Mr. Guadalupe Zavala was 87 years old and living in the 300 block of Sycamore Road in San Diego. Mr. Zavala was armed with a piece of wood and shards of glass. A caretaker was tending to Mr. Zavala at the time.

Officer Ronquillo was in full uniform, assigned to patrol duties and armed with an orange less-than-lethal bean bag shotgun.

Background
During the evening hours on August 10, 2008, Mr. Zavala became agitated and incoherent. Relatives took him to Sharp Hospital. Hospital staff found Mr. Zavala confused and in acute distress, but alert and orientated in time and place. The attending physician noted Mr. Zavala "has had a change in his mental status with increasing confusion and agitation." He was diagnosed with community acquired pneumonia, dementia and stage three chronic kidney disease. Mr. Zavala was hospitalized, medicated and discharged four days later on August 14, 2008. His relatives arranged for a caretaker to tend to his physical needs.

Shooting Incident
Shortly after 6:00 p.m. on August 16, 2008, (two days after Mr. Zavala was discharged from the hospital), he told his female caretaker he wanted to go outside to smoke a cigarette. When told he couldn't go outside, Mr. Zavala became angry; he grabbed a metal burner from the stove,

raised it over his head, and threatened to hit the caretaker with it. The caretaker was frightened and told Mr. Zavala that she was going to call the police. He told her to go ahead. She left the home and persuaded a neighbor to call 911.

A sergeant and several officers responded to the call. After they arrived, the caretaker heard them telling Mr. Zavala to put down the stick. The officers saw Mr. Zavala inside the home armed with a stick and shards of glass. He had broken out the windows at the front of the house. From outside the home, the officers repeatedly told Mr. Zavala, in both English and Spanish, to drop the weapons.

Before entering the home, the sergeant formulated a plan to take Mr. Zavala into custody. Each officer present was assigned a specific task. One officer was equipped with a less-than-lethal bean bag shotgun, one had a Taser, one had a K-9 (police dog), and one officer was equipped with deadly force. Two officers were assigned as an arrest team. When the officers opened the door, Mr. Zavala began walking toward them with a large shard of glass in each hand. The officers told Mr. Zavala to drop the broken glass. He dropped the glass in his left hand but held onto the glass shard in his right hand and continued towards the officers. In response, Officer Ronquillo fired four bean bag rounds at Mr. Zavala striking him in the chest and abdomen. Mr. Zavala continued toward the officers with the broken glass. He fell to the floor after Officer Cochran shot him with a Taser.

Mr. Zavala was transported to the UCSD Medical Center for treatment. The attending physician discovered that one of the bean bags had penetrated Mr. Zavala's body. Mr. Zavala died 30 days later on September 15, 2008.

Investigation

The police department's Homicide Division conducted an investigation. The investigation revealed that Officer Ronquillo fired four bean bag rounds at Mr. Zavala and Officer Cochran deployed a Taser. One barb of the Taser went into the wall; the other struck Mr. Zavala in the hand. Photographs taken of the scene shortly after the incident depict Mr. Zavala in handcuffs on the floor, the injuries he received, broken furniture, a wooden stick, broken living room windows and shards of broken glass both inside and outside the home.

The 911 and police radio transmissions were reviewed in detail. The caretaker reported that Mr. Zavala, whose age she reported as 65, was breaking out windows. After Officer Ronquillo arrived he requested additional officers respond to assist because Mr. Zavala was "very agitated and armed with a club."

Witness Statements

The caretaker said when she wouldn't allow Mr. Zavala to go outside for a cigarette, he threatened to hit her with a metal burner from the stove. She left the house and locked Mr. Zavala inside. She asked a woman nearby to summon the police for her. Later, she heard officers talking to Mr. Zavala in Spanish and saw that he was armed with a stick and broken pieces of glass while the police were talking to him.

Officer Mora arrived at the house just after Officer Ronquillo. Officer Mora spoke with the caretaker upon his arrival. He looked through the broken window and saw Mr. Zavala inside holding a stick and a broken piece of glass in his hands. Officer Mora approached the house and began speaking to Mr. Zavala in Spanish. He convinced Mr. Zavala to drop the stick, but Mr. Zavala held onto a large rectangular piece of broken glass. When the arrest team entered the house, Officer Mora saw Mr. Zavala moving towards the door with the broken glass in his hand. His arms were bloody from cuts he sustained breaking out the window.

Officer Cephas told investigators that upon his arrival, he joined Officer Mora at the window. The two of them spoke to Mr. Zavala in Spanish. Mr. Zavala acknowledged them, but seemed disorientated and confused. Officer Cephas saw that Mr. Zavala was armed with a piece of wood and a shard of broken glass. Officer Cephas stated that he ordered Mr. Zavala to drop the weapons. Mr. Zavala eventually dropped the piece of wood but held onto the shard of glass. When the arrest team entered the home, Officer Cephas saw Mr. Zavala move away from the window and walk towards the front door. Officer Cephas heard the officers at the door giving commands and the discharge of between three and five bean bag rounds.

Officer Burgess, a K-9 officer, spoke to Sgt. Alldredge upon his arrival at the house. After seeing that Mr. Zavala was elderly, Officer Burgess advised Sergeant Alldredge that he would probably not send his police dog into the house. Officer Burgess and Sgt. Alldredge thought that the threat of the dog might intimidate Mr. Zavala into complying. When the officers opened the door, Officer Burgess yelled at Mr. Zavala to drop the glass or he would send in the police dog. Mr. Zavala looked directly at Officer Burgess and began walking towards him with large shards of glass in each hand. Mr. Zavala dropped one shard, but held on to the other as he advanced. Not wanting to send in the dog, Officer Burgess fell back. Officer Burgess later told investigators, "99.9% of the time when you have that big dog lunging and barking at somebody, they comply. This gentleman didn't comply or blink an eye."

Officer Burgess saw Officer Ronquillo fire all four bean bag rounds. Mr. Zavala kept walking forward without slowing down. Officer Burgess didn't even see him flinch. After the Taser was deployed, Mr. Zavala fell to the ground, but continued to struggle with officers.

Officer Johnson told investigators that he arrived and saw Officer Mora speaking to an agitated Mr. Zavala in Spanish. Mr. Zavala seemed to be holding a "stick or a metal pipe" in his hand. At times, Mr. Zavala would raise and lower the stick. At one point Officer Johnson saw Mr. Zavala drop the stick and pick up a large piece of broken glass. When the arrest team entered the home, Officer Johnson heard Officer Ronquillo giving Mr. Zavala commands in Spanish. He heard four beanbag rounds fired and the Taser being deployed.

Officer Janzen saw Mr. Zavala walking toward the officers while holding a large piece of broken glass in his right hand. Officer Janzen described the glass as being triangular approximately six inches narrowing to 1½ inches. He saw Officer Ronquillo fire the bean bags, but said Mr. Zavala didn't seem affected by the bean bags at all.

Officer Cochran saw Officer Mora talking to Mr. Zavala through a window. Officer Cochran saw Mr. Zavala holding a piece of glass and a stick that was "sharp at the end." Sgt. Alldredge told Officer Cochran to get his Taser ready. When the officers opened the door, Officer Cochran could hear Officer Ronquillo speaking in Spanish to Mr. Zavala. Mr. Zavala was moving towards the officers at the door while holding a piece of glass. Officer Cochran saw all four beanbags hit Mr. Zavala. When Mr. Zavala didn't go down, Officer Cochran fired his Taser. One Taser prong struck Mr. Zavala in the hand while the other hit the wall. No electrical charge was employed. After being hit with the Taser prong, Mr. Zavala went down and was cuffed.

Sergeant Alldredge arrived and saw Officer Ronquillo talking with Mr. Zavala. Mr. Zavala was inside the home armed with a piece of wood and a jagged piece of glass. When the arrest team entered the home, Sgt. Alldredge heard Officer Ronquillo order Mr. Zavala multiple times in Spanish to drop the weapons. Mr. Zavala walked toward them with broken pieces of glass in each hand. Sgt. Alldredge described the glass shards as being "about six inches in width at the bottom where he was holding [them] and jagged one and a half to two inches from the top." Mr. Zavala was jabbing the glass at the officers in a threatening manner as he advanced on them. Sgt. Alldredge saw Mr. Zavala drop one shard of glass. Mr. Zavala continued toward them while armed with the other shard. Sgt. Alldredge saw Officer Ronquillo fire a total of four bean bag shots as Mr. Zavala closed the distance between them from 20 feet to about 10-12 feet. As Officer Ronquillo fired the rounds, he was yelling commands in Spanish. When it appeared the bean bags were ineffective, Sgt. Alldredge told Officer Cochran to fire the Taser.

Officer Ronquillo's Statement

Officer Ronquillo responded to the home with Officer Mora. He saw that Mr. Zavala was very agitated, angry, and hostile. He seemed irrational. He was waving a stick and breaking windows inside the house. Officer Ronquillo tried talking to Mr. Zavala in Spanish, but Mr. Zavala wouldn't listen to him. Mr. Zavala gave the name of "Ventura Garcia" and was very defiant. Ronquillo learned from the caretaker Mr. Zavala was angry with her because she wouldn't allow him outside to smoke a cigarette. When Mr. Zavala threatened his caretaker she left, locking Mr. Zavala inside. Mr. Zavala challenged the officers and told them to take him out. Officer Ronquillo heard Mr. Zavala say in Spanish, "I know you're the police. Come kill me. I don't care." Ronquillo called for a sergeant who subsequently formulated an arrest plan. Ronquillo was assigned to a less-than-lethal bean bag shotgun.

When Sgt. Alldredge opened the door to the house, Officer Ronquillo saw Mr. Zavala move towards the door with a large triangular piece of glass he was holding in his right hand. As Mr. Zavala closed the distance between them, Ronquillo told Mr. Zavala to stop and to drop the glass before he fired the first bean bag. Mr. Zavala didn't respond and kept coming. Officer Ronquillo said he was scared. He felt Mr. Zavala was too close to them. Officer Ronquillo feared Mr. Zavala wanted to die and was going to try and hurt him or one of the other officers. Officer Ronquillo said he ordered Mr. Zavala again a second time to drop the glass before he fired the second, third and fourth bean bags. After the four bean bags had been fired, Officer Ronquillo heard Sgt. Alldredge yell for the Taser to be deployed. After the Taser was deployed, Officer Ronquillo saw Mr. Zavala drop the glass and fall to the ground.

Autopsy

On September 16, 2008, Dr. Marvin S. Platt performed an autopsy on Mr. Zavala. Mr. Zavala sustained blunt force injuries from four bean bag impacts to his chest and abdomen. His scalp was free of hemorrhage. There were no skull fractures or epidural or subdural hemorrhages. The hyoid bone and larynx (both in the neck area) were without fracture, although Dr. Platt noticed that Mr. Zavala had a metastatic malignant tumor in a lymph node on his neck. Toxicological tests were negative for alcohol or drugs of abuse.

Dr. Platt noted that "the presence of a malignant tumor, severe lung disease, and chronic disease of his kidneys, heart, and brain set the stage for a poor prognosis when he was admitted to the hospital in August 2008. However, the [bean bag] impacts initiated the sequence of events which resulted in his death." Ultimately, Dr. Platt determined the cause of death was "complications following blunt force injuries to the chest and abdomen." He also listed chronic obstructive pulmonary disease, dementia, arteriosclerotic cardiovascular and cerebrovascular disease and a metastic malignant tumor as contributing factors. The manner of death was homicide.

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 end his effort to make 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.]

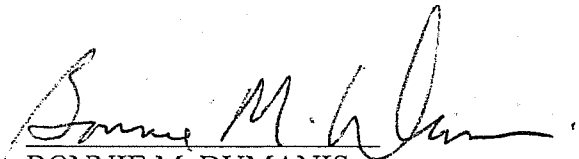
Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self defense is available to any person. Homicide is justifiable in accordance with Penal Code 197 when resisting any attempt by a person to commit great bodily injury on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

Conclusions

When Officer Ronquillo arrived at the Sycamore Road address, Mr. Zavala was hostile, angry, and agitated. He had threatened his caretaker with a metal stove burner and was smashing out windows in the house. When Officers Mora and Ronquillo began talking to him in Spanish, Mr. Zavala challenged the officers to kill him. The officers continued trying to negotiate with Mr. Zavala in Spanish. Mr. Zavala eventually dropped his stick, but armed himself with large pieces of glass in each hand. When officers threatened to send a police dog into the home, Mr. Zavala actually started advancing towards the officers at the door. When Mr. Zavala got to within 20 feet, and after several orders in Spanish and English to drop his shard of glass had failed, Officer Ronquillo used a less-than-lethal bean bag shotgun to stop Mr. Zavala. When the beanbag rounds failed, officers used a Taser to control and arrest Mr. Zavala.

When Mr. Zavala ignored all commands and approached them in a threatening manner with a broken shard of glass, the officers were legally justified in discharging the bean bags and Taser at Mr. Zavala in an effort to protect themselves and one another. Accordingly, 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
County of San Diego

BMD:jh
Cc: Captain Jim Collins