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June 29, 2011

Brea Police Department
Chief Jack Conklin
1 Civic Center Circle
Brea, CA 92821

**RE Officer Involved Shooting Incident on June 30, 2010
The Death of Julian Stanley Collender
DA Case # SA 10-016
Brea Police Case # 10-003879
Orange County Crime Laboratory Case # FR 10-47803
Orange County Sheriff- Coroner Case # 10-04299 MI**

Dear Chief Conklin:

Please accept this letter detailing our Office's investigation and legal conclusion in connection with the above listed incident during which Brea Police Narcotics Detective Shawn Neel shot Julian Stanley Collender, causing his death.

OVERVIEW

This letter contains the scope and legal conclusion of the Orange County District Attorney's (OCDA) investigation of the June 30, 2010, death of Collender. In this letter, the OCDA describes the investigative methodology employed, evidence examined, witnesses interviewed, facts discovered, and legal analysis to determine whether criminal culpability existed on the part of any personnel at the Brea Police Department (BPD).

On June 30, 2010, OCDA Special Assignments Unit (OCDASAU) Investigators responded to the shooting scene located in the area of 24545 Avenida De Marcia in the City of Yorba Linda. During the course of this investigation, OCDA Investigators interviewed 37 witnesses, including Detective Neel. Additionally, we obtained and reviewed witness statements, BPD reports and police in-car video, laboratory and identification reports, autopsy reports, toxicology reports, incident scene photographs, hospital reports and other relevant reports and materials. All BPD personnel provided voluntary statements, including Detective Neel.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and impartially reviewed all evidence in light of the applicable legal standards. In addition, the OCDA reviewed and considered information and material

provided by the family of Collender. The scope and findings of this review are **expressly** limited to determining whether any criminal conduct occurred on the part of any BPD personnel, specifically Detective Neel, as it relates to the death of Collender. The OCDA will not be addressing policy, training, tactics, or civil liability issues.

INVESTIGATIVE METHODOLOGY

The OCDASAU is responsible for investigating officer-involved shooting incidents within Orange County, with the exception of the City of Huntington Beach, per the Memorandum of Understanding effective since Jan. 3, 1990. An OCDASAU Investigator is assigned as a case agent and supported by additional Investigators from other OCDA units. OCDASAU consists of six full-time Investigators. There are 25 additional OCDA Investigators assigned to other units trained to assist when needed. The OCDASAU audio-records all interviews, and the Orange County Crime Laboratory (OCCL) processes all physical evidence.

The OCDASAU concludes the investigation and turns the file over to a prosecutor for legal review. A veteran deputy district attorney from the Homicide Unit or the Gang Unit reviews the case and determines whether criminal charges are appropriate. Throughout this process, the reviewing prosecutor may consult his or her supervisor, and this Assistant District Attorney will eventually review the legal conclusion and resulting memo. The case may also be reviewed by a Senior Assistant District Attorney, the Chief of Staff, and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

FACTUAL SUMMARY

Background

Collender was a 25-year-old man who lived with his mother and father on Avenida De Marcia in the City of Yorba Linda. According to his friends, Collender had a severe problem with an addiction to Oxycotin, a controlled substance, using approximately four 80 milligram tablets of Oxycotin a day. He did not have a job to pay for the drugs. Collender had a gun Dealer Record of Sale (DROS) for a Beretta 9 millimeter semi-automatic handgun purchased on May 25, 2010.

Chris C. (18 years old), Michael F. (19 years old), and Brianna M. (18 years old) are friends who met at Esperanza High School in Yorba Linda. Collender and 21-year-old Adela McCormick were friends and both were acquaintances of Chris C., Michael F., and Brianna M.

Armed Robbery Leading to BPD Involvement

On June 29, 2010, at approximately 5:00 p.m., Chris C., Michael F., and Brianna M. went to the EZ Take Out restaurant, located at 22260 La Palma Avenue, Yorba Linda. The three were in Chris C.'s Toyota pick-up truck, with Chris C. driving, Michael F. in the left rear seat, and Brianna M. in the right front seat. Shortly after their arrival, Collender and McCormick arrived in the EZ Take Out restaurant parking lot and parked a red Nissan Sentra near Chris C.'s truck. Collender and McCormick entered Chris C.'s truck from the right rear door and sat in the rear seat. McCormick sat next to Michael F. and Collender sat behind Brianna M. Collender displayed a Beretta 9mm handgun and pointed it at the three victims, including at victim Chris C.'s head. Collender and McCormick demanded Oxycotin from Chris C. and property from all three victims. Collender and McCormick took the victims' property and left in the red Nissan Sentra. McCormick was charged with this robbery in Orange County Superior Court case #

10NF1993. On Sept. 24, 2010, McCormick pleaded guilty to her involvement in this armed robbery with Collender and signed, under penalty of perjury, a factual summary admitting the following:

In Orange County, California, on 6-29-10 I and Julian Collender unlawfully by means of force and fear took the personal property against the will of and from the person, possession and immediate presence of Chris C.

On June 29, 2010 at approximately 9:39 p.m., BPD Detective Michael Johnson received a telephone call from Chris C. regarding the robbery. Chris C. described Collender and Brianna M. informed Johnson of Collender's name and described Collender's vehicle as a red, older four-door car with California license plate 6HSA348. Chris C. further told Detective Johnson that Collender was armed with a black semi-automatic handgun and had threatened to kill Chris C.'s family if he did not come up with \$1,000. Detective Johnson directed Chris C., Michael F., and Brianna M. to come to BPD to report the crime. Chris C., Michael F. and Brianna M. drove to BPD and personally spoke to Detective Johnson and other officers at BPD, who took a robbery report under BPD case number 10-003879. Chris C. and Brianna M. identified Collender as the robbery suspect during separate photographic line-ups.

At approximately 11:26 p.m., BPD Dispatch sent BPD Officer Richard Salcido a message on his Mobile Data Computer (MDC) regarding the armed robbery that occurred at the EZ Take Out restaurant. The broadcast message included the victims' names and information regarding suspect Collender, including name, date of birth, vehicle description with license plate, and address on Avenida De Marcia, Yorba Linda. Officer Salcido drove to Avenida De Marcia and saw Collender's red Nissan Sentra parked in the driveway of his home. The lights were on inside an upstairs room above the garage of the house and the window covers were open, however, Officer Salcido could not see anyone inside the residence. He communicated over his police radio that the suspect vehicle was at the location and he parked his vehicle up the street at the corner of Avenida De Espacio and Avenida De Marcia to keep an eye on the suspect vehicle.

At approximately 11:40 p.m., BPD Detective Johnson called his partner, Detective Shawn Neel, who was at home, off-duty, preparing to go to bed. Detective Johnson told Detective Neel that he needed his assistance regarding a case where a suspect had committed a robbery with a handgun and had threatened to kill the victim's family. Detective Johnson told Detective Neel the robbery suspect was Julian Collender, whom he described as a male Caucasian, age 25. Detective Johnson gave Detective Neel Collender's address on Avenida de Marcia and a description of Collender's Sentra, and asked Detective Neel to assist with surveillance of Collender's vehicle and residence. Detective Johnson explained that BPD detectives were writing a search warrant to search Collender's home and to arrest Collender, but while the warrant was being prepared, BPD needed to keep watch on Collender's residence and vehicle to make sure he didn't leave. Detective Johnson asked Detective Neel to perform the surveillance in an undercover car. Detective Johnson told Detective Neel that probable cause existed to arrest Collender, and that should Collender leave his residence, Neel should inform Officer Salcido, who was in a marked patrol car and could make the felony stop and arrest.

On June 30, 2011, at approximately 12:08 a.m., Detective Neel arrived at Avenida De Marcia and parked his unmarked silver Cadillac CTS on the south side of the street, west of the location. Detective Neel was dressed in blue jeans, a black long sleeve t-shirt, black boots and a ballistic vest. The vest was equipped with Detective Neel's gear and was marked with "POLICE" on the right chest and the rear of the vest. Detective Neel also had a metal BPD badge hanging around his neck. Detective Neel was armed with a department-issued Heckler and Koch, model G36, .223 caliber assault rifle along with his duty handgun and a back-up handgun.

Detective Neel's Description of Shooting

Two days after the shooting, Detective Neel voluntarily gave a statement to OCDA Investigators.

Detective Neel said that when he arrived on Avenida de Marcia, he parked his vehicle in a position that allowed him to view the front of Collender's home and the red Nissan Sentra parked in the driveway. Detective Neel's side and rear vehicle windows were tinted to conceal his position inside his vehicle and he reclined his seat to avoid detection. Based on the information that Detective Neel received about the circumstances of the robbery and the fact that a handgun was used, Detective Neel placed his .223 assault weapon on his lap. At approximately 12:24 a.m., Detective Neel saw a male Caucasian, whom he believed to be Collender, run out the front door of his house towards the red Nissan Sentra parked in the driveway. Detective Neel described Collender running out of the house "like someone running out of a burning house." Collender got into the driver's seat of the Nissan and left the door open. The dome light illuminated the inside of the vehicle. Collender leaned between the driver's and passenger's seat and reached into the rear seat. Detective Neel could not tell what Collender was doing in the back seat. After approximately 30 seconds, Collender closed the driver's door, started the car and put the car in reverse. Detective Neel relayed over his police radio that Collender was in his car and driving away. Detective Neel wanted to communicate with Officer Salcido so that Officer Salcido could get ready to make a high-risk stop on the vehicle.

Collender backed out of the driveway and faced westbound on Avenida De Marcia. Detective Neel assumed that Collender was going to continue westbound on Avenida De Marcia towards Officer Salcido, however, Collender drove forward and stopped directly next to Detective Neel's vehicle. Collender stopped his car in a position where his driver's window was only a few feet away, directly next to Detective Neel's driver's window. Collender shined a flashlight into Detective Neel's vehicle for about 10 seconds. Detective Neel was shocked, but stayed still and tried to hide his head behind the metal column frame between the front and rear door. Detective Neel told investigators that he positioned his head behind the door column, "hoping that if I started taking rounds [fired by Collender] in the side of my car, that I was going to at least try to protect my head the best that I could." After about 10 seconds, Collender drove away quickly and Detective Neel was unsure if Collender had seen him. Collender abruptly made a u-turn, however, and drove east back towards Detective Neel's vehicle. Collender again stopped approximately two feet from Detective Neel's vehicle, with his right front passenger window immediately next to Detective Neel's driver's window. Collender again shined a flashlight into Detective Neel's car for about 10 seconds. Detective Neel stated that he could not tell if Collender had a flashlight in his hand or if he was using a flashlight mounted to a handgun.

Collender drove forward and Detective Neel stated that he assumed at that point that Collender had not seen him and that Collender was going to drive away. However, Collender again abruptly stopped his vehicle in the middle of the road approximately 10 to 15 feet in front of Detective Neel's vehicle. Collender got out of his vehicle and walked towards Detective Neel's car. Detective Neel stated that he became very concerned about Collender's behavior since he knew Collender was armed with a handgun earlier in the evening during the robbery. Detective Neel stated that he was concerned that Collender may have thought that Detective Neel was one of the robbery victims there for revenge, or perhaps that Collender believed Detective Neel was a policeman. Detective Neel requested assistance over his police radio, however, he stated that he later learned that due to the stress of the situation he was hitting the wrong button and was not transmitting the request over the radio.

Detective Neel stated that Collender stood in front of Detective Neel's vehicle and shined a flashlight into the front windshield. Detective Neel's front windshield was not tinted, therefore, he believed that Collender saw him. According to Detective Neel, he could not tell if the flashlight was mounted to a handgun. Neel said he was in fear for his life, believing that he was in a "kill zone"¹ so he made a decision to engage with Collender. Detective Neel requested Officer Salcido to respond code three (red lights and siren) and Detective Neel got out of his car to engage with Collender.

Detective Neel said that he got out of the driver's side of his vehicle and immediately pointed his rifle at Collender, identified himself as a Brea police officer, and told him to get his hands up and drop to the ground. Collender did not comply with Detective Neel's commands. Detective Neel stated that he was surprised that Collender did not respond to his commands because they were very loud and forceful and he had his assault rifle pointed at Collender. Detective Neel stated that in his experience, most subjects comply when there is a gun pointed at them. Collender instead stayed quiet and walked away. Collender stepped backwards away from Detective Neel in a manner Detective Neel described as "back pedaling."

Collender's hands were visible as he walked backwards and sideways towards the sidewalk near his residence. Detective Neel continued to order Collender to surrender by telling him to get on the ground, but Collender did not comply. Detective Neel walked forward and followed Collender. Detective Neel stated that he was intent on arresting Collender, and preventing Collender from fleeing and getting back into the house to possibly barricade himself or take hostages. Detective Neel said he continued to give Collender commands to get down on the ground and keep his hands where he could see them. Collender did not comply with Detective Neel's commands to get down; instead, he continued to back away from Detective Neel. Detective Neel said Collender's actions showed no indication that he intended to surrender. Detective Neel said that Collender did not speak at all prior to the shooting. Detective Neel kept his eyes on Collender's hands, which at that point remained visible to him, held out away from his body, although not in a surrender position.

Detective Neel said that before reaching the curb line in front of Collender's house, Collender reached his left hand down into his left front pants pocket. Detective Neel described Collender's

1) A "kill zone" is a tactical term referring to an area with barriers that hinder the target's ability to flee and which provides a clear shot for the ambusher; thus, it is an area providing a high probability for a successful attack.

pants as “kind of blousy or baggy.” Detective Neel said the movement of Collender’s hand into his pocket was very rapid, distinct and intentional. Detective Neel said there was no sign in Collender’s eyes of wanting to surrender. Detective Neel said that once Collender’s hand went into his pocket, he felt certain that Collender was reaching for a gun. Detective Neel felt in fear for his life and believed he had to make a decision quickly, before Collender withdrew his hand from his pocket, because once Collender’s hand was out of his pocket, he could possibly fire a shot at Detective Neel before Detective Neel could shoot him. Detective Neel said Collender then began to withdraw his hand from his pocket, with the movement of his hand coming up toward Detective Neel, so Detective Neel fired one shot at Collender in self-defense.

Officer Salcido’s In-car Video

Officer Salcido heard Detective Neel’s code three request and turned on his emergency red lights and siren, which automatically activated his in-car video recording system as he drove toward Detective Neel’s location. Officer Salcido’s in-car video indicates that it was activated at “6/30/2010 at 00:23 hours.” The in-car video software has a clock counter that starts at the beginning of the video titled “Time Recorded,” which starts at “00:23:37.” The following analysis is based on the “Time Recorded” clock and the interactions between Detective Neel and Collender as recorded by Officer Salcido’s in-car video system, which records events in color and includes audio.

- At 00:24:37 on the “Time Recorded” clock, Officer Salcido drove forward from his position at the corner of Avenida De Espacio and Avenida De Marcia.
- At 00:24:44 on the “Time Recorded” clock, Detective Neel and Collender started to come into focus on Officer Salcido’s in-car video, as Officer Salcido continued to drive toward their location. Both Detective Neel and Collender are outside of their cars, on the street. Detective Neel kept pace with Collender’s backwards movement toward the north curb of Avenida de Marcia. The street is illuminated by street lights.
- At 00:24:47 on the “Time Recorded” clock, Officer Salcido began braking his police vehicle along the north curb of Avenida De Marcia. Collender stopped his movement in the street approximately two to three feet away from the curb, facing Detective Neel. The headlights of Officer Salcido’s patrol car helped to illuminate Collender and Detective Neel; visibility conditions appeared to be good. Collender’s arms were held straight out to either side, at 90 degree angles from his body. Detective Neel is in the middle of the street approximately eight to 10 feet away from Collender. After Collender stopped and placed his arms out, Detective Neel moved forward a few steps and closed the distance between him and Collender.
- At 00:24:48 on the “Time Recorded” clock, Salcido’s car came to a full stop approximately 20 to 30 feet west of Collender and Detective Neel. Collender’s arms lowered from 90 degrees and moved closer to his body. Collender’s right arm stayed a few feet away from his body at about a 45 degree angle. Collender was holding a flashlight in his right hand. Collender moved his left hand quickly towards his left front pants pocket, drawing to within about six inches of his pocket. Detective Neel was about six to eight feet from Collender, facing him and pointing his weapon at him.
- At 00:24:49 on the “Time Recorded” clock, Collender continued the quick motion of his left hand, putting it into his left front pants pocket. Collender’s pants looked baggy, and appeared to have been capable of concealing a handgun in the pocket.

- At 00:24:50 on the “Time Recorded” clock, Collender started to remove his left hand from his left front pants pocket. Detective Neel fired one round from his rifle. Collender fell to the ground. At this point on the in-car video, Detective Neel’s commands can be heard, telling Collender to get on the ground. Neel’s tone of voice evidences that he was experiencing extreme stress. Before the shot was fired, commands from Detective Neel could not be heard on the in-car video because Officer Salcido had his siren on and he did not arrive to the scene of the shooting until just before Detective Neel fired.
- At 00:24:53 on the “Time Recorded” clock, Officer Salcido approached Detective Neel and Collender. Officer Salcido relayed over the police radio that an officer-involved shooting had occurred and he requested paramedics.

Events After Shooting

At approximately 12:25 a.m., Brea Police Officer Jason Wambaugh arrived and assisted Officer Salcido and Detective Neel. Officer Wambaugh, following protocol for arrests of suspected felons (even those who have been shot), placed handcuffs on Collender while Officer Salcido went to his patrol car to obtain a first aid kit. Officers Salcido and Wambaugh administered emergency first aid to Collender by applying direct pressure to his injury.

At approximately 12:30 a.m., Orange County Fire Station Paramedic Unit #32 and Engine Company #53 arrived at the location. A paramedic examined Collender and performed a quick assessment. Collender was in traumatic arrest and was unresponsive. Collender’s shirt was cut off and it was found that he had a gunshot wound to his abdomen area. Collender had no pulse, no electrical activity, and no breathing present. At approximately 12:49 a.m., Collender was loaded into an Emergency Ambulance and transported to Kaiser Medical Center in Anaheim. Collender was continually monitored and found to have no pulse while en-route to the hospital. At no time did Collender ever regain consciousness. At approximately 12:59 a.m., Collender arrived at Kaiser Medical Center, where all advanced life saving (ALS) techniques were relinquished to emergency room personnel. Collender had no monitor activity, never had a pulse, and displayed no cardiac activity. At approximately 1:38 a.m., after having no response whatsoever to ALS, the attending doctor pronounced Collender deceased and the coroner was notified.

On June 30, 2010 at approximately 8:55 a.m., Dr. Aruna Singhania conducted the autopsy on Collender. She determined the cause of death to be massive intra-abdominal hemorrhage due to a through-and-through gunshot wound to the abdomen. Collender’s postmortem blood samples were analyzed for prescription drugs and common drugs of abuse. The following results were obtained:

DRUG	MATRIX	RESULTS
Oxycodone (free)	Postmortem blood	0.93 mg/L
Oxymorphone (free)	Postmortem blood	0.0099 mg/L
Alprazolam	Postmortem blood	Detected
Oxycodone (Total)	Postmortem blood	Detected

The level of Oxycodone present in Collender's system is in the midrange between therapeutic level and fatal level. More specifically, the level present in Collender's system is higher than what is typically seen in a single dose of Oxycodone, however, it is not what is typically seen in fatal cases. Oxycodone is a controlled substance. Its effects on the user can include lightheadedness, confusion, and hallucination.

At the time of the shooting, Collender did not have any weapons on his person. Collender did have a cell phone and other personal items in his pocket and he was holding a flashlight at the time he was shot by Detective Neel. In addition, Collender had in his possession an iPod that was taken from one of the three victims during the robbery hours earlier. Upon searching the upstairs room in Collender's house in which Officer Salcido had seen a light, investigators found the Beretta 9 mm handgun registered to Collender. The robbery victims later identified a picture of that Beretta as the gun Collender had pointed at them.

LEGAL PRINCIPLES AND ANALYSIS

Homicide is the killing of one human being by another. To prove that a person is guilty of murder, the prosecution is required to prove beyond a reasonable doubt, based on lawful and reliable evidence, the following elements:

1. The person committed an act that caused the death of another human being;
2. When the person acted he had a state of mind called malice aforethought; and
3. He killed without lawful excuse or justification.

There are two kinds of malice aforethought, express malice and implied malice. Express malice is when the person unlawfully intended to kill. Implied malice requires that a person intentionally committed an act, the natural and probable consequences of the act were dangerous to human life, at the time he acted he knew his act was dangerous to human life, and he deliberately acted with conscious disregard for human life.

An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes.

A homicide committed with malice aforethought but in a situation called "imperfect self-defense" is deemed to be voluntary manslaughter. "Imperfect self-defense" occurs when a person kills another person in the actual but unreasonable belief in the necessity to defend against imminent peril to life. Similarly, a homicide committed with malice aforethought but in a situation called a "sudden quarrel or heat of passion" is deemed to be voluntary manslaughter. The "sudden quarrel or heat of passion" which provokes the person who kills must be of the character and degree as naturally would arouse the mind of a reasonable person in the same circumstances to act rashly and without deliberation in order for a homicide committed with malice aforethought to be reduced to voluntary manslaughter.

Penal Code section 835a states that "any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance." In addition, Penal Code section 834a requires that if a person has either actual or constructive knowledge that he is being arrested by a peace officer, that person must refrain from using force or any weapon to resist such arrest.

The Criminal Jury Instructions as written by the Judicial Council of California are referred to as CALCRIM instructions. CALCRIM 505 provides that a person who reasonably believes that he/she is in imminent danger of being killed or suffering great bodily injury is permitted to defend himself/herself from attack, if as a reasonable person, he/she had ground for believing and does believe that death or great bodily injury is about to be inflicted upon him/her or upon another person. In doing so, such person may use all force and means which he/she believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the death or injury which appears to be imminent.

The law as detailed in CALCRIM 505 and in well settled cases permits a person, if confronted by the **appearance of danger** which arouses in his/her mind as a reasonable person an honest fear and conviction that he/she or another person is about to suffer death or great bodily injury, to act in self defense or defense of others upon such appearances, and from such fear and honest convictions. The person's right of self defense is the same whether the danger is real or merely apparent. [*People v. Jackson (1965) 233 Cal.App.2d 639, 641-642.*] In the seminal case of *Graham v. Conner (1989) 490 U.S. 386*, the United States Supreme Court held that an officer's right to use his weapon is to be analyzed under the Fourth Amendment's "objective reasonableness" standard. The High Court further opined that the "calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain and evolving." The United States Supreme Court's analysis and teachings in *Graham* is very much applicable to the circumstances surrounding Detective Neel's interactions with Collender.

In reviewing Detective Neel's interview with investigators from OCDA, he gave a voluntary statement indicating that he actually feared for his life, which caused him to shoot Collender. In our legal opinion, Detective Neel's fear was reasonable in light of all the surrounding circumstances and in light of Detective Neel's knowledge at the time. In his interview, Detective Neel made statements indicating the following:

- a) That he was aware that Collender had pointed a gun at the robbery victims just a few hours earlier;
- b) That his nerves were rattled and he was in fear for his life when Collender approached his car, shined a flashlight, and looked inside through the tinted windows;
- c) That his fear was heightened when Collender stepped to the front of Detective Neel's car and looked inside through the untinted windshield, as this placed Detective Neel in a "kill zone" and put Collender in a position of great tactical advantage;
- d) That Collender's reaching into his pocket put Detective Neel on the "ultimate edge" and that he believed and was certain that Collender was going for a gun;
- e) That after Collender put his hand in his pocket, Detective Neel made a decision that he was not going to let Collender's hand clear his pocket, because Detective Neel did not want to take a chance on Collender being "faster on the draw or quicker on the trigger" than Detective Neel.

As the California Supreme Court held in a recent case, it is well settled that "unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. Police officers are, in short, not similarly situated to the

ordinary battery defendant and need not be treated the same. In these cases, then, the defendant police officer is in the exercise of the privilege of protecting the public peace and order [and] he is entitled to the even greater use of force than might be in the same circumstances required for self-defense.” (*Brown v. Ransweiler* (2009) 171 Cal. App. 4th 516, 527.)

In analyzing the conduct of Detective Neel, one of the questions to be asked is similar to what the Supreme Court observed in *Brown*: “the question is whether a peace officer's actions were objectively reasonable based on the facts and circumstances confronting the peace officer. The test is highly deferential to the police officer's need to protect himself and others.” (*Ibid.* at p. 527.) Furthermore, the Supreme Court held that “the ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The question is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. In calculating whether the amount of force was excessive, a trier of fact must recognize that peace officers are often forced to make split-second judgments, in tense circumstances, concerning the amount of force required.” (*Ibid.* at pp. 527-528.)

In the present case, it is well settled that in evaluating Detective Neel’s conduct, “we must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” (*Brown v. Ransweiler* (2009) 171 Cal. App. 4th 516, 528.) The reality that Detective Neel was facing included the need on his part to make a split-second decision when confronted with a man who appeared to Detective Neel to be retrieving something from his pocket after repeatedly ignoring commands to get on the ground and to keep his hands visible. This reality also included Detective Neel’s knowledge that hours earlier the man he was confronting committed an armed robbery where he pointed a gun at the head of another human being. It also includes the extraordinary behavior of Collender just prior to the shooting, in which Collender raced out of his house, drove up directly next to Detective Neel’s car and then looked into the car with a flashlight.

Where potential danger, emergency conditions, or other exigent circumstances exist, the Supreme Court's definition of reasonableness is comparatively generous to the police. In effect, “the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer's use of deadly force is reasonable 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. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.” (*Brown v. Ransweiler* (2009) 171 Cal. App. 4th 516, 528.)

In order for Detective Neel to be justly and lawfully charged and convicted with a crime in this incident--whether it were murder or manslaughter--it is the prosecution’s burden to prove beyond a reasonable doubt that Detective Neel did not act in reasonable and justifiable self defense when he shot at Collender. Therefore, our above described legal analysis and our legal

conclusion listed below are equally applicable to a potential filing for murder or voluntary manslaughter.

CONCLUSION

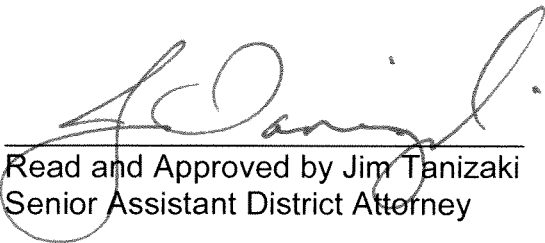
Based on all the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports we reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is insufficient evidence to prove beyond a reasonable doubt that Detective Neel committed a crime on June 30, 2010, when he shot Collender, causing his death.

Accordingly, the OCDA is closing its inquiry into this incident.

Very truly yours,



EBRAHIM BAYTIEH
Senior Deputy District Attorney
Homicide Unit



Read and Approved by Jim Tanizaki
Senior Assistant District Attorney