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September 28, 2012

Sheriff Sandra Hutchens  
Orange County Sheriff's Department  
550 N. Flower Street  
Santa Ana, CA 92703

Re: Officer Involved Shooting on February 7, 2012  
Fatal Incident involving Manuel Levi Loggins  
District Attorney Investigations Case # S.A. 12-004  
Orange County Sheriff's Department DR # 12-022073  
Orange County Crime Laboratory Case # 12-42078

Dear Sheriff Hutchens,

Please accept this letter detailing the Orange County District Attorney's (OCDA) Office's investigation and legal conclusion in connection with the above-listed incident involving on-duty Orange County Sheriff's Department (OCSD) Deputy Darren Sandberg. Manuel Levi Loggins, 31, of Camp Pendleton, died as a result of his injuries suffered in this tragic incident. The incident occurred in the City of San Clemente on Feb. 7, 2012.

## OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the Feb. 7, 2012, fatal officer-involved shooting of Loggins. The letter includes an overview of the OCDA's investigative methodology and procedures employed, as well as a description of the relevant evidence examined, witnesses interviewed, factual findings, and legal principles applied in analyzing the incident and determining whether there was criminal culpability on the part of the OCSD deputy involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On Feb. 7, 2012, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident approximately 2 hours after the shooting. OCDASAU Investigators interviewed more than 12 witnesses and obtained and reviewed the following: OCSD reports, audio recordings and dispatch and radio traffic recordings; Orange County Fire Authority (OCFA) incident reports; Orange County Sheriff Crime Lab (OCCL) and Orange County Coroner's reports including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports; crime scene investigation photographs; medical/autopsy records and photographs related to the injuries sustained by Loggins; criminal history records related to Loggins including prior criminal history records and prior incident reports; the personnel records of Deputy Sandberg; and other relevant reports and materials.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and

has impartially reviewed all evidence and legal standards available. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of any OCSD deputies or personnel involved in the incident, specifically Deputy Sandberg. The OCDA will not be addressing issues of policy, training, tactics or civil liability.

In an officer-involved shooting (OIS) such as this, a critical component of the investigation is to seek to obtain a statement from the involved officers, especially the shooting officer. All OCSD personnel involved in this OIS, including Deputy Sandberg, made voluntary statements to OCDASAU Investigators.

### **INVESTIGATIVE METHODOLOGY**

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units. Six investigators are assigned to the OCDASAU on a full-time basis. Additional OCDA Investigators assigned to other units in the office are trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, neighborhood canvass, crime scene processing and evidence collection, vehicle processing, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When an OCDASAU Investigator has concluded an investigation, the file is turned over to a veteran deputy district attorney for legal review. Deputy district attorneys from the Homicide or Gang Units review fatal, officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. Prosecutors assigned to the Special Prosecutions Unit review non-fatal officer-involved shooting cases for possible criminal filings. Throughout the review process, the assigned prosecutor consults with his or her supervisor, and that Assistant District Attorney eventually reviews and approves any legal conclusions and resulting memos. The case often may be reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff, and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

### **FACTS**

On Feb. 7, 2012, at approximately 4:00 a.m., 31-year-old Loggins woke his two oldest children so that the three of them could go to San Clemente High School for an early morning track workout and Bible study. According to Loggins' wife of 13 years, the couple had been taking their daughters regularly for approximately one month to San Clemente High School to run on the track early in the morning and Loggins would sometimes lead a family Bible study at the track. According to Loggins' wife, they would usually leave their house at around 4:30 to 5:00 a.m. to go to the track; however, going to the track was not a daily occurrence. On the date of the incident, Loggins' wife and the couple's youngest daughter did not accompany the rest of the family to San Clemente High School.

Loggins drove his white GMC Yukon sport utility vehicle (SUV) from the Camp Pendleton area to the City of San Clemente. His 14-year-old daughter was seated in the front passenger seat and his 9-year-old daughter was seated in the rear right passenger seat. Both of these children were later interviewed by the Child Abuse Services Team regarding this investigation.

According to the 14-year-old daughter, as her father drove to the San Clemente High School athletic field, he had a stern look on his face, he looked angry and he was speeding. The 9-year-old daughter reported that her father was speeding during the drive to the school and that he ran a red light at an intersection prior to entering the campus. She reported feeling scared and unaware of what her father was thinking.

The 14-year-old daughter stated that her father pulled up to an empty parking lot at San Clemente High School and, instead of parking in an empty parking stall, accelerated through the parking lot and crashed his vehicle through a

closed gate at "full speed." She reported that her father was mumbling something to himself; however, she could not understand what he was saying.

Moments after the collision, Loggins exited the vehicle, began walking towards the athletic field, and left the girls alone in the car. The 14-year-old daughter became scared and noticed that her sister was also scared. She climbed into the rear seat in order to comfort her younger sister.

Deputy Sandberg was on duty that morning and was sitting in his patrol vehicle in the parking lot of San Clemente High School. At approximately 4:00 a.m. Deputy Sandberg's shift was drawing to a close and he had parked in the school parking lot in order to complete his shift log. It was dark outside but the area was illuminated by streetlights located throughout the parking lot. Deputy Sandberg observed Loggins' vehicle enter the parking lot at a high rate of speed. Deputy Sandberg heard the screeching of tires and looked up to see Loggins' vehicle entering the south driveway of the high school parking lot. The vehicle accelerated at a high rate of speed, eastbound toward the area of the athletic fields. Deputy Sandberg observed the vehicle disappear behind the southern-most structure on the high school campus, which was the boys' locker room. Deputy Sandberg then heard the sound of a collision emanating from the area from which he saw the vehicle disappear. Deputy Sandberg had conducted a patrol check of the athletic field area earlier that morning and knew there was a locked metal gate blocking access to the area of the athletic fields. He responded to the location to investigate.

The area to which Deputy Sandberg drove after hearing the crash is located in the southern portion of the school grounds. A small, paved, asphalt service road runs from the southwest corner of the parking lot and extends to the east boundary of the school. The service road serves as the main pedestrian and vehicular entry point to the athletic fields from the student/faculty parking lot. The service road is bordered by mobile classrooms to the north and athletic fields to the south. On the south side of the service road, a 12-foot high chain linked fence separates the outdoor handball courts and the athletic fields from the service road. Entrance from the service road to the athletic fields is gained by walking through a 7-foot-high pedestrian turnstile. Buildings border the north side of the service road, and a building/mobile structure is located at the end of the service road.

At the time of the incident, vehicular traffic from the student/faculty parking lot onto the service road was restricted by a 24-inch high metal gate, which was located at the west end of the service road. The gate was constructed of tubular metal pipes, and consisted of two halves, designed to meet in the middle of the road and bound together with a chain. Together, the two halves of the gate span across the service road to restrict access. Both halves of the gate swung on large 10-inch tubular hinge/pivot points, which were reinforced into the ground with metal and concrete.

As Deputy Sandberg approached the scene, he observed Loggins' vehicle stopped with a portion of the metal gate lodged beneath the vehicle. Deputy Sandberg turned on his overhead red/blue lights and parked his marked patrol vehicle behind Loggins' SUV. Deputy Sandberg also illuminated his vehicle's strobe lights and flashed a spotlight on Loggins' SUV. Deputy Sandberg's patrol vehicle was equipped with video capabilities that captured all of the events that followed his arrival at the location where the SUV was stopped.

#### **Video from Deputy Sandberg's Patrol Car**

The patrol video from Deputy Sandberg's car reveals the following:

When Deputy Sandberg stopped his car behind the SUV, Loggins exited his vehicle, leaving his door open, and walked around the front of his SUV and then off-camera toward the athletic field. Loggins carried an object in his hand which cannot be identified from the video. (It was later discovered to be a Bible.) At 4:39:45 a.m. Loggins got out of his car. Deputy Sandberg exited his vehicle, drew his handgun from its holster, and can be heard on the in-car audio giving Loggins commands to stop. Loggins, however, ignored the commands, walking away from Deputy Sandberg, off-camera in the direction of the turnstile, which gives access to the athletic field.

Deputy Sandberg followed Loggins toward the athletic field but quickly returned to the SUV, holstered his gun, and opened the rear passenger door. The video captured Deputy Sandberg having a brief conversation with Loggins' daughters, who were seated together in the rear seat. Deputy Sandberg broadcasted his location over the radio and reported that he was near Loggins' vehicle investigating a hit-and-run collision with possible child endangerment. Additional OCSD deputies began to respond to the location in an effort to assist Deputy Sandberg with his investigation.

The video shows other OCSD personnel arriving at the scene, talking with Deputy Sandberg, and looking toward the athletic field, apparently trying to locate Loggins somewhere in the darkness.

At 4:46:00 a.m., per the patrol video clock, one of the members of OCSD broadcast over the radio that Loggins was "returning to the vehicle...across the field." The video depicts Deputy Sandberg positioning himself approximately five to 10 feet north of the turnstile, and at 4:46:05 a.m., unholstering his firearm. At 4:46:07, Deputy Sandberg was facing toward the turnstile and can be heard saying, "Show me your hands." Deputy Sandberg walked just off-camera, but can be heard continuing to order Loggins to show his hands.

At 4:46:11 a.m., Deputy Sandberg re-enters the screen, backpedaling slightly, holding his gun in front of his body and pointed in the direction of the turnstile. Loggins can be heard saying something like, "I've got somewhere to go." At 4:46:18 a.m., Loggins appears on screen, striding purposefully toward Deputy Sandberg, who is between Loggins and Loggins' SUV. Loggins says something like "Give me my kids back."

Loggins approached Deputy Sandberg with his hands to his side while Deputy Sandberg kept his handgun trained on Loggins. At 4:46:19 a.m., Deputy Sandberg sidestepped slightly to stay at arms' length from Loggins, and Loggins continued walking quickly toward his vehicle. Deputy Sandberg is heard yelling, "Get your hands up" at Loggins; stress can be heard in Deputy Sandberg's voice. Loggins' hands were to his side and he was holding something in his right hand (which, upon careful inspection of the video, looks like a book).

Loggins ignored the command, and at 4:46:21 a.m., he quickly rounded the rear of his SUV and proceeded from the rear left of his SUV toward the open driver's door.

Deputy Sandberg followed right behind Loggins, still pointing his firearm directly at him. At 4:46:23 a.m., in a loud and urgent voice, Deputy Sandberg yelled at Loggins, "Get your hands up! Don't you get in that car or I'll shoot you."

At 4:46:25 a.m., Loggins entered the car and closed the driver's door. Deputy Sandberg was several feet to the left of, and slightly behind, the driver's door, still pointing his firearm toward Loggins. OCSD Sergeant Todd Carpenter, who had arrived at the scene, is now also visible on screen, several feet to the right rear side of the SUV. Sergeant Carpenter also had his firearm drawn and pointed at Loggins.

At 4:46:27 a.m., the rear brake lights of Loggins' SUV illuminate. Immediately thereafter, Deputy Sandberg shoots his firearm three times in the direction of the driver's seat.

#### **Statements of Other OCSD Personnel**

After Loggins disappeared onto the athletic field and Deputy Sandberg reported his location over the radio and said that he was near Loggins' vehicle investigating a hit-and-run collision with possible child endangerment, additional OCSD deputies responded to the location in an effort to assist Deputy Sandberg with his investigation.

Responding OCSD deputies began to set up a perimeter, encompassing the athletic fields. Community Services Officer (CSO) Brian Kim was the first to arrive at the scene, followed shortly thereafter by OCSD Deputy Jeffrey Hewitt and Sergeant Carpenter.

CSO Kim advised Deputy Sandberg that he had a night vision monocular, which he retrieved and began using to scan the athletic fields for Loggins. CSO Kim can be seen on the patrol car video positioning himself near the turnstile, panning

right to left and left to right, in the direction of the athletic fields. He later reported that he observed an individual "running" in a southeast direction and CSO Kim can be heard on the patrol video advising the on-scene deputies that he saw someone "moving." CSO Kim later reported that he briefly diverted his attention from the field to the deputies and when he returned his focus toward the field, he was unable to re-locate the individual. CSO Kim then saw Deputy Hewitt's patrol vehicle drive past him and continue south in the narrow alleyway.

Deputy Hewitt later told OCDA Investigators that he drove to the eastern portion of the school campus in an effort to locate Loggins. He was familiar with another paved pedestrian pathway in that area. Deputy Hewitt did not observe Loggins in that area, but soon heard Sergeant Carpenter broadcast that Loggins was headed back toward the white SUV. Deputy Hewitt then drove westbound, back toward the area of the SUV and Deputy Sandberg's vehicle.

Sergeant Carpenter told Investigators that he had heard either Deputy Sandberg or CSO Kim yell that they saw a silhouette and that he was walking back toward them from the athletic field. Sergeant Carpenter ran to the front of Loggins' vehicle and initially could not see Loggins. Sergeant Carpenter moved away from the front of the vehicle toward the athletic field fence and observed the silhouette of Loggins coming toward them from out of the darkness of the athletic field. As Loggins approached the fence line and turnstile, Sergeant Carpenter believed that the turnstile would not allow one to exit from the field, thereby giving them time to re-deploy. However, Loggins continued walking through the turnstile and was able to exit the field. During his interview with OCDA Investigators, Sergeant Carpenter described Loggins as walking stiff-armed and stiff-legged toward them, with a "very determined and mean" expression on his face.

Sergeant Carpenter told Investigators that Deputy Sandberg asked him for a Taser. Sergeant Carpenter informed Deputy Sandberg that he did not have a Taser on him.

Sergeant Carpenter told investigators that Deputy Sandberg then repeatedly yelled at Loggins something similar to, "Stop where you are, show us your hands, put your hands up." At one point, Deputy Sandberg yelled that Loggins still had something in his hands, but he couldn't tell what the item was.

As Loggins approached the turnstile, Sergeant Carpenter observed Loggins was holding something in his right hand. Sergeant Carpenter later told Investigators that the object appeared to be a book or dark colored binder.

Loggins walked through the turnstile directly towards Sergeant Carpenter and Deputy Sandberg. Deputy Sandberg yelled to Loggins to show his hands. According to Sergeant Carpenter, Loggins ignored the commands and appeared focused, his body rigid, and his jaw clenched, appearing as if he were speaking through his teeth. Loggins appeared to Sergeant Carpenter to be psychotic or under the influence of "drugs."

Sergeant Carpenter also drew his duty weapon and pointed it toward Loggins. He yelled something similar to, "Stop where you are, get on the ground." Loggins again ignored the commands and refused to comply.

### **The Shooting and Subsequent Events**

Immediately after Loggins stepped on the brake pedal and put his SUV into the "drive" gear, Deputy Sandberg fired his firearm three times at the lower right corner of the driver's window, in the direction of the engine compartment of the

vehicle. The bullets struck Loggins in the left bicep, left finger and mid left torso. Loggins slumped to his right side.

After firing his handgun, Deputy Sandberg immediately responded to the rear of the SUV to attempt to help the children, who were still seated in the rear passenger compartment of the vehicle. Sergeant Carpenter assisted by opening the rear door on the passenger's side of the vehicle and removing the children. Sergeant Carpenter then led the children to the safety of Deputy Sandberg's patrol vehicle. The children were scared and hysterical. The 9-year-old later told investigators that she had been worried that her father was going to drive the car forward and go "boom" into the "office," referring to the brick building bordering the north side of the service road.

Deputy Sandberg checked the handle of the driver's door to the SUV, but found that it was locked. Using his baton, Deputy Sandberg broke out the shattered glass that remained in the driver's door window and manually unlocked the door. Deputy Sandberg opened the door and observed Loggins slumped over onto the front passenger's seat. Sergeant Carpenter opened the front passenger's door of the vehicle and, with the assistance of another OCSD deputy, extracted Loggins from the vehicle. At that point, Deputy Sandberg holstered his handgun and separated himself from the incident by walking to the rear of the vehicle.

Assisting OCSD deputies provided Loggins medical aid until OCFA paramedics arrived at the scene. Upon arrival at the scene, paramedics observed two OCSD deputies performing cardiopulmonary resuscitation (CPR) on Loggins, who was lying on the ground next to a vehicle. One deputy was performing chest compressions while another was performing rescue breathing. OCFA paramedics relieved the deputies and assumed CPR.

OCFA paramedics observed Loggins to be unresponsive with apparent gunshot wounds to his left arm and left flank area. Electrocardiogram pads were applied to Loggins and indicated an absence of heart rhythm. Loggins was placed in cervical spine stabilization precautions and loaded into the transport unit. While en-route to Mission Hospital, OCFA paramedics unsuccessfully attempted to initiate an intravenous line into Loggins' arm. Following that, OCFA paramedics were able to initiate a line into Loggins' left tibia.

At approximately 5:21 a.m., Loggins was admitted to Mission Hospital and placed in the care of a trauma doctor. Loggins was in cardiac arrest and CPR was in progress by the accompanying paramedics. Loggins was unresponsive and unconscious, his pupils were fixed and dilated, and he had no cardiac activity. Loggins appeared to have "bullet wounds" on the left and right side of his chest and a "through and through" wound to his left arm.

After employing several advanced life-saving measures, Loggins' condition did not improve and the trauma team was unable to restore any meaningful mechanical or electrical cardiac activity. Loggins was pronounced deceased at 5:40 a.m.

#### **Voluntary Statement of Deputy Sandberg**

Shortly after 5:00 p.m. on the day of the shooting, Deputy Sandberg gave a voluntary, consensual statement to the OCDA.

In his statement to Investigators, Deputy Sandberg said that he initially believed the driver of the SUV might be driving while under the influence. Deputy Sandberg had estimated the speed of the SUV while it sped through the school parking lot toward the service road, just before it broke through the metal gate, as 40 miles per hour. As Deputy Sandberg parked behind the SUV on the service road, he saw Loggins exit the SUV, and Deputy Sandberg could see that Loggins was carrying an object in his hand, although he was unable to determine what the object was. (One of the daughters later reported she saw Loggins was carrying his Bible. The other daughter reported that she was unable to determine what her father was holding; she said she thought it was either a Bible or a knife.)

Deputy Sandberg said that after Loggins walked away from the SUV, ignoring Deputy Sandberg's commands to stop, Deputy Sandberg spoke to the girls inside the SUV. Deputy Sandberg described seeing the Loggins children for the

first time. He stated that when he opened the door of the SUV, he saw the two girls screaming. He recalled, "The little one was crying; the oldest one was holding the younger one."

The children advised Deputy Sandberg that the driver was their father and that he was a member of the United States Marine Corps (USMC), residing at Camp Pendleton. The girls told Deputy Sandberg that their father had "freaked out."

Deputy Sandberg told OCDA Investigators that he personally is a former member of the USMC. He said that he was surprised that someone with Loggins' USMC background would blatantly disregard commands from law enforcement. According to Deputy Sandberg, Loggins' behavior was odd and unpredictable. Deputy Sandberg reported that Loggins was acting like a person who was "irrational and won't listen to reason." He concluded that based on his behavior, Loggins was "not listening to reality, not coherent, and appeared to be on a mission."

Deputy Sandberg reported that when he saw Loggins reappear from the field and walk toward the SUV, he became concerned that Loggins was going to drive away erratically with the children in the car. The children were not wearing seatbelts when Deputy Sandberg made contact with them in the car. He said that he repeatedly directed Loggins to stop, but that his efforts were unsuccessful. He recalls thinking that he was no longer dealing with a person who might be intoxicated. More specifically, Deputy Sandberg believed Loggins was "acting like a crazy person, not a drunk person."

Deputy Sandberg spoke with conviction when he discussed the fear he felt when Loggins re-entered the SUV with the children seated in the rear passenger compartment. He explained:

"Looking at everything with that-, the way he ran that gate, the way - , I'm looking at if he leaves here with those kids, those kids are gonna get hurt. Either end up in a chase, I don't know if he's gonna drive them to the brick wall, if he's ... mad at somebody at home and he's gonna sacrifice himself and his kids, I, I believe those kids are gonna get hurt. They're gonna end up in a car accident. He's gonna, something's gonna happen where they're going to be seriously injured or even dead."

Deputy Sandberg described what he was thinking as he pointed his gun at Loggins and ordered him to stay out of the car:

"The whole time I'm thinking, okay, he's gonna listen, he's got to listen, he can't get out of here. He can't take these kids. He leaves with his kids, something bad is going to happen with these kids. Can't let him go.... I was afraid if he was gonna get out of there, it was eventually gonna end up in a chase and who knows what would of happened to those kids."

Deputy Sandberg's demeanor during the interview was consistent with a person who was struggling with the gravity of the situation. He spoke passionately when he discussed his concerns for the Loggins children. When asked to describe the shooting, Deputy Sandberg became somber, taking time to maintain his composure before answering the questions. Deputy Sandberg told the OCDA Investigators that once Loggins put his gear shift into drive, based on his concern for the safety of the girls, he made the decision to shoot Loggins.

Deputy Sandberg described his reasoning for using his firearm. He stated that he did not have a Taser, so he had asked Sergeant Carpenter for one, but Sergeant Carpenter did not have a Taser, either. Further, Deputy Sandberg said that he thought that using a baton was not an option that appeared reasonable in light of the circumstances. Given what he knew about Loggins at that time, and having experienced what he believed to be odd, yet determined, behavior, Deputy Sandberg felt that using a baton would place his own life in more danger. Loggins was slightly taller than six feet and weighed 190 lbs. Deputy described fearing that Loggins, could "take him" if he used a baton.

Deputy Sandberg further stated that when he made the decision to shoot his firearm, he specifically aimed the gun forward and downward in the direction of the engine block of the SUV in order to avoid the bullet entering the rear

passenger compartment of the vehicle. He was mindful that the children were seated in the rear passenger compartment and made the conscious decision to target his use of force away from the children and toward the driver's compartment of the vehicle, where Loggins was behind the wheel attempting to drive away.

### **BACKGROUND INFORMATION**

In 1999, Loggins enlisted in the USMC and attained the enlisted rank of E-5, Sergeant. In 2009, Loggins was assigned to the Camp Pendleton base, located in north San Diego County, as a Traffic Management Specialist. At the time of this incident, Loggins was in a USMC exit program. He was being medically discharged due to a non-combat injury to his knee.

Loggins had been married to his wife for approximately 13 years, and the couple had three daughters. At the time of the incident, Loggins' wife was approximately eight months pregnant and expecting the couple's fourth daughter. Several circumstances of a private nature were causing stress within the family.

Loggins had been previously diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and prescribed "Adderall," a medication commonly used to treat ADHD. According to his 9 year-old daughter, Loggins had recently stopped taking the medication because he did not feel he needed it. She also stated Loggins provided "Adderall" to the children until recently, when he "dumped" the medication because the family was participating in a fast through their church.

Loggins and his family were active members of an Irvine church. Some of the congregation participate in an annual fast during the month of January. The Loggins family participated in this year's fast which, according to the senior pastor at the church, officially ended on Jan. 29, 2012.

According to one of the daughters, Loggins was still fasting on Feb. 7, 2012. She described her dad as going "cuckoo" as a result of the fasting. She stated that her father was not eating or drinking any liquids and described her father as going "berserk" as a result of not drinking any liquids. The daughter reported hearing her father yell the words, "Get away, Satan" while they were at the San Clemente High School athletic field on the day prior to this incident.

### **PRIOR CRIMINAL HISTORY**

Loggins had no prior criminal history.

### **EVIDENCE ANALYSIS**

#### **Condition of the vehicle**

After the shooting, Loggins' SUV was examined. It was determined that the keys were in the ignition and the vehicle was running. The automatic transmission shifter, which was located on the steering column of the SUV, was in the "D," or "drive" position.

A 12-foot metal pipe (part of the parking lot gate) was lodged in the undercarriage of the SUV.

#### **Evidence Collected at the Scene/During the Autopsy**

- A 5-inch by 8-inch black Bible was located on the driver's side floorboard with an apparent bullet strike mark on the top left portion.
- Three federal .40 S&W cartridge cases were collected at the scene of the shooting.
- Two bullets were recovered at the scene. They were located in the following locations:
  - A bullet was observed on the interior of Loggins' black sweatshirt.
  - A bullet was recovered from Loggins' chest during the autopsy.

#### **Firearm Examination**

- Deputy Sandberg was issued the following weapon: GLOCK Model 22 pistol, .40 Smith & Wesson caliber.
- The pistol was test fired and operated without malfunction.

- The bullets recovered from the autopsy and Loggins' sweatshirt were both determined to have been fired from Deputy Sandberg's firearm.
- The three fired cartridge cases found at the scene were determined to have been fired from Deputy Sandberg's firearm.

### **Autopsy Findings**

On Feb. 8, 2012, at approximately 9:00 a.m., the post-mortem examination of Loggins was conducted by Forensic Pathologist Joseph Cohen. Following the autopsy, Dr. Cohen concluded that the cause of death was a penetrating gunshot wound to the torso. Dr. Cohen did not find indications that Loggins was suffering from dehydration.

### **Toxicological Examination**

A sample of Loggins' post-mortem blood was removed for testing. The blood was examined for the following drugs: Alkaline Drugs, Ethanol/Volatiles, Cocaine and/or Metabolites, Benzodiazepines, Phenethylamines, Opiates, and Cannabinoids. No drugs were detected in Loggins' blood.

### **LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES**

Possible criminal charges against the officer involved in the shooting include murder (PC 187), attempted murder (PC 664/187), assault with a deadly weapon (PC 245), and assault by a police officer (PC 149). However, in order to convict any officer of any of these charges, it would be necessary to prove beyond a reasonable doubt that no legal justifications apply for the officers' actions. People v. Banks (1977) 67 Cal.App.3d 379, 383-84. Several justifications may apply; they are provided by Penal Code sections 196, 197, and 835a.

California Penal Code section 196 states that use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are "charged with a felony" and who are fleeing from justice or resisting such arrest. Section 196 applies both when the suspect in question is "charged with a felony" and when the officer has "reasonable cause" to believe that the person has committed a felony. People v. Kilvington (1894) 104 Cal. 86, 89. The felony must involve violence or the threat of violence. Kortum v. Alkire (1977) 69 Cal.App.3d 325, 333.

California Penal Code section 835a provides that any police officer who has reasonable cause to believe that a person to be arrested has committed a felony may use reasonable force to effectuate the arrest, to prevent escape, or to overcome resistance. The section further states that a police officer "who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance." As with Penal Code section 196, section 835a only allows use of deadly force by the police officer when the suspect's felony involves violence or the threat of violence. Kortum v. Alkire (1977) 69 Cal.App.3d 325, 333. The Kortum court further held that deadly force against a fleeing felony suspect is justifiable only when the felony "is of the violent variety, i.e., a forcible and atrocious one which threatens death or serious bodily harm, or there are other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another." Kortum v. Alkire, *supra*, 69 Cal.App.3d at 333.

Pursuant to CALCRIM 507, a killing committed while attempting to effectuate an arrest, to prevent escape, or to overcome resistance is justified if the killing was necessary to accomplish those purposes and committed by an officer who had probable cause to believe that the decedent posed a threat of serious physical harm, either to the officer or to others.

The above justifications must be interpreted in light of U.S. Supreme Court precedent that limits the right of a police officer to use deadly force. A police officer may not use deadly force unless it is necessary to prevent escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the pursuing officer or others. People v. Martin (1985) 168 Cal.App.3d 1111, 1124. The U.S. Supreme Court ruled that a police officer is entitled to use deadly force only when "the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily injury to the officer or others." Tennessee v. Garner (1985) 471 U.S. 1, 3.

California Penal Code section 197 provides that use of deadly force by any person is justifiable when used in self-defense or in defense of others. The legal justification of self-defense and the defense of others was codified in 1872 and has remained substantially unchanged since then. It requires that the user of deadly force must honestly believe that he or someone else is in imminent and deadly peril, and that a reasonable person in the same circumstances would believe the same and would deem it necessary to use deadly force in order to protect against such peril.

Pattern jury instruction CALCRIM 505 sets forth the elements of justifiable homicide in self-defense or defense of another. It requires: (1) the person who used deadly force must reasonably have believed that he/she or someone else was in imminent danger of being killed or suffering great bodily injury; (2) the immediate use of deadly force was necessary to defend against that danger, and (3) the person who acted in response to the danger must have used no more force than was reasonably necessary to defend against that danger.

Significantly, the criteria for application of the legal justification of self-defense/defense of others also accounts for the exigency of a situation. In determining whether a person acting in self-defense, or in the defense of others, acted properly upon the appearance of danger, the law recognizes that a person experiencing a stressful event is not able to reflect upon his actions and the perceived threat against him or others, to the same degree as a person who is not being confronted by an emergency situation. When police officers encounter threats of deadly attack, the warning is often instantaneous and the danger immediate. The law recognizes this situation: "Where peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." People v. Collins (1961) 189 Cal. App. 2d 575, 589. The law further provides that actual danger is not necessary to justify the exercise of self-defense. Thus, the right to use self-defense or defense of others is the same whether the danger is real or merely apparent. People v. Jackson (1965) 233 Cal. App. 2d 639, 641-42.

Moreover, any determination about the reasonableness of force used by an officer "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." Graham v. Connor (1989) 490 U.S. 386, 395. Thus, "[t]he 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." Id. at 396. Thus, as the California Court of Appeal has held: "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 Brown opinion teaches that when 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." Brown v. Ransweiler, supra, 171 Cal. App. 4th at 528.

## **LEGAL ANALYSIS**

In applying the above legal principles to the facts of this case, the most prominent justification to be considered is the one claimed by Deputy Sandberg: defense of others. For that justification to apply, three elements must be present:

- 1) Deputy Sandberg actually believed he needed to shoot Loggins in order to defend against an imminent threat of great bodily injury to the girls;
- 2) That belief must have been reasonable under the circumstances;
- 3) Deputy Sandberg must have used no more force than was reasonably necessary to defend against the threat.

In order to obtain a criminal conviction for this shooting, the evidence must, beyond a reasonable doubt, disprove the existence of a legal justification. In other words, if a reasonable doubt exists as to whether the justification applies, the

shooter is entitled to an acquittal.

The three legal elements for the defense-of-others justification will be addressed in turn.

### **Actual Belief in Need to Defend**

The same day of the shooting, Deputy Sandberg voluntarily told OCDASAU Investigators that he acted out of a belief that Loggins was about to cause great harm to his daughters. Once it was clear that Loggins was ignoring Deputy Sandberg's commands and repeated warnings that he would shoot, Deputy Sandberg said he became concerned that Loggins was unstable and had determined to escalate the situation. He believed that, based on the totality of what he had already witnessed, the children would be in grave danger if Loggins drove the vehicle away. When Deputy Sandberg made his statement to DA investigators, his demeanor and emotional state matched his statement – he spoke with conviction about the danger he perceived the girls to be in, and he displayed emotion such as might be expected in one who has just been thrust into a life-or-death situation.

Additionally, Deputy Sandberg's statement concerning his mindset is corroborated by his actions and statements captured on the patrol video, as well as the observations of his conduct by other witnesses at the scene. Consequently, we find the first element – that Deputy Sandberg actually believed in the necessity to shoot Loggins -- is proved.

### **Reasonableness of Belief in Need to Defend**

The second element required for the shooting to be legally justified is that Deputy Sandberg's belief in the need to defend the girls must be reasonable given the situation as known to Deputy Sandberg. The circumstances known to Deputy Sandberg included the following:

- Loggins was the father of the girls.
- The girls had been inside the SUV when Loggins drove recklessly and dangerously through a closed metal parking gate.
- Loggins had abruptly left the girls alone inside the SUV without inquiring into their well-being after the accident, while he went out to the athletic field in the dark, from where he could be heard yelling indistinctly.
- The girls were scared and said their father had "freaked out."
- Loggins, a military man, had utterly ignored the commands of a uniformed police officer who was pointing his firearm at him and ordering him to stop and raise his hands.
- Loggins returned to his car, saying something like, "Give me my kids back" and "I've got someplace to go," and he ignored police commands to stop, show his hands, and not drive the car or he would be shot.
- Loggins strode purposefully toward his car, entered it quickly, and placed the gear shift into "drive."

Based on the above facts, it was reasonable for Deputy Sandberg to believe that Loggins posed an imminent threat to the safety of the children who were unbelted in the car. The prior recklessness of Loggins, coupled with his escalation of matters by ignoring the deputy's commands and his determination to get to his girls and get into the car, led to the reasonable inference that if Deputy Sandberg were to allow Loggins to drive away, great bodily harm would come to the girls. Indeed, Deputy Sandberg was not the only person at the scene who drew that inference. One of Loggins' daughters told Investigators that she thought her father intended to drive the car forward and crash into a building at the end of the service road. She went on, "I was afraid and I think the officer was too, so that's why he shot him, so we wouldn't get hurt."

It bears repeating that, for the legal justification to apply, the question of whether Loggins was *actually* a threat to cause great bodily harm to his daughters is not the issue; there need only be a showing of an *apparent* threat. It is often difficult to fathom a person's thoughts, and such is the case here: despite a thorough investigation, it remains clouded what was going through Loggins' mind at the time of this shooting. By all accounts, Loggins was a law-abiding person who was loved by his friends, family and co-workers. However, he was experiencing several significant life stressors. His children described him as acting strangely on that day and on the day prior, and expressed that his behavior was scary to them. Additionally, one of the girls reported that her father had abruptly stopped taking the medication,

Adderall, and had been fasting for a long time leading up to this incident. If this information is accurate, it is possible that Loggins may have been experiencing symptoms of amphetamine withdrawal, which can include confusion, agitation and/or psychosis (loss of touch with reality including auditory hallucinations or delusional thinking).<sup>1</sup>

In any event, Loggins' behavior on the morning of this shooting indicates that he was acting out of the ordinary. The decision to drive through the metal gate at high speed and then abruptly exit his vehicle, leaving his children behind, lends itself to the reasonable inference that he was acting with disregard toward the welfare of the children. He put them in danger and then simply left them behind, while an officer stood by with his firearm drawn. Loggins did not ask the children if they were okay after the collision, nor did he inform them of where he intended to go and how long he would be away. He completely disconnected from them when he walked away from the car. This behavior was not only irresponsible, it was criminal: the facts provide substantial evidence that Loggins had committed the crimes of child endangerment<sup>2</sup> and resisting arrest.<sup>3</sup> These circumstances provide a reasonable basis for Deputy Sandberg's concern that the girls were in danger.

### **Reasonableness of Force Used**

The third and final element required for the shooting to be legally justified is that Deputy Sandberg used no more force than a reasonable person would believe was necessary to defend the girls against the threat to their safety.

In hindsight, one could conclude that several non-deadly options were available to Deputy Sandberg *prior* to the shooting. For example, he could have removed the children and/or the keys from the vehicle prior to Loggins' return. Of course, this would have required Deputy Sandberg to anticipate that Loggins would return to the vehicle and blatantly ignore the deputies' commands prior to re-entering the SUV. Moreover, Deputy Sandberg's decisions *prior* to the shooting are not germane to the question of whether the shooting itself was justified; the legal test for criminal culpability is whether *at the moment of the shooting* the force used to defend the girls reasonably appeared to be necessary (Graham v. Conner, *supra*, 490 U.S. at 396).

In analyzing the apparent necessity to shoot, one must account for the suddenness of the peril which faced Deputy Sandberg and evaluate the situation from the standpoint of a reasonable person in his position (as decreed by the Court of Appeal in People v. Collins, *supra*, 189 Cal. App. 2d at 589).

When Loggins emerged from the darkness of the athletic field, headed quickly and determinedly for his car, the turnstile proved no impediment to Loggins' egress. Suddenly, Deputy Sandberg was faced with what he perceived as a dangerous threat to the girls. Deputy Sandberg used his firearm to try to keep the peace in the situation, pointing it directly at Loggins and ordering Loggins to stop and show his hands. Meanwhile, Sergeant Carpenter yelled for Loggins to stop and get on the ground. Loggins ignored the commands, however, and continued to stride purposefully toward his car and said, "Give me my kids back" and "I've got somewhere to go."

The duration of time between the radio broadcast that Loggins was returning to his car and the shooting is only 27 seconds. Deputy Sandberg has his gun unholstered for only 22 seconds before the shooting. Loggins can be seen on-screen in the patrol video for only nine seconds prior to the shooting. Thus, the situation evolved very quickly.

It is within that rapidly evolving context that the apparent reasonableness of the necessity for Deputy Sandberg to shoot must be analyzed. When doing so, consideration must be given to whether any less-than-lethal alternatives were

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1) SAMHSA / Center for Substance Abuse Treatment (CSAT) US Dept HHS / Public Health Service;  
<http://www.ncbi.nlm.nih.gov/books/bv.fcgi?rid=hstat5.chapter.57310>.

2) Penal Code section 273a(a) defines the crime of child endangerment, providing that "any person who...having the care or custody of any child...willfully causes or permits that child to be placed in a situation where his or her person or health is endangered" has committed a crime which can be punished either as a misdemeanor or a felony, at the discretion of the court.

3) Penal Code section 148(a) defines the crime of resisting arrest, providing that "every person who willfully resists, delays, or obstructs any ...peace officer . . . in the discharge or attempt to discharge any duty of his or her office or employment" has committed a misdemeanor.

available to Deputy Sandberg. No Tasers or other non-lethal firearms were available to Deputy Sandberg. The only less-than-lethal weapons available to Deputy Sandberg were his baton and his pepper spray. Deputy Sandberg concluded that the baton was not a reasonable option, as Loggins might be able to overpower Deputy Sandberg in hand-to-hand combat. Moreover, Deputy Sandberg had already drawn his firearm, and once Loggins advanced to within arms' length of Deputy Sandberg, Deputy Sandberg would be disadvantaged in hand-to-hand combat by the need to use one hand to re-holster his firearm (in order to prevent Loggins from getting control of it). After the five seconds it took Loggins to approach and pass Deputy Sandberg and enter the car, use of the baton and pepper spray were no longer an option –Loggins was inside his car with the door closed. Given all the circumstances, it was not unreasonable for Deputy Sandberg, at the moment he shot Loggins, to not resort to less-than-lethal weaponry.

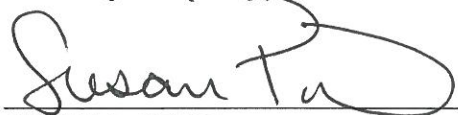
In hindsight, it still might be argued that Deputy Sandberg could have, at the last second, made the decision to shoot at the tires of the car rather than shooting at the person of Loggins. If the tires could have been successfully shot out, the SUV might have been rendered incapable of travelling at a sufficient speed to result in a life-threatening collision. Upon deliberation in the calm afforded by retrospection, one might conclude that shooting the tires might have been a sufficient measure to ensure the safety of the girls. However, given the tense situation and the brief time in which it unfolded, it is unreasonable to require Deputy Sandberg to coolly tabulate and evaluate all of the possible alternatives of non-deadly force, nor does the law require that of him. Moreover, were the car to begin to move away quickly, as it seemed about to, it would become a dangerous strategy to shoot at the tires. Shooting at tires of a moving car with innocent children inside was precisely the kind of endangerment that Deputy Sandberg wished to avoid, as a bullet could enter the rear passenger compartment and strike the girls, or a blowout of the tire could cause the car to swerve out of control and result in a dangerous crash. Finally, the argument for shooting out the tires presumes that the only threat posed to the girls by Loggins was a dangerous car crash, but Loggins' erratic, dangerous, and defiant behavior reasonably supports contrary inferences.

Therefore, making "allowance for the fact that police officers are often forced to make split second judgments—in circumstances that are tense, uncertain, and rapidly evolving" and granting police officers faced with such situations "a fairly wide zone of protection," as the U.S. Supreme Court declares we must, we find there is substantial evidence that Deputy Sandberg believed he needed to use deadly force to protect the children from death or serious bodily injury, and there is significant evidence that his belief was reasonable. At a minimum, the prosecution would be unable to disprove the reasonableness of that belief beyond a reasonable doubt, as would be required in order to justly and lawfully charge and convict Deputy Sandberg.

Consequently, although this incident ended tragically, and in hindsight may have been preventable, we find there is insufficient evidence to prove that Deputy Sandberg's conduct violated criminal law.

## **CONCLUSION**

Based upon a review of all of the evidence provided to and obtained by the OCDA, and pursuant to the applicable legal principles, it is our legal opinion that the evidence does not support a finding of criminal culpability on the part of Deputy Sandberg. Accordingly, the OCDA is closing its inquiry into this incident.



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