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BONNIE M. DUMANIS
DISTRICT ATTORNEY

August 13, 2008

Sheriff William Kolender
San Diego County Sheriff's Department
9621 Ridgehaven Court
San Diego, CA 92117

Re: Fatal shooting of David Arnulfo Lopez on October 21, 2006, involving San Diego Sheriff's Deputies Shawn Aitken, Jacob Pavlenko and Jonathan Fecteau; San Diego Sheriff's case number 06-073826; DA Special Operations case number 06-127PS; Deputy District Attorney assigned: Richard Monroy

Dear Sheriff Kolender:

We have reviewed the materials compiled by your department's Homicide Division concerning the fatal deputy-involved shooting of Mr. David Arnulfo Lopez. A District Attorney Investigator responded to the scene soon after the incident and was briefed by your investigators.

Persons Involved

Mr. David Arnulfo Lopez was 27 years old. He formerly resided with his wife, but was not living with her when this incident occurred.

Deputies Shawn Aitken, Jacob Pavlenko and Jonathan Fecteau were all assigned to patrol duties in Vista. They were in uniform and driving marked sheriff's patrol cars. Deputy Pavlenko was a canine handler and was working with sheriff's K-9 "Gonzo."

Background

On June 14, 2005, uniformed sheriff's deputies arrested Mr. Lopez for assaulting his wife six days earlier on June 8, 2005. During this arrest, Mr. Lopez resisted and fought with the arresting deputies.

On October 18, 2005, Mr. Lopez arrived at a Vista residence where Narcotic Task Force officers were conducting a narcotics investigation. When the officers tried arresting Mr. Lopez, he resisted by striking one officer in the eye and kicking another officer in the neck.

None of the deputies involved in these two prior arrests were involved in the incident on October 21, 2006.

October 21, 2006 Incident

On October 21, 2006 at 6:20 p.m., Mrs. Verdugo, the estranged wife of Mr. Lopez, called the Sheriff's Department to report a domestic violence situation at her home at the Vista Terraces Mobile Home Park.

Mrs. Verdugo reported her husband, David Arnulfo Lopez, had shown up drunk at her trailer, that he'd armed himself with a knife and said he was going to kill her if she called the police. Mrs. Verdugo said her husband was aware a Temporary Restraining Order had been issued prohibiting him from contacting her, but that he showed up at her home anyway. Mr. Lopez and his wife had been separated after he was convicted of Felony Spousal Abuse for beating her on June 8, 2005. A Civil Protection Order was issued on June 16, 2005, which restrained Mr. Lopez from assaulting or threatening his wife. This Order was in effect at the time of this incident and wasn't scheduled to expire until June 16, 2008. Mr. Lopez was also on active parole from the California Department of Corrections at the time of this incident.

Mrs. Verdugo was interviewed by Homicide detectives, she said when her husband arrived at her home he was drunk and he appeared to be under the influence of drugs. Mrs. Verdugo reported that Mr. Lopez walked into her trailer and began arguing with her. She said her husband obtained a black handled kitchen knife, about a foot and a half in length, from a kitchen drawer. While armed with that knife, Mr. Lopez pushed Mrs. Verdugo to the floor, into a table and threatened to kill her. Mrs. Verdugo said her husband told her, "*I'm gonna kill you! I'm not afraid of anything.*" Mrs. Verdugo asked her husband "*Why, I've done nothing to you.*" Mrs. Verdugo's 11 year-old daughter told Mr. Lopez she was going to call the police. Mr. Lopez replied, "*I don't care. It doesn't matter to me.*" Mr. Lopez then stabbed a door, an air conditioning unit, a lamp and the floor with the knife.

Mrs. Verdugo and her daughter fled their home and went to ask the neighbor in space #22 to call the police. Mrs. Verdugo spoke to the sheriff's dispatcher and said her husband was at her home, that there was a TRO against him, and that he had a knife. Although Mrs. Verdugo's daughter had removed the knife and hidden it before she and her mother fled their home, the child didn't tell her mother that she had hidden the knife. This specific information regarding what Mrs. Verdugo's 11 year-old daughter had done with the knife was never supplied to the dispatcher, and therefore, it was never relayed to the responding patrol deputies.

Mrs. Verdugo, who spoke to the dispatcher through an interpreter, said her husband was at her home destroying her house, that he was armed with a knife, and threatened to kill her if she called the police. Mrs. Verdugo supplied the dispatcher with her husband's name, physical description and said he was both drunk and on drugs. The sheriff's dispatcher relayed this information to the responding patrol units and told them Mr. Lopez was running through the trailer park looking for his wife.

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After Mrs. Verdugo fled her apartment, her husband confronted and assaulted two other men who were in the trailer park. Based on witness statements and forensic evidence obtained at the scene, the investigation revealed Mr. Lopez ran up to two men, (Mr. Rafael Marure and Mr. Teofilo Ruiz) neither of whom knew Mr. Lopez, and physically assaulted them.

When Mr. Lopez confronted Mr. Marure and Mr. Ruiz, he asked them, "*What's up*" and then struck Mr. Marure twice in the face with his fist. Mr. Marure took off a belt he was wearing and swung it at Mr. Lopez striking Mr. Lopez in the face. Mr. Ruiz told officers that he feared that Mr. Lopez was going to kill Mr. Marure because Lopez was throwing so many punches at Mr. Marure's head. Mr. Ruiz then hit Mr. Lopez with a stick. Mr. Lopez responded by turning and striking Mr. Ruiz in the face, which caused Mr. Ruiz to fall backwards and hit his head on the pavement knocking him unconscious. Mr. Lopez ran away bleeding after fighting with Mr. Marure and Mr. Ruiz. Mr. Ruiz was later transported by an ambulance to a local hospital for treatment of the head injury he sustained.

Deputy Aitken and Deputy Pavlenko were assigned to the domestic violence call phoned in by Mrs. Verdugo. Deputy Aitken arrived first and waited at the front of the mobile home park for Deputy Pavlenko to arrive. In addition to supplying the deputies with Mr. Lopez's name and physical description, the dispatcher also advised them Mr. Lopez had been drinking and was under the influence of drugs.

Deputy Aitken and Deputy Pavlenko went directly to Mrs. Verdugo's home at space #39 to see if anyone there was hurt, needed help or if Mr. Lopez was still there. When the deputies arrived at space #39, it was dark and there were no lights on inside the trailer. Two doors were open. The deputies requested emergency radio clearance while they looked inside the trailer for victims or Mr. Lopez. It was dark, so they used their flashlights to see, but they found no one inside.

While Deputy Aitken and Deputy Pavlenko were walking to space #22, (from where the 911 call was made) two men contacted them and told them their friend (Teofilo Ruiz) had just been assaulted and knocked out by someone. The deputies initially thought the man who'd been knocked out and the call for help by Mrs. Verdugo were two separate incidents. Therefore, they told the men to wait and they would help them after they completed the call they were on. The deputies later learned Mr. Lopez was responsible for both crimes, the assault upon Mr. Ruiz and the assault on Mrs. Verdugo.

When the deputies contacted Mrs. Verdugo in person, a young girl translated for them. Mrs. Verdugo told the deputies through the translator that her husband threatened her with a knife, slapped her across the face, and was somewhere in the mobile home park. The young girl told the deputies Mrs. Verdugo's husband was the same man who knocked out the man at the front of the park and that she'd seen him take off his shirt. While speaking to Mrs. Verdugo, an older male approached the deputies and told them the man involved the fight at the front of the complex was bleeding from his face and that he went into a mobile home located in space #59.

After receiving the information concerning Mr. Lopez's location, Deputies Aitken and Pavlenko went to trailer #59 to contact and detain Mr. Lopez for the felony crimes of assault with a deadly weapon, brandishing, and felony assault. As the deputies approached the mobile home at space #59, they contacted a male and a female standing outside a car. It was apparent to the deputies these people didn't match the description of the man they were looking for, but the female said she saw a man who was bleeding go into the mobile home in space #59.

While standing outside the trailer, the deputies heard two male voices inside. Suspecting Mr. Lopez was inside the trailer, the deputies called for a third deputy to assist so they could have one officer watch the back of the trailer while two went to the front door. Deputy Fecteau responded and arrived several minutes later. When Deputy Fecteau arrived, Pavlenko returned to his car, obtained his K-9 "Gonzo" and returned to the trailer in space #59.

Deputies Aitken and Pavlenko went to the front sliding glass door and knocked while Deputy Fecteau watched the back of the trailer. A man matching the description of Mr. Lopez opened the curtains and looked outside. Mr. Lopez then went to the rear door, stepped outside, and looked at Deputies Aitken and Fecteau. Deputy Aitken told Mr. Lopez to walk over to them as they needed to speak to him, but instead, Mr. Lopez turned and ran back into the trailer closing the door behind him.

Deputies Aitken and Pavlenko ran to the rear door. Deputy Aitken stepped up onto the landing and opened the door while drawing his service weapon. Deputy Pavlenko stood with his dog on the steps. Deputy Aitken saw Mr. Lopez breaking out a bathroom window and trying to escape out of the trailer by climbing through the window.

Deputy Aitken gave Mr. Lopez commands to "**Stop!**" Mr. Lopez suddenly turned and charged directly at Deputies Aitken and Pavlenko, swinging his arms as he ran towards them. Deputy Pavlenko, who was standing with his dog on the landing, released his K9. Mr. Lopez ran past the K9 and directly into Deputy Aitken. The K9 jumped up onto Mr. Lopez's back as Mr. Lopez ran into Deputy Aitken. The collision forced Deputy Aitken backwards into the landing's wooden railing. Mr. Lopez, the K9 and both deputies were all struggling in a very small area on the landing. Deputy Aitken saw the K9 wasn't having any affect on Mr. Lopez and that Mr. Lopez had moved his hands towards the lower front part of his body. Deputy Aitken feared Mr. Lopez was reaching for the knife Mr. Lopez was said to have been armed with. The deputy was afraid Mr. Lopez would rise up and stab him with the knife, so he fired five rounds at Mr. Lopez's torso.

Deputy Pavlenko also looked inside the trailer from his position on the landing and saw Mr. Lopez running straight at him and Deputy Aitken. Deputy Pavlenko said Mr. Lopez appeared angry and had his fists clenched as he ran towards them. Deputy Pavlenko thought Mr. Lopez was going to attack them, so he released his dog. The dog bit Mr. Lopez, but Mr. Lopez swatted the dog, pushed it aside and ran into Deputy Aitken, forcing him into the

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railing. Deputy Pavlenko tried to grab Mr. Lopez's arms, but they were bloody and sweaty and he couldn't get a firm grip. Deputy Pavlenko saw Mr. Lopez try to hit Deputy Aitken, so Pavlenko shoved Mr. Lopez into the doorframe.

Deputy Pavlenko said while he, Deputy Aitken, Mr. Lopez and the K9 were fighting on the landing, it was very dark and they were all only inches apart from one another. When Mr. Lopez crouched down and leaned over, Deputy Pavlenko thought he was reaching for a knife or a gun. Deputy Pavlenko pushed his dog back, drew his handgun and fired five times at Mr. Lopez's midsection.

Deputy Fecteau responded to the deputies' request for assistance. Deputy Fecteau also had a civilian ride-a-long with him. Deputy Fecteau had the civilian wait in the car after they arrived at the mobile home park. Deputy Fecteau spoke to Deputy Aitken and learned that they were trying to locate and arrest an armed suspect for Assault with a Deadly Weapon and Brandishing charges. Deputy Fecteau watched the back of trailer in space #59 while Deputies Aitken and Pavlenko made contact at the front. Deputy Fecteau couldn't see the front of the trailer from where he was positioned, but he could hear Deputy Aitken knocking at the front of the trailer and saying something to someone. Deputy Fecteau then heard glass breaking and ran to the side of the trailer but didn't see anyone. He then heard people yelling and the sounds of a struggle at the front and ran back to the front of the trailer where he saw Deputies Aitken and Pavlenko fighting with Mr. Lopez on the landing. Deputy Fecteau then radioed, "*Code Cover.*"

When Deputy Fecteau arrived at the landing, he heard Deputies Aitken and Pavlenko giving commands to Mr. Lopez to stop resisting and turn around. Deputy Fecteau saw Mr. Lopez reach toward his waistband with his right hand. When Deputy Fecteau lost sight of Mr. Lopez's hands, he heard gunshots being fired. Deputy Fecteau hadn't seen either Deputy Aitken or Pavlenko draw their weapons before this, so when he heard the gunshots, he thought Mr. Lopez had obtained a gun and was firing at Deputies Aitken and Pavlenko. Fearing that Mr. Lopez was shooting Deputies Aitken and Pavlenko, Deputy Fecteau reached up, grabbed Deputy Aitken by the shoulder and pushed him down. Deputy Fecteau could then fire at Mr. Lopez over Deputy Aitken's left shoulder. As Deputy Fecteau was firing, Mr. Lopez was turning and trying to get up and onto a shed that was behind the stairs. Deputy Fecteau said he fired two rounds at Mr. Lopez.

Witnesses

Two uninvolved people were present inside the mobile home in space #59 when this incident occurred. Mr. Lucero and Ms. Witenour returned home that evening to find a man, Mr. Lopez, whom they didn't know and had never seen before, inside their home. Mr. Lucero asked Mr. Lopez what he was doing inside his house. Mr. Lopez said he was looking for his girlfriend. Mr. Lucero told Mr. Lopez he had the wrong place. Mr. Lucero saw Mr. Lopez had blood on him and it was apparent to Mr. Lucero that Mr. Lopez had been in a fight and that someone had hit him. Mr. Lucero said the lights were on inside his home and he didn't see any weapons in Mr. Lopez's hands.

While they were talking to Mr. Lopez, Mr. Lucero and Ms. Witenour heard someone banging loudly on the front of their trailer and yelling, "*Sheriff's Department!*" Mr. Lucero and Ms. Witenour watched as Mr. Lopez ran to the curtains, looked outside and then ran to, opened and stepped out the back door. They saw Mr. Lopez shut the back door and then run into the bathroom as a deputy came in the rear door with his gun drawn.

Statements – Mr. Lucero

Mr. Lucero heard glass shattering and saw Mr. Lopez trying to get out the bathroom window, but he was too big and couldn't fit through it. Mr. Lucero said Mr. Lopez then turned around and ran out the bathroom towards the officer who was holding the gun. Mr. Lucero stated, "*The guy just ran straight, straight toward him... He didn't care if he (the Deputy) had that gun out or not. He was trying to get away.*"

Mr. Lucero said:

"All I heard was stop! Stop! I mean he (the Deputy) had the gun pointed right at him. If he wanted to shoot him, he had a chance to shoot him when he was trying to break, get out that window. The officer said; Stop! I said stop! Right there! Stop where you're at! ... And the guy just wasn't listening... He went straight at that officer man! With that gun! Right through that door! ... I mean he wanted out man! He didn't give a f, care how he was gonna get out!... The way he acted... it looked like he had done something that put fear in him. You don't act that way when a police officer identifies himself unless you did something, that you broke the law and you know you're guilty... He just didn't care...All I could see were flashlights. I was just shocked! It happened so fast. He must have known who was at the door because he was scared about something."

Statements – Ms. Witenour

Ms. Witenour said, "*The Officers were telling him to stop! Stop right there!*" She saw one officer point his gun at the man and tell him, "*Freeze, stop, stand still.*" Ms. Witenour saw an officer trying to grab the man, but the man pushed past the officer and a dog came inside the trailer and jumped up and latched onto the man while they were in the threshold of the doorway.

Statements – Mr. Kloch

Mr. Kloch was a civilian ride-a-long with Deputy Fecteau. Mr. Kloch waited outside of Fecteau's patrol car while this incident evolved. Mr. Kloch said when the deputies knocked on the trailer, he saw someone look outside the front glass door. Mr. Kloch was about 120' away and said the lighting was low and dark, but that there was some light from inside the trailer. Mr. Kloch saw one Deputy at the rear door with his gun drawn and pointing it at someone while telling them, "*Get down! Get down!*" Mr. Kloch saw a struggle and heard someone saying, "*Stop fighting! Stop fighting!*" Mr. Kloch said this all happened "*pretty quick,*" he couldn't see any blows being thrown, that he heard between five and six gunshots, but that he couldn't see what caused the deputies to fire.

Statements – Daughter

Mrs. Verdugo's daughter said Mr. Lopez walked into their trailer without knocking. She saw Mr. Lopez get a 12" long knife from the kitchen and use it to stab the door, wall, and floor, and cut the fan. The daughter said both she and her mother were scared and that she saw Mr. Lopez push her mother to the floor while armed with the knife.

Additional Investigation

The crime scenes were secured and physical evidence was recovered and forensically examined. The investigation revealed Mr. Lopez had apparently removed two knives from his ex-wife's kitchen. He apparently left one knife behind and took a second knife with him to trailer #59. The second knife was found on a block wall outside the home. Both of these knives were later identified by Mrs. Verdugo as belonging to her. She said both knives were in her kitchen drawer before Mr. Lopez arrived at her home that evening.

DNA Test Results

DNA testing was conducted on both knives, Deputy Aitken's flashlight, the belt and stick that Mr. Marure and Mr. Ruiz used to defend themselves with against Mr. Lopez's attack and Mr. Marure's shirt. The DNA found on the knife Mr. Lopez used to assault his wife with contained a mixture of three DNA profiles. Mr. Lopez was included as a possible contributor to the DNA found on that knife. Mr. Lopez's DNA was also found on Deputy Aitken's flashlight, Mr. Marure's belt, the stick used by Mr. Ruiz's, and Mr. Marure's shirt. There was limited information obtained from the analysis of the DNA obtained from the knife found outside the mobile home at space #59, and no conclusions could be drawn.

Landing – Spatter - Blood

The confined railing area on the porch where the shooting took place was measured at 3' wide by 3'2" deep. High velocity blood spatter was observed on the trailer outside the back door left of the landing. Cast off blood spatter was observed on the trailer awning area over the landing. The bathroom window was broken. There was a blood trail from the bathroom window to the rear door. Two of the twelve rounds fired by the deputies struck and penetrated the shed and trailers north of the landing.

Shots Fired

Deputy Aitken fired five (5) rounds, Deputy Pavlenko fired five (5) rounds and Deputy Fecteau fired two (2) rounds. Twelve (12) expended shell casings were recovered at the scene. Two of the twelve rounds fired by the deputies struck and penetrated the shed and trailers north of the landing.

Radio Transmissions

The sheriff's radio transmissions made during this incident were reviewed in detail. Deputy Aitken radioed that they were going to be making contact at trailer #59 and to give them ET (Emergency Traffic). Fifteen seconds later, Deputy Fecteau radioed a request for, "Code Cover." A struggle can be heard in the background. Only seven seconds after Deputy Fecteau requested emergency assistance, he radioed, "Shots fired."

Autopsy

On October 23, 2006, Dr. Jonathan Lucas of the San Diego County Medical Examiner's Office, performed an autopsy on Mr. Lopez. Dr. Lucas determined that Mr. Lopez died from multiple gunshot wounds. The manner of death was determined to be a homicide.

Mr. Lopez sustained a total of twelve gunshot wounds. Nearly all of the gunshot wounds were orientated from back to front. One gunshot wound to the left side, labeled A, had soot and dense stippling, indicating a close range or contact wound. One gunshot wound labeled H, entered at an angle, near the tailbone, which indicates Mr. Lopez was bent at the waist and to some extent gunshot wounds labeled B, C, D, I and J, do as well.

The two gunshot wounds that entered and exited the body were labeled K and F. Gunshot wound K entered near the right armpit and exited above the right shoulder. The trajectory, as evidenced by a rod inserted during autopsy, indicates an upward trajectory (contingent upon the shooters position) and could indicate Mr. Lopez was either bent at the waist when the shot was fired or the shot was fired from below where Mr. Lopez was positioned at the time. Gunshot wound F entered and exited at the right hip. Based on the positioning of these wounds, either could be responsible for the high velocity blood spatter found on the trailer siding north of the rear door.

Mr. Lopez had blunt force injuries to his head, torso and extremities. These injuries included abrasions and lacerations to his scalp, a contusion to the chin, scattered abrasions and contusions of the chest, lower back, arms and legs and a canine bite mark on his left thigh. He also sustained a large glass related laceration to his left forearm and glass shards were found embedded in his right arm. These injuries appear consistent with the fights Mr. Lopez was involved in with Mr. Ruiz and Mr. Marure and his intentional breaking of Mr. Lucero's bathroom window.

Toxicological tests were also conducted. Those tests were positive for the presence of alcohol, methamphetamines and cannabis in Mr. Lopez's system. Mr. Lopez's blood alcohol level was measured at .13%. The amount of methamphetamine and cannabis in his system were consistent with those drugs use.

Legal Analysis

This review was conducted pursuant to the joint protocol between this Office and all San Diego County 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.

In this case, uniformed San Diego Sheriff's Deputies Shawn Aitken, Jacob Pavlenko and Jonathan Fecteau were trying to locate and arrest Mr. Lopez, who was said to have been armed with a knife, for the felonious assault upon his wife and assaults upon the persons of Ramon Marure and Teofilo Ruiz. The information the deputies developed when they arrived indicated that Mr. Lopez, who was under the influence of both alcohol and drugs and armed with a knife, had fled into the trailer in space #59, a home it was later determined was not his and he had no right to be in.

When the deputies knocked on the trailer and identified themselves, Mr. Lopez looked outside, saw them and tried to flee out the back by breaking and climbing through a bathroom window. Failing his escape, Mr. Lopez charged at two uniformed deputy sheriffs, one of whom had his weapon drawn and was ordering him to stop. Mr. Lopez did not heed repeated orders to stop, but charged at Deputy Aitken running into him and forcing him backwards into the railing. During the struggle in the darkness and in a confined area on the landing, Deputies Aitken and Pavlenko both stated they feared Mr. Lopez was going to stab them with a knife when Mr. Lopez turned and reached towards his waistband. It was then that both Deputies Aitken and Pavlenko fired five times at Mr. Lopez.

When Deputy Fecteau heard the struggle on the porch, he ran to help the other deputies. Fecteau saw the struggle and also saw Mr. Lopez turn and bend down reaching towards his waistband. Deputy Fecteau heard gunshots being fired, and in the darkness, feared Mr. Lopez had in fact obtained a weapon and was firing at Deputies Aitken and Pavlenko. Deputy Aitken then fired twice at Mr. Lopez.

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 had reasonable cause to believe has committed a public offense. That section states the officer need not retreat or end his effort to affect 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 injury to the officer or others.' All determinations of unreasonable force 'must embody allowance for the fact that police officers are often forced

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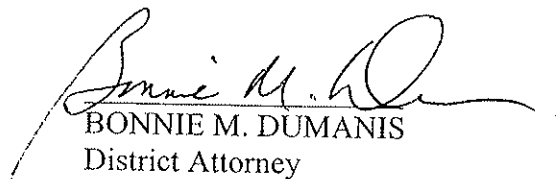
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to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” [Citations omitted.]

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 section 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

As a result, Deputies Aitken, Pavlenko and Fecteau 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

BMD:jh

Cc: Captain Octavia Parker