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December 9, 2010

Chief Paul Workman
Laguna Beach Police Department
505 Forest Avenue
Laguna Beach, CA 92651

**Fatal Shooting of Colby Joshua Koenig,
Involving Laguna Beach Police Department Officers:
Ramos, Bixby & MacDonald
#10-00397-AR**

Dear Chief Workman,

OVERVIEW

This letter contains the scope and legal conclusion of the Orange County District Attorney's (OCDA) investigation of the Jan. 12, 2010, fatal shooting of Colby Joshua Koenig involving three Laguna Beach Police Department (LBPD) officers. The OCDA will detail the investigation's methodology employed, evidence examined, witnesses interviewed, factual findings, and legal analysis used to determine if there was criminal culpability by the officers involved in the shooting.

The OCDA developed the format of this document at the request of many Orange County police agencies to foster greater accountability and transparency in law enforcement. Today, Dec. 9, 2010, Orange County District Attorney Tony Rackauckas issued a press release regarding OCDA's new format of providing information to the public and media following the conclusion an officer-involved shooting or custodial death investigation. To read the full statement, please visit www.orangecountyda.com and click on the press release titled "OCDA Tony Rackauckas Announces New Policy to Publish the Office's Finding of Facts and Legal Conclusions in Officer-Involved Shootings and Custodial Deaths."

On Jan. 12, 2010, Investigators from the OCDA Special Assignments Unit (OCDASAU) responded to the scene of the fatal shooting of Koenig by LBPD officers. During the course of this investigation, OCDA Investigators interviewed more than 60 witnesses. We obtained and reviewed reports prepared by the LBPD, Laguna Beach Fire Department (LBFD), and Orange County Sheriff's Department (OCSD). We also obtained and reviewed relevant video and audio evidence and toxicology reports. All officers involved gave voluntary statements.

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The OCDA conducted an independent and thorough investigation of the facts and circumstances of this event and 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 the police officers involved. The OCDA will not be addressing policy, training, tactics, or civil liability.

METHODOLOGY OF INVESTIGATION

The OCDASAU is responsible for investigating officer-involved shootings within Orange County when a person has been injured as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and supported by additional Investigators from other OCDA units. There are six full-time Investigators assigned to OCDASAU. There are 25 additional OCDA Investigators assigned to other units trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called and perform a variety of investigative functions including interviewing witnesses, canvassing neighborhoods, processing crime scenes, collecting evidence, and processing vehicles. The OCDASAU audio record all interviews and physical evidence is processed by the Orange County Crime Lab.

Following the OCDASAU's conclusion of an investigation, the file is turned over to a deputy district attorney for legal review. A veteran deputy district attorney from the Homicide or Gang Unit reviews the case for criminal filing in fatal officer-involved shootings and custodial deaths. A veteran deputy district attorney from the Special Prosecutions Unit reviews non-fatal officer-involved shooting investigations for criminal filing. Throughout this process, consultation between the reviewing prosecutor and his or her supervisor occurs, and an assistant district attorney will review their legal conclusion and the resulting memo. Often, the case may be reviewed by multiple veteran prosecutors including senior assistant district attorneys, Chief of Staff, and the District Attorney. The case may be sent back for further investigation if necessary.

FACTS

Koenig, a 25-year-old resident of Foothill Ranch, lived with a female roommate in separate bedrooms for the past 18 months. They were not romantically involved. Koenig worked for and attended California State Polytechnic University, Pomona.

According to family members, Koenig had experimented with various illegal and prescription drugs. They were unaware if Koenig had been abusing any drugs recently.

Koenig's mother stated that back in December he had been seeing a therapist to address anxiety issues. Koenig had been prescribed medication but she had discarded them because she was convinced he did not need them and felt her son would abuse the medication.

According to Koenig's roommate, he was considerate, respectable, and paid his rent on time. She was unaware that he was abusing any drugs, but drank alcohol at times. She said she knew Koenig was seeing a doctor for Attention Deficit Disorder (ADD).

In December 2009, Koenig's roommate noticed he was blankly staring at objects in their residence and not being himself. Koenig said there was a conspiracy and aliens were coming to kidnap people. She was so concerned for her safety that she barricaded herself in her bedroom for the night. She said she was also concerned for Koenig's health and considered calling his parents, but never did. Koenig later blamed his behavior on exhaustion and sleep deprivation.

On the evening of Jan. 11, 2010, Koenig's roommate again noticed his strange behavior.

At approximately 7:30 a.m. the next morning, while Koenig's roommate was getting ready for work, she saw him in his bedroom holding the Bible in his left hand with a pack of energy drinks in his lap. Koenig appeared to be looking for the correlation between the two items. He was also picking up his shoes and reading the labels. His roommate believed Koenig was having another episode and he was not right. Koenig told his roommate that he had not slept the night before. She contemplated calling his doctor, but didn't. Koenig's roommate left their residence and went to work.

At 7:54 a.m., OCSD communications began receiving 911 telephone calls from drivers reporting Koenig driving on the wrong side of the road, speeding, and heading northbound on Pacific Coast Highway (PCH) from Crown Valley Parkway in Dana Point. Koenig was speeding in his Mitsubishi Lancer ranging between 60 and 100 miles per hour. OCSD communications telephoned LBPD communications to alert them to Koenig's erratic driving as he was heading into Laguna Beach.

At 7:55 a.m., LBPD Corporal Andy Peck and Motor Officer Rod MacDonald were on-duty, in uniform, and directing traffic at the intersection of Wesley Drive and PCH due to an earlier power outage. Peck and MacDonald observed Koenig driving on the wrong side of the road, speeding 60 to 70 miles per hour, and maneuvering in a reckless and dangerous manner.

MacDonald ran to his motorcycle and attempted to catch-up to Koenig. Koenig's driving was captured on the motorcycle's digital video recorder.

As Koenig approached Saint Anns Drive, he veered into the number one southbound lane of PCH and collided with a black 2000 GMC Sierra truck heading northbound, which disabled the GMC. The collision launched Koenig's vehicle into the air and crashed it into the left front corner of a black 2006 Chevrolet Suburban traveling behind the GMC Sierra. Koenig's vehicle then struck the rear of a tan 2004 Ford F-150 truck, which was heading northbound on PCH in the number one lane at Saint Anns Drive.

At 7:57 a.m., MacDonald arrived at the scene and parked his motorcycle facing northbound on PCH. Koenig's Lancer was in the north end of the intersection facing in a southwest direction with significant damage to the right side of the vehicle. Emergency Medical Technician (EMT) Thomas Moore and an unknown subject were kneeling down next to Koenig's driver side window to provide him with medical aid. Off-duty Newport Beach Battalion Chief Ralph Restadius was also present while MacDonald and other LBPD officers assessed other potential injured parties. MacDonald stated that he believed Koenig was receiving medical aid from both Restadius and Moore, so he focused on assessing the traffic collision.

Moore introduced himself to Koenig, telling him he was an EMT and there to help him. Koenig was conscious and told Moore his name and age. Koenig stated that he did not know where he was, the date, time, or what happened. Moore did not smell any alcoholic odor coming from Koenig. Moore then took Koenig's vital signs while a C-spine collar was placed around his neck by the unknown subject.

Koenig pushed Moore's hands away while trying to help Koenig. Koenig told Moore to get away from him repeatedly. Moore again told Koenig that he was an EMT, who was there to help and paramedics would be on scene very soon.

At 7:57 a.m., LBFD Engine 2 received an emergency call to respond to a traffic accident. Firefighter/Engineer Jeff Priest, Captain Steve Rening, and Firefighter/Paramedic Thomas Padden, responded to the scene.

At 7:58 a.m., LBPD Sergeant George Ramos arrived at the scene to assess the scene and requested additional resources to manage the major traffic collision.

At 8:02 a.m., LBPD Corporal Paul Bixby arrived on scene and parked directly behind Ramos' police vehicle, which was facing westward towards PCH on Saint Anns Drive.

After arriving at the scene, LBFD Engine 2 parked at the northwest corner of PCH and Saint Anns Drive.

Meanwhile, Moore noticed that Koenig's keys were still in the ignition and decided to remove them to keep him from driving away. Moore was unable to remove the car keys because Koenig continued to push Moore's hands away as he reached into the driver's side window. Koenig suddenly started the car and accelerated in reverse. Moore's upper body and arms were still inside the vehicle and he began screaming, "No! No! No! Please stop the car, you don't need to do this, we are going to help you." Moore ran alongside the vehicle until he was able to get his body and arms out of the vehicle as Koenig continued to drive in reverse.

The police vehicle video recordings taken from Ramos and MacDonald's vehicles depict the series of events that follow. After Moore and the unknown subject escaped from Koenig's car, Ramos ran up to Koenig, ordered him to stop, and kicked the right side of the vehicle to get his attention. Koenig then backed into a vehicle that was attempting to go through the scene of the traffic collision. Koenig pulled forward toward the southeast corner of the intersection where a large crowd of people had gathered to view the traffic collision.

MacDonald heard the revving of Koenig's engine and observed him driving in reverse. MacDonald walked eastbound as Koenig drove forward towards him briefly, before making a sharp left turn toward the southeast corner of St Anns Drive and PCH, where MacDonald observed 15 to 25 pedestrians walking. Believing Koenig was not going to stop his vehicle, MacDonald drew his duty handgun and fired 10 rounds to the rear left side of the car.

Ramos arrived at the scene and observed Koenig's vehicle which had significant damage and appeared immobile. Ramos initially believed Koenig was unconscious. Suddenly, he heard people yelling for Koenig to stop. Ramos observed Koenig drive in reverse. He noticed Moore and the unknown subject in-between Koenig's vehicle and another car and drew his duty handgun fearing for their safety. Ramos watched Koenig drive forward onto Saint Anns Drive, believing that he was going to crash into a crowd of people waiting to cross at the southeast corner of Saint Anns Drive and PCH. Ramos fired one round at the passenger side of Koenig's car thinking that he may hurt or kill the pedestrians. As Ramos fired, Koenig turned eastbound on Saint Anns Drive. Ramos quickly re-positioned himself on the driver's side of the car and fired another round at Koenig in an attempt to stop him from running over the people.

Shortly after Bixby arrived at the scene, he heard people screaming for Koenig to stop his car. Bixby saw Koenig driving in reverse northbound in an arch path. Bixby yelled at surrounding bystanders to get back and away from Koenig's vehicle. Bixby retreated to the rear of Ramos' police vehicle to avoid being struck. Bixby then moved to the front of his patrol vehicle before Koenig suddenly turned eastbound onto Saint Anns Drive. Based on Koenig's driving and path of travel, Bixby

believed that he or the group of pedestrians would likely be hit. Bixby drew his duty handgun and fired three times at Koenig to protect the pedestrians and himself.

Koenig was struck by the bullets in the back of his head and left bicep. As a result, Koenig crashed into a parked car situated at a northeast angel on Saint Anns Drive.

At 8:06 a.m., Koenig was attended to by fire department personnel. LBFD Firefighter Jeff Preist secured Koenig's head from moving by getting into the back seat of his car. Preist placed a C-spine collar on Koenig and helped put him on a backboard. Koenig was unconscious while being removed from his car. LBFD Engine 1 Paramedics Richard Gilmore and Adam Schumenberg arrived on scene and preformed Advance Life Saving (ALS) measures on Koenig. At 8:15 a.m., Koenig was transported by Doctor's Ambulance to Mission Hospital in Mission Viejo.

At 8:28 a.m., after arriving at the Hospital Emergency Room, Koenig was moved to room #21. Emergency room doctors attended to Koenig, who was still unconscious, not breathing on his own, and had no pulse or blood pressure. Doctors placed Koenig on life support. Koenig sustained two gunshot wounds to the back of his head and another to his left upper extremity. A Registered Nurse started ALS procedures and administered medications to Koenig, who remained unresponsive.

At approximately 5:20 p.m., Koenig was pronounced dead.

AUTOPSY

At 9:00 a.m. on Jan. 13, 2010, a post-mortem examination was conducted of Koenig by the Orange County Sheriff-Coroner at the Forensic Science Center. The autopsy was performed by Orange County Chief Forensic Pathologist Dr. Richard Fukumoto, who concluded that the cause of death was a perforating gunshot wound to the head.

EVIDENCE ANALYSIS

TOXICOLOGY

A toxicological exam was conducted on Koenig's post-mortem blood sample. The results were:

<i>DRUG</i>	<i>MATRIX</i>	<i>RESULT</i>
ETHANOL	POST-MORTEM BLOOD	NONE DETECTED
METHAMPHETAMINE/AMPHETAMINE	POST-MORTEM BLOOD	DETECTED
COCAINE	POST-MORTEM BLOOD	NEGATIVE
OPIATE / MORPHINE	POST-MORTEM BLOOD	DETECTED
CANNABINOIDS	POST-MORTEM BLOOD	DETECTED
NORDIAZEPAM	POST-MORTEM BLOOD	DETECTED

WEAPONS/FIREARM EXAMINATION

OCSD Crime Lab Forensic Scientist Tara Christian performed the firearms examination on the following items of evidence:

1. Glock Model 22 .40 caliber semi-automatic pistol, magazines and cartridges (MacDonald).
2. Glock Model 21 .45 caliber semi-automatic pistol, magazines and cartridges (Bixby).
3. Glock Model 22 .40 caliber semi-automatic pistol, magazines and cartridges (Ramos).
4. Cartridge cases and projectiles from the officer-involved shooting scene.
5. Bullet fragment from Koenig's head.
6. Bullet, copper jacket fragments, and lead fragments from Koenig's Mitsubishi Lancer.

After examining the evidence, Christian concluded that the Glock pistols functioned normally.

Glock Model 22 pistol (MacDonald)

Ten cartridge cases from the scene were determined to have been fired by the Glock Model 22 pistol.

Glock Model 21 pistol (Bixby)

Three cartridge cases from the scene were determined to have been fired by the Glock Model 21 pistol.

Glock Model 22 pistol (Ramos)

Two cartridge cases from the scene were determined to have been fired by the Glock Model 22 pistol.

Bullet Fragments from Koenig's head

The larger fragment has polygonal rifling marks consistent with being from a .40 caliber Smith & Wesson bullet; however, there were no marks for classification.

LEGAL ANALYSIS

California Penal Code (P.C.) 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, prevent escape, or overcome resistance. In addition, P.C. 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.

CALCRIM 3470 permits a person being assaulted to defend himself or herself from attack if, as a reasonable person, he or she had grounds for believing and does believe that bodily injury is about to be inflicted upon him or her or upon another person. In doing so, such person may use all force and means which he or she believes to be reasonably necessary, which would appear as such to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury that appears to be imminent.

The law as detailed in CALJIC 5.51 and CALCRIM 3470 permits a person, if confronted by the appearance of danger which arouses in his or her mind as a reasonable person, an honest fear and conviction that he or she or another person is about to suffer bodily injury, to act in self defense or defense of others upon such appearances, and from such fear and honest convictions. A 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 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 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.

Koenig's dangerous and erratic driving resulted in a series of collisions, which rendered his vehicle immobile. Several minutes passed while emergency personnel tried to help Koenig when he suddenly re-started his vehicle and almost ran one of them over. A large amount of bystanders, police officers, firemen, and vehicular traffic had collected in the small intersection. Koenig's attempt to flee, objectively and reasonably, posed a danger of escape, death, and serious bodily injury to the officers, emergency medical personnel, and other civilians. The officers' belief that it was necessary to employ deadly force to stop the threat is reasonable under the circumstances.

Conclusion

Based on all the evidence provided to the OCDA, entirety of the facts contained in the reports I reviewed, and pursuant to the applicable legal principles, it is my legal opinion that there is no evidence of any criminal culpability on behalf of Officers Ramos, Bixby, and MacDonald. The action of each LBPB officer was reasonable in light of the situation they confronted.

Very truly yours,



HOWARD GUNDY
Senior Deputy District Attorney
Homicide Unit



Read and Approved by Jim Tanizaki
Senior Assistant District Attorney