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April 17, 2017

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

Re: Custodial Death on Jan. 24, 2016
Death of Inmate Patrick John Russell
District Attorney Investigations Case # S.A. 16-004
Orange County Sheriff's Department Case # 16-018648
Orange County Crime Laboratory Case # 16-41237

Dear Sheriff Hutchens,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA) investigation and legal conclusion in connection with the above-listed incident involving the Jan. 24, 2016, custodial death of 30-year-old inmate Patrick John Russell.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Patrick John Russell. In this letter, the OCDA describes the investigative methodology employed, evidence examined, witnesses interviewed, facts discovered, and the legal principles applied to determine whether criminal culpability exists on the part of any Orange County Sheriff's Department (OCSD) personnel or any other person under the supervision of the OCSD.

On Jan. 24, 2016, OCDA Special Assignment Unit (OCDASAU) Investigators responded to Hoag Hospital-Irvine, where Russell died while in custody after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU interviewed eight witnesses, as well as obtained and reviewed reports from the OCSD and Orange County Crime Laboratory (OCCL), incident scene photographs, and other relevant materials.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this event and impartially reviewed all evidence and applicable legal standards. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of OCSD personnel or any other person under the supervision of the OCSD. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating custodial deaths within Orange County when an individual dies while in custody. 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. There are additional OCDA Investigators assigned to other units in the Office 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, scene processing, evidence collection, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to a veteran deputy district attorney for legal review. Deputy district attorneys from the Homicide, TARGET/Gangs, and Special Prosecutions Units review fatal, as well as non-fatal, officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. Throughout the review process, the assigned prosecutor will be in consultation with the Assistant District Attorney supervising the Special Prosecutions Unit, who will eventually review and approve any legal conclusions and resulting memos. The case may often 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 Jan. 8, 2015 Patrick John Russell was arrested by the Orange County Probation Department and he was booked into the Orange County Jail Intake Release Center (IRC). During the intake process, Russell was asked numerous pre-booking health screening questions. Russell indicated that he had no known drug allergies, no medical problems, and that he did not take any prescription medications. Russell was given a chest X-ray and there was no abnormal result. Upon completion of the booking process, Russell was housed overnight at Orange County Jail Men's Central Jail Complex. On Jan. 9 2016, Russell was transferred to the Orange County Jail Theo Lacy Facility where he spent the next approximately 18 hours before being transferred and booked into the Orange County Jail James Musick facility on Jan. 10, 2016.

On Jan. 23, 2016, at approximately 10:23 p.m., a deputy referred Russell to the medical ward due to vomiting and hyperventilating. Upon arrival in the dispensary, Russell told medical staff, "I can't breathe, I'm having an anxiety attack." Russell indicated he had no chronic conditions or other medical problems including mental health problems, and that he was not taking or prescribed any medications. The attending nurse prescribed Bismuth subsalicylate tablets to be taken every 2 hours as needed for the following 48 hours to treat his nausea and vomiting. Russell was also advised to increase fluid intake and rest until his symptoms subsided.

On Jan. 24, 2016, at approximately 12:03 a.m., a deputy again referred Russell to the medical ward due to complaints of physical and muscular chest pain. Russell told medical staff he had done 30 pushups for the first time the previous day. Russell also told staff he was anxious and unable to keep himself calm. The attending registered nurse instructed Russell about the importance of stretching after working out and sent him to the Orange County Jail Intake Release Center (IRC) medical triage ward for a mental health assessment due to his anxiety. At approximately 1:08 a.m., Russell arrived at triage complaining of chest pain radiating to his arm and jaw. Russell informed medical staff that he vomited on the bus and was also experiencing numbness in his hands and feet. The attending registered nurse administered Russell a dosage of nitroglycerin (NTG). Five minutes after the NTG was administered, Russell complained his pain was 8-9 out of 10. The nurse palpated his chest and Russell's response was consistent with muscular pain. Russell continued to vomit, appeared anxious and was breathing rapidly. Vitals showed that Russell had an elevated respiratory rate of 26 breaths per minute. The attending physician was notified of Russell's condition and referred him to mental health services.

During his mental health screening, Russell indicated he felt anxious about violating probation and the consequence of facing 6-9 months in prison. Russell denied prior mental health problems and stated he was not experiencing any delusions or thoughts of depression. The physician instructed Russell on breathing and relaxation exercises for feelings of stress and advised him to contact mental health staff as needed. At approximately 2:04 a.m., Russell returned to the Musick facility, complaining of flu like symptoms. At approximately 5:32 a.m., Russell returned to the medical ward with chest pains that he assessed at a level 10/10. The on-call registered nurse checked his vitals, which were stable. The nurse gave Russell a dose of Motrin 400 mg and he remained in the dispensary for observation.

At approximately 6:50 a.m., the nurses changed shifts and the new on-call registered nurse observed Russell sitting on a bench in the medical ward supporting his head with his hand. The nurse checked Russell's vitals, which remained stable, and she advised Russell to rest and that she would check on him after lunch. Russell returned to his housing module.

At approximately 10:20 a.m., Russell returned to the medical ward where Deputy Joseph Martini was stationed and the Deputy escorted Russell to see the nurse. Russell complained that his chest pain was a 10/10 and that the pain was coming from his chest and down his throat and he had numbing in both arms. Russell denied any heart condition but indicated he had experienced high blood pressure after having surgery on his hand the previous year at Kaiser Hospital. Russell was dry heaving, forcefully coughing, and he vomited a moderate amount of liquid emesis. Russell indicated to the nurse that he felt better after vomiting, and continued to rest on the patient table inside the doctor's room. At approximately 11:40 a.m., Russell sat up to vomit and lay back down on the floor stating he still felt nauseated. Russell then returned to the patient's table.

At approximately 12:20 p.m., the nurse was alerted by Russell's breathing and notified deputies of a "man down" inside the medical ward. Deputy Kenneth Harnden responded and observed Russell seated on a chair gasping for air. Russell was moved to the floor at the nurse's direction. Within seconds, approximately 3-4 additional deputies responded and found that Russell was not breathing and had no pulse. Deputy Harnden immediately started cardio pulmonary resuscitation (CPR) compressions. Deputy Martini retrieved the medical bag from the nurse's station which contained the "Ambu Bag" to assist with providing rescue breaths. The nurse attached an automated external defibrillator (AED) to Russell's torso. After the first "analyze," the AED advised a no shock situation. Deputy Harnden was able to find a weak pulse and immediately resumed chest compressions and did 2 additional cycles of chest compressions before the AED advised "to stand clear of the patient." The AED again did not advise a shock. Deputy Harnden observed through the Ambu bag mask that Russell was gasping for air and CPR was resumed. Deputy Harnden completed two additional sets of chest compressions before the Paramedics arrived.

At approximately 12:28 p.m., Paramedics from Orange County Fire Authority Engine #38 and #27 arrived on scene and took over chest compressions. After attaching a heart monitor to Russell, Paramedics identified that Russell's heart was in a "slow agonal rhythm," which equates to 20-30 beats per minute. Paramedics indicated this rhythm was from electrical pulses only and that the heart was not contracting. An intravenous line was placed in Russell's right arm and 1 milligram of epinephrine was administered. The epinephrine had no effect on Russell.

At approximately 12:42 p.m., Russell was placed into the CARE Ambulance for transport to Hoag Hospital in Irvine. CPR continued during transport with epinephrine being administered every three to five minutes. Russell did not respond to the epinephrine and remained in full cardiac arrest for the duration of the transportation. At approximately 12:55 p.m., the ambulance arrived and Russell's care was turned over to on-duty emergency room personnel. The attending Emergency Room physician checked Russell for a pulse and was unable to locate one; CPR continued. Advanced Cardiac Life Support (ACLS) protocols were then initiated. Per the physician's orders, the attending nurse administered one milligram of epinephrine every 3 minutes. Russell was also administered sodium bicarbonate, but Russell was unresponsive to both medications. At approximately 1:07 p.m., Russell regained a pulse and CPR was briefly discontinued. Russell was then placed on a dopamine drip to assist his rate and pressures. At approximately 1:12 p.m., Russell again became pulseless and ACLS protocols were re-started and continued for approximately 18 minutes before all treatment options had been exhausted. At approximately 1:36 p.m., the attending physician pronounced Patrick John Russell deceased.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- One inmate orange shirt and pants
- One inmate orange left shoe
- Two black socks
- Heart blood stain
- Two brown paper bags

AUTOPSY

On Jan. 31, 2016, independent Forensic Pathologist Scott Luzi from Clinical and Forensic Pathology Services conducted an autopsy on the body of Patrick John Russell. After extensively examining the body, Dr. Luzi found no significant injuries or trauma. The autopsy revealed that Russell suffered from an enlarged heart consistent with hypertension and a laceration to his aorta that allowed blood into the right side of his chest which was derived from complications of high blood pressure. Dr. Luzi noted that Russell had an extensive history of illegal drug and alcohol abuse. Finally, Dr. Luzi opined the cause of death was consistent with high blood pressure, heart disease and the tear in the aorta.

BACKGROUND INFORMATION

Russell had a State of California Criminal History record dating back to 2007 that revealed arrests for the following violations:

THE LAW

Homicide is the killing of one human being by another. Murder, voluntary manslaughter, and involuntary manslaughter are types of homicide. To prove that a person is guilty of murder, the following must be proven:

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

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

A person can also commit murder by his/her failure to perform a legal duty, if the following conditions exist:

a. The killing is unlawful (*i.e.*, without lawful excuse or justification);
b. The death is caused by an intentional failure to act in a situation where a person is under a duty to act;
c. The failure to act is dangerous to human life; and
d. The failure to act is deliberately performed with knowledge of the danger to, and with conscious disregard for, human life.

A person can also commit involuntary manslaughter by failing to perform a legal duty, if the following conditions exist:

a. The person had a legal duty to the decedent;
b. The person failed to perform that legal duty;
c. The person's failure was criminally negligent; and
d. The person's failure caused the death of the decedent.

In *Giraldo v. California Dept. of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 231, 250-251, the court held that there is a "special relationship" between jailer and prisoner:

> "[T]he most important consideration 'in establishing duty is foreseeability.' [citation] It is manifestly foreseeable than an inmate may be at risk of harm.... Prisoners are vulnerable. And dependent. Moreover, the relationship between them is protective by nature, such that the jailer has control over the prisoner, who is deprived of the normal opportunity to protect himself from harm inflicted by others. This, we conclude, is the epitome of a special relationship, imposing a duty of care on a jailer owed to a prisoner, and we today add California to the list of jurisdictions recognizing a special relationship between jailer and prisoner."

California Government Code 845.6 codifies that the special relationship that exists in a custodial setting gives rise to a legal duty, as follows:

> "[A] public employee, and the public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care."

Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when he/she acts in a reckless way that creates a high risk of death or great bodily injury and a reasonable person would have known that acting in that way would create such a risk. In other words, a person acts with criminal negligence when the way he/she acts is so different from how an ordinarily careful person would act in the same situation that his/her act amounts to disregard for human life or indifference to the consequences of that act.

An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A substantial factor is more than a trivial or remote factor; however, it does not need to be the only factor that causes the death.

LEGAL ANALYSIS

In this case, there is no evidence whatsoever of express or implied malice on the part of any OCSD personnel or any inmates or other individuals under the supervision of the OCSD. Accordingly, the only possible type of homicide to analyze in this situation is murder or manslaughter under the theory of failure to perform a legal duty. Although the OCSD owed Russell a duty of care, the evidence does not support a finding that this duty was breached in such a way that rises to the level of criminal culpability-either intentionally (as required for murder) or through criminal negligence (as required for involuntary manslaughter).

On the evening before his death while in custody, Russell began experiencing chest pains and anxiety and was immediately assessed by the jail medical staff. Russell continued to receive medical assistance throughout the night and early morning, at which point, Russell's symptoms began to rapidly progress. According to interviews and the notes of the attending nurses, Russell's symptomology was broad. The complaints of chest and radiating pain and numbness, while certainly red flags, were not alone indicative of a cardiac event. Russell's vital signs remained stable throughout his treatment, he expressed great anxiety about being incarcerated, and told the staff that he had done many push-ups after a period of inactivity. Several of the attending nurses palpated his chest, which caused increased pain and is counter indicative of a cardiac situation. Russell was a relatively young thirty years old without a history of heart disease.

While in the medical ward and under the observation of an attending registered nurse, Russell became unresponsive. The Paramedics were immediately called as the nurse and deputies began performing CPR. Epinephrine was administered and CPR continued during the duration of his transport to the hospital. Upon arriving at the Hoag Hospital-Irvine, Russell's

care was relinquished to the on-duty emergency room staff. Russell was provided Advanced Cardiac Life Support treatment for about 40-45 minutes before all treatment options had been exhausted and the attending physician pronounced Russell deceased.

Clearly, the nurses and doctor at the jail who evaluated and treated Russell were incorrect in their assessments, as his cause of death was due to an aortic dissection. However, to rise to the level of criminal negligence, a person must act in a reckless way that creates a high risk of death. Criminal negligence involves more than ordinary carelessness, inattention or mistake in judgment. The evidence in this case shows that multiple medical personnel examined and assessed Russell's condition. Based on a review of their notes and interviews, it is our conclusion that Russell's symptoms were appropriately evaluated by the medical staff at the jail. Each time he requested medical care, Russell was allowed to see a nurse in the medical ward. Russell's vital signs were taken each time and an assessment was made based upon the myriad of symptoms he presented. Based on all the available evidence and the totality of all the circumstances, it appears that Russell's initial diagnosis while at the jail was as a result of a mistake in reasoned, experienced and dutiful judgment. Therefore, the actions of the OCSD personnel do not rise to the level of criminal culpability.

CONCLUSION

Based on all the evidence provided to and reviewed by the OCDA, and pursuant to applicable legal principles, it is our conclusion that there is no evidence to support a finding of criminal culpability on the part of any OCSD personnel or any individual under the supervision of the OCSD. The evidence shows that Patrick John Russell died as a result of high blood pressure, heart disease and the tear in the aorta.

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

Respectfully submitted,

BARBARA K. KIM
Senior Deputy District Attorney
TARGET/Gangs Unit

Read and Approved by **EBRAHIM BAYTIEH**
Assistant District Attorney
Supervising Head of Court – Special Prosecutions Unit