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DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TONY RACKAUCKAS, DISTRICT ATTORNEY

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VIOLENT CRIMES

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SENIOR ASSISTANT D.A.
GENERAL FELONIES/
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BUREAU OF INVESTIGATION

LISA BOHAN - JOHNSTON
DIRECTOR
ADMINISTRATIVE SERVICES

SUSAN KANG SCHROEDER
CHIEF OF STAFF

October 31, 2014

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

Re: Officer Involved Shooting on August 10, 2013
Non-Fatal Incident involving Bryan Song Yang
District Attorney Case # 13F12873
District Attorney Investigations Case # S.A. 13-019
Orange County Sheriff's Department DR # 13-155963
Orange County Crime Laboratory Case # FR 13-51200

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 shooting incident involving on-duty Orange County Sheriff's Department (OCSD) Deputy Donald Lee. Bryan Song Yang, Riverside, age 37 at the time, survived his injuries. The incident occurred in the City of Yorba Linda on Aug. 10, 2013.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the Aug. 10, 2013, non-fatal officer-involved shooting of Bryan Song Yang. 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 Aug. 10, 2013, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators interviewed more than 33 witnesses and obtained and reviewed the following: OCSD reports, dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports including toxicology, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Yang; criminal history records related to Yang, including prior incident reports; and other relevant reports and materials including audio recordings of the conducted area canvass.

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

WEB PAGE: www.OrangeCountyDA.com

MAIN OFFICE
401 CIVIC CENTER DR W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3600

NORTH OFFICE
1275 N. BERKELEY AVE.
FULLERTON, CA 92631
(714) 773-4480

WEST OFFICE
8141 13TH STREET
WESTMINSTER, CA 92683
(714) 896-7261

HARBOR OFFICE
4601 JAMBOREE RD.
NEWPORT BEACH, CA 92660
(949) 476-4650

JUVENILE OFFICE
341 CITY DRIVE SOUTH
ORANGE, CA 92668
(714) 935-7624

CENTRAL OFFICE
401 CIVIC CENTER DR. W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3952

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 OCSD Deputies or personnel, specifically Deputy Lee. The OCDA will not be addressing herein issues of policy, training, tactics or civil liability.

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. 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, 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 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 or Gang Units review fatal, officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. Deputy district attorneys assigned to the Special Prosecutions Unit review the non-fatal officer-involved shooting cases for possible criminal filings. Throughout the review process, the assigned prosecutor will be in consultation with his or her supervisor, and this Assistant District Attorney 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

At approximately 2:00 p.m. on Aug. 10, 2013, OCSD Deputy Donald Lee was on patrol in a marked police vehicle in the city of Yorba Linda. Deputy Lee was armed with a Glock, Model 35, .40 caliber, semi-automatic pistol.

At the time of the incident, Deputy Lee had been employed with the OCSD for approximately nine months. Prior to Deputy Lee's employment with the OCSD, Deputy Lee worked for the University of Southern California Department of Public Safety for six years, and was most recently employed as a Brea Police Department (BPD) officer for seven years. During that time, BPD held the contract to police the city of Yorba Linda. At the time of this officer-involved-shooting incident, the city of Yorba Linda contracted police services through OCSD.

While employed with BPD, Deputy Lee patrolled the City of Yorba Linda and became familiar with the Extended Stay America hotel, located at 22711 Oak Crest Circle. The Extended Stay America hotel was known by Deputy Lee to be the focus of numerous probation and parole searches, as well as arrests for the sales and use of illegal narcotics. Approximately two weeks prior to this shooting incident, Deputy Lee was dispatched to the Extended Stay America hotel for a call relating to a possible domestic violence situation. Deputy Lee conducted his investigation and gathered information necessary to identify and locate the suspect who was still outstanding as of Aug. 10, 2013.

On Aug. 10, 2013, Deputy Lee was working a routine patrol shift in the City of Yorba Linda. Throughout the day, Deputy Lee continued surveillance of the Extended Stay America as part of his investigation into the previous domestic violence call. During Deputy Lee's surveillance, he observed what he believed to be a considerable amount of vehicles that entered the parking lot and appeared to only stay for a few minutes before leaving. A "fair number" of the vehicles Deputy Lee observed were Cadillac Escalades and Cadillac sedans.

At approximately 2:00 p.m. Deputy Lee observed a white, Cadillac Escalade enter the Extended Stay America parking lot. The driver of the Escalade, later identified as Bryan Song Yang, drove to the front of the Extended Stay America, stopped in the middle of the parking aisle near the front entrance and remained inside the vehicle. Shortly after the Escalade stopped, Deputy Lee heard a horn honk twice. The horn was possibly from the Escalade, as if the

driver was alerting someone of his arrival. Seconds later, the horn sounded two more times. Yang sat parked in his vehicle for approximately two minutes before leaving the location. Deputy Lee observed Yang preparing to exit the parking lot onto Oak Crest Circle and saw that Yang was not wearing a seatbelt as prescribed by law. Deputy Lee also observed what he believed to be a dog seated in Yang's lap. Deputy Lee pulled in behind the Escalade driven by Yang.

Deputy Lee completed a registration check of the California license plate affixed to the Escalade. The Department of Motor Vehicles (DMV) listed the registered owner of the vehicle as Frank Emmett, with a release of liability to Rebecca Silva. Deputy Lee saw that the driver of the Escalade was a male Asian, and was expecting the inquiry would return a registered owner with an Asian surname. Deputy Lee illuminated his overhead, solid red, forward facing light and initiated a traffic stop on Yang's vehicle for violation of the mandatory seat belt law, CVC 27315 (d)(1), as well as distracted driving due to the dog seated upon Yang's lap while driving.

Yang turned into the east entrance/exit of the Denny's restaurant parking lot, located at 22611 Oak Crest Circle. Yang drove to the northernmost aisle of the parking lot and stopped in the center of the aisle. Yang parked the vehicle, but left the engine running. Deputy Lee stopped his patrol vehicle approximately 10 feet behind Yang's vehicle, slightly offset to the left. From this position, Deputy Lee's patrol video recording system (PVS) captured and memorialized the traffic stop.

In an effort to keep the radio clear for emergency radio traffic, Deputy Lee did not advise dispatch of his traffic stop. Instead, Deputy Lee sent a car to car message to Deputy Brian Fischer that read, "Denny's." Deputy Fischer, also on patrol in the Yorba Linda area, knew Deputy Lee was conducting surveillance near the Extended Stay America. Deputy Lee believed Deputy Fischer would understand the very brief message. Deputy Lee transmitted the message, exited his vehicle and approached the driver's side of Yang's vehicle.

Deputy Lee believed he could be approaching a stolen vehicle and/or a vehicle that was just involved in some type of narcotic related activity. These circumstances caused Deputy Lee to remove his duty weapon from his holster as he approached, and held it in his right hand down next to his right leg, out of Yang's view.

As Deputy Lee approached the driver's door, a small white dog seated on Yang's lap lunged forward at Deputy Lee through the window. Yang retrieved the dog from the window and handed it to the passenger seated in the front seat, later identified as Yang's girlfriend, Jane Doe. During Deputy Lee's initial contact with Yang and Jane Doe, they appeared to be cooperative, so Deputy Lee re-holstered his duty weapon.

Deputy Lee requested Yang's driver's license, registration and insurance card. Yang quickly leaned over and opened the glove box on the passenger side of the dashboard. Deputy Lee described Yang's actions as, "weird" because Yang didn't even appear to look for the registration before quickly closing the glove box.

Yang told Deputy Lee he was going to have to run the plate because it was his parent's car and he didn't have the registration. Yang also told Deputy Lee he did not have his driver's license because it had been lost. A DMV records check revealed that at the time of the traffic stop, Yang's license status was "suspended or revoked."

Yang told Deputy Lee his name was, "Steve Kim." When Deputy Lee asked Yang for his parent's names, Yang gave Deputy Lee an Asian surname, which did not match the name of the registered owners. When Deputy Lee asked for identification from Jane Doe, she told him she did not have any identification. Deputy Lee became suspicious that some type of criminal activity was taking place, due to their inability to produce any personal or vehicle documentation. Deputy Lee again removed his duty weapon from the holster and held it down next to his right leg, again out of Yang's view.

Deputy Lee stood next to the driver's door and instructed Yang to turn off the vehicle and hand him the keys. According to Deputy Lee, Yang turned off the engine, removed the keys from the ignition with his right hand, and held the keys in the air. According to Yang, Deputy Lee asked him to turn off the engine and he did not comply with Deputy Lee's request. Yang had no recollection of removing the keys from the ignition.

According to Deputy Lee, Yang became visibly agitated and less compliant. Yang questioned Deputy Lee as to why he was stopped and why he had to surrender his keys to him. The verbal exchange between Deputy Lee and Yang continued as OCSD Deputies Fischer and Alvarez arrived in response to the earlier message from Deputy Lee. Deputy Fischer parked his marked patrol vehicle behind Deputy Lee's. Deputy Fischer exited his vehicle and approached the passenger side of Yang's vehicle, followed closely by Deputy Alvarez.

Deputy Lee reached into the interior of Yang's vehicle with his left hand to retrieve the keys, his duty weapon still concealed next to his right leg. As Deputy Fischer approached the rear of Yang's vehicle, Deputy Fischer heard a "mechanical" sound, as though the driver was shifting the vehicle into gear. Deputy Fischer recalled thinking to himself, "this isn't going to be good." Simultaneously, he heard Deputy Lee yell something at Yang, but could not understand what was said.

According to Yang, at this point he became nervous because he was not in possession of his driver's license, and because he was "high" from smoking marijuana earlier that day. Yang abruptly leaned forward, inserted the key into the ignition and started the vehicle's engine. Deputy Lee raised his duty weapon and reached into the driver's window of the vehicle pointing his duty weapon at Yang. With both of Deputy Lee's arms inside the driver's window of the vehicle, Deputy Lee yelled "stop, don't do it, don't do it," trying to dissuade Yang from driving away.

In what Deputy Lee described as "all one motion," Yang depressed the brake, shifted the vehicle into drive and leaned over to his right toward the center console/floorboard area. Deputy Lee believed Yang was reaching for a weapon and knew that if Yang produced a weapon, his upper body was exposed and both of his arms were inside the vehicle making him very vulnerable.

Yang accelerated forward, forcing Deputy Lee to run laterally alongside Yang's vehicle. Afraid that Yang was going to produce a weapon, or flee and create a pursuit situation which would endanger civilians, Deputy Lee determined lethal force was necessary. Deputy Lee quickly assessed his shooting background and decided he did not have a safe background to fire because Jane Doe was seated in the passenger front seat. Deputy Lee adjusted his shooting angle to eliminate the possibility of accidentally injuring Jane Doe. Deputy Lee pointed his handgun down toward Yang's left hip area and fired one round, striking Yang in the left pelvic region.

After firing, Deputy Lee dislodged his arms from the fleeing vehicle and ran back to his patrol vehicle. Deputies Fischer and Alvarez had already returned to their patrol vehicle and drove past Deputy Lee in pursuit of Yang. At approximately 2:04 pm, Deputy Lee broadcast from his handheld radio, "102, be in pursuit, shots fired," and joined the pursuit. Yang continued to the west end of the parking lot, toward the west driveway. Yang stopped before reaching the driveway apron. Yang and Jane Doe remained inside the Escalade.

Deputies Fischer and Lee stopped a safe distance behind Yang's vehicle. All three deputies exited their vehicles to conduct a felony car stop. After approximately 15 seconds of sitting at the driveway apron, Yang abruptly accelerated out of the parking lot eastbound onto Oak Crest Circle and fled at a high rate of speed. Deputies Fischer and Lee pursued Yang as he fled through the city, making his way to Yorba Linda Boulevard. Yang drove in a reckless manner and committed numerous vehicle code violations during his flight.

At Yorba Linda Boulevard, Yang entered the eastbound 91 Freeway. An OCSD motor officer joined the pursuit. Yang used all lanes of the freeway to escape, traveling at speeds estimated at 100 miles per hour. Deputy Fischer drove parallel to Yang in the FasTrak Express lanes. As Yang passed the 241 toll road, near Gypsum Canyon Road, Deputy Fischer observed a cloud of smoke and debris near Yang's vehicle, which led him to believe that Yang's vehicle had collided with another vehicle, or possibly multiple vehicles. It was later discovered that Yang collided with

at least three vehicles during his flight. One couple went to the hospital for injuries sustained as a result of the collision caused by Yang.

Deputy Fischer observed Yang's vehicle slowing next to the guard rail on the right side of the freeway. Yang's vehicle appeared to be leaning down towards the front passenger side, as if the vehicle experienced a suspension or tire malfunction. Yang's vehicle continued to decelerate and stopped east of the Coal Canyon off-ramp. Numerous deputies initiated a felony traffic stop, and both Yang and Jane Doe were taken into custody without incident.

Anaheim Fire Department personnel were dispatched to the scene. Yang was lying on the ground next to the driver's door of his vehicle and a deputy sheriff was rendering medical aid. Yang sustained a gunshot wound to the left pelvic area and was transported to the Western Medical Center-Santa Ana (WMC-SA). Hospital personnel discovered the bullet in Yang's undergarments and turned it over to OCSD. Yang underwent surgery and his injuries were successfully treated. After surgery, Yang told a nurse he fled the scene of the traffic stop because he was, "afraid because he was high" and didn't have a license.

Summary of Deputy Lee's PVS video:

A review of Deputy Lee's PVS recording showed the events consistent with Deputy Lee's recollection and statement. The video recorded Yang's Escalade drive away from the Extended Stay America hotel and enter the Denny's parking lot. Yang stopped in the aisle and Deputy Lee parked behind him. Deputy Lee's PVS is pointed toward the Escalade's rear tailgate and provides a visual of the driver's side of the Escalade. The PVS shows Deputy Lee approach the driver's side of the Escalade.

The PVS audio recorded the interior noise of the police unit, but did not pick up the exchange between Deputy Lee and Yang. Deputy Lee stood outside the driver's door for 55 seconds. Deputy Lee then extended his left arm, palm up and level with his shoulder, into the driver's door. Deputy Lee remained in this position for several seconds, then brought his right hand up, holding his firearm. As Deputy Lee extended both arms in the driver's window, the brake lights of the Escalade illuminated.

One second later, the Escalade moved forward and hit Deputy Lee in the arms. The Escalade continued to accelerate, with Deputy Lee still leaning inside. Two seconds after the Escalade began to move, a popping sound is audible. Due to the acceleration of the Escalade, Deputy Lee is no longer visible and the Escalade is almost entirely outside the view of the PVS. Deputy Lee returned to his unit and followed the Escalade to the Denny's exit. The statement "shots fired" is audible on the PVS. The Escalade stopped briefly, but was not in view of Deputy Lee's PVS. Deputy Lee participated in the pursuit, but the Escalade is not visible until Deputy Lee arrives at the stopping point of the pursuit on the 91 Freeway.

Summary of Jane Doe's statement:

Jane Doe was interviewed on Aug. 10, 2013, and gave a voluntary statement. Jane Doe identified Yang as "Brandon Park," her "on and off" boyfriend of 3 years. She had never heard of the name Bryan Yang. Jane Doe was staying at the Extended Stay America hotel. Yang arrived and picked her up in his Escalade. Shortly after they left the hotel, Yang told Jane Doe he was getting pulled over and he parked.

The deputy approached the driver's side window and spoke with Yang. Neither Yang nor Jane Doe were able to provide identification. The deputy asked Yang to remove the keys from the ignition. Yang did so, and the deputy reached in with his left hand to take the keys. Yang held the keys for a few seconds, then put them back in the ignition. The deputy reached through the window with his gun and pointed it at Yang.

Yang started the Escalade and shifted it into drive. Jane Doe thought the deputy may have said, "Stop," or, "Get out." The Escalade moved forward, with both of the deputy's arms still inside. Jane Doe said as the Escalade accelerated, the deputy's body got caught, like he got bumped or pushed. Jane Doe heard a shot and saw blood. Yang drove

away, stopping briefly at the Denny's exit, then fled onto the 91 Freeway. Jane Doe believed that at least two police officers were in pursuit and she heard sirens. Jane Doe believed they collided with multiple cars before they stopped on the freeway.

Voluntary, Consensual Statement of Deputy Lee

Deputy Lee gave a voluntary, consensual statement to the OCDA on Aug. 14, 2013. The following is a summary of Deputy Lee's statement.

At the time of the interview, Deputy Lee had been a sworn peace officer for approximately 14 years. Deputy Lee had been employed by OCSD for nine months. He worked for the University of Southern California Department of Public Safety for six years and BPD for seven years prior to being hired by OCSD. Deputy Lee was familiar with the Extended Stay America hotel in Yorba Linda, and the surrounding areas, because he patrolled that area when employed by BPD.

At the time of the incident, Deputy Lee was surveilling the Extended Stay America hotel as part of an ongoing domestic violence investigation. Deputy Lee also noted that there is significant narcotics activity at the Extended Stay America hotel. There had been numerous recent arrests for narcotics, as well as parole and probation violations. Deputy Lee noticed a white Escalade enter the hotel parking lot and honk several times. The male Asian driver, later identified as Yang, remained in the aisle and did not exit the vehicle. Yang drove away a few minutes later.

Deputy Lee saw Yang exit the parking lot. It appeared as if Yang was not wearing his seat belt, and had a dog in his lap. Deputy Lee followed Yang out of the parking lot and did a registration check. The registered owners' names were not Asian, and Deputy Lee suspected possible narcotics activity in the parking lot. Deputy Lee decided to stop Yang for his failure to wear a seatbelt and for distracted driving. Deputy Lee turned on his overhead lights and Yang pulled into the Denny's parking lot and stopped in the aisle. Deputy Lee sent a car to car message to his partner, Deputy Fischer, advising of his location.

Deputy Lee approached the driver's side window and made contact with Yang. Yang initially appeared compliant when Deputy Lee asked for Yang's license, registration, and insurance. Yang looked quickly in the glove box and told Deputy Lee his name was "Steve Kim." Yang said he lost his license, and Deputy Lee would have to look up the license plate because the car belonged to his parents, and Yang did not know where the registration was located. The name Yang gave for his parents did not match the names of the registered owners. Yang's girlfriend was in the passenger seat and did not have any identification, either.

Suspecting the vehicle might be stolen, Deputy Lee asked Yang to take the keys out of the ignition. Yang was holding the keys and refused to give them to Deputy Lee. Deputy Lee said Yang's demeanor became challenging and noncompliant. Deputy Lee extended his left hand into the window to get the keys. Yang then reached up, put the keys back in the ignition, and started the engine. Deputy Lee then reached both arms into the cab and pointed his gun at Yang. Deputy Lee told Yang, "Stop, don't do it." Yang put the vehicle into drive, and reached over and down toward the center console floorboard area.

Deputy Lee was afraid Yang was going to come back with a weapon and shoot Deputy Lee. Deputy Lee was aware that those who are involved in narcotics sometimes possess weapons. The vehicle started moving while Deputy Lee had both arms inside the Escalade and the vehicle struck his arms as it moved forward. With both arms inside the cab of the Escalade, Deputy Lee pointed his gun down and fired one round. Yang then fled in the Escalade, stopping briefly at the west exit of Denny's, before accelerating and leading the police on a pursuit through Yorba Linda and onto the 91 Freeway. Deputy Lee did not catch up to the Escalade until it stopped on the side of the 91 Freeway. At that time, Yang was taken into custody.

Post-Shooting, Voluntary Interviews with Civilian Witnesses in the Area

Civilians were present in the Denny's parking lot area at the time of the initial stop. Witness #1 was interviewed and she stated that she heard the deputy trying to get the driver of the Escalade to stop.

Yang struck three civilian vehicles while driving on the 91 Freeway. The first vehicle was struck on the driver's side by Yang's vehicle. The impact broke the windows, spraying glass on the occupants. Both victims were subsequently transported by ambulance to Placentia-Linda Hospital for injuries sustained from the collision.

Yang side-swiped a second vehicle carrying three people. None of the occupants were injured as a result of the collision, but the vehicle suffered damage to the passenger side.

Yang hit a third car, occupied by the adult driver and two children. None of the occupants were injured, but the vehicle suffered damage to the driver's side rear fender.

Bryan Yang's Consensual, Voluntary, Pre-Miranda Statements of Events

Yang was interviewed on Aug. 19, 2013, after he was advised of his Miranda rights and consented to speak with both the OCDA Investigator and OCSD personnel. Yang stated, "I'm glad you guys are here to talk to me." Yang stated he went to the Extended Stay America hotel to pick up his girlfriend. Yang pulled into the Denny's parking lot and noticed a police car behind him with lights activated. Yang stopped, and the deputy walked to Yang's driver's window and requested Yang's license and registration. Yang recognized the deputy as a police officer. Yang said he did not have his registration, and he lost his driver's license. Yang stated him and his wife (not the female in the vehicle) just purchased the Escalade from "John Emery" and had not yet transferred title.

Yang gave different versions of the incident. In one version, the deputy told Yang to put the car in park, or turn the car off. Yang said he consented, and the deputy pulled a gun. Yang said he put the car in drive, got scared, hit the gas, and the deputy shot him. Yang later stated he, "just watched too many shows, I don't know, I was like, uh, freak stupid move." In another statement, Yang said the deputy told him, "...put your car in park or drive..." Yang did not remember the deputy asking for his keys. Yang also stated that he was already shot when he put the car in drive, and then said the car wasn't even on, it just rolled. Yang also told the investigators that when the deputy shot the bullet, it ricocheted and short-circuited the Escalade (the OCCL did not find any bullet holes in the Escalade, and the only bullet fired was retrieved from Yang's undergarments by hospital staff).

Yang admitted he did not think he had a valid license at the time of the incident, and was also aware of an outstanding warrant for his arrest. Yang denied giving the deputy a false name, and when he was confronted with striking at least three vehicles during the pursuit, he said, "Nah, not me." When discussing the event, Yang said, "Maybe I was high? I was paranoid?"

Yang said he got on the 91 Freeway to go to a hospital, but didn't know which one. Yang admitted to "clipping" one vehicle during the escape, and said he may have run red lights and stop signs, and drove at speeds up to 100 miles per hour.

EVIDENCE COLLECTED AT THE SCENE

OCSD impounded and processed Yang's Escalade. The following evidence was located in the vehicle:

- One (1) Federal .40 caliber S & W cartridge casing from underneath driver's side rubber floor mat of the Cadillac Escalade, and
- A backpack containing (4) separate large clear plastic bags containing a total of 92 individually packaged plastic containers of a marijuana by-product; a digital scale; a glass jar containing leafy marijuana; and, \$690.00 US currency in a clear plastic bag [(32) \$20.00 dollar bills and (10) \$5.00 dollar bills].

The following items of evidence were collected at WMC-SA:

- Bullet (retrieved from Yang's undergarments), and
- Yang's miscellaneous clothing and tennis shoes

The following items of evidence were collected from the OCSO patrol units of Deputies Lee and Fischer, respectively:

- Flashback 2 Video Card S/N CF0223080 – Unit 2676, and
- Flashback 2 Video Card S/N CF0222640 – Unit 2675

The following items were collected from Deputy Lee:

- Glock, Model 35, .40 caliber, semi-automatic pistol,
- One .40 caliber cartridge in the chamber of the pistol, and
- Fourteen .40 caliber cartridges from the magazine in the pistol.

EVIDENCE ANALYSIS

An OCCL Forensic Scientist examined the following items of evidence:

- Glock, Model 35 .40 caliber semi-automatic pistol,
- (1) Bullet core,
- (1) Fired cartridge case,
- (2) Overlay tracings of T-shirt, and
- (1) Overlay tracing of jeans.

FIREARM EXAMINATION RESULTS AND INTERPRETATIONS

After examining the evidence, the OCCL Forensic Scientist completed a firearms examination and comparison of the firearm related to this investigation with the following results:

- The Glock pistol was test fired and operated without malfunction,
- The fired cartridge case from the vehicle was determined to have been fired from Deputy Lee's Glock pistol,
- The bullet is consistent with having been fired from Deputy Lee's Glock pistol, and
- The distance of the shot to the t-shirt is estimated to have been at a muzzle distance between 12 and 48 inches.

YANG'S MEDICAL CONDITION

Yang was transported to WMC-SA, where he was treated for a through and through gunshot wound to his left pelvic area. Yang underwent surgery for a damaged colon, iliac artery and iliac vein. The surgery was successful, and after a recovery period, Yang was released from the hospital.

YANG'S PRIOR CRIMINAL HISTORY

Yang's relevant criminal history includes carrying a loaded firearm in a vehicle with a prior felony conviction, aggravated assault with a weapon, grand theft, marijuana sales, possession of a weapon, burglary, disorderly conduct, petty theft, domestic violence, driving on a suspended license, and violations of his probation. At the time of the incident, Yang had outstanding warrants for his arrest from Riverside County for possession of a firearm by a prohibited person, grand theft, domestic violence, and possession of marijuana for sale. Yang also had an outstanding warrant for his arrest from Florida for illegally carrying a concealed weapon.

YANG'S POST-INCIDENT CONVICTION

On Aug. 20, 2013, OCDA filed criminal charges against Yang in Orange County Superior Court case 13NF2780, consisting of felony Evading a Police Officer, a violation of California Vehicle Code section 2800.2(a); felony Obstructing a Police Officer, in violation of California Penal Code section 69; felony Hit and Run with Injury, in violation of California Vehicle Code section 20001(a); and, misdemeanor Hit and Run, in violation of California Vehicle Code section 20002(a). While out on bail in 2014 awaiting resolution of this case, Bryan Yang was involved in a new traffic accident and died from his injuries. Yang's death was not caused by or related to the officer-involved-shooting incident discussed in this letter. Due to his death, the criminal case against Yang was dismissed on June 27, 2014.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a non-fatal shooting include attempted murder [Penal Code Section 664/187]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. *People v. Banks* (1977) 67 Cal. App. 3d 379, 383-84. Several such justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197 and 835a.

California Penal Code Section 196 provides 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 where the suspect in question is "charged with a felony" and where 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 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

California Penal Code Section 835a allows any police officer who has reasonable cause to believe that a person to be arrested has committed a felony to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. The section further provides 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. The court in *Kortum* 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.

In addition, Penal Code section 834a requires that if a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, that person must refrain from using force or any weapon to resist such arrest.

Similarly, the relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself from attack if, as a reasonable person, he had grounds for believing and did believe that bodily injury was about to be inflicted upon him or upon another person. In doing so, such person may immediately use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

The law as detailed in CALCRIM 3470 and in well-settled case law therefore permits a person, if confronted by the appearance of danger which arouses in his mind, as a reasonable person, an honest fear and conviction that he 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. The person's right of self-defense is the same whether the danger is real or merely apparent. *People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642.

Nevertheless, the above justifications must be interpreted in light of United States Supreme Court precedent that limits the right of a police officer to use deadly force. *People v. Martin* (1985) 168 Cal. App. 3d 1111, 1124. Thus, in *Tennessee v. Garner* (1985) 471 U.S. 1, 3, the United States 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."

This limitation was, however, subsequently clarified by the United States Supreme Court in the seminal case of *Graham v. Conner* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer's right to use force [i.e., his weapon] is to be analyzed under the Fourth Amendment's "objective reasonableness" standard. The Supreme Court further stated that the determination of the reasonableness of an officer's use of force "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." *Id.* at 397. Thus, the Court cautioned that the "reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* at 396.

The United States Supreme Court's analysis and teachings in *Graham, supra*, are very much applicable to the circumstances surrounding the interactions of Deputy Lee with Yang.

LEGAL ANALYSIS

At the time of the incident, Deputy Lee had patrolled the area of the Extended Stay America hotel for seven years. He was aware of excessive criminal activity at the hotel, such as domestic violence and narcotics transactions. It is common for those who traffic in narcotics to carry weapons. During surveillance of the hotel, Deputy Lee saw an Asian male, later identified as Yang, enter the parking lot in a white Escalade. His behaviour was suspicious, since he did not park in a parking stall, but stopped in the aisle. Yang did not exit the car, but honked numerous times before he exited the parking lot. Yang was not wearing his seat belt and drove with a dog on his lap, in violation of the California Vehicle Code. Deputy Lee ran the license plate for the Escalade and the registration names did not appear to be consistent with the driver of the Escalade.

Deputy Lee conducted a traffic stop, and requested the required registration, insurance, and identification paperwork. Yang could not provide any of the necessary documentation, nor could Yang's girlfriend, who was seated in the front passenger seat. In addition, Yang's statement regarding the identity of the registered owner did not match Deputy Lee's information, and it was later discovered that Yang gave Deputy Lee a fake name. Deputy Lee began to suspect that the vehicle might be stolen or that Yang was engaged in criminal activity.

Deputy Lee asked Yang to turn off the vehicle and give Deputy Lee the keys. Yang became challenging and less compliant. Still standing next to driver's side of the vehicle, Deputy Lee extended his left hand, palm out, into the driver's side window, to get the keys from Yang. Instead of handing the keys to Deputy Lee, as instructed, Yang inserted the keys in the ignition and started the car.

Deputy Lee then told Yang, "Stop, don't do this," and pointed his firearm into the cab of the Escalade. Yang refused to obey Deputy Lee's orders and proceeded to put the Escalade in drive, while Deputy Lee was leaning into the cab of the Escalade. Yang then reached down toward the floorboard of the Escalade. Deputy Lee was afraid Yang was reaching for a weapon and would shoot Deputy Lee in the face. Deputy Lee was also afraid Yang would flee, leading to a police pursuit which would place other motorists in danger.

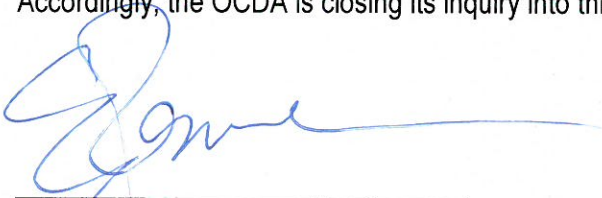
Yang's vehicle began to move forward, and struck Deputy Lee in the arm. In an attempt to neutralize the threat to Deputy Lee's own safety, as well as that of the public and Yang's passenger, Deputy Lee fired one round toward Yang's hip area to disable him. Yang then accelerated away from Deputy Lee at a high rate of speed. Yang led the police on a high speed pursuit, through Yorba Linda and onto the 91 Freeway. Yang ran red lights, reached speeds of approximately 100 miles per hour, and struck at least three civilian motorists on the freeway, until Yang finally pulled over with a disabled vehicle. Yang admitted to being high and paranoid at the time.

In order for Deputy Lee to be justly and lawfully charged and convicted with a crime in this incident, it is the prosecution's burden to prove beyond a reasonable doubt that Deputy Lee did not act in reasonable and justifiable self-defense or defense of others when he shot at Yang. As should be apparent from the above-described factual and legal analysis, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts would likely conclude that it was reasonable for Deputy Lee to use the force that he did under the circumstances.

CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews we reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is a lack of sufficient evidence to warrant the filing of criminal charges against Deputy Lee, and that there is evidence indicating that Deputy Lee's actions were reasonable under the circumstances when he shot Bryan Yang on Aug. 10, 2013.

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



ERIN ROWE
DEPUTY DISTRICT ATTORNEY
SPECIAL PROSECUTIONS UNIT



READ AND APPROVED BY **EBRAHIM BAYTIEH**
ACTING ASSISTANT DISTRICT ATTORNEY
HEAD OF COURT - SPECIAL PROSECUTIONS UNIT