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November 9, 2015

Police Chief Shelley Zimmerman
San Diego Police Department
1401 Broadway
San Diego, CA 92101

Re: Fatal shooting of Mr. Fridoon Rawshan Nehad on April 30, 2015 by San Diego Police Officer Neal Browder; SDPD Case No. 15-018209; DA Special Operations Case No. 15-055PS; Deputy District Attorney assigned: Fiona Khalil

Dear Chief Zimmerman:

We have reviewed the reports and other materials compiled by your department's Homicide Division concerning the fatal shooting of Mr. Fridoon Rawshan Nehad by Officer Neal Browder on April 30, 2015. A District Attorney Investigator responded to the scene and was briefed by your investigators. This case was presented to the District Attorney's Office for review on June 29, 2015.

Persons Involved

Mr. Fridoon Rawshan Nehad was 42-years-old at the time of this incident and was transient. Officer Neal Browder had been a police officer with the City of San Diego for 27 years when the incident occurred. He was in full uniform and assigned to the Western Patrol Division.

Summary

The San Diego Police Department received a 911 call about a man threatening people with a knife. Radio communications to officers in the field repeatedly described the suspect as being armed with a knife and that the situation was ongoing. Officer Browder responded and was the first and only officer on scene when he located Mr. Nehad in the alley next to the Hi-Lite Bookstore. Nehad matched the description provided by the 911 caller, which Browder took the time to confirm with communications. Nehad is seen on video surveillance walking directly toward Browder with a shiny object in his hand which appears metallic and several inches in length. Nehad constantly manipulated the item, twirling it in his hand, while he held his arm at a 90-degree angle. He continued advancing on Browder, who was dressed in his uniform. Nehad crossed the alley and walked toward Browder, who was then standing at the driver's door of his clearly-identifiable patrol unit. Three witnesses saw Nehad had an item in his hand. Two of them believed it was a knife; one was not sure what it was. Browder also believed Nehad was armed with a knife. Two of the witnesses heard Browder demand that Nehad drop the knife. Another witness believed that Browder told Nehad to stop. At no point did Nehad stop walking toward Browder. This is supported by analysis of the video surveillance footage. Browder fired one round at Nehad, who was approximately seventeen feet away, as measured using evidence at

the scene. Nehad was struck in the chest. He was transported by paramedics to the hospital where he was pronounced dead.

911 Call and Radio Communications

An employee of the Hi-Lite Bookstore called 911 at 12:04 a.m. and reported “*I’m at work right now, I just got a, some crazy guy in the lot threatening people with a knife.*” The dispatcher asked the caller specifically if he **had seen the knife**. The caller responded affirmatively. When asked how large the knife was, the caller stated, “*I think it was like a kitchen knife,*” but was not sure of the exact length. The caller went on to say the man initially had the knife in his backpack. Additionally, he stated: “*he held it out. He was brandishing it.*” The caller described the man as either Asian or Hispanic, 50 to 60 years of age, wearing a gray sweater, a red shirt, and gray shorts and suspenders. He was asked to flag the officers down when they arrived. He confirmed the business was located next to Les Girls. He agreed to flag down the officer.

Dispatch communicated the incident to officers as a “hot call,” meaning the activity was continuing to occur at the same time as the information was being relayed. The first description given by the dispatcher was the offense involved a “***417...with a knife.***” Penal Code section 417 describes drawing, exhibiting or using a deadly weapon in a rude, angry or threatening manner. Several officers transmitted their ability to respond to the call. A few moments later the dispatcher spoke with the Air Support Unit (ABLE) and said: “***ABLE, I have a 417...It’s with a knife.***” Officer Browder provided information about his location. He was the closest officer to the location of the Hi-Lite Bookstore at the time and indicated he would respond to the call. The dispatcher repeated it was a “***hot call.***” Officers were told the “***male with the knife***” was Asian or Hispanic, 50-60 years of age, wearing a gray sweater with a red shirt underneath, and was last seen outside or possibly behind the store. The officers were told the male’s current location was unknown.

A sergeant responding to the call asked if the “***417***” was to the employee or another person. The dispatcher said the employee was advising the “***male in the back lot was threatening people with a knife***” and it appeared the employee was a witness. The Lead Dispatcher clarified the **employee was “also threatened.”**

Officer Browder communicated he arrived at the location, but asked the dispatcher to find out if the employee was located next to Les Girls. The dispatcher confirmed that. Browder then asked for the description of what the suspect was wearing. The dispatcher said the suspect was wearing a gray sweater with a red shirt underneath; was 50 to 60 years of age; and was Asian or Hispanic. Browder broadcast he saw the suspect in the alley.

The dispatcher knew Officer Browder was the first officer to arrive and therefore the only officer on the scene at that time. Based on the information received from the 911 caller the dispatcher believed Browder was encountering a dangerous situation and everyone using the radio frequency needed to be aware of what was occurring. The dispatcher was aware Browder had located a person who had reportedly been threatening people with a knife and she wanted to do what she could to keep Browder and other officers safe. The dispatcher announced there would

only be emergency traffic allowed on the radio frequency. The emergency tone was sounded over the air to warn other officers not to use the radio frequency for non-urgent inquiries or communications. Browder shot Nehad 32 seconds after driving into the alley.

The 911 Caller's Later Statement to Investigators

An employee (hereinafter referred to as W1) of the Hi Lite Bookstore believed Mr. Nehad was homeless and preparing to sleep behind the Body Shop. W1 said he told Nehad he was not allowed to sleep on the property. W1 could tell Nehad was irritated. He said Nehad felt his pockets as if he was looking for something and then reached into his backpack. W1 believed something was not right. He said Nehad moved towards him and began threatening him. At the same time Nehad made a threat. W1 stated, *"I can't recall the specific words but something along the lines like, 'I'm gonna kill you!'"* W1 said Nehad had removed something from his backpack and had it in his right hand when he moved toward W1. W1 said, *"I am pretty sure he had a knife in his hand. It was like a kitchen knife, but I'm not sure. I am saying that because of the length and the blade was wide at the base and goes to a point."*

W1 was certain he saw something in Mr. Nehad's hand. He wanted to put some distance between them, but did not want to turn his back to Nehad. W1 described Nehad as speeding up when walking toward him. W1 backed away from Nehad and returned inside the bookstore. Nehad entered the bookstore a few minutes later and told W1 he was dead. Nehad told W1 he had already showed W1 how he was going to kill him. W1 described Nehad as mumbling and said he had trouble understanding him, but he specifically heard the words, "kill" and "people."

W1 called 911 because he believed Mr. Nehad would hurt someone. He saw the patrol unit while he was inside the store and walked out of the store to flag the officer down. W1 told investigators he saw the police officer pull into the alley. He saw the officer open the patrol unit's door and heard the officer say 'Put it down!' W1 described the officer as being next to the patrol unit when the officer said 'Drop it!'" W1 said he wasn't sure where Nehad was when the officer yelled his commands. W1 turned around and started to go back inside the store. He didn't see the shooting but heard the gunshot. W1 went out to the alley and saw Nehad on the ground. W1 described seeing the police officer immediately trying to give Nehad emergency medical attention.

Statement of Witness No. 2

Witness No. 2 (hereinafter W2) is also an employee of the Hi Lite Bookstore. He was interviewed twice. On both occasions W2 stated he was walking back to the bookstore from the taco shop across the street when he saw a police officer stop near the alley. W2 said he saw the officer in the police car stop, get out, and tell the man with the knife to drop the knife. W2 repeated that he heard the officer say: "Drop the knife!" W2 added, "I saw the man had a knife and was walking towards the police officer. The officer said, 'Drop the knife, stop!'" W2 said the man had his right arm stretched out in front of his body and a knife in his hand pointed at the officer. W2 estimated the man with the knife was approximately 27 feet away from the officer when the officer told the man to drop the knife. W2 said he did not want to observe what was occurring and continued walking across the parking lot. W2 said he heard the gunshot right after he opened the door to the bookstore and did not go back outside to look.

In a subsequent interview W2 added that when he was inside the store before going to the taco shop, he saw Nehad in the bookstore. Nehad had a threatening expression and was grasping something shiny in his right hand. W2 believed it was a knife. W2 heard Nehad threaten to kill W1 and he was going to kill someone. W2 got up quickly and decided to get help at the taco shop. When he arrived at the taco shop there were customers inside and the employee W2 intended to seek help from could not leave.

Statement of Witness No. 3

Witness No. 3 (hereinafter W3) is a U.S. Marine. He was in the parking lot when he saw a police car pull into the alley. W3 was concerned he might get a parking ticket because of where he parked in the street. W3 approached the officer's open driver's side door and noticed the officer's attention was focused on listening to the radio communications. W3 saw the officer step out of the patrol unit and extend his left hand out in front of his body, as if he was telling the man he was contacting to stop. W3 said he could not remember actually hearing the officer say the words 'stop' but he was sure he said something similar to that.

In his opinion, W3 estimated the distance between Officer Browder and Mr. Nehad was 10 feet at most and Nehad could have closed the distance in 1.5 seconds. He told investigators he saw Nehad fiddling with something in his left hand as the officer was contacting him. W3 said he did not know exactly what the object was, but it was shiny and silver in color. W3 described Nehad holding the object in front of his waist and hearing a gunshot. Based on his observations, W3 believed Nehad had shot himself.

Statement of Witness No. 4

Witness No. 4 (hereinafter W4) was working at the front door of the Body Shop. He knows W1 and is familiar with Mr. Nehad being in the area on prior occasions. W4 told investigators W1 called him a little before midnight and warned him Nehad was in the alley with a knife.

Shortly after the call from W1, Mr. Nehad tried to enter the Body Shop but W4 refused to let Nehad inside. W4 said Nehad looked at him and showed W4 a knife. W4 described Nehad showing him the tip of the knife and then putting it back in his jacket pocket. W4 said the tip was polished silver and quite shiny. W4 said Nehad did not remove the entire knife from his jacket pocket.

Officer Neal Browder's Statement

Officer Browder participated in a voluntary walk-through of the scene. A walk-through is standard operating procedure. The purpose of the walk-through is to assist the scene investigators in understanding what evidence may exist at the scene and the positioning of those involved in the shooting. It is not intended to be an interview. Officer Browder provided a voluntary interview five days after the shooting. He could have asserted his Fifth Amendment right against self-incrimination, but chose not to exercise that right guaranteed to him by the United States Constitution.

Prior to the interview Browder and his attorney were allowed to view surveillance video of the shooting. While there are some opposing views, it is widely recognized that by viewing the

video officers will have a more detailed recollection of the shooting and provide a more reliable statement.

During the interview Officer Browder told investigators he responded to a radio call of a man threatening people with a knife, who was last seen walking down the alley by the bookstore. He heard it was a 'hot call.' As the information was being dispatched, there was never any update that the man was not armed. To the contrary, the information being dispatched was the man was still armed with a knife.

Officer Browder was in a marked patrol unit and in uniform. When he arrived on scene, a person pointed Browder toward the alley. Browder saw a man fitting the description and asked the dispatcher to confirm the suspects clothing. Browder estimated the man was between maybe 25 to 30 feet from his patrol unit. Browder described the man walking at a fast pace right toward his car. *"I see something in his hand and that's what I keyed on and it looked like it was a metal object. I could see the reflection off the light...**And the first thing in my mind is, 'he's armed with a knife.'** I mean that's the first thought that was coming through my mind...he's still armed with a knife. And then the next thing is like why isn't he stopping?"*

When asked if there was anything specific he remembered about the object in Mr. Nehad's hand Officer Browder said, *"It appeared it was in his left hand and he had it down at an angle, but I could see the point of the object...it was just like how you would hold a knife if you were holding up the knife by the handle...I saw probably about ... three to four inches of this object sticking out of his left hand. ... It appeared to be metal to me...I'm thinking it was a knife. And the thing is that he kept coming up...aggressive ...on the driver's side of the car... I swear I thought he was going to stab me."*

Officer Browder estimated that Mr. Nehad was within 10 to 15 feet from him when he fired. He did not recall issuing any commands to Nehad.

Investigators asked Officer Browder if he considered using any other force options. Browder replied, *"It happened that quick. I didn't have a chance to use any other force options."* Browder was asked what he believed would have happened if he had not fired at Nehad. He replied, *"...he was going to stab me. There's no doubt in my mind that he was going to stab me."* Browder described how Nehad appeared focused on him. He saw what he perceived was a knife still in Nehad's hand, at his side and Nehad was not dropping it.

Officer Browder noted in his experience when an officer arrives at a scene, suspects usually stop, they wait for directions, or they run away. What struck Browder about Mr. Nehad was he did not stop and kept walking toward Browder. That caused Browder great concern for his safety and he believed Nehad was going to stab him.

Officer Browder was asked about his training with knives and edged weapons. He was specifically asked how quickly a person with a knife at ten to fifteen feet away could seriously injure or kill him. Browder explained, *"When I first came on we would always use the 21 foot rule. If they're within 21 feet they can be on top of you and stabbing you before you react to*

that. But now I think they're trying to extend that distance out even further because I think there is documentation now that someone armed with a knife can literally run up on someone before you're able to react to that, or already being stabbed."

Investigation

The scene was secured and an investigation was conducted by the San Diego Police Department's Homicide Team V. The investigation determined Officer Browder fired one round using a .45 caliber Glock, Model 21, semi-automatic pistol at Mr. Nehad. One .45 caliber casing from Browder's pistol was recovered from an area consistent with his stated and viewed location. The distance between Nehad and Browder was estimated at approximately 17 feet. This was based on measurements at the scene, examination of surveillance video from a nearby business and a crime scene examination. While at the scene, detectives were notified Mr. Nehad was seen on video surveillance hiding a knife sheath in between sandbags behind the Body Shop in the same parking lot where W1 was first confronted by Nehad. Detectives recovered the sheath and surveillance video.

During the review process of this investigation, District Attorney Investigators, staff and I returned to the scene. Additional video recordings and photographs were collected. The scene visit provided the opportunity to view the scene under the same or similar conditions that Officer Browder and Mr. Nehad experienced on the night of the shooting. We were able to see firsthand the lighting, the weather conditions, and the condition of the scene. Care was taken to view the scene as it would have appeared on the night of the shooting. Lighting conditions were as described in the scene reports, including the nonfunctioning streetlight at the northern entrance to the alley, the intermittent streetlight behind the Hi-Lite Bookstore and the ambient lighting in the area. The scene visit occurred at midnight while the moon was in a similar phase to the night of the shooting. The San Diego Police Department brought a patrol unit like the one Officer Browder was assigned on April 30, 2015 to the scene so it could be observed and recorded as it drove into the alley and stopped. It was clear the vehicle was a patrol unit when it was viewed from the multiple locations Nehad would have seen it from as he advanced toward the vehicle. Its color, design, emblem on the driver's door, and overhead lights although not activated, were all immediately visible and instantly recognizable.

All scene reports, lab reports, Medical Examiner reports, scene photographs, audio recorded interviews and video recovered from all surveillance cameras in the area of the shooting were reviewed for this investigation.

Toxicology reports were reviewed and showed Cannabinoids or THC was detected in Mr. Nehad's system, indicating he had consumed marijuana. No alcohol or other illicit drugs were detected. There was also no evidence Nehad was taking any medication.

Independent Opinion

As part of the review in this case, in addition to the experience and expertise of the investigators involved, an expert outside of San Diego County was consulted. Case materials were provided to Jeffrey Martin, J. D., A.R.M. Mr. Martin is a lawyer licensed in the State of California, who specializes in the use of deadly force by peace officers. He is a retired police sergeant from the

San Jose Police Department, with 34 years of law enforcement experience. Mr. Martin has provided instruction to the California Police Officer Standards and Training Institute of Criminal Investigations on Officer-Involved Shootings. He is a frequent teacher and presenter on the topic of officer-involved shootings, using deadly force, and analyzing video evidence. Mr. Martin has consulted or qualified on numerous occasions as an expert witness in these areas.

Mr. Martin determined the following after his review:

1. Officer Browder's actions in this incident "were consistent with those of a trained and reasonable officer, including using deadly force to defend against the immediate threat to his life that Mr. Rawshan Nehad presented."
2. "It was reasonable – and prudent – for Officer Browder to perceive the object held by Mr. Nehad was a knife, and to not wait longer to try to absolutely confirm whether or not it was a knife." Mr. Martin recognized that Browder had to make his decision quickly. "Any analysis of Officer Browder's decision making has to consider if he shot Mr. Rawshan Nehad and was wrong about the nature of the object he was holding, such a decision kept him and others safe. Conversely, if Officer Browder had decided not to shoot, and was wrong about the nature of the object (i.e., it turned out to be a knife), he might not survive the encounter." Martin noted that civilian witnesses also thought Nehad was armed with a knife. Martin also determined the pen Nehad was holding could have been used as a deadly weapon and could have inflicted serious bodily injury with the potential to cause death.
3. "Officer Browder made the decision to use deadly force under circumstances that were tense, uncertain and rapidly evolving as Mr. Nehad was still walking toward the officer when he fired his weapon."
4. "Not taking time to consider or try to use other non-lethal options was reasonable and prudent under the circumstances." In Mr. Martin's opinion, other options such as using a Taser, OC spray, or a baton would not have protected the officer or the civilians who were nearby.

Video Surveillance

Officer Browder did not turn on his body worn camera. He explained that his habit at the time was to turn on his camera when he got out of his patrol unit. However, his attention was immediately focused on Mr. Nehad when he drove into the alley. He explained his observations in his statement. His actions indicate he did not jump to conclusions, but took the time to clarify the physical description of the suspect to make sure his initial impression of locating the suspect who had reportedly been threatening people with a knife, was the man who was continuing to walk toward him. As Browder continued to watch Nehad he saw the item in his hands which he believed was a knife.

Video surveillance footage supports Officer Browder's statement on a number of critical facts. The initial portion of the video shows a frontal view of Mr. Nehad while he is walking toward the patrol unit. Nehad held his right arm at a ninety-degree angle and continuously manipulated and rotated a metallic, cylindrical item in his hand. Nehad is seen next on video taken from another camera angle, on the other side of the alley, continuing to advance toward the officer.

Nehad had switched his position from the passenger side of the patrol unit to the driver's side where Browder stood. Nehad's arm remained at a ninety-degree angle.

Video surveillance also shows Mr. Nehad may have slowed down slightly in his last step, but he did not stop advancing toward Officer Browder. When the video is carefully reviewed it shows when Nehad was shot he was still in mid-stride, lifting his left foot off the ground.

Mr. Martin provided an analysis of video surveillance footage in his report: "Video evidence can be misleading because of many factors. These include that the video camera will almost never see the incident from the same perspective as the officer, even if the camera is mounted on the officer's head. ... Video evidence is a two-dimensional representation of the camera's limited perspective while the officer experiences the event in the three-dimensional world, making sense out of it using his previous knowledge and experience thereby forming his perception and memory of it. In other words, *cameras record*, while *people process*. The camera records the scene according to its capabilities. People take in sensory input (i.e., what they see, hear, feel and smell), and apply their knowledge, beliefs and expectations about the world to that input, forming an *interpretation* of the experience." (Original emphasis.)

It is noted the surveillance cameras which obtained video of the alley and the shooting were mounted 22.5 feet above the alley and more than 72 feet from where Officer Browder was standing when he issued commands to Mr. Nehad. It would be impossible for the video surveillance footage to replicate the view Browder and Nehad had of one another. Browder and Nehad each had the opportunity to have a direct view of the other as Nehad continued to walk toward the driver's door of the patrol unit.

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and may 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 has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or end his effort to make an arrest because of a person's resistance. Penal Code section 196 declares that homicide is justifiable when committed by public officers under circumstances where it is 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 physical injury to the officer or others.' All determinations of unreasonable 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 rapidly evolving – about the amount of force that is necessary in a particular situation.'" [Citations omitted.]

An officer's actions are judged under an objectively reasonable standard. Courts have noted that the test of reasonableness is not capable of precise definition or mechanical application, however, its proper application requires careful attention to the facts and circumstances of each particular case. *Graham v. Connor* (1989) 490 U.S. 386, 395-396. **"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."** *Graham v. Connor, Id.*, at 396-397.

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

In order to prove Officer Browder committed voluntary manslaughter when he used deadly force, a prosecutor would be required to show the officer's belief he needed to defend himself or others was unreasonable. This legal standard is referred to as imperfect self-defense. A jury would be instructed as follows:

1. The defendant actually believed he or someone else was in imminent danger of being killed or suffering great bodily injury; AND
2. The defendant actually believed that the immediate use of deadly force was necessary to defend against the danger; BUT
3. At least one of those beliefs was unreasonable."

"In evaluating the defendant's beliefs, consider all the circumstances as they were known and appeared to the defendant."

"A danger is imminent if, when the fatal wound occurred, the danger actually existed or the defendant believed it existed. The danger must seem immediate and present, so that it must be instantly dealt with. It may not be merely prospective or in the near future."

The jury would also be instructed: "If you find that Fridoon Rawshan Nehad threatened or harmed the defendant or others in the past, you may consider that information in evaluating the defendant's beliefs."

Additionally, in all criminal cases, evidence of specific instances of a victim's conduct are admissible if the evidence is offered by the defendant to prove the victim's actions

conformed to his character or trait of his character. Evidence Code section 1103. The information below is being included because if a criminal case were filed it is likely a jury would hear about Mr. Nehad's prior conduct.

Prior Instances of Threatening Conduct by Mr. Nehad

Review of numerous police reports since 2004 indicate that Mr. Nehad suffered from a bipolar disorder. His family has also described him as suffering from schizophrenia. Sadly, members of Mr. Nehad's family have been his most frequent victims. They have called the San Diego Police Department for assistance on several occasions and have struggled to protect themselves from Mr. Nehad by requesting restraining orders from the court. All of these instances and others which have resulted in police contacts with Nehad, would potentially be admissible to support the reasonableness of Officer's Browder's decision to use deadly force against Nehad on April 30, 2015.

October 27, 2004: Threats to Kill; Physical Attack on Family; Hiding Knives

Mr. Nehad threatened to burn his family's home down. The family was afraid of Nehad and hid the kitchen knives. Nehad taunted his family and said he could still kill them even if he did not have knives. Nehad physically assaulted his sister and kicked his mother in the stomach. He also kicked a family friend. Police officers took photos of cuts, redness, scratches and bruises on various members of the family. The next morning five tires on the family's vehicles were found deflated.

October 29, 2004: Application for Restraining Order

A sister applied for a restraining order. She represented Nehad had admitted to flattening the tires on the vehicles. The sister wrote in the application: "Over the past two months there have been numerous death threats, threats of rape and mental abuse. ... I fear that if my family and I are not protected, Fridoon will try to kill us."

January 27, 2005: Request for Dismissal of Restraining Order

Mr. Nehad's sister requested a dismissal of the restraining order. Referring to Nehad, his sister wrote: "He is suffering from a mental disorder ... He needs help and there is no one else that can provide him help but his family."

October 1, 2008: Assault on Cab Driver

Mr. Nehad refused to pay for a cab fare to his family's home and threw a cigarette at the driver. The officers who responded recalled they had previously contacted Nehad about a fight he had been involved in on the trolley. They had taken Nehad to County Mental Health. (CMH) On this date Nehad's father said his son was mentally ill and caused problems for everyone. The cab driver said he saw Nehad had something in his hand at the time. He was unsure what it was so he got into his car and called police.

October 5, 2008: Stabbing Plastic Bottle with Knife

Mr. Nehad refused to leave a gas station. He picked up a plastic bottle and started stabbing it with a pocket knife. The day before Nehad had been observed scraping a tree with a pocket knife. Officers had contacted Mr. Nehad four times in the previous two months for incidents that

appeared related to a mental disorder. The officer on October 5, 2008 transported Nehad to CMH for an evaluation. While being transported to the jail, Nehad told the officer he would be out in two days and said, "I will kick the officer's ass."

November 1, 2008: Burglary of Residences While Persons Present. "Hot Prowl."

A resident of an apartment woke up and heard a voice. He saw Mr. Nehad standing in front of his 8-year old daughter's bedroom talking to her. The father confronted Nehad who claimed he had entered the wrong apartment. Nehad left and entered a nearby apartment. Nehad was found in possession of stolen items from the apartment. In March 2009, the defendant was sentenced to a four-year prison term.

November 19, 2012: Threats and Marijuana

Nehad's mother called 911 and reported Nehad was bipolar and schizophrenic. She said her son had tried to kill her and she mentioned a knife. Nehad's mother said she had locked herself in her room to get away from Nehad. She said Nehad used marijuana.

November 23, 2012: Threats, Theft of Car

One of Mr. Nehad's sisters reported Nehad had taken a car. The reporting sister said Nehad was bipolar and schizophrenic; he suffered manic episodes and had not been taking his medication.

June 27, 2014: Pomerado Commitment

Nehad threatened to kill his mother. Nehad was taken to Pomerado Hospital for a 72-hour commitment. Nehad's mother said she was afraid of Nehad. She stated he was bipolar but would not take his medication.

July 7, 2014: Vandalism of Parking Gate and Possession of Marijuana

Mr. Nehad grabbed the gate arm of a parking barrier and broke it into three pieces. His mood fluctuated considerably when he spoke to the officer. He said to the officer: "You are a bitch. I will have you suspended. You will no longer have a job. I will make you really know what being police is." Nehad was found in possession of less than an ounce of marijuana. The officer noted in a report that Nehad had been causing problems in the downtown area for the past week and police had responded to calls involving him.

July 14, 2014: Physical Assault on Sister; Threats to Kill with a Knife; Hiding Knives; Threats to Slit Officer's Throat

Mr. Nehad was taken to a mental health facility. When he returned to the family home the family locked him out because they were afraid of him. Nehad yelled he was going inside to get a knife and would kill his sister and mother. Nehad was able to get inside. His sister grabbed him and Nehad punched her in the face. The sister reported Nehad was bipolar and schizophrenic and not taking his medications. The family said Nehad had been experiencing psychotic episodes for six years. The sister said she was terrified of what Nehad could do and she believed he would kill her and her mother.

Mr. Nehad's mother said after she locked the door she ran to the kitchen and hid all the knives. She said she was terrified that Nehad would carry out his threats to stab her and her daughter.

An officer transported Mr. Nehad to jail. Nehad told the officer to 'shut up.' Nehad told the officer repeatedly he was going to use a knife to slit the officer's throat and it would be the first thing he did when he was released from jail. Nehad said he was a trained assassin in his country. He said he had killed plenty of Americans in Afghanistan by slitting their throats.

The officer believed Nehad was potentially a threat to law enforcement officers he may come into contact with. The officer created a file to alert all officers who responded to the family home or had contact with Nehad in the future.

July 19, 2014: Nehad calls 911

Nehad called 911 and wanted to complain about the officer who arrested him earlier in the week. He stated his sister had caused the problem and if he was in Afghanistan he would kill his sister. Nehad stated he knew he could not do that because he was in America.

August 9-10, 2014: Physical Assault on Mother; Threat to Kill with Knife; Commitment to CMH
Mr. Nehad pushed his mother causing her to fall backward, hitting her head on the hard floor. Nehad left the home. He returned the next morning and demanded to be let in. His mother could tell he was still upset and she was fearful of him. Nehad threatened to break a window and yelled he would kill his mother. Nehad's mother quickly unlocked the front door and then ran upstairs to her bedroom. She locked the door and called 911. When police arrived she told them she was afraid of Nehad and believed he would physically harm her or damage the home. She said Nehad threatened to kill her with a knife the previous day. Nehad was transported to CMH. Seven officers responded to the home when Nehad's mother made the call to 911. She told officers Nehad was bipolar.

September 30, 2014: Shoplift and Possession of Marijuana

Nehad was arrested at a Target store on Sports Arena Boulevard for shoplifting items. When taken into custody he was found in possession of a small bundle of marijuana.

April 13, 2015: Application for Restraining Order by Mother; Knife found in Stolen Car.

Mr. Nehad's mother filed an application to obtain a restraining order for protection from her son. She represented Nehad was bipolar and had been aggressive and violent in the past eleven years; since the summer of 2014 Nehad's behavior has been increasingly more violent; and she did not feel safe when he was in the home. She wanted him removed from the home. She stated in her application she was frightened and without a restraining order she believed Nehad would continue to harm her.

Mr. Nehad's mother described an incident occurring on April 10, 2015. She had wanted Nehad to leave the house. He yelled she could not kick him out. He threatened to kill her, but left after she gave him some cash. Her daughter's car was missing the following morning. When it was found the next day a pocket knife was found in the car. Nehad's mother believed Nehad had taken the keys and stolen the car.

Mr. Nehad's mother said whenever Nehad was in the home, she locked herself in her bedroom. She wrote she had been forced to live with her daughters out of state because "of the violent

nature and frequency of Respondent's attacks on the house." She only returned when she knew Nehad was in jail.

Mr. Nehad's mother wrote: "I need this restraining order because I am afraid for my safety and security. Respondent has physically overpowered me on multiple occasions and verbally abuses me on a weekly basis. I do not feel safe in the house and am worried Respondent will physically harm me in the future." Her application was filed just seventeen days before the shooting.

April 24, 2015: Threat to Stab Parking Valet

A valet parking attendant for a strip club in the Midway area called 911 to report a man threatened to stab him with a pen. Two officers detained Nehad. Eventually five officers responded and stood by while Nehad answered questions. Nehad allowed an officer to search his backpack. The officer noted there were a number of pens in Nehad's backpack. The parking attendant told detectives the man he had encountered was holding a black pen with a silver tip in his fist. He brought his arm up overhead and swung it at the attendant. The parking attendant wrapped a shirt around his arm to protect himself in case the man attacked him. He told investigators he had not wanted to press charges. This event occurred six days before the shooting.

April 25, 2015: Threat to Stab Hotel Security

Security at a hotel on Harbor Drive called 911 to report a man displaying a knife to the security staff. The person said Nehad pulled out a knife with a two-inch blade and held the knife in his right hand. As the staff person was being questioned he admitted he wasn't sure Nehad had been holding a knife and the item could have been a pen.

While obtaining information an officer noticed Nehad standing approximately 15 feet behind them. The officer wrote in his report: "Based on the nature of the call and the suspect's close proximity to me I conducted a pedestrian hot stop. I drew my firearm from my holster and pointed in center mass of the suspect." The officer described another officer arriving and providing lethal cover, meaning he also had his firearm drawn and pointed at Nehad. One officer provided commands to Nehad which Nehad complied with. This event occurred five days before the shooting.

April 26, 2015: Threats to Hit Hotel Guests

Nehad refused to leave a hotel. When contacted by staff Nehad began yelling and screaming and threatened to punch people. This event occurred four days before the shooting.

Cannabis Intoxication and Exacerbation of Psychotic Symptoms

In reviewing this matter it is noted that Mr. Nehad's family reported on several occasions Nehad suffered from a bipolar disorder and schizophrenia. It is also of note Nehad was determined to have cannabinoids and THC in his system at the time of the shooting according to a toxicology report from the Medical Examiner's Office. The reports outlined above show Nehad has been using marijuana for several years. There are a number of studies which have found cannabis intoxication can exacerbate pre-existing psychotic diseases. *Psychiatry* (Edgmont). 2009 Dec, 6(12): 44-48. Marijuana exacerbates psychotic symptoms and worsens outcomes in patients

already diagnosed with schizophrenia or other psychotic disorders. *Medical Marijuana and the Mind*. Harvard Mental Health Letter, April, 2010. Researchers concluded that people with bipolar I and bipolar II disorders who use marijuana/cannabis experience a notable increase in their levels of mania-related symptoms as well as their depression-related symptoms. *PLOS ONE*, Dr. Elizabeth Tyler, Lancaster University and Professor Steven Jones, et al., Manchester University, March, 2015. People with major mental illnesses such as schizophrenia are especially vulnerable in that cannabis generally provokes relapse and aggravates existing symptoms. *Psychiatric effects of cannabis*, Andrew Johns, The British Journal of Psychiatry, February 2001.

The positive toxicology results for cannabinoids and THC at the time of death, indicate Mr. Nehad's symptoms of bipolar disorder and schizophrenia could have been exacerbated on April 30, 2015, creating an even greater risk to the safety of Officer Browder and the citizens in the area. Nehad's conduct toward the witnesses who described their encounters with him that night are evidence of Nehad's paranoia and disorganized thinking. He was not someone who could be reasoned with, nor someone who was willing to listen to simple commands such as those Officer Browder was heard issuing to him. It was also apparent from the toxicology results he was not taking any appropriate medications to treat his bipolar disorder or schizophrenia.

Officer Browder's Career with SDPD

Officer Browder has had an exemplary 27-year career with San Diego Police Department. His evaluations through the years describe an officer who has dedicated himself to duty and has performed at the highest levels. Browder has 20 years of experience as a SWAT officer. He is a field training officer, a field evidence technician, and has experience as a certified firearms instructor. He has never used his firearm in an officer-involved shooting prior to this incident.

Excerpts from his evaluations describe Officer Browder as follows: "very thorough, meticulous and detailed in every aspect as a police officer. He takes great pride in his profession and ensures whatever task before him is done correctly." "His long tenure in SWAT makes him an exceptional asset in the field during critical incidents. He is calm, poised and has a serious command presence in the field." "He has unparalleled officer safety skills." "He is always prepared for situations in the field...Browder was the tactical leader when conducting enforcement sweeps. This has helped me enhance officer safety in tactical situations." "Browder's self-initiated activity is among the highest in the Division...has resulted in [him] becoming an expert in the local transient population. He has earned the respect of the local transients..." "Browder is well spoken with everyone he comes into contact with, and remains calm in tense situations." "I have witnessed Browder on numerous contacts in the field. He is firm and fair with suspects in criminal cases and with the people he has arrested." Browder has also received numerous Commanding Officer's Citations during his career.

Officer Browder has received regular updated training in areas such as tactical firearms usage, the use of force, officer survival, people in crisis, firearms training, less lethal weapons, deadly force, mental illness, Taser training, patrol response to mentally ill people, and defensive tactics. Browder's actions after shooting Mr. Nehad conform to the evaluations noted above. The officer immediately sought medical aid for Nehad; offered him encouragement; tried to make him as

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comfortable as he could; and demonstrated compassion for the man whom he reasonably believed had posed a threat to his life.

Conclusions

The San Diego Police Department received a call requesting help because Mr. Nehad was reported to have threatened W1 with a knife. W1 described being threatened with a kitchen knife. Officer Browder responded to the call. On his way to the bookstore Browder would have heard on multiple occasions the threat was still occurring. Browder had the opportunity to hear on multiple occasions the suspect was armed with a knife or was threatening people with a weapon. When Browder pulled the patrol unit into the alley he saw Nehad with a metallic item in his hand. Nehad was seen manipulating a metallic item in his hand on video surveillance. He didn't hold the item like one would hold a pen. Nehad continued to advance toward the patrol unit without stopping. He never lowered his right arm and always kept it at a 90-degree angle. He crossed from one side of the alley to the other and continued to advance toward the driver's side of the patrol unit where Browder stood in uniform. He repeatedly ignored Browder's commands to "stop;" to "drop it." He continued to walk forward. Nehad was within a short distance of Browder and was correctly perceived as a threat to Browder's life, as well as those in the parking lot. Browder's perception that Nehad was armed with a knife was shared by two civilians in the immediate vicinity, in addition to those who had encountered Nehad shortly before he was shot. Browder believed the imminent threat from Nehad did not allow time for the use of less-lethal options. Based on these circumstances, the evidence, and the law, Officer Browder's decision to shoot Mr. Nehad was reasonable and therefore he bears no criminal liability for his 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
County of San Diego

BMD:jh

cc: Captain David Nisleit