

HALL OF JUSTICE  
330 WEST BROADWAY  
SAN DIEGO, CA 92101  
(619) 531-4040  
SanDiegoDA.com

  
**OFFICE OF  
THE DISTRICT ATTORNEY  
COUNTY OF SAN DIEGO**  
**SUMMER STEPHAN  
DISTRICT ATTORNEY**

**DWAIN D. WOODLEY**  
ASSISTANT DISTRICT ATTORNEY

April 16, 2021

Chief David Nisleit  
San Diego Police Department  
1401 Broadway  
San Diego, CA 92101

**Re: Non-fatal shooting of Mr. Keith Bergman by San Diego Police Officers Timothy Arreola, Michael Rodriguez and Paul Yi on July 5, 2020; SDPD Case No. 20607640; DA Special Operations Case 20-085PS; Deputy District Attorney assigned: Giacomo Bucci; District Attorney Investigator assigned: Steve Hutchinson**

Dear Chief Nisleit,

We have reviewed the reports and other materials compiled by the San Diego Police Department's Homicide Unit concerning the shooting of Keith Bergman. This case was submitted to the District Attorney's Office for review on October 6, 2020.

***Summary***

On July 5, 2020 officers responded to the Westgate Hotel after receiving a report of a male causing a disturbance in the lobby. Officers arrested Keith Bergman for being under the influence of a controlled substance, possession of a controlled substance, and possession of stolen credit cards. Bergman was transported to sallyport at headquarters. Officers began the booking process while Bergman sat in the back of the patrol unit. Bergman slipped out of his handcuffs, pulled back a divider which separated the trunk, and removed an officer's backpack where a loaded gun was kept.

When an officer went to check on him, Bergman tried to push the door open. Other officers went to assist. An officer saw Bergman holding a firearm. Bergman was ordered to drop the weapon and show his hands, but he refused. Bergman fired one round from the firearm which went through the rear window of the patrol vehicle towards an area where an officer was standing. Officers fired back and one of the rounds shattered the rear drivers-side door window. Bergman reached through the shattered glass, opened the door from the outside, and exited the patrol vehicle with the firearm protruding from his waistband.

With one handcuff still connected to his right wrist, Bergman walked to the rear of the police vehicle and tried to open the hatch but he wasn't able to. He walked to the driver's door and reached into the compartment through an open window. An officer fired three rifle shots at

Bergman, who fell to the ground but attempted to stand back up at the driver's door. The officer fired an additional shot and Bergman fell to the ground. He was taken into custody with the assistance of a police canine and transported to the hospital. Toxicology testing of Bergman was positive for amphetamines and methamphetamines, pseudoephedrine/ephedrine, benzodiazepines and cannabinoids.

Bergman pled guilty on January 21, 2021 to assault on a peace officer with a firearm and possession of a firearm by a felon in case number SCD286456. He was sentenced on February 22, 2021 to a stipulated term of ten years in state prison.

### ***Persons Involved***

Bergman was 25 years old at the time of this incident. He was transient from Utah, visiting San Diego. Arreola had been employed by the San Diego Police Department for eight years at the time of this incident; Yi for six years; and Rodriguez for less than a year and was in training with Yi.

### ***Statement of Law Enforcement Officer 1 (LE1)***

LE1 and LE2 responded to the disturbance call at the Westgate Hotel involving Bergman, who was refusing to leave and fighting with security. He threatened to stab the security guard, who pepper sprayed him. During a search of Bergman and his property, LE1 found a small plastic baggie containing a white crystalline substance inside, as well as several credit cards in the name of another person. She determined he was under the influence of a controlled substance and arrested him. Bergman was placed into the rear of a patrol car and transported to the San Diego Police Headquarters sallyport. LE1 and LE2 exited their patrol vehicle to conduct further investigation and to obtain additional paperwork. Bergman was left handcuffed in the patrol car.

LE1 returned to the car and saw Bergman did not have his seatbelt on and was leaning against the window. LE1 opened the door and saw Bergman was out of his handcuffs. Bergman attempted to push the door open but LE1 was able to close the door on him, keeping him inside. Bergman used his elbow to smash the Plexiglas divider between the rear seat and the cargo area. LE1 alerted LE2 that Bergman had gotten out of his handcuffs. LE2 went to assist LE1, along with Yi and Rodriguez. Yi shined his flashlight towards Bergman and yelled that Bergman was holding a gun. The officers drew their firearms and pointed them at Bergman. LE1 asked LE2 if he was sure that Bergman had a gun and LE2 confirmed he was. LE1 did not see Bergman with a gun. LE1 and Rodriguez moved to a position of cover on the passenger side of the car.

LE1 heard officers yelling at Bergman and heard one officer comment, "We don't want to shoot you." LE1 heard a single gunshot followed by multiple gunshots. LE1 did not know where the first shot came from, but knew Bergman was still inside the car. LE1 then saw an obviously injured Bergman walk to the rear of the patrol car. He attempted to open the rear cargo door. LE1 saw a gun tucked into Bergman's waistband above his right hip and heard officers continuing to give Bergman commands to show his hands. LE1 alerted the other officers that Bergman had a gun in his waistband. Bergman was unable to open the rear hatch of the patrol car. Bergman walked back to the driver's side of the vehicle and tried to open the driver's door.

LE1 heard gunshots and saw the police dog run to Bergman and bite him. Bergman screamed and fell to the floor. LE1 and other officers ran up to Bergman to take him into custody and to get the gun from his waistband. LE1 saw the gun had fallen to the ground and another officer kicked it away from Bergman's reach.

***Statement of Law Enforcement Officer 2 (LE2)***

LE2 and LE1 arrested Bergman at the Westgate Hotel and transported him to headquarters. While at the sallyport LE1 yelled that Bergman was out of his handcuffs. LE2 went over to the driver's side of his vehicle where LE1 was standing. Yi and Rodriguez had already joined LE1 to assist. LE2 looked inside and saw Bergman holding a black semi-automatic handgun.

Someone from the Watch Commander's Office yelled to retreat. LE2 and other officers moved to positions of cover. LE2 could not see Bergman from his vantage point, but he heard one gunshot. LE2 did not know if the shot came from Bergman or from another officer. LE2 heard one additional shot. LE2 saw Bergman exit the vehicle from the rear driver's side and make his way to the rear of the vehicle. Bergman attempted to open the rear hatch but was unable to. Bergman made his way back to the driver's side and LE2 lost sight of him. The police dog was released towards Bergman and LE2 and other officers took Bergman into custody.

After the shooting, LE2 noticed his backpack which had contained his personal firearm and effects was laying on the ground behind his patrol vehicle, along with some of his items. LE2 had previously placed the backpack in the trunk of the patrol vehicle. Another officer placed his personal firearm on the hood of his patrol vehicle.

***Statement of Law Enforcement Officer 3 (LE3)***

LE3 is a canine officer. He responded to the SWAT response call at the sallyport after receiving information that there was an officer-involved shooting. LE3 took a position behind Arreola who was at the open door leading from the Watch Commander's Office to the sallyport.

LE3 saw Bergman go to the driver's door of the patrol vehicle and reach in the open driver's side window in an attempt to open the door. Bergman was holding a brown with black handle handgun in his right hand. LE3 yelled, "drop the gun," at Bergman. Immediately, Arreola fired three rounds from his rifle towards Bergman, and the rounds impacted the patrol vehicle's windshield. Bergman went down and LE3 could not see Bergman on the ground.

LE3 changed positions and saw Bergman. He warned Bergman to drop the gun or he would be bitten by the canine. LE3 heard an additional shot. LE3 moved position to get a clear view of Bergman, who was on the ground and appeared to be trying to get up. LE3 ordered Bergman to get on his stomach several times and Bergman refused to comply with any commands.

LE3 believed Bergman was still armed with a firearm, had committed several attempted murders on officers in the sallyport and was not complying with his commands, so he released his canine towards Bergman. Bergman appeared to charge at the dog before the dog grabbed Bergman's right arm and brought him down to the ground. LE3 and several officers took Bergman into

custody. Bergman continued to kick and resist officers after being handcuffed. Another officer recovered the firearm which had fallen out of Bergman's waistband.

***Statement of Officer Yi***

Yi was on duty and in uniform sitting at a table inside the sallyport completing paperwork. LE1 yelled that the prisoner had slipped out of his handcuffs. Yi went to LE1's vehicle and started to put his gloves on to assist LE1 in re-cuffing the prisoner. LE2 and Rodriguez also stepped up to LE1's vehicle to assist LE1. Yi shined his flashlight at Bergman and saw his hands were not behind his back but in front of him. Yi saw Bergman holding what appeared to him to be a Glock handgun with a flashlight attached to it. The gun appeared to have its slide in a rear locked position, which in his experience, revealed that the gun was out of battery, without a round in the chamber.

Yi immediately yelled "gun" and pointed his pistol at Bergman. Yi yelled at Bergman several times to show his hands, but Bergman refused to comply. Bergman raised a black backpack towards Yi and the other officers. Yi told Bergman they did not want to shoot him several times and told him to put his hands up, but he refused. Yi moved to a position of cover as other officers gave Bergman commands. Yi could not see exactly what Bergman was doing inside because it was dark in the rear portion of the vehicle. Yi heard a shot and saw muzzle flash coming from exactly where Bergman was sitting in the patrol car.

Yi could not see where Bergman was pointing the firearm, but he was in fear for his safety and the safety of the other officers in the sallyport and believed Bergman was trying to shoot him or them. Yi fired one round towards Bergman's position, anticipating more rounds being fired from Bergman. Yi yelled at Bergman to show his hands several times, but Bergman refused to comply or acknowledge. Yi tried to verbally de-escalate the situation but continued to point his firearm towards Bergman. Bergman reached out of the shattered rear passenger window, opened the rear door of the vehicle from the outside handle, exited the vehicle, and walked to the rear of the patrol vehicle. Bergman unsuccessfully tried to open the trunk of the patrol vehicle. He then walked to the driver's side and tried to open the door, but it was locked. Yi did not see anything in Bergman's hands, but noticed he had a firearm tucked into the right side of his waistband. Yi heard three shots from another officer's weapon. Yi saw Bergman on the ground and possibly wounded from the three shots. A police dog approached and bit Bergman on the right arm. Yi and other officers approached Bergman with their weapons still pointed at him. The gun that Bergman had in his waistband had dropped on the ground. Rodriguez stored the gun on the hood of LE1's vehicle and Bergman was handcuffed.

***Statement of Officer Rodriguez***

Rodriguez was a uniformed police officer trainee working with his Field Training Officer, Yi. LE1 told him the prisoner had slipped or ripped off his cuffs. Rodriguez went to his patrol vehicle to get some gloves to assist LE1 in re-cuffing Bergman.

Yi said that he saw a gun. Rodriguez did not see a gun. Rodriguez drew his handgun and pointed it towards the inside of the patrol vehicle where Bergman was seated. Rodriguez backed away from the patrol vehicle and took a position of cover behind a concrete pillar. Rodriguez changed

his position and yelled at Bergman to drop the gun and come out. Rodriguez saw a flash coming from the inside LE1's vehicle and heard a bang and glass breaking. Rodriguez knew it was Bergman who fired the shot because he could see the muzzle flash inside of the vehicle and heard the glass breaking. Rodriguez knew Bergman had a gun and must be shooting at him or other officers. Rodriguez fired two shots at Bergman because he thought that he may be shot and killed by Bergman.

Rodriguez was unable to see Bergman, who appeared to be hiding below the window. Yi kept giving Bergman commands and could see Bergman sit up and start moving around. Rodriguez saw Bergman's hands and saw that Bergman was not holding a firearm. Rodriguez did not feel the need to fire any further shots at Bergman because he did not feel Bergman was an immediate danger to him or the other officers in the sallyport. Bergman reached out of the window, grabbed the outside handle of the vehicle's door, opened the door, and came out. Bergman had a gun in his waistband. Rodriguez moved to a better position of cover. Bergman walked back to the rear of the patrol vehicle and tried to open the trunk. Rodriguez heard Yi yelling at Bergman to get down, but Bergman refused to comply. Bergman was unable to open the trunk. Rodriguez continued to watch the gun in Bergman's waistband.

Bergman walked back to the driver's side of the vehicle and tried to get into the driver's door. Rodriguez moved to another tactical position in the sallyport and heard two or three shots that did not come from Bergman. Bergman fell down. Bergman got up a second time and Rodriguez heard one more shot. Bergman fell down a second time and started to stand up again. LE3 deployed the police canine, which grabbed and bit Bergman's right arm. Rodriguez could still see the handgun in Bergman's waistband. As Bergman was trying to fight off the canine, Rodriguez, another officer and LE3 approached Bergman and attempted to restrain his arms and legs. Rodriguez located the gun lying on the concrete under Bergman. Rodriguez retrieved the gun and secured it until he was told to put the weapon on the hood of LE1's patrol vehicle.

### ***Statement of Officer Arreola***

Arreola is a police officer assigned to the San Diego Police Department's Special Operations Unit and is a member of the Department's SWAT Primary Response Team (PRT). Arreola was in the parking lot outside of headquarters when he noticed another officer retrieve a rifle from his vehicle and quickly re-enter the sallyport area.

Arreola heard a volley of rounds go off from the sallyport area and saw several detectives exit the building asking for help. One detective told Arreola that it was a "Code 12," the highest priority emergency SWAT response. Arreola initially heard on the radio that an officer was down, but the information was quickly updated indicating there had been an exchange of gunfire in the sallyport. Arreola put on his SWAT gear and rifle and ran towards the sallyport. Arreola was told by a Field Lieutenant to come to the sallyport and said the suspect had a gun.

Arreola took a tactical position in the doorway that led to the sallyport. He could not see where Bergman was. Arreola saw two officers with their guns drawn hiding behind a concrete pillar directly in front of him. Two officers told him Bergman was behind the patrol car to his right.

Arreola watched the patrol vehicle which the officers had pointed out to him and saw Bergman come into his view standing next to the driver's door of the patrol vehicle he was watching.

Arreola saw what he believed to be a firearm in Bergman's right hand pointed at the two officers who were directly in front of him behind the concrete pillar. Bergman reached into the patrol vehicle with his left hand as if he were trying to open the door to get in the car. Bergman had a gun pointed towards the two officers. Fearing that Bergman may shoot at them or himself, Arreola fired three shots from his AR-15 rifle at him. Bergman went down and out of his view. Within a few seconds, Arreola saw Bergman's head come back up over the driver's door of the patrol vehicle. Arreola believed his last three rounds were ineffective towards stopping Bergman and believed that Bergman still had the firearm in his possession. Arreola fired an additional round at Bergman's head in order to stop the threat. Arreola saw Bergman drop out of his view again. Arreola believed the police dog was deployed on Bergman after his last shot and Bergman was taken into custody.

#### ***Statement of Michael Bergman***

On July 6, 2020, Bergman was released from the hospital and interviewed by homicide detectives. Bergman admitted to being a drug addict for a long time. He told police about the incident at the hotel which caused police to respond. Bergman said he had not used any "real" drugs, but he had used "bleach and water from a microwave." He had also taken six unknown pills someone on the street had given him. Bergman said he takes drugs because he hates himself and is trying to die. Bergman stated, "*Fuck, you guys couldn't aim a little higher? Two inches lower ... Fuck ... Higher ... Damn ... Bullshit.*"

Bergman denied having a gun during the incident and said he didn't know why the officers shot him. Bergman said he did not know he had gotten out of his handcuffs. He remembered being shot but said he did not remember officers telling him to stop doing what he was doing.

Bergman was asked why he was trying to get in the patrol vehicle. He responded about feeling the bullets go by his neck and the direction the bullets came from. Bergman told detectives that he was able to squeeze through the glass because he wanted his backpack. He said he had two backpacks when he was arrested. One was brown and black that contained alcohol and three pairs of shoes. He said he had a "Puma" brand backpack. Bergman denied holding a backpack when he got out of the car. He reached out because the glass was broken. He remembered there were two shots. One hit the window and hit him. Bergman said the back window was blown out, and he is sure the second shot came from the area of the rear window. Bergman unlocked the door, stepped out, turned around, tried to get into the door, got hit and fell. Bergman said he just remembered feeling pain. He said he did not know who shot out the back window. He said there were two shots from the side: a shot from one officer and another shot from somebody behind.

#### ***Investigation***

The scene was secured, photographed, and investigated by San Diego Police Department detectives. All detectives' reports, crime-scene investigators' reports, audio-recorded witness interviews, photographic evidence, radio traffic and body worn camera videos were reviewed. Yi, Rodriguez, Arreola and the involved witness officers had their body worn cameras activated

during this incident. A review of the footage corroborated the statements of the officers, except as to LE3 and Arreola.

The footage reveals a tense and rapidly unfolding event where officers are unexpectedly confronted by a prisoner with a firearm who will not listen to numerous commands to put the gun down and keep his hands visible. All of Bergman's actions described by LE1, LE2, Yi and Rodriguez are corroborated by the footage. Yi and LE1 yell at Bergman that they don't want to shoot him. Officers scramble for cover behind pillars and vehicles as Bergman remains in the patrol unit with the firearm. The officers can be heard warning each other about crossfire. When Bergman shoots a round out of the back window of the patrol unit, two officers can be heard, each reacting with dismay and concern.

The firearm can be seen tucked into Bergman's waistband when he gets out of the patrol unit. Officers continue to shout commands and Bergman ignores them. Bergman drops a backpack to the ground at the back of the patrol unit. An officer communicates via radio, "He's got a handcuff on. He's trying to get in the back of the car. Nothing in his hands at this point." The dispatcher repeats, "Nothing in his hands at this point. He's got a handcuff on." Approximately 22 seconds later Arreola relays that shots have been fired.

The radio communications were reviewed. A little over four minutes before Arreola fired at Bergman, the dispatcher is alerted that a prisoner is in a vehicle in the sallyport and has a gun. Officers are urged to keep the air clear so communication will not be interrupted. A short time later it is reported an officer has been shot, but that is quickly corrected that an officer fired and shots have been fired in the sallyport. Confirmation is sought that no officers have been shot. A lieutenant advises that all of the officers need to maintain good cover behind pillars, they should not advance and they are not to move from good, hard cover positions. They are told SWAT is responding. It is emphasized that no officers have been shot. SWAT is advised that an emergency response is needed.

Body worn footage from LE3 shows him responding to the building. As he runs with his canine to an entrance other officers are seen running to respond as well. As LE3 approaches the Watch Commander's Office, personnel are lined up along a hallway, seeking cover from the threat posed in the sallyport. A lieutenant shouts at the personnel to get out of the office away from the potential threat. The canine is barking. The scene is tense.

Arreola is seen kneeling and focusing on the sallyport outside the door. The door of the office is to the left of the patrol unit and has a view of the left side of the vehicle. Arreola seeks confirmation from the lieutenant about what has happened. The lieutenant tells him where the patrol unit is and acknowledges Arreola cannot see it from his current position. He tells Arreola, "Suspect armed with a firearm, has slipped his cuffs." An officer in the sallyport can be heard shouting, "Let me see your hands. Let me see your hands." The lieutenant shouts out, "Watch your crossfire." Arreola stands, his firearm is pointed towards the ground. He continues to focus on the scene in the sallyport, looking out to the sallyport. A review of sallyport surveillance video corroborates that Arreola would have seen two officers attempting to obtain cover behind

one pillar, which was insufficient cover for both. Arreola seeks confirmation from an officer in the sallyport about which car the suspect is located at. The canine barks continuously.

LE3 states, "He's coming out the back," and moves up towards the lieutenant and Arreola at the door, while continuing to hunch over with the canine. The canine barks and LE3 tells the dog to be quiet. At one point he yells at the dog to be quiet as it continues to bark. The lieutenant starts to say, "Shut the dog..." Arreola tells LE3 to "get him out of here," and waves LE3 out of the door. The lieutenant shouts to the sallyport area, "Is he out of the car?" LE3 moves up to the door with the canine and tells Arreola to "Cover me. Cover me." LE3 shouts, "Does he have the gun?" Arreola moves to the door with his rifle pointed outside. LE3 yells, "Drop the gun!" Three shots are heard. LE3 moves out to the sallyport with the canine. As LE3 gets to the back wall of the sallyport another shot is heard.

Overhead sallyport surveillance video of the right, driver's side of the patrol unit shows Bergman at the driver's door reaching into the patrol unit with his right hand. One handcuff is attached around his right wrist and the other is dangling from the right wrist.

A criminalist determined Officer Yi fired one cartridge from his duty weapon. Officer Rodriguez fired two cartridges from his pistol and Officer Arreola fired a maximum of five shots.

The firearm Bergman had in his possession was a Glock, Model 43, semi-automatic, 9mm handgun. A San Diego Police Department criminalist conducted a test fire of the weapon and found the weapon to be operable. The firearm contained seven unexpended rounds in the magazine. The cartridge casing located inside of the vehicle where Bergman had been sitting was determined to have been fired from the Glock pistol. A damaged missile was recovered from the north wall of the sallyport was inconclusive due to lack of characteristics.

### ***Injuries***

Bergman sustained one through-and-through gunshot wound to his left shoulder, one through-and-through gunshot wound to his right flank and multiple dog bites to his right forearm. Bergman had bullet fragments in his left shoulder and sustained a nick to his liver as a result of the gunshot wound to his abdomen. Bergman also sustained an injury to his right hand by apparently striking a hard, solid object several days prior to him being shot.

### ***Toxicology Report***

A sample of Bergman's blood was taken for toxicology testing on July 6, 2020. Bergman's blood sample detected methamphetamine, amphetamine, pseudoephedrine/ephedrine, benzodiazepines and cannabinoids.

### ***Legal Analysis***

Penal Code section 835a(c) sets forth the standard to evaluate a peace officer's use of deadly force. The law provides that "a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of circumstances, that such force is necessary, for either of the following reasons:



(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.” Penal Code section 835a(c)(1)(A).

“A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not poses an imminent threat of death or serious bodily injury to the peace officer or to another person.” Penal Code section 835a(c)(2).

The statute provides definitions for “deadly force,” “imminent” and the “totality of circumstances” in Penal Code section 835a(e)(1) – (3).

““Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.” Penal Code section 835a(e)(1).

“A threat of death or serious bodily injury is “imminent” when based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person.” Penal Code section 835a(e)(2).

“An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.” Penal Code section 835a(e)(2).

““Totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” Penal Code section 835a(e)(3).

“In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques, if reasonably safe and feasible to an objectively reasonable officer.” Penal Code section 835a(2).

“[T]he decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight. The totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force.” Penal Code section 835a(4).

“A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts because of resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right of self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or prevent escape or overcome resistance. For purposes of this section “retreat” does not mean tactical repositioning or other de-escalation tactics.” Penal Code section 835a(d).

Penal Code section 196 was also amended. The statute provides that homicide is justified when committed by peace officers and those acting by their command in their aid and assistance when the homicide results from a peace officer's use of force that is in compliance with Section 835a.

***Conclusion***

Mr. Bergman's firing of the weapon and refusal to comply with commands presented an imminent threat of death or serious bodily injury to everyone within the area. Officer Yi and Officer Rodriguez fired at Mr. Bergman immediately after Mr. Bergman fired a shot out of the patrol unit. They acted in defense of themselves and the officers in the sallyport.

Officer Arreola and LE3 both described Mr. Bergman holding a firearm in his right hand. LE3 provided a description of the firearm. Officer Arreola had responded to a scene where he knew shots had been exchanged with Mr. Bergman. He knew Mr. Bergman was armed with a firearm. He knew Mr. Bergman was not complying with commands. Officer Arreola could see officers in danger in the sallyport, seeking cover behind pillars. He heard LE3 tell Mr. Bergman to drop the gun. Officer Arreola believed he saw a firearm in Mr. Bergman's right hand and he was pointing it at officers. At that moment the gun was tucked into Mr. Bergman's waistband on the right side. Based on the totality of the circumstances, it was reasonable for Officer Arreola to believe Mr. Bergman had a gun in his hand based on the interaction which had taken place between Mr. Bergman and the officers to that point in the sallyport.

Officer Yi, Officer Rodriguez, and Officer Arreola reasonably feared for their safety and the safety of others in the sallyport and fired upon Mr. Bergman. As a result, they bear no state liability for their actions. A copy of this letter, along with the materials submitted for our review will be retained in our files.

Sincerely,



SUMMER STEPHAN  
District Attorney

cc: Captain Richard Freedman  
San Diego Police Department