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OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

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December 20, 2023

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

Sheriff Kelly Martinez
San Diego Sheriff's Department
9621 Ridgehaven Court
San Diego, CA 92123

Re: Fatal shooting of Scholar Wang involving San Diego Police Officer Mitchel Tani on August 23, 2022; San Diego Sheriff Case No. 22137464; DA Special Operations Case No. 22-104PS; Deputy District Attorney assigned: D. Cal Logan

Dear Chief Nisleit and Sheriff Martinez:

We have reviewed the materials compiled by the San Diego Sheriff's Department Homicide Unit concerning the shooting of Scholar Wang. A District Attorney Investigator responded to the scene and was briefed by your investigators. This case was submitted to the District Attorney's Office for review on December 8, 2022, and additional materials were received after April 5, 2023.

Summary

On August 23, 2022, the San Diego Police Department received a call from a person requesting police respond to their home in the 1500 block of Bridgeview Drive in San Diego. The caller reported being assaulted by their family member, Scholar Wang. Officers arrived and found two elderly individuals who were injured and bleeding as a result of Wang having beaten them with a wood stick. Wang had barricaded himself in a bathroom of the residence. Through an exterior window to the bathroom, officers saw Wang was in possession of a hedge trimmer and a knife. Officers attempted to negotiate with Wang to come out of the bathroom. The officers deployed pepper spray into the bathroom through the exterior window, but it did not appear to significantly affect Wang.

After an hour of ineffective efforts to convince Wang to surrender, officers forced open the bathroom door and Officer Mitchel Tani deployed his police dog into the bathroom. The police dog located Wang and bit him. Tani entered the bathroom to find Wang hitting the police dog with a metal rod. As Tani approached Wang to get control of his police dog, Wang raised the metal rod over his head in a striking motion. Believing Wang was going to strike him with the metal rod and injure him, Tani fired three shots at Wang from his pistol. Wang was struck three times and died of his injuries.

Persons Involved

Scholar Wang was a 48-year-old resident of San Diego. Officer Tani had been employed by the San Diego Police Department for ten years and was in full police uniform.

Law Enforcement Witness One (LE1)

LE1 received information while driving to the incident that Wang had assaulted his family members with some type of wooden dowel. When LE1 arrived at the residence, he learned Wang had barricaded himself inside a downstairs bathroom. LE1 entered the home with several officers, including LE2, LE3, and Tani. The officers took up positions in the first floor living room, adjacent to the bathroom Wang was in. The officers began calling out to Wang but received no response. Furniture had been stacked up in the hall in front of the bathroom door, so some officers removed it. LE1 was initially uncertain if Wang was in the bathroom or in an adjoining bedroom so he went outside and located a window to the bathroom he believed Wang was in. LE1 assisted other officers with breaking the bathroom window, allowing him to see Wang inside. Wang was very agitated and had armed himself with a knife, hedge trimmers, and a short metal bar LE1 described as like one used for exterior security. LE1 continued to call out to Wang to communicate with him but Wang told him to get out of the house and that he was trespassing. LE1 directed another officer to deploy pepper spray into the bathroom to force Wang out. The pepper spray made Wang cough and had some effect on him, but Wang still refused to exit the bathroom.

LE1 went back inside the house where LE2, LE3, and Tani were waiting outside the bathroom door. LE2 and LE3 kicked the bathroom door open and retreated to LE1's position but Wang closed the door. LE1 kicked the door open and the door split in half. Wang ran at LE1 holding a pair of hedge trimmers at chest level with the blade toward LE1. LE1 thought Wang was going to cut him or hit him with the hedge trimmers so he backed away and Wang stayed in the bathroom.

The officers who were outside the bathroom window deployed more pepper spray to distract Wang while LE1 pushed the bathroom door open. This was done so a police dog could be sent into the bathroom. There were two police dogs on hand. The first dog sent would not go inside the bathroom, so Tani sent his dog into the bathroom. Tani announced his dog was biting Wang so LE1, LE2, LE3, and Tani began to approach the bathroom to go inside. Tani was the first to go into the bathroom. LE1 heard Tani yelling commands to Wang. LE1 saw Tani fire three shots. LE1 could not see the shots impact Wang because Wang was in a shower stall out of LE1's view. LE1 helped get Tani and his dog out of the bathroom and LE1 then went back inside the bathroom to provide medical aid to Wang. Wang was not moving. LE1 cut off a backpack Wang was wearing and checked for a pulse. LE1 could feel a faint pulse on Wang's neck so LE1 and LE2 carried Wang into the living room and began providing medical aid to him until paramedics arrived.

LE1 had been to Wang's home several times prior to this incident because Wang's family members had called police when Wang was having some type of mental health crisis. During these incidents, Wang had barricaded himself in the house and refused to come out of the house. On one occasion, Wang was taken into custody and placed on a 72-hour hold, but most times officers took no action and left the home.

Law Enforcement Witness Two (LE2)

LE2 arrived at the residence and heard officers on the radio say they were inside the home. LE2 went inside through the back of the home and met with officers who were already there. They developed a plan whereby officers on the exterior would deploy pepper spray through an exterior window into the bathroom that Wang was in. LE2 met with other officers at the exterior bathroom window. While there, LE2 used a metal bar to break out the glass on the window and another officer deployed pepper spray into the bathroom. This had little effect on Wang, and he still refused to communicate with the officers or leave the bathroom. LE2 went back inside the house and met again with the other officers. A plan was developed whereby LE1 and LE2 would force the bathroom door open so a police dog could be sent in. LE2 had his pistol out and covered LE1 as LE1 forced the door open. The door split in two; the bottom portion opened and the top portion stayed closed. LE2 saw Wang advancing on LE1 with some type of sharp object in his hand. LE2 was not sure if Wang was trying to stab LE1 with the object or trying to use it to pull the door closed. LE1 and LE2 retreated and waited until the officers outside the bathroom window deployed more pepper spray through the window.

While more pepper spray was being deployed, LE1 and LE2 went to the bathroom door and LE1 forced it open again. LE2 saw Wang coming toward him and LE1 with a knife or other type of blade in each hand so LE2 moved back. A police dog was sent into the bathroom. The dog entered but then came back out and ran past LE2. A police dog went back in the bathroom and LE2 heard the dog handler say the dog was on a bite. LE2 holstered his gun to go in the bathroom and arrest Wang and saw the police dog was holding Wang's arm. Wang was standing and had a knife in his hand so LE2 backed up. Tani moved forward toward Wang. Tani was giving commands to Wang to stop fighting and Wang retreated further back into the bathroom. Wang was swinging some type of blade and Tani had his gun out and was trying to take hold of the dog. Tani fired three shots and LE2 assisted getting Tani out of the bathroom. LE2 and LE1 went back in the bathroom and found Wang had at least one gunshot wound to his face. LE1 and LE2 began providing medical aid to Wang until paramedics arrived.

Law Enforcement Witness Three (LE3)

LE3 arrived at the residence and learned that Wang was barricaded in a bathroom inside the residence. Two injured people from the home were being tended to by an officer at the back of a police car. One person had a significant injury to their head and both people were bleeding. LE3 assumed a security post in front of the residence. More officers arrived and perimeter security was established around the house. The officers secured the front door and turned off the water to the house. LE3 went with a group of officers, which included a canine unit, to the back of the house where there was an open sliding glass door. LE3, who was armed with a shotgun, was designated as lethal cover for the canine officer. Another officer was armed with a beanbag shotgun. LE3 and the other officers entered the home and saw furniture had been piled up in a hallway in front of both the bathroom door and a bedroom door. LE3 thought Wang was likely in either the bathroom or bedroom. An officer on the perimeter said they could hear water running inside the home. LE3 and the other officers entered through the back sliding door and began calling out to Wang. LE3 heard Wang yelling in what LE3 thought sounded like Vietnamese.

As LE3 and the officers who were inside the house continued to negotiate with Wang to come out of the bathroom, other officers went to the bathroom window at the side of the house. Wang began to respond in English and told the officers it was private property and to get out of the house. LE3 and the

other officers told Wang they would not leave and he was under arrest. The officers who were outside broke out the bathroom window and could see Wang was armed with garden shears and was in the shower. The officers deployed pepper spray into the bathroom from the window while the officers who were with LE3 removed the furniture from in front of the bathroom door. LE3 provided cover at the bathroom door while two officers forced the bathroom door open so a police dog could be sent inside. After the door opened, the two officers retreated and it appeared to LE3 Wang shut the bathroom door. LE3 and the other officers continued to call out to Wang to get him to come out, but he refused to do so. In order to provide cover and to slow Wang if he came at them, LE3 put a table in front of himself, the canine officer, and an officer who had a bean bag shotgun. Two officers approached the bathroom door and forced it open but then ran back toward LE3. One officer said Wang was armed with shears, prompting LE3 to turn off the shotgun's safety and place his hand on the trigger. When the officers forced open the bathroom door, it split in two. The officers on the outside of the house looking in the window told LE3 Wang had armed himself with some shears, had put on a backpack, and was in the shower.

LE3 and the other officers continued to tell Wang to come out. They developed a plan to deploy gas into the bathroom from the outside as a distraction while simultaneously sending a police dog into the bathroom. There were two police dogs in the house. The first one was sent into the bathroom but came back out. A second police dog was sent in and LE3 moved closer to the bathroom. LE3 could see Wang standing inside with a small machete in his hand. Wang held the machete above his head in a swinging position and LE3 ordered him to drop it. The police dog began pushing Wang back in the shower and LE3 moved forward because it appeared Wang was off balance. LE3 thought this may be the best time to get the arrest team in the bathroom to take Wang into custody since he was distracted by the police dog. Wang still had the machete raised over his head and was screaming when LE3 began to move toward the bathroom. Tani moved in front of LE3 and entered the bathroom. LE3 could see Wang hitting the police dog in the head with the machete while he and Tani entered the bathroom. Wang began falling back into the shower stall out of LE3's view and Tani was now about one foot away from Wang. Wang still had the machete over his head and began swinging it downward in a chopping motion when Tani fired three shots. LE3 did not have a clear shot at Wang so he did not fire his weapon. LE3 believed that had Tani not fired at Wang, Tani would have been injured by the machete. Tani took control of the dog and LE3 stepped out of the bathroom to let him pass. Two other officers entered the bathroom and took Wang out of the bathroom to the hallway. LE3 secured his shotgun in his police car and went back in the house where officers were performing CPR on Wang. LE3 used a chest seal to cover a gunshot wound on Wang's chest and paramedics began providing medical aid to Wang.

Statement of Officer Mitchel Tani

When Tani arrived at the residence, the first officers on scene established that a felony battery occurred. Wang had used a wooden or metal pole or rod to assault elderly family members, causing them substantial injuries. Tani and the other officers established a perimeter around the house and Tani was in front on the street with his police dog. Tani began calling out to Wang on a public address system to come outside. Tani issued the standard canine warning he uses, stating a police dog is with him and Wang may be bitten if he did not comply. Wang did not respond to the warnings. Officers on the perimeter reported hearing water running and a light being on in a bathroom. Tani was concerned Wang may not hear their calls if he was in the bathroom, so they turned off the water and power to the house. Tani continued calling out to Wang on the P.A. and Wang began yelling from the bathroom, but

Tani could not understand what was being said. Tani described Wang as having a heavy accent and as speaking a mix of Vietnamese and English. The original plan was to have Wang come out of the bathroom since he was known to be armed with the object he used to assault the victims. Tani believed this plan would be safer to do this because there could also be other unconventional items normally found in a bathroom, which could be used as weapons.

Officers began breaking the glass of the bathroom window and found a metal security bar was mounted on the inside. Additionally, cardboard and paper had been stuffed between the security bar and window, which prevented them from hearing what Wang was saying. Tani looked through the window by standing on a ladder. He saw the top of Wang's head and saw Wang had a metal pipe with a sharp edge in his hand. Tani deployed pepper spray through the window at Wang but it did not have the desired effect on him. Tani made sure officers were in the front of the house and in the back of the house so they could receive Wang should he come outside. Tani also made sure the officers had less lethal and lethal options, which included bean bag shotguns, shotguns, and rifles as well as a second police dog. An officer who was observing Wang notified Tani that Wang was using items inside the bathroom to barricade the door. The items included a rubber tub and a laundry basket.

Other officers made Tani aware that Wang had a history of mental health issues and had stated in the past he wanted to commit suicide by forcing the police into a deadly encounter.

Some of the officers had entered the residence through a back door. Tani joined the officers inside. Tani saw blood spatter on the patio and on the interior of the home along with some bloody rags. Tani learned the blood was from the victims Wang had assaulted. Tani believed Wang was armed with a weapon that could produce injuries causing that kind of bleeding.

A lieutenant, a canine sergeant, and an acting sergeant on scene developed a plan on how to proceed. The plan involved officers outside deploying gas into the bathroom through the window as a distraction so officers inside could force the door open, and the dog could be sent in. Tani and his dog were the backup unit to the primary canine unit, which was on scene. The primary dog had been showing signs of fatigue after having been there so long. Tani's dog would be used if the first dog failed. Two officers approached the door, one armed with a pry bar and the other with a gun. They opened the door, but the door broke in half horizontally. The top half opened while the bottom half stayed closed because items had been stacked up against it on the inside.

The first canine was sent into the bathroom, but the dog could not get inside so it was called back by its handler. Tani then sent his dog in, and the dog stopped when it got halfway in the door. Tani could see the front of his dog was in an elevated position and could hear Wang yelling. This led Tani to believe the dog was biting Wang. Tani moved forward to go into the bathroom to see what his dog was doing and to evaluate what Wang was doing. Tani's training dictates that he has an obligation to minimize the time his dog is biting a suspect to reduce injuries. Tani needed to see if Wang was compliant, if Wang had dropped the weapon, or Wang was defeating the dog. Tani did not feel he had the lethal coverage he needed from the officers who were with him so he pulled his gun as he approached the threshold of the door. Under normal circumstances if Tani feels he has sufficient coverage from other officers and he can view what his dog is doing from behind the officers, he will keep his gun holstered. In this case, the bathroom was so confined that Tani felt he did not have sufficient lethal protection, so he drew his gun.

As Wang came into Tani's view, he could see Wang attacking the dog with a metal pole. The pole had a sharp edge and Wang was backing into the shower stall. Tani began to lose view of Wang and the dog as Wang backed further into the shower stall. Tani realized that even though his dog was biting Wang on the forearm, Wang was still attacking the dog and attempting to defeat him. The dog was giving Tani a tactical advantage by immobilizing one of Wang's arms, but Wang still posed a deadly threat to other officers since he was so close. Tani was concerned that if Wang defeated the dog, he would come at him or other officers with the deadly weapon in the confined space. Knowing that Wang previously made statements of wanting to force a deadly confrontation with police, Tani believed had he not used his police dog, Wang would have attacked him. When Tani went in to arrest Wang and get control of his dog, Wang was hunched over in a low position. As Tani approached him, Wang repositioned himself in an upright posture and turned his attention to Tani. Wang raised the pole over his shoulder and was going to strike at Tani with the weapon. Tani fired three rounds from his weapon and stopped when he fired the third round. Tani could see Wang no longer posed a threat and was beginning to drop to the ground. Tani knew Wang needed medical aid, but no other officers could get in behind him so he removed his dog and left the bathroom so officers could render aid to Wang.

Tani recalled being dispatched to Wang's residence several years ago before he was assigned to the canine unit. He could not recall the exact nature of the call but remembered it involved Wang having some type of mental health crisis. No arrests were made and Tani believed Wang was evaluated by a PERT clinician. Tani has heard officers being dispatched to Wang's home several times in the past because Wang was having some type of mental health issue and had been violent toward his family members.

Investigation

The shooting took place in a ground-level bathroom of a two-story residence in San Diego. The crime scene was secured, photographed, and investigated by the San Diego Sheriff's Homicide Unit. All officers' and detectives' reports, audio and video recorded interviews, along with the medical examiner's report, dispatch recordings, and body worn camera (BWC) footage were reviewed. The events leading up to and the incident itself were captured on officers' BWC. All these items were found to provide evidence that corroborates the officers' statements.

15 civilian witnesses were interviewed. Five of them heard the shots being fired but none of them witnessed the shooting.

At the time of this incident Tani was carrying his own Glock 45 MOS 9mm handgun. Tani told investigators the gun was loaded with 20 rounds in the seated magazine and one round in the chamber. Tani had two additional handgun magazines loaded with 20 rounds each. Following the shooting incident, a Sheriff's Department Crime Scene Specialist retrieved and examined Tani's handgun. The gun had 18 rounds remaining. One round was in the chamber and 17 rounds were in the seated magazine. Two cartridge casings were collected from the bathroom floor at Tani's shooting position and one cartridge casing was found in the window frame to the left of Tani's position. This was found to be consistent with Tani firing three times.

Wang was armed with a metal device, which was approximately one inch wide by approximately 14 inches long. The device was a metal track used in cabinetry drawers and appeared to have been

removed from the bathroom vanity. The device also had a thin metal piece, approximately six inches long affixed to one end at a 90-degree angle.

A kitchen knife, a pair of scissors, and a gardening tool were found in the medicine cabinet on the wall in the bathroom. A large wood-handled kitchen knife was also found on the bathroom floor adjacent to the shower stall.

The two elderly female family members Wang had attacked sustained injuries and were transported to the hospital for treatment. One was treated for two broken hands, injuries she sustained as she tried to shield herself from Wang's attack. She also sustained a neck laceration and a contusion on her forehead. The other victim had been struck by Wang with a wooden stick and was treated in part by receiving four staples in the top of her head and eight to ten more staples in the back of her head. After the attack, she told investigators she was "scared to death" and believed she was going to die. When she was informed the Wang had been shot and killed by police, she commented she felt Wang was shot because the police were tired of dealing with him.

Autopsy

An autopsy was performed on Wang's body by a Deputy Medical Examiner. Wang sustained one gunshot wound to the head and one to the chest. Wang also sustained dog bite injuries to the left forearm. A toxicology screening was negative for alcohol, drugs of abuse, and therapeutic medications.

Body Worn Camera

The BWC footage generally corroborates the statements of the officers and the civilian witnesses. BWC footage further shows the two female victims were injured and one had sustained head wounds and was bleeding profusely.

LE1's BWC shows him in the living room area of the home along with LE3, Tani, and several other officers. Tani releases his dog and soon afterwards states they need to move up because his dog is on the bite. LE1's BWC is blocked by LE2, who is in front of him, but someone can be heard telling Wang to "let me see your hands or you're gonna get shot." Tani comes into view as he pushes past LE1 and LE2. Tani enters the bathroom with LE3. Soon after Tani enters the bathroom, three shots are heard. Tani removes his dog from the bathroom and LE1 enters and finds Wang in a seated position in the shower stall. LE1 assisted with removing Wang from the shower to the living room so medical aid can be provided. As Wang is removed from the shower, the 14" long metal piece is seen on the shower floor.

LE2's BWC shows him in the living room with LE1, LE3, and Tani. Tani releases his dog and then states the dog is on the bite and they need to move up. LE2 follows LE3 to the door and LE2 stops at the left side of the door frame. Tani moves past LE2 and enters the bathroom followed by LE3, then three shots are heard. LE2's BWC is blocked because he is standing in front of the wall. As Tani grabs his dog and pulls him out, Tani runs into LE2 and LE2's BWC falls off his uniform and lands face up on the hallway floor. Another officer retrieves the camera and returns it to LE2 once LE2 completes his turn providing CPR to Wang.

LE3's BWC shows him holding a shotgun, which partially obstructs the camera view. Tani can be heard directing LE1, LE2, and LE3 to move to the bathroom because his dog is biting Wang. LE3

steps to the open door of the bathroom and Tani's dog is seen holding on to Wang's left arm. Wang's right arm can briefly be seen raised over his head with an object in his hand. LE3 remains at the doorway and yells for Wang to show his hands. Wang moves out of view into the shower stall. Three shots are heard and Tani is seen pulling his dog out of the bathroom as LE3 backs away. LE3 secures his shotgun in his patrol vehicle, then returns to the scene to assist paramedics with treating Wang.

Tani's BWC shows him standing in the living room behind LE2 and LE3. Tani releases his police dog and the dog enters the bathroom. The dog appears to encounter someone or something because it does not go all the way in the bathroom. His back legs and tail are still visible. Tani tells LE2 and LE3 they must move up because the dog is on the bite. As Tani approaches the door, he has his handgun out and calls out to Wang telling him to show his hands or he will be shot. As the three officers get to the doorway of the bathroom, Tani moves past LE2, who stops at the left side of the door. LE3 is to Tani's right pointing a shotgun into the bathroom. By this time, Wang has moved around a corner into the shower stall and is not completely visible. The dog is up on two legs and Wang has an approximately 12-inch-long object in his hand. He swings the object downward toward the dog in a chopping motion. As he is doing this Tani and LE3 are shouting to Wang to drop what he is holding. Tani continues to move toward Wang, who is still holding the object in his right hand. As Tani gets closer, Wang raises the object over his head in a striking manner and Tani fires three shots in quick succession. Wang falls to the floor in a seated position and is motionless as the police dog continues pulling on his arm. Tani physically restrains the dog to stop it from biting Wang and then removes the dog from the bathroom while other officers enter to aid Wang.

Legal Standards of Criminal Liability

Penal Code section 835a(c) sets forth the circumstances in which a peace officer may use deadly force and the standard to evaluate the use of such 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 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).

The statute defines "deadly force" as 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).

An imminent threat of death or serious bodily injury is one where "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. 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).

The statute defines totality of the circumstances as "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).

The statute further states, "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).

Additionally, “[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 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

Officers arrived at the residence in response to a 911 call and found two elderly women who reported they had been physically assaulted by Wang. Both women had sustained significant injuries and one was profusely bleeding. Officers determined Wang had committed felony assault and subsequently secured the perimeter of the home and attempted to establish contact with Wang to convince him to surrender.

Wang had barricaded himself in a bathroom and refused to come out when ordered to do so by the officers. A police dispatcher informed the officers on scene that during prior police contacts with Wang, he made statements of wanting to commit suicide by police.

The officers attempted to compel Wang to surrender by means of less lethal force. Pepper spray was deployed through a window into the bathroom where Wang had barricaded himself, but the pepper spray appeared to have little effect. An officer in a position to observe Wang reported Wang had armed himself with a knife, a pair of garden shears, and a metal pole.

A plan was developed whereby LE1 would force the bathroom door open and a police dog would be sent in to subdue Wang so he could be arrested. When LE1 forced the door open, Wang moved toward LE1 with a kitchen knife in hand. LE1 backed away and Wang stayed in the bathroom. Tani sent his police dog in the bathroom and told LE1, LE2, and LE3 they needed to go into the bathroom because his dog was biting Wang. Adhering to his training, Tani moved forward into the bathroom so he could evaluate the effectiveness of his dog and determine if he needed to retrieve the dog. When Tani got to the door, he could see his dog was biting one of Wang’s arms and Wang was striking the dog with some type of metal object. Tani began losing sight of Wang and the dog as Wang backed into the shower stall. Tani feared if he did not intervene Wang might defeat his dog or may assault him or the other officers with the object he was using to hit the dog. Tani moved toward Wang to arrest him, and Wang’s attention turned away from the dog and toward Tani. Wang raised the metal object over his

shoulder as though he was going to strike Tani. Fearing Wang was about to strike him with the weapon, Tani fired three shots at Wang, fatally wounding him.

At the moment Tani fired his weapon, he was faced with an imminent threat of death or serious bodily injury that he had to instantly confront and address. A reasonable officer in Tani's situation would believe that Wang had the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to himself and others. Therefore, given the totality of the circumstances, Tani bears no state criminal liability for his actions. A copy of this letter, along with the materials submitted for our review, will be retained for our files.

Sincerely,



SUMMER STEPHAN

District Attorney

cc: Captain Richard Freedman
San Diego Police Department
Captain James Emig, Jr.
San Diego Sheriff's Department