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June 27, 2013

**PUBLIC REPORT ON OFFICER INVOLVED SHOOTING OF JOSE NAVEJA
BY LAW ENFORCEMENT OFFICERS ON JULY 30, 2012**

The Santa Barbara County District Attorney's Office has completed its review of the investigation by the Santa Barbara County Sheriff's Department of the homicide of Jose Naveja that occurred on July 30, 2012, in Santa Maria, California.

The District Attorney finds the shooting was a justifiable homicide under Penal Code section 196(2).

SUMMARY

Jose Naveja lived in Florida but had been staying in Santa Maria with his sister, Bonita Fout, and her husband, Timothy Fout, since July 1, 2012. Bonita and Timothy overheard Naveja say on more than one occasion that he wanted to die. On July 29, 2012, Timothy Fout heard Naveja say, "I want to die...I just don't want to kill myself." On Monday, July 30, 2012, Naveja, who suffered from numerous medical conditions, had been using Oxycontin and had consumed a couple of bottles of wine. Naveja and Bonita argued because Naveja decided that he wanted to leave Santa Maria immediately and drive back to Florida. Bonita and her husband, Timothy, were concerned about Naveja's level of intoxication and refused to give Naveja money to purchase gas for his car. They told Naveja they would give him a check the next day to purchase gas. Naveja left the Fouts' home and tried to buy gas with his out-of-state check, but he returned when he could not buy the gas. Bonita and Timothy Fout again told Naveja that he should stay the night and they would give him gas money in the morning. Naveja left the Fouts' home a second time.

Timothy Fout left his house and went to his son's home in Orcutt. A short time later Naveja arrived at the Fouts' front door. Naveja was holding a handgun and demanded that Bonita write him a \$70 check for gas. Bonita and her daughter, Florentina, were in the living room. Bonita asked her daughter to go to her bedroom, but Naveja physically blocked Florentina's way and ordered Bonita to write him a check. Bonita was afraid for her and her daughter's safety, so Bonita wrote Naveja a check. Naveja left the residence and Bonita immediately dialed 911.

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Sergeant Dave Allen responded to the call and found Naveja filling up his black minivan at the Orcutt Union 76 gas station at Broadway Street and Clark Avenue in Orcutt. Sergeant Allen attempted to get Naveja to cooperate, however Naveja refused all of Sergeant Allen's orders. Naveja stated that he had 7 guns in his van and 3 on his person. After filling up with gas Naveja got into his minivan and drove away, leading Sgt. Allen and responding units on a pursuit through Santa Maria. Naveja drove his vehicle at near-normal speeds, stopping at red traffic lights, and using his turn signals. Officers from the California Highway Patrol and the Santa Maria Police Department also trailed the pursuit as it made its way north on Highway 135 (Broadway). Naveja ended up driving northbound on Preisker Lane which is a dead end cul-de-sac. Sergeant Allen and other units were able to block Naveja in the dead end, where a 30-minute standoff ensued.

Naveja sat in his van and refused to follow orders as directed. He "flipped off" the officers, formed a "gun" with his hand, pointed and "shot" at the officers, and yelled at them to "fuck off." At one point Naveja threw two handguns out of the minivan after being ordered to do so by officers, but Naveja refused to surrender. A few minutes later Naveja drove his van a few feet and positioned his driver's door next to one of the handguns he had just thrown out. Naveja exited the van, bent over, picked up a black semi-automatic handgun, turned and faced the officers. Naveja put the gun to his head and then lowered the gun in the direction of the officers. Feeling a direct threat to their lives, two Santa Barbara County Sheriff's Deputies, one California Highway Patrol Officer, and one Santa Maria Police Department Officer fired their firearms at Naveja, striking and killing him.

The District Attorney's role in reviewing this homicide is to determine whether the shooting of Jose Naveja was lawful and to provide a detailed explanation to the public about the facts and the law in that regard. As stated in *Graham v. Connor* (1989) 490 U.S. 386, this process "requires careful attention to the facts and circumstances." Hence, this analysis will give careful attention to both the facts and circumstances of the fatal shooting of Jose Naveja.

PART I - STATEMENT OF FACTS

Officers' Statements

Sergeant David Allen

Santa Barbara County Sheriff's Department Sergeant David Allen was the Santa Maria Area Patrol Supervisor and was in full uniform and driving a marked black and white Sheriff's Department SUV on July 30, 2012. Sergeant Allen heard a call come through of a robbery by a man with a gun driving a black van. Sergeant Allen located the van at the 76 gas station in Orcutt. Naveja was filling up his gas tank. Sergeant Allen got out of his vehicle and ordered Naveja to show his hands and step towards the back of the van. Naveja told Sergeant Allen that he could not hear him and he was busy. Naveja failed to comply with any of Sergeant Allen's orders. Sergeant Allen asked Naveja if he had any guns. Naveja said, "I have seven in the car and I have three on me." Naveja finished fueling his van and started to walk towards the driver's door. Sergeant Allen ordered Naveja not to get into his car and Naveja said, "Start shooting!" Naveja got into his car, pulled out of the gas station onto Clark Avenue, and headed towards Highway 135. Sergeant Allen followed with his lights and sirens on and advised Dispatch of the pursuit.

Naveja proceeded onto Highway 135, driving the speed limit, and stopping at red traffic lights. Sergeant Allen requested a spike strip from the California Highway Patrol but it was denied because Naveja was believed to be armed. At several intersections Sergeant Allen gave Naveja orders over the PA system, but Naveja failed to comply. Naveja turned onto Preisker Lane and proceeded to a dead end cul-de-sac, where they were able to block him in. Deputy Macauley was at the driver's side of his car and Deputy Calahan was at the passenger side of Deputy Macauley's car. Sergeant Allen was at the driver's side of his SUV and Deputy Esparza was at the passenger side of the SUV. Sergeant Allen gave Naveja orders over the PA system to show his hands, but Naveja put his hands out momentarily and then moved them out of sight. Someone asked Sergeant Allen if he had a pepper ball gun, but Sergeant Allen only had a bean bag gun. Sergeant Allen loaded the bean bag gun and placed it next to his car door. He asked someone to move another patrol car up between his car and Deputy Macauley's car. A CHP Officer moved the black SBSO patrol car up and took position behind the driver's door of that car and a Santa Maria Police Department Officer took position behind the passenger door of that car. Sergeant Allen then spoke to a Santa Maria Police Department sergeant about available strategies. Someone from SMPD brought a pepper ball gun and they requested the K-9 respond from Guadalupe. Sergeant Allen also requested a hostage team negotiator respond to the scene to see if he could talk Naveja down. Naveja continually failed to respond to commands, flipped them off, and ranted and raved about not going to jail. Sergeant Allen ordered Naveja to throw his guns out of the car and at one point Naveja did so. Naveja then revved his engine, causing black smoke to come out of the rear of his van. At this point, Sergeant Allen believed Naveja was going to drive right at the officers. Sergeant Allen had his AR-15 and yelled for the officers to watch their back. Naveja drove to where the guns were, got out of his van, and picked up one of the guns. He held the gun towards his head and at that point Sergeant Allen looked down for a moment to check his sight picture on his rifle. Gunfire erupted, causing Sergeant Allen to look up and see Naveja going down. Sergeant Allen remembers hearing a lot of rounds fired at the same time and the firing stopped in less than a second.

Sergeant Allen immediately called for medics because Naveja was not moving. He asked where Naveja's gun was and the CHP Officer said he had it. A Santa Maria Police Department Sergeant walked up and told everyone to put their firearms on safe to prevent an accidental discharge. Medics called the hospital and obtained permission to pronounce Naveja deceased. Sergeant Allen walked downrange to make sure that no one else had been struck or injured by the gunfire and determined that no one else was downrange.

Deputy Rando Calahan

Santa Barbara County Sheriff's Deputy Rando Calahan was working uniformed patrol in a marked black Sheriff's vehicle on July 30, 2012. Calahan was at the Santa Maria Substation when he heard the radio call that a gun was involved. He responded to Old Orcutt where Sergeant Allen had made contact with Naveja at the gas station. Calahan saw Naveja drive out of the gas station with Sergeant Allen behind him, heading east on Clark Avenue towards Highway 135. Sergeant Allen and Deputy Calahan both had their lights and sirens on, yet Naveja failed to yield. Naveja continued northbound on Highway 135 and stopped at all of the red traffic lights except the one at Stowell Road. Each time they came to a red traffic light the deputies would attempt a high-risk felony stop, but Naveja proceeded to drive forward when the light turned green. The pursuit continued to Preisker Lane where Naveja turned left and drove into a dead end cul-de-sac.

A number of officers had joined the pursuit and were able to block the exit to the cul-de-sac. Naveja drove around the street and positioned his vehicle facing the police cars. Deputy Macauley's car was to Deputy Calahan's left and Sergeant Allen's car was to his right. They both had their headlights and spotlights on Naveja's car. Sergeant Allen gave Naveja repeated commands to show them his hands. Naveja would put his hands outside of his window for a short period of time, and then would pull them back into the car where officers could not see them. Naveja repeatedly told the officers to "fuck off." Sergeant Allen ordered Naveja to throw his guns out of the car. Deputy Calahan saw Naveja throw two handguns onto the pavement but Deputy Calahan was still concerned about his own safety because the information he received was that Naveja was possibly in possession of up to seven guns. Naveja revved his engine and Deputy Calahan believed that Naveja was going to ram them head on. Naveja pulled his van forward to where the handguns were lying on the pavement. Naveja got out of his van at that point and reached down to pick up one of the handguns. Deputy Calahan had his AR-15 rifle pointed at Naveja. Naveja exited the driver's door with the handgun in his right hand and raised the gun towards his chin. Naveja then brought the gun down and fully extended towards the location where Deputies Calahan and Macauley were standing. Deputy Calahan heard a "pop" and believed Naveja had just fired his weapon at them. Deputy Calahan was afraid for his life and his partner's life so he returned fire, firing his rifle what he believed to be five or six times until Naveja went down. He heard rapid succession shots which made him think that several people fired at the same time.

Deputy Calahan, Deputy Macauley, Sergeant Allen, and California Highway Patrol Officer Gruver cleared the car and searched for the firearms. Deputy Macauley handcuffed Naveja. Deputy Calahan heard someone over the radio immediately call for medics.

Deputy Chris Macauley

Santa Barbara County Sheriff's Deputy Chris Macauley was working uniformed patrol in a marked black and white Sheriff's vehicle on July 30, 2012. Deputy Macauley heard Sergeant Dave Allen ask for assistance in a pursuit and Macauley responded towards Santa Maria from his Lompoc location. Deputy Macauley caught up to the pursuit and became the third car in the pursuit behind Deputy Rando Calahan and Sergeant Allen. The suspect stopped at red stop lights and Deputy Macauley exited his vehicle each time with his AR-15 rifle drawn and attempted a felony stop. Naveja never got out of his car and when the light turned green, he continued driving northbound on Highway 135. Naveja turned onto Preisker Lane, which is a dead end cul-de-sac. The officers used their cars to block the exit to the cul-de-sac while Naveja drove around and pointed his car so it faced the officers.

Each time Naveja put his hands down, Sergeant Allen gave Naveja numerous commands such as, "put your hands up," "get out of the car," and to give himself up. At one point Naveja said, "Fuck you, shoot me...fucking shoot me." He kept repeating, "Fuck you. Shoot me." Sergeant Allen ordered Naveja to toss the weapons from his car. Naveja threw two guns out of his window onto the street. He then revved his engine and pulled forward next to the handguns he had just thrown out onto the pavement. At that instant, Deputy Macauley noticed a person coming out of a nearby house and Deputy Macauley's attention was briefly drawn from Naveja to that person. When Deputy Macauley turned back towards Naveja, Naveja was already out of his vehicle with a gun in his hand pointed at his head. Naveja then brought his gun down, causing Deputy Macauley to believe that Naveja was going to shoot him. Deputy

Macauley fired his gun because he was afraid for his life and had no doubt Naveja was going to shoot at him. Deputy Macauley does not remember hearing the gunfire and believes he fired three times until Naveja fell to the ground.

Deputy Macauley saw Naveja go down after he fired. He looked to see if Deputy Callahan was uninjured and then they moved up towards Naveja to look for the second gun and to make sure Naveja was secured. Deputy Macauley put handcuffs on Naveja and cleared the car to make sure there were no weapons within reach. Deputy Macauley asked Dispatch to send medics to treat Naveja.

Deputy Ruben Esparza

Santa Barbara County Sheriff's Department Deputy Ruben Esparza was on patrol in full uniform and driving a marked black and white Sheriff's Department SUV on July 30, 2012. He had a citizen ride-a-long (citizen on patrol) with him that evening. Deputy Esparza heard a radio call of a man with a gun and heard Dispatch say that the man had robbed his in-laws. Deputy Esparza responded with lights and sirens to the pursuit, picking the pursuit up at Clark Avenue and Highway 135, behind Deputy Macauley. Naveja stopped at the red traffic lights but failed to obey their commands. Naveja continued driving each time the traffic light turned green. The pursuit continued to Preisker Lane where Naveja drove to a dead end.

Deputy Esparza told his ride-a-long to stay in the car. Deputy Esparza grabbed his AR-15 rifle and took position on the passenger side of Sergeant Allen's SUV. Sergeant Allen repeatedly gave suspect Naveja commands that Naveja did not follow. Deputy Esparza heard something hit the ground but could not see what the suspect had thrown. A Santa Maria Police Department Officer behind Deputy Esparza told him that Naveja had just thrown out two guns. A minute or two later Naveja revved his engine and drove the van slightly to the left, placing his van between the deputies and the guns he had just thrown out. Naveja got out of his car, grabbed one of the guns and pointed it at his own face. From Deputy Esparza's position there was a glare on Naveja so he did not have a clear view of what Naveja was doing. The deputies yelled at Naveja to put the gun down. Deputy Esparza heard a single gunshot, followed by five to seven more shots, and Naveja went to the ground.

Officer Michael Gruver

California Highway Patrol Officer Michael Gruver was in full uniform driving a marked CHP car on July 30, 2012. He was at the California Highway Patrol Station when he heard a pursuit in progress involving a suspect who had just committed an armed robbery with a firearm. Officer Gruver, Officer McCaslin, and Sergeant Barba headed towards the pursuit in separate vehicles. Officer Gruver joined the pursuit around Betteravia Road. He noticed a number of Sheriff's vehicles and some Santa Maria Police Department vehicles in the pursuit. Officer Gruver and Officer McCaslin trailed the pursuit, running traffic breaks to try to protect the public from getting too close to the pursuit. Officer Gruver followed the pursuit down Preisker Lane and parked his car at the first cross street before getting to the cul-de-sac.

Officer Gruver had his AR-15 rifle and walked up to where Deputy Macauley and Deputy Calahan were standing by Deputy Macauley's vehicle. Officer Gruver heard the sergeant giving commands over the PA speaker. Officer Gruver pulled Deputy Calahan's car forward to give him some cover so it was in line with Deputy Macauley's and the sergeant's cars. Officer Gruver took position behind the driver's door of Deputy Calahan's vehicle and a Santa Maria Police Department Officer took position behind the passenger door. The sergeant repeatedly ordered Naveja to put his hands up but Naveja would only momentarily put his hands where the officers could see them. Naveja did not comply with the sergeant's orders and flipped the sergeant off several times. Naveja repeatedly said, "Shoot me, mother fuckers, shoot me. Come on. Fuck you." Officer Gruver was very worried for his safety because Naveja kept dropping his right hand and Officer Gruver knew that Naveja likely had weapons in the car. Naveja threw a gun out of the window, followed by what Officer Gruver assumed was a magazine. Officer Gruver noticed black smoke coming out of the back of Naveja's car and heard the engine revving. Officer Gruver believed Naveja was going to try to ram them. Naveja pulled forward slowly and then got out of his car and reached for the gun on the pavement. Naveja walked out in the open, away from his car door, with a handgun in his right hand. Naveja was facing Officer Gruver and looking right at him, which caused Officer Gruver to fear for his life. Officer Gruver saw Naveja's hand start to come up with the gun, and, at that moment, heard a bang and thought he saw smoke coming from Naveja's direction. Believing he had just been shot at, Officer Gruver returned fire, firing what he believed was four or five shots until Naveja went down. Officer Gruver heard other weapons shooting as well, so, when Naveja went down, Officer Gruver yelled, "Cease fire. Cease fire. Cease fire." The officers quickly cleared Naveja's car and Officer Gruver saw a handgun by Naveja's feet and another handgun by the car. Officer Gruver stood over the handgun to protect it until other officers took over the scene.

Officer Felix Diaz

Santa Maria Police Department Officer Felix Diaz heard over the radio that the Sheriff's Department was involved in a pursuit with a robbery suspect who had firearms. Officer Diaz saw the pursuit go by at Betteravia Road and began trailing the pursuit in case the Sheriff's Department needed any assistance. Naveja stopped at the red traffic lights and each time the Sheriff's Deputy would order Naveja over the PA system to get out of his vehicle, Naveja would continue to drive when the light turned green. Naveja turned onto Preisker Lane and continued to the cul-de-sac where the Sheriff's Deputies blocked him in.

Officer Diaz parked his unit on the corner and walked up to the passenger side of a black Sheriff's car with his AR-15 rifle. Naveja was flipping them off and saying that he was not going to jail. He would at times have his hands where Officer Diaz could see them and then would pull them out of sight. They ordered Naveja over the PA system to throw out his guns. Officer Diaz saw Naveja rack a gun and then toss it out of the window. Officer Diaz also saw Naveja throw something else out of the window. Naveja's left hand was sticking out of his car window, but he kept reaching down with his right hand. Officer Diaz knew that it was possible Naveja had multiple guns in the car. Naveja then put his car in drive, turned the steering wheel, and drove towards the gun that he had thrown on the ground. Officer Diaz yelled out, "He's gonna grab the guns. He's gonna go for the guns." Naveja got out of his car and walked straight for the guns. Naveja bent down and stood back up with a gun in his right hand. Naveja turned and faced directly towards Officer Diaz. Naveja lifted his arm straight up in the direction of

Officer Diaz. Officer Diaz was scared and feared for his life so he fired his rifle. Officer Diaz remembers firing one time and heard several other shots fired at the same time. Naveja went down to the ground and Officer Diaz stopped firing. The officers approached Naveja and cleared the scene for weapons. Officer Diaz remembers medics were already staged at Boomers and someone called for them to come treat Naveja.

Sergeant Dan McCammon

Santa Barbara County Sheriff's Department Sergeant Dan McCammon was the Lompoc and Central Station Patrol Supervisor on July 30, 2012. Sergeant McCammon was in Lompoc when he heard the pursuit come over the radio, so he drove to Santa Maria in case deputies needed his help. He caught up with the pursuit at the cul-de-sac on Preisker Lane. He saw the sheriff vehicles lined up, blocking Naveja's exit. He heard Sergeant Allen give numerous orders to Naveja and at one point he saw Naveja throw a dark metallic object out of his window onto the ground. He heard Naveja rev his engine and saw Naveja move his van towards the gun. He saw Naveja get out and pick up the handgun, so McCammon decided he needed to take cover. As he did so, Naveja was shot and went to the ground.

Sergeant Marc Schneider

Santa Maria Police Department Sergeant Marc Schneider was in briefing at the Santa Maria Police Department when he heard from Dispatch that the Sheriff's Department was involved in a pursuit in the city. Sergeant Schneider and other officers responded to points throughout the city to assist. Sergeant Schneider was at the intersection of Jones Street and Highway 135 when he saw the pursuit going northbound. Sergeant Schneider noticed that Naveja was obeying traffic lights and was not driving erratically. The pursuit continued and at each red traffic light deputies gave Naveja commands but Naveja continued forward when the light turned green. Naveja drove down Preisker Lane to the dead end, turning around so his van was facing the deputies. Sergeant Schneider could see Naveja and could hear the deputies giving commands that Naveja failed to comply with. Deputy Esparza requested a pepper gun so Sergeant Schneider radioed to have one brought to the scene. The deputies continued to give commands for about twenty minutes with Naveja failing to comply. Sergeant Schneider heard officers yell that Naveja just threw a firearm out of the window and he saw Naveja flip them off. Sergeant Schneider saw Naveja pull his van forward, get out, and bend down towards the gun on the ground. Sergeant Schneider saw Naveja come up with something in his hand, so he ducked behind a car. Sergeant Schneider heard a succession of six to eight simultaneous gunshots and when he looked up, Naveja was down.

Lieutenant Norm Come

Santa Maria Police Department Lieutenant Norm Come was in briefing at the Santa Maria Police Department when he heard from Dispatch that the Sheriff's Department was involved in a pursuit with a robbery suspect who was possibly armed. He left the station and watched the pursuit go by at the intersection of Cook Street and Highway 135. He directed only one Santa Maria Police Department unit to trail the pursuit because there were already several Santa Barbara Sheriff and CHP cars in the pursuit. Lieutenant Come later responded to the north dead end of Preisker Lane, where Naveja's van was blocked in by police units. Lieutenant Come heard commands being given over the PA system and he saw Naveja

with his hands out of the window, flipping off officers. Naveja was also yelling at them that they were “fucking faggots” and were wasting taxpayer money. Lieutenant Come spoke to Sergeant Allen and suggested they call in a K-9 and ordered a pepper ball gun be brought to the scene at the request of Sergeant Allen. Naveja was ordered to throw the gun from his car. Lieutenant Come saw Naveja racking the slide on a semi-automatic pistol and then Naveja threw the gun out of the window. At that point Naveja began revving the engine and drove the van to a position between the gun on the ground and the officers. Naveja got out of the van, picked up the gun, and put the gun in his mouth as he jumped around. Naveja then pulled the gun out of his mouth, crouched down and began to lower the gun towards the officers. Lieutenant Come immediately heard gunshots fired from his left and saw Naveja fall to the ground. Lieutenant Come then ordered everyone to stop shooting and ordered everyone to put their guns on safe. He could see that there were two pistols on the ground, a distance away from Naveja, so he decided it was safe for them to approach and handcuff Naveja. Lieutenant Come then had the four shooting officers removed from the scene, preserved the integrity of the scene, and called in the Sheriff’s Department to investigate.

Sergeant Pat Curran

California Highway Patrol Sergeant Pat Curran was working patrol out of the San Luis Obispo area on July 30, 2012, when he overheard radio traffic regarding a pursuit of a robbery suspect in the Santa Maria area. Sergeant Curran and Officer Carr drove towards Santa Maria in the same vehicle. Sergeant Curran drove to Preisker Lane where officers had Naveja’s car blocked at the dead end road. Sergeant Curran noticed the driver of the mini-van continually put his hands out of his car window and then back inside the van. Sergeant Curran heard commands being given over the PA system and noticed the officer was speaking in a very calm manner. It sounded like a professional negotiator who was trying to keep the driver of the van from getting agitated. Sergeant Curran saw a silver-colored gun skipping along the pavement away from the van. Sergeant Curran then heard the sound of the van’s engine revving and he realized he would not be safe if the mini-van accelerated in his direction. He saw the mini-van pull forward and the steering wheel turned all the way to the left, towards the gun on the ground. Naveja got out of the van and bent down to pick up the gun off of the ground. Numerous commands were given such as, “Get back in the van” and “Drop the gun.” Naveja lifted his right hand with the gun in it and pointed it towards three patrol vehicles and the officers standing next to the vehicles. Two to three seconds after Naveja raised the gun, he heard gunfire that lasted a couple of seconds and he thought it sounded like 30-50 rounds. He heard someone yell, “Cease fire” and he saw Naveja was down.

Officer Shawn Fuggs

Santa Maria Police Department Officer Shawn Fuggs was in briefing at the Santa Maria Police Department when he heard from Dispatch that the Sheriff’s Department was involved in a pursuit with a robbery suspect who was possibly armed. He saw the pursuit pass him at the intersection of Park Avenue and Highway 135. Officer Fuggs followed the pursuit from a distance until Lieutenant Come instructed SMPD units to back off. Officer Fuggs proceeded to Beat 3 on the south end of Santa Maria. A short time later a pepper ball gun was requested so he responded to Preisker Lane with the one he had in his car. Sergeant Schneider instructed Officer Fuggs to engage the suspect with the pepper ball gun if the situation warranted a less-than-lethal option. He saw three Sheriff’s Deputies, one CHP Officer, and Officer Diaz

dealing with Naveja. Commands were being given but Naveja was non-compliant and yelled out obscenities. Naveja revved his engine and threw out two handguns. Naveja said, "You guys are going to shoot me." Naveja drove his car closer to the guns, got out, picked up a gun and turned to face the patrol units. Naveja held the gun to his chin, so Officer Fuggs moved back to the rear of the patrol car. He heard deputies yell, "Drop the weapon. Drop the weapon." Moments later Officer Fuggs heard shots being fired and saw Naveja fall to the ground.

Statements of Medics

Ryan Vaughn

Ryan Vaughn works as a Paramedic with AMR. On July 30, 2012, Ryan was dispatched to stage in the area until a scene was secured. The paramedics followed a police officer into the scene and as they drove towards Naveja, Ryan Vaughn could see a couple of "agonal" respirations. Ryan grabbed his equipment and approached Naveja. He noticed holes in Naveja's shirt that looked like bullet wounds. Naveja was not breathing and was pulseless, with fixed and dilated pupils. Dr. Weber was contacted and pronounced Naveja dead at 10:55 p.m.

Dustin Blom

Dustin Blom works as a Paramedic Supervisor with AMR. Dustin responded to the call for medics on Preisker Lane. He noticed Naveja had gunshot wounds to the head and to his body. The paramedics placed him on a cardiac monitor and noticed there was pulseless electrical activity. Dustin Blom called Dr. Paul Weber, who pronounced Naveja dead at 10:55 p.m.

Statements of Civilian Witnesses

A. Robbery Scene

Bonita Fout

Bonita Fout is married to Timothy Fout and is the sister of Jose Naveja. Naveja had been staying at Bonita's house prior to July 30, 2012, and she had heard Naveja say he wanted to die on more than one occasion. On July 30, 2012, Bonita noticed that Naveja was taking a number of medications, that he had consumed two bottles of wine, and appeared to be spaced out. Naveja wanted to leave the Fouts' house, but Bonita was concerned that Naveja was not in any shape to leave, so she tried to talk him into waiting until the morning. Naveja asked Bonita for a check so he could purchase gas, but Bonita told Naveja he would have to wait until the morning for her to give him the money. Naveja got into his car and drove away without the check. Timothy Fout called the gas station and told them not to sell any gas to Naveja because Naveja was too intoxicated to drive.

Naveja came back to the Fouts' home and requested money again, but Timothy Fout told Naveja they would give him a check in the morning, so Naveja left for the second time. Later, Naveja returned to Bonita Fout's home and came to the front door. Naveja was "wild looking." The look on Naveja's face, the way he moved, and his gestures were all different. Naveja had one hand behind his back and was trying to open the door. The way he was jiggling the screen door made Bonita think she was going to get "shot" through the front door, so she decided to let Naveja in. As Naveja walked in the door Bonita told her daughter to go to her room, but Naveja said, "She's going to stay here." Bonita could see a small black handgun in Naveja's right hand as he ordered her to, "Give me a check. Give me a check." Bonita was terrified for her safety and the safety of her daughter. Bonita wrote a check payable to the Union 76 gas station in the amount of \$70 and handed it to Naveja while he continued to hold the gun in his hand. Bonita was crying and told Naveja, "You're my brother, I'm your sister, don't forget who I am." Naveja took the check and left the house. Bonita immediately locked the door and dialed 911.

Timothy Fout

Timothy Fout is married to Bonita Fout and is the brother-in-law of Naveja. Naveja came to visit them on July 1, 2012, and stayed with them until July 30, 2012. Timothy knew that Naveja was abusing Oxycontin and was having marital problems. On Sunday July 29, 2012, Timothy Fout heard Naveja say, "I want to die...I just don't want to kill myself." Naveja told Timothy that he had a .22 caliber and a .357 caliber handgun and that he had permits to carry them.

On July 30, 2012, Timothy Fout gave Naveja money to put gas in his van. Naveja purchased two bottles of wine with the money that Timothy gave him instead of purchasing gas. Timothy believed that Naveja drank both bottles of wine and then told him that he was ready to leave to return to his home in Florida. Timothy noticed that Naveja was stumbling around, appeared intoxicated, and was in no shape to drive. When Naveja left to go to the gas station, Timothy called the gas station and told them not to sell Naveja any gas due to his level of intoxication.

Naveja returned to their house and asked for a check after the gas station refused to accept his out-of-state check. Timothy told Naveja they would give him a check in the morning, so Naveja left again. Timothy Fout then left the house to go to his son's home in Orcutt. Shortly afterwards he received a call from Bonita saying that Naveja had just pulled a gun on her and made her write out a check. Timothy immediately returned to the house and called 911 on his way there.

Florentina Fout

Florentina Fout is the adult daughter of Bonita and Timothy Fout and the niece of Naveja. Florentina returned home around 7:00 p.m. on July 30, 2012, and noticed that Naveja was packing his belongings and getting ready to leave. Florentina knew Naveja was on numerous prescription medications and was left. Timothy called the gas station and told them not to take Naveja's check because he had been drinking. Naveja returned to the house and again asked for more money. Florentina's parents tried to convince Naveja to stay another night, but he drove away instead. Timothy left the house a short time later to go to her brother's home in Orcutt.

Naveja returned again around 9:00 p.m. and knocked on the front door. Florentina knew there was going to be a problem this time. Naveja was on the front steps yelling at them to “hurry up and write me a check.” He was very upset and cussing with mostly the “F-word.” Bonita opened the front door and Naveja came inside and blocked Florentina from going into her room to call 911. Naveja said, “No, she’s going to stay out here.” Florentina was too scared to go anywhere so she stayed on the couch. Bonita wrote Naveja a check and he left. Florentina did not see the gun, but her mom told her he showed her the gun out of Florentina’s view.

Adrian Ochoa

Adrian Ochoa was working as a cashier at the Unocal 76 gas station at Broadway and Clark Avenue in Orcutt on July 30, 2012. Naveja came in around 8:20 p.m. with an out-of-state check, so Ochoa asked for some identification. Timothy Fout, who is a regular customer, called and told Ochoa that he should not cash Naveja’s check because Naveja had been drinking. Ochoa smelled alcohol on Naveja but he did not think Naveja was too intoxicated. Ochoa told Naveja that he could not accept the out-of-state check and Naveja left without a scene. Approximately 20 minutes later Naveja returned with cash and a debit card. Naveja used a combination of the two to purchase gas. Ochoa closed the station and locked up around 2100 hours and he went to the restroom. Ochoa returned to find Naveja attempting to open the locked door. Naveja had a check in his hand from Timothy Fout; therefore, Ochoa assumed that Timothy had given Naveja the check. Ochoa agreed to cash the check and as he was placing it in the register drawer, he saw the Sheriff’s car behind Naveja’s van. Ochoa heard the Deputy ask if Naveja had any guns and he heard Naveja say, “Yeah, I do, in the car.” The deputy ordered Naveja to stay out of the car, yet Naveja got into the car and took off.

B. Pursuit/Shooting Scene

Matthew Peinado

Matthew Peinado was participating in a ride-a-long with Deputy Esparza on July 30, 2012. Matthew heard Dispatch advise over the radio that a robbery had just occurred at the 76 gas station on Broadway and that the suspect had guns in his car. Matthew Peinado and Deputy Esparza responded to Highway 135, falling in as the second car in the pursuit. Naveja stopped at several stoplights, but ignored commands to get out of the car and continued driving each time the light turned green. Naveja eventually turned onto Preisker Lane, ending up on a dead end road. Several officers got out of their cars and tried talking Naveja into getting out of his car. Naveja said, “Fuck you” and flipped the officers off. Naveja threw two guns out of his car at some point. About five or ten minutes later, Naveja revved his engine and drove towards the guns, blocking Peinado’s view. Naveja got out of his car and Peinado ducked down when he heard gunshots.

Arthur Sanjuan

Arthur Sanjuan and his wife live near the intersection of Preisker Lane and Johnson Drive. Sanjuan woke up to the sound of sirens around 10:00 p.m. on July 30, 2012. Sanjuan heard the officers tell the suspect to put his hands up at least a dozen times and he described the officers as “extremely professional.”

Sanjuan walked to his front yard where he saw people from the neighborhood outside looking at what was going on. Sanjuan could hear the suspect yelling profanities at the officers but he could not see him. After being outside for about ten minutes, Sanjuan heard 10-15 rapid gunshots. Sanjuan estimated that the officers had negotiated with the suspect for about 20-25 minutes before the shots were fired. Sanjuan saw an ambulance arrive very quickly after the shooting.

Jose Luis Zepeda Real

Jose Luis Zepeda Real lives in the area of Preisker Lane with his wife Rosa. Jose was inside his house around 9:30 p.m. on July 30, 2012, when he heard sirens and saw rotating police car lights outside. He looked outside and saw the police pointing rifles at a male in the driver's seat of a dark grey van. The officer asked the driver to step out of his car numerous times with his hands up, but he refused to comply. The driver said, "Fuck you" and continually "flipped off" the officers. The officers continued to give the driver orders for approximately thirty minutes but he refused to comply. The driver threw an item outside his window, and, based on the shape of the item and the sound it made, Jose Real believed it was a small pistol. The driver then started his car and drove it forward and to the left. The driver got out of his car, bent down, picked up the pistol, and turned around to face the officers. The driver raised the pistol to his right cheek, and, at that point, Jose Real heard approximately 20 shots in rapid succession. The pistol flew out of the driver's hand and he went to the ground. Shortly thereafter law enforcement and AMR personnel approached the driver.

Rosa Zepeda

Rosa Zepeda lives in the area of Preisker Lane with her husband Jose. Rosa saw the driver inside his vehicle, "laughing" at the commands given to him by law enforcement. At one point he stuck his head out of the window and said, "Fuck you, come and get me." She believed that "the way he looked...he wanted to die." She saw him pick up the gun and believed at that point he had nothing to lose.

Evelyn Hernandez and Mark Dalziell

Evelyn Hernandez and Mark Dalziell live in the area of Preisker Lane. On July 30, 2012, around 9:30 p.m. to 10:00 p.m., they heard sirens and saw patrol cars outside. They saw four officers with their guns drawn standing by the patrol cars. One of the officers was on the loud speaker giving commands to a driver in a car that was in front of the patrol cars. They heard the officers order the driver to show his hands multiple times, to get out of the car, and to put his weapon down. They saw the driver mocking the officers and heard him say, "Go ahead and shoot me because I'm not getting out of this fucking car." The officers were constantly telling him to show his hands. Dalziell saw the driver throw two small handguns from the car. Approximately 5 to 10 minutes later, the driver started the car and moved it between the officers and the guns he had thrown on the ground. He then got out of the car, picked something up off the ground, held the object to his head, and Dalziell heard gun fire.

Edward J. Galawski

Edward J. Galawski lives in the area of Preisker Lane. On July 30, 2012, he was emptying out his car when he heard sirens and then he saw the patrol cars. Galawski noticed the officers had deployed their

rifles and began shouting commands at the suspect over the speaker. The officers told him to, "Get out of the car. Let me see your hands. Keep your hands visible." The commands were very clear and were repeated over and over again. The driver told the officer, "Fuck you, fuck you." It was obvious that the suspect was not complying. Galawski estimated it lasted for about 20 minutes and as he was walking up his driveway, he heard several shots simultaneously.

Forensic Documentation of Shooting Scene

A number of patrol cars were parked at the scene. Naveja's van was also parked at the scene and his body was found on the ground. A loaded North American Arms .22 Magnum revolver and an unloaded Diamondback DB9 .9mm semi-automatic handgun believed to belong to Naveja were recovered from the scene. Naveja purchased the .22 caliber revolver on August 12, 2011, but never registered it. The .9mm was not registered and Naveja did not have any firearms registered to him. A total of 28 expended .223 casings were located at the scene. Multiple suspected skip indentions in the asphalt, a suspected bullet hole through a Santa Maria City metal sign, suspected bullet damage to a chain link fence, and potential suspected bullet entry into the dirt area of the built-up levy barrier were noted.

Review of Video

Coban

The Santa Barbara County Sheriff's Department vehicles driven by Deputy Calahan and Deputy Macauley both had operable in-car video at the time. The California Highway Patrol vehicle driven by Officer Bennett also had an operable in-car video. Deputy Calahan's video captured the pursuit as it travelled down Highway 135. At numerous red traffic lights, Naveja stopped his car. Officers repeatedly ordered him to put his car in park, to show them his hands, and to give up. Naveja continued forward each time the light turned green, ignoring the officers' orders. As Naveja drove down Highway 135 towards the north end of Santa Maria, Deputy Calahan's video unit overheated and automatically shut off.

Deputy Macauley's in-car video captured the pursuit beginning on Highway 135 and Santa Maria Way. Officers repeatedly ordered him to put his car in park, to show them his hands, and to give up. Naveja continued forward each time the traffic light turned green, ignoring the officers' orders. Naveja turned left on Preisker Lane and continued to the dead-end street. Officers used their cars to block Naveja in as Sergeant Allen repeatedly gave him commands over the PA system. Sergeant Allen repeatedly ordered Naveja to come out, to show his hands, and to please step out of the vehicle so they could walk up and talk to him. Naveja continually put his hands out of the window and then back inside the car where officers could not see his hands. The officers can be heard saying more than once that he was doing something with his hands but they could not see what he was doing. Naveja also yelled at the officers on numerous occasions. Dispatch advised officers that the reporting party saw him with one gun, but he told her he had a few guns. Sergeant Allen ordered Naveja to throw the guns out of the car. Shortly after that Naveja threw something out of his driver's window. Naveja then revved his engine, drove forward slowly, and placed his van so the driver's door was next to the handguns on the ground. He got out of the

van and leaned over to pick up something. Just as Naveja did that, Deputy Macauley yelled that Naveja retrieved his gun. Naveja walked towards the front of his van and yelled something as he raised his right hand. Naveja then walked out of the viewing angle of the camera. Deputies ordered Naveja to drop the gun and then numerous gunshots could be heard. The video shows deputies approach the van after the gunshots stopped and then medics were brought in.

No other vehicles had any video of the pursuit or standoff.

Autopsy

On August 1, 2012, Dr. Robert Anthony performed an autopsy on Jose Naveja. Dr. Anthony discovered five wound paths: three to the abdomen, one to the left scalp, and one to the lower sternum. Toxicology results showed that Naveja had a blood alcohol level of .087 with traces of Oxycodone, Cyclobenzaprine (a muscle relaxant), Fentanyl (a morphine substitute), Norfentanyl (a morphine substitute), Dextro (codeine analog), among other substances. Naveja had an extensive medical history that included chronic obstructive pulmonary disease, congestive heart failure, diabetes, hypertension, chronic kidney disease, chronic back pain, cancer, and a number of other ailments. Dr. Anthony determined that the cause of Naveja's death was due to multiple gunshot wounds.

Suspect History

Jose Naveja was a 71-year old Hispanic male. He had several convictions out of New York State for such things as third-degree assault and possession of weapons back in the 1960's and 1970's. Prior to Naveja's death, he lived in Florida with his wife and children. Health problems coupled with marital problems led him to drive across country, visiting his family along the way. He arrived in Santa Maria on July 1, 2012, where he stayed with his sister for a month. His family reported a recent history of mental health issues. His wife told his sister, Bonita, that she was afraid he would shoot her if he came back to Florida. His sister, Bonita, and his brother-in-law, Timothy, both heard him say that he wanted to die on more than one occasion in the month he stayed with them. In addition, back on July 13, 2012, Naveja's son sent a Facebook message to Bonita asking her to check on his dad because he said he was going to kill himself.

Part II - LEGAL ANALYSIS AND CONCLUSION

Applicable Law

Homicide is the killing of one human being by another, either lawfully or unlawfully. Homicide includes murder and manslaughter, which are unlawful, and the acts of excusable and justifiable homicide which are lawful. The shooting of another person in self-defense or in the defense of others is justifiable and not unlawful. Penal Code section 196(2) defines justifiable homicide by public officers. "Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance when necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty." Under California law anyone, including a police

officer, who is threatened with an attack that justifies the use of self-defense need not retreat. The person attacked may stand his ground and defend himself, if necessary, by deadly force, even if he might have more easily gained safety by flight. See *People v. Newcomer* (1897) 118 Cal. 263, 273; *People v. Dawson* (1948) 88 Cal.App.2d 85, 95.

A police officer may use deadly force where the circumstances create a reasonable fear of death or serious bodily injury in the mind of the officer. *Graham v. Connor* (1989) 490 U.S. 386; *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334. In *Graham v. Connor* (1989) 490 U.S. 386, the United States Supreme Court held that the reasonableness of the force used “requires careful attention to the facts and circumstances” of the particular incident “including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” (*Id.*, at 396). Further the Court states, “[t]he ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene rather than with the 20/20 vision of hindsight.” (*Id.*, at 397). Moreover, “[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make a split-second judgment—in circumstances that are tense, uncertain and rapidly evolving—about the amount of force that is necessary in a particular situation.” (*Id.*, at 397-398). Under *Graham*, we must avoid substitution of our personal notions of proper police procedure for the instantaneous decision of an officer at the scene. “We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347. *Graham*’s definition of reasonableness has been described as “comparatively generous to police in cases where potential danger, emergency conditions or other exigent circumstances are present” (*Roy v. Inhabitants of the City of Lewiston* (1st Cir. 1994) 42 F.3d 691) and also as giving police “...a fairly wide zone of protection in close cases....” *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334. In *Estate of Starks v. Enyart* (7th Cir. 1993) 5 F.3d 230, the Court held that if the officer is already in front of a vehicle before it accelerates, the shooting may be justified.

Legal Analysis

Jose Naveja was experiencing a number of physical problems, marital problems, and mental health issues. On July 29, 2012, Timothy Fout overheard Jose Naveja say, “I want to die...I just don’t want to kill myself.” On July 30, 2012, Naveja committed the crime of Penal Code section 211, home invasion robbery, with the special allegation pursuant to Penal Code section 12022.53(a) when he used a firearm to rob Bonita Fout, his own sister, for a \$70 check. Naveja was confronted by Sergeant Allen at the Union 76 gas station and at that point was ordered to stay out of the car and keep his hands in view. Naveja not only failed to comply with the orders, but proceeded to get back into his car and lead officers on a vehicle pursuit throughout the city of Santa Maria. Naveja was given orders to put his car in park, to show his hands, and to get out of his car at numerous red traffic lights. He continually ignored the lawful orders and proceeded down Highway 135 to Preisker Lane.

Naveja ran into a dead-end street where the officers were able to block him from leaving with their vehicles. They gave him countless orders to get out of the car and to show them his hands. He continually put his hands out of the car and then back inside the car, where officers could not see them.

He told officers to “fuck off,” he flipped them off, and he said, “You guys are going to shoot me.” Naveja was ordered to throw the weapons out of his car and at one point he did so. Shortly thereafter he revved his engine and pulled his van between the officers and the guns he had thrown on the ground. He got out of the van, picked up one of the guns off the ground, turned his body towards the officers, brought the gun up towards his chin, and then brought the handgun pointed towards the officers. Feeling a direct threat to their lives, two Deputies, one CHP Officer, and one Santa Maria Police Department Officer fired their firearms at Naveja, striking and killing him. All of the officers’ actions were reasonable under the standard set forth in *Graham* based on the totality of circumstances in this case.

CONCLUSION

Based on the investigation by the Santa Barbara County Sheriff’s Department, applying the law as set forth in PC 196(2), and the cases cited *supra* in this report, all the officers/deputies acted reasonably in their use of deadly force; therefore, the shooting of Jose Naveja is a justifiable homicide.