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August 6, 2007

Garr Nielson  
Eureka Police Chief  
604 C Street  
Eureka, California 95501

RE: December 8, 2006, shooting death of Jonni Kiyoshi Honda, aged 51, at the Super 8 Motel, located at 1304 4<sup>th</sup> Street, in Eureka, California.

Dear Chief Nielson:

This review into the December 8, 2006, shooting death of Jonni Kiyoshi Honda, aged 51, (hereinafter referred to as "Honda"), at the Super 8 motel, located at 1304 4<sup>th</sup> Street, in Eureka, California was conducted pursuant to the joint protocol between this office and all Humboldt County law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force. This review cannot and does not examine such issues as compliance with the policies and procedures of any law enforcement agency, ways to improve training, or any issues related to civil liability. Accordingly, this review does not and should not be interpreted as expressing an opinion on these matters.

#### BRIEF SUMMARY OF APPLICABLE LAW

Under the Fourth Amendment of the United States Constitution, an individual has the right to be free from the use of excessive force by a law enforcement officer even when that officer is making a lawful arrest. *Graham v. Connor* (1989) 490 U.S. 386, 394-96. ("All claims that law enforcement officers have used excessive force – deadly or not – in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than under a 'substantive due process' approach.") "Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Graham*, 490 U.S. at 396. This balancing test entails consideration of the totality of the

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facts and circumstances in the particular case, 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.*<sup>1</sup> “All determinations of unreasonable force “must embody allowances for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving... about the amount of force that is necessary in a particular situation.” *Scott v. Henrich* (9<sup>th</sup> Cir. 1994) 39 F.3d 912.

“Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.” *Penal Code* section 835a. “A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed the aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or overcome resistance.” *Id.* “When the arrest is being made by an officer under the authority of a warrant, after information of the intention to make an arrest, if the person to be arrested either flees or forcibly resists, the officer may use all necessary means to effect the arrest. *Penal Code* section 843.”<sup>2</sup> A peace officer may use deadly force in the course of their duties: (i) in obedience to any judgment of the competent court; (ii) when necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or (iii) when necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting arrest. *Penal Code* section 196. In addition to specific authority provided to peace officers, an officer at all times has the protection of the law of self-defense which provides that homicide is justifiable when it is committed while “resisting any attempt [by any person] to murder any person, or to commit a felony, or to do some great bodily injury upon any person.” *Penal Code* section 197.<sup>3</sup>

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<sup>1</sup> There is no question in this case that the firing of guns at Omholt-Cooke constituted deadly force, whether defined as force reasonably likely to cause death (as it was at the time of the events giving rise to this case) or as force creating a substantial risk of causing death or serious bodily injury. See, *Smith v. City of Hemet* (9<sup>th</sup> Cir. 2005) 394 F.3d 689, 704-07 (en banc), overruling *Vera Cruz v. City of Escondido* (9<sup>th</sup> Cir. 1998) 139 F.3d 659, 663.

<sup>2</sup> See generally, Arrest, *Penal Code* sections 833 – 851.90.

<sup>3</sup> *Penal Code* section 664 & 187 (summarized in pertinent part)

If attempted murder is committed upon a peace officer and the person who commits the offense knows or reasonably should know that the victim is such a peace officer engaged in the performance of his duties, the person guilty of the attempt shall be punished by imprisonment in the state prison for life without the possibility of parole.

If the crime attempted is willful, deliberate and premeditated murder the person guilty of that attempt shall be punished by imprisonment in the state prison for life with the possibility of parole.

In other cases, attempted murder is punishable in the state for five, seven or nine years.

*Penal Code* section 245(d)(1) (summarized in pertinent part)

Any person who commits an assault upon the person of a peace officer with a firearm, and who knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, when the peace officer is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for four, six, or eight years.

*Penal Code* section 245(a)(2) (summarized in pertinent part)

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Any person who commits an assault upon the person of another with a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in the county jail for not less than six months and not exceeding one year, or by both a fine not exceeding \$10,000 and imprisonment.

*Penal Code* section 834 (summarized in pertinent part)

An arrest is taking a person into custody, in a case in the manner authorized by law. An arrest may be made by a peace officer.

*Penal Code* section 834a

If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such a person to refrain from using force or any weapon to resist such arrest.

*Penal Code* section 835

An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subject to such restraint as is reasonable for his arrest and detention.

*Penal Code* section 835a

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed the aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome such resistance.

*Penal Code* section 836 (summarized in pertinent part)

A peace officer may arrest a person in obedience to a warrant or without a warrant whenever the officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence or that he has omitted a felony.

CALJIC 5.30 Self-defense against assault (in pertinent part)

It is lawful for a person who is being assaulted to defend himself from attack if, as a reasonable person, he has grounds for believing and does believe that bodily injury is about to be inflicted upon him. In doing so, that person may use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent.

CALJIC 5.32 Use of force in defense of another

It is lawful for a person who, as a reasonable person, has grounds for believing and does believe that bodily injury is about to be inflicted upon another individual to protect that individual from attack.

In doing so, he may use all force and means which that person believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent.

CALJIC 5.50 Self-defense, assailed person need not retreat (in pertinent part)

A person threatened with an attack that justifies the exercise of the right of self-defense need not retreat. In the exercise of a his right of self-defense a person may stand his ground and defend himself by the use of all force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge. This law applies even though the assailed person might more easily have gained safety by flight or by withdrawing from the scene.

CALJIC 5.51 Self-defense, actual danger not necessary (in pertinent part)

Actual danger is not necessary to justify self-defense. If one is confronted by the appearance of danger which arouses in his mind, as a reasonable person, an actual belief and fear that he is about to suffer bodily injury, and if a reasonable person in a like situation, seeing and knowing the same facts, would be justified in believing himself in like danger, and if that individual so confronted acts in self-defense upon these appearances and from that fear and actual beliefs, the person's right of self-defense is the same whether the danger is real or merely apparent.

## INVOLVED OFFICERS

Eureka Police Officer Marsh  
Eureka Police Officer Mataxas  
Eureka Police Sergeant Johnson

## RELEVANT FACTS

### *Background Information*

During November 2006, the Eureka Police Department (hereinafter referred to as “EPD”) Criminal Investigation Division received information from an anonymous Source of Information (hereinafter referred to as “SOI”), who stated Honda was wanted by law enforcement in Trinity County on child molestation charges and was making routine trips to the Fairhaven area to visit a girlfriend. The SOI stated Honda’s girlfriend was approximately 26 years old and was employed as a janitor or housekeeper. The SOI stated that Honda was driving a maroon 2000 Ford Expedition bearing California license plate 4VML377 whose registered owner (hereinafter referred to as “R/O”) was Jonni K. Honda or Cindy Beckstead, P.O. Box 535 Big Bar, California 96010. The SOI also stated that Honda always carried a “sidearm” and made statements that he would not be taken alive.

Based on this information, EPD Detective Neil Hubbard (hereinafter referred to as “Detective Hubbard”)<sup>4</sup> contacted Trinity County Sheriff’s Office (hereinafter referred to as “TCSO”) and spoke with Detective Brian Ward. Detective Hubbard relayed the information EPD had received from the SOI. Detective Ward confirmed Honda was wanted in Trinity County pursuant to an active arrest warrant for multiple violations of California Penal Code section s 288(a), lewd or lascivious acts with a child under 14 years of age. Detective Ward also stated Honda was aware of the outstanding warrant for his arrest, was allegedly carrying a firearm, and had made statements to a family member that he would not be taken alive by law enforcement. TCSO Detectives believed Honda was driving a white Dodge 4X4 pickup truck bearing California license plate 7K79971 (R/O Honda or Cindy Beckstead, Highway 299 West, Big Bar, California 96010.)

After receiving the above information from the SOI and the TCSO, Detective Hubbard prepared a law enforcement bulletin documenting the allegations against Honda and advising law enforcement to use “extreme caution” when contacting Honda. The bulletin prepared by Detective Hubbard was disseminated to local law enforcement in the Eureka and surrounding areas.

During early December 2006, EPD Detectives were made aware that Honda had been involved in a vehicle pursuit with the California Highway Patrol (hereinafter referred to as “CHP”) in the Hawkins Bar area of Trinity County, during which Honda evaded law enforcement after abandoning his vehicle and fleeing on foot. After Honda abandoned his vehicle, law enforcement

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<sup>4</sup> Detective Hubbard was acquainted with Honda since 1972 through Honda’s volunteer work with the Trinity County Search and Rescue Team.

located a handgun and indicia in the name of Charla Rogers inside the vehicle Honda had been driving.<sup>5</sup> After evading law enforcement, Honda reportedly spent three to five days in the snow in the Hawkins Bar area and sustained frostbite to his feet.

On December 7, 2006, at approximately 1430 hours, TCSO Detective Ward contacted EPD Detectives and advised that he had received information from a Confidential Information (hereinafter referred to as "CI"), alleging that Honda's wife, Cindy Beckstead, had picked him up somewhere in Trinity County following his pursuit with CHP and drove him to Eureka where they obtained a motel room. After receiving this information from the CI, Detective Ward contacted several motels in the Eureka area and learned that Cindy Beckstead had obtained a motel room at the Super 8 Motel in Eureka. According to the motel records, Beckstead had obtained the motel room on Sunday, December 3, 2006, for two people and listed her vehicle information on the registration slip. Detective Ward requested EPD Detectives to go to the Super 8 Motel in an effort to locate Honda.

On December 7, at approximately 1500 hours, EPD Detectives Hubbard, Curtis Honeycutt, and Ronald Harpham, and Deputy U.S. Marshall Brad Gill, United States Marshall's Service, went to the Super 8 Motel located at 8304 Fourth Street, Eureka, California. Detectives confirmed with motel employees that Cindy Beckstead had registered for a room (Room 110) for two people on December 3, 2006.

Shortly after law enforcement arrived at the Super 8 Motel, Charla Rogers drove by the motel, recognized members of law enforcement, and notified Honda of law enforcement's presence via her cellular phone. Rogers then drove into the Super 8 Motel parking lot located on the north side of the motel and parked her vehicle, a maroon 1992 Pontiac bearing California license plate 3CCS687 (R/O Leonard, D.A.), in front of the window to Honda's room.

Detective Hubbard detained Rogers in an effort to obtain information as to Honda's whereabouts and was informed that she had been with Honda earlier in the morning and believed he was most likely still inside his motel room. Detective Hubbard attempted to contact Honda via motel and cellular phone but received no answer. Detective Hubbard contacted Honda's wife, Cindy Beckstead, via telephone. Beckstead told Detective Hubbard she had just spoken with Honda via telephone and confirmed he was inside his motel room. She related that he was aware of law enforcement's presence at the motel.

#### *Events after the location of Honda*

Based on their knowledge that Honda was inside the motel room and the information they had previously received from Detective Ward and the SOI alleging Honda was armed and unlikely to surrender, Detectives treated Honda as a barricaded subject. EPD Detectives contacted EPD Lieutenant Antonio Zanotti, the Operational Commander (hereinafter referred to as "OC"), who

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<sup>5</sup> Rogers was later identified as Honda's girlfriend.

notified the EPD Special Weapons and Tactics (hereinafter referred to as “SWAT”) Team, as well as the EPD Crisis Negotiations Team (hereinafter referred to as “CNT”). EPD SWAT<sup>6</sup> and CNT were notified to respond to EPD at approximately 1547 hours. While waiting for SWAT and CNT to respond, EPD Detectives and Officers on scene at the Super 8 Motel established a perimeter around Honda’s motel room, began evacuating motel guests, and made attempts to contact Honda via telephone.

On arrival EPD SWAT established a perimeter around Honda’s motel room, established a Command Post (hereinafter referred to as “CP”) and the CNT initiated attempts to contact Honda via telephone. Numerous attempts to contact Honda were made, but were unsuccessful, as Honda refused to answer the telephone. In addition to the CNT’s attempts to contact Honda via telephone, law enforcement personnel also made attempts to initiate contact with Honda by addressing him over a Public Address (hereinafter referred to as “PA”) System located outside of Honda’s motel room. All attempts to initiate contact with Honda via telephone and the PA system were ignored by Honda.

At approximately 2030 hours, EPD personnel contacted the California Department of Corrections and Rehabilitation (hereinafter referred to as “CDC&R”), Pelican Bay State Prison Negotiations Team, and requested the use of the Negotiations equipment, including a “throw telephone” equipped with a camera and a microphone system. The Pelican Bay Negotiations Team (hereinafter referred to as “PBNT”) agreed to provide assistance to the CNT and responded to the Super 8 Motel, arriving on December 8, 2006, at approximately 0030 hours.

After receiving a briefing about the functionality of the equipment provided by CDC&R, a plan to deploy the “throw telephone” and introduce a pole camera into Honda’s room through the motel window was designed.<sup>7</sup> At approximately 0143 hours, the plan to deploy the CDC&R “throw telephone” and introduce a pole camera into Honda’s motel room was implemented. EPD SWAT members approached the window to room 110 and threw a piece of cinderblock through the glass window in an effort to break the glass and rip the drapes away from the window. The cinderblock broke a portion of the window but did not remove the drapes from the window. After the cinderblock was thrown through the window, the glass in the center of the window shattered outward. This caused the SWAT team members to believe Honda was throwing things from inside the motel room so they retreated without deploying the “throw telephone” or introducing the pole camera.

At approximately 0205 hours, negotiators from the CNT made contact with Honda via telephone. The decision was made to utilize Detective Hubbard to speak with Honda because of their past relationship. Honda and Detective Hubbard engaged in a lengthy conversation for approximately

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<sup>6</sup> The following EPD SWAT members responded to EPD, where they attended a briefing conducted by Detective Hubbard regarding the barricaded subject at the Super 8 Motel: Detective Harpham, Lieutenant Len Johnson, SWAT Team Leader Sergeant Bill Nova, Sergeant Patrick O’Neill, and Officers Joseph Marsh, Timothy Jones, Rodrigo-Reyna Sanchez, Louis Altic, and Todd Wilcox. Additional Officers arrived to provide assistance throughout the standoff.

<sup>7</sup> Both a “throw camera” which is a telephone receiver often equipped with a secreted microphone, and a pole camera, which a small camera affixed or mounted to the end of a pole, are commonly utilized in tactical police situations. The “throw telephone” allows law enforcement to not only speak to the subject, but also to conduct audio surveillance of the subject(s) surreptitiously, while a pole camera allows law enforcement to conduct visual surveillance of an area, while maintaining a safe distance from the threat.

two or three hours. During this conversation Honda inferred he had a gun and made statements to the effect that, while he did not want to die, he was not going to jail. Detective Hubbard attempted to convince Honda to surrender peacefully.<sup>8</sup> While negotiators continued to have periodic contact with Honda throughout the night, the SWAT team and assisting officers remained on the perimeter positions covering Honda's motel room.

On December 8, 2006, at approximately 0400 hours, EPD contacted the Humboldt County Sheriff's Offices (hereinafter referred to as the "HCSO") and requested assistance from the HCSO Special Enforcement Teams (hereinafter referred to as "SET"). At approximately 0530 hours, the following HCSO SET personnel arrived on scene and received a briefing from EPD personnel: Lieutenant George Cavinta, Sergeant Bryan Quennell, and Deputies Justin Braud, Patrick Bishop, Todd Fulton, David Lundie, Brian Taylor, Kerry Ireland, Gary Cooper, and Jesse Taylor.

At approximately 0440 hours, EPD personnel contacted the Humboldt County Department of Health and Human Services (hereinafter referred to as "DHHS"), Mental Health Branch (hereinafter referred to as "MHB") and requested assistance. At approximately 0530 hours, DHHS, MHB Supervising Clinician Terri Butts arrived at the Super 8 Motel. Upon arriving at the motel, Butts met with Command personnel and was asked to assist members of the EPD CNT by providing new ideas and strategies to use when speaking with Honda. Butts eventually spoke directly to Honda and determined he was "very committed" to suicide.

At approximately 0700 hours, the HCSO SET relieved the EPD SWAT team and took positions covering the door and window to Honda's motel room.

Throughout the day on December 8, 2006, negotiators, with the assistance of mental health professionals, continued their attempts to convince Honda to surrender peacefully through the use of various negotiation methods and strategies, none of which were successful.

After continued attempts to convince Honda to surrender peacefully proved to be unsuccessful, and based on the belief that Honda was suicidal, Command personnel designed a tactical plan to deploy CS gas into Honda's motel room.

At approximately 1900 hours, Chief Harpham, Lieutenant Zanolli, Lieutenant Johnson, Sergeant Nova, Sergeant Soderberg, Lieutenant Cavinta, Sergeant Quennell, Detective Hubbard, Lieutenant Dave Morey, and Supervising Clinician Butts participated in a briefing to discuss the status of the standoff, negotiation efforts, and Honda's current mental status. Butts was asked to provide her professional opinion as to Honda's current state of mind. After having monitored the negotiation efforts for approximately ten hours prior to the briefing and from engaging in a conversation with Honda directly, Butts rendered the opinion that Honda was "very committed" to suicide and believed he was not willing to negotiate or "entertain any other option."

In addition to the discussion regarding Honda's state of mind, various tactical options were also discussed and considered, including the deployment of sound/light distraction devices, the use of Tasers, and the introduction of CS gas into Honda's motel room. Law enforcement personnel asked Butts what effect the introduction of CS gas into Honda's motel room may have on him.

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<sup>8</sup> Detective Hubbard's conversation with Honda was not recorded.

She believed the introduction of the CS gas would “get some movement going” but did not believe it would change Honda’s level of “suicidality.”

After discussing this information, Command personnel agreed to design and implement a plan to deploy CS gas into Honda’s motel room in an effort to persuade him to exit his room and surrender. Following the decision to deploy the gas, Sergeant Nova designed a tactical plan which detailed the deployment strategy, personnel and weapons assignments, and Rules of Engagement (hereinafter referred to as “ROE”) which was reviewed and approved by Command Personnel from EPD and HCSO.

At approximately 2057 hours, the plan to introduce CS gas into Honda’s room was implemented. EPD SWAT team members deployed the first volley of CS gas through the bathroom wall of room 109 into the bathroom area of Honda’s motel room.

At approximately 2130 hours, EPD SWAT team members took a position north/northwest of Honda’s motel room and deployed second volley of CS gas into Honda’s room through the window. The gas canisters deployed from this position did not appear to penetrate the drapes of the window and were believed to be ineffective. Based on the apparent ineffectiveness of the CS gas deployed from outside Honda’s window, a decision was made to deploy any additional volleys of CS gas through the wall of room 109 into Honda’s room.

At approximately 2150 hours, a third volley of CS gas was deployed through the wall of Room 109 into the bedroom area of Honda’s motel room. At approximately 2258 hours, a fourth volley of gas was deployed through the wall of Room 109 into the bathroom area of Honda’s room. After deploying CS gas through the common wall between room 109 and 110, Officers inserted a pole camera through the existing hole(s) made by the gas canisters in an attempt to view the interior of the room and determine Honda’s location. Although officers were successful in introducing the pole camera into the room, they had a limited view of the room due to the lack of maneuverability of the camera and the chemical contamination inside room 110.

In addition to the pole camera introduced through the common wall, SWAT officers also attempted to deploy a pole camera through the window of room 110. Although the pole camera introduced through the window was ineffective, Officers were able to determine that Honda was most likely in the bathroom of the motel room.

Throughout the deployment of CS gas, negotiators continued their efforts to convince Honda to exit his motel room and surrender peacefully. In addition to the attempts made by negotiators, Detective Hubbard repeatedly addressed Honda via the PA system, giving him verbal commands to exit the motel room and show his hands.

At approximately 2330 hours, Honda opened the door to his motel room and began to exit the room on his stomach, feet first. As he exited his motel room, he was given verbal commands to show his hands to officers. Honda showed officers his left hand, but refused to show his right hand, which remained out of view. After Honda failed to comply with officers’ verbal commands, Sergeant Nova gave the command to utilize Tasers on Honda. Detective Harpham and Officer Altic deployed their tasers at Honda, striking him in the back and leg areas. Honda then rolled over onto his left side, extended his right arm, and pointed a handgun at the officers.

EPD Officers Marsh, and Robert Metaxas and EPD Sergeant Mike Johnson fired their weapons at Honda striking him multiple times.

Honda attempted to roll onto his back and dropped his weapon, which came to rest in his left armpit area. Officers moved toward Honda, removed his weapon from his reach, and placed him in handcuffs. Officers then pulled Honda from in front of room 110 toward room 109, where paramedics rendered aid to him. Honda was transported to St. Joseph Hospital by the Eureka Ambulance Company, where he was pronounced dead.

#### *Summarized statement of Officer Marsh*

On the fourth deployment of gas, Officer Marsh went with Officers Jones, Harpham and Sergeant O'Neill into room 109 with two ballistic shields and a pole camera. The plan was to enter the room, fire CS gas and cut a hole in the drywall to stick a camera into room 110. The ballistic shields were for providing cover while they deployed gas and the camera pole. While they were doing that, a second camera crew came in and placed another camera through the broken window. When the second camera was in place, Officer Marsh was pulled out of the room and into the bathroom to shoot another round of CS gas into Honda's room and stick the pole camera into the bathroom area of 110 to see if Honda was there. As they were doing that, he heard "he's coming out" so Officer Marsh pulled out of the bathroom and into the walkway area.

As he deployed there with Officers Jones and Harpham,<sup>9</sup> Officer Marsh saw Honda exiting the room feet first, belly down. As Honda was coming out Detective Hubbard was giving verbal commands to "come out, don't bring anything in his hands, let's resolve this." It appeared to Officer Marsh that Honda was trying to draw them into the room to provide him medical help but he wasn't making an effort to get outside the door to show them both his hands. Honda continued to scoot out a little bit but he wasn't showing his hands so Officer Marsh began to get a little cautious. Detective Hubbard told Honda they needed to see his hands and to bring his hands back so they could see them. At that time, Honda brought back one hand and showed an open palm and waved it as if to show that there was nothing in it.

Because he wasn't showing his other hand the officers began to talk about tasing Honda. Officers Harpham and Altic had a beam on his mid lower back area and Honda began asking questions like, "What? "Taser me?" why would you Taser me?" And he was saying, "No, I got nothing in my hands, I wouldn't do that" and was acting like he couldn't get out and was stuck. Officer Marsh interpreted his actions as trying to lure them closer to him.

At that point, Sergeant Nova gave the command to Taser Honda. As Honda was Tasered Officer Marsh moved up to cuff him but was told to hold. Officer Marsh stopped and went down placing his knee on Officer Harpham's lines which he could feel charging through his left knee. Officer Marsh then observed Honda curl his back, almost like a push up without his toes to the ground. Then Honda pushed and spun toward them with his right hand. As he was doing this, Officer Marsh saw a gun in Honda's hand as he brought it back toward them.<sup>10</sup> Officer Marsh thought

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<sup>9</sup> Officer Harpham was behind him and a little to the left and Officer Johnson was almost directly to his left.

<sup>10</sup> Officer Marsh felt that, at the angle of Honda's arm, he would not have hit Officer Harpham without further adjustment but Honda was definitely pointing in the direction of Officer Marsh, Officer Altic and Sergeant Jones.

Honda was going to shoot them or shot him or shoot any one of them and he fired his weapon.<sup>11</sup> As he fired he could hear gunfire from others but he had tunnel vision on Honda so he did not know who was firing.

After Officer Marsh fired at Honda, he saw Honda roll over onto his back. Honda no longer had the gun in his hand and Officer Marsh could not see where it was. He could see that Honda was hit but he didn't know how badly. Then he heard Officer Metaxas yell "I can see the gun, its' in his left armpit area."

At that, Officer Marsh moved up with the ballistic shield, reached down and grabbed the weapon and tossed it to his left and a little at an angle. Then he grabbed Honda's left arm and pulled him out from the doorway into the hallway, handcuffed him and conducted a search for additional weapons.

Then Officer Marsh heard they needed to get Honda into a clearing so he dragged him to a clearing. While doing that, and on getting to the clearing, Officer Marsh told Honda to hang on. At that time, Honda was doing deep breaths but was not responding to Officer Marsh's entreaties. Shortly after that the ambulance crew arrived.

#### *Summarized statement of Officer Metaxas*

He was posted at the north window on room 108 with Officer Marsh, Sergeant Johnson and Rigo Sanchez. At some point the decision was made to introduce CS gas. As they shot CS gas in through the wall, Officer Metaxas mentioned to Rigo Sanchez that they could stick a pole camera through one of the holes and take a look inside to see where Honda was. They eventually ended up doing that.

Later, they decided to put a pole camera in the window. While that was going on, Officer Metaxas was standing next to Sergeant Johnson, who was sitting in a chair in front of the shield, when the door to room 110 opened and a set of feet came out. Simultaneously, Sergeant Johnson and Officer Metaxas yelled, "he's coming out!" There were two pillars in front of room 108 that Officer Metaxas thought would provide cover so he began to move forward. Officer Metaxas was the first officer that moved toward Honda and the door. Officer Metaxas passed both pillars to allow Sergeant Johnson and whoever was with him the use them as cover. He felt he could get cover from the corner of the wall due to the angle with the wall and the door Honda was coming out of.

Honda's feet came out of the door. Detective Neil Hubbard and Officer Metaxas yelled several times for Honda to show his hands. Then Officer Metaxas told Detective Hubbard to give commands since Officer Metaxas was on a rifle. When Honda's waist and stomach area got to the threshold of the door, he finally showed his left hand. Honda was on his stomach and was showing that his left hand was empty. Detective Hubbard was yelling, "let's see the other hand, let's see the other hand." Which Honda didn't show.

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<sup>11</sup> At that time, Officer Marsh thought he fired twice. Later he checked his magazine and determined he shot three times.

Honda kept coming out and Officer Metaxas, while not able to remember at what point he saw the lasers on the Tasers, saw Tasers in Honda's back so he knew somebody had tased him. Honda kept coming out and Detective Hubbard kept ordering him to show his hands. At some point, Officer Metaxas told Detective Hubbard, Honda was faking. Officer Metaxas then heard Honda say "don't tase me, don't tase me" or something to that effect.

By that time Honda had his body and shoulder past the doorframe so Officer Metaxas could see his shoulder and Honda was lying on his right forearm. Then, as Honda's head cleared the doorframe he looked up, turned his head and looked at the officers. There was no doubt in Officer Metaxas' mind that Honda was looking at them to see where they were. Officer Metaxas did not see pain in Honda's eye. Rather, he saw that Honda was looking at where the officers were stationed.

Then Honda rolled up on his left side, looked, picked up his right hand, pointed what looked like a Model 19, two and a half inch, and pointed it directly at Officer Metaxas. Officer Metaxas saw the muzzle coming up and fired two shots at Honda. Officer Metaxas could see the bullets hit Honda and then saw his right hand slump down and roll over onto his back. Officer Metaxas saw the pistol stay there for an instant and then saw it slide down to the crook of Honda's arm and lay there. Somebody yelled, "I can't see the pistol," or "where's it at" and Officer Metaxas told them he could see it and to relax.

Then Officer Metaxas saw a shield come up so he moved with the shield to provide cover to where Officer Marsh could handcuff Honda. While Officer Marsh was doing that, Officer Metaxas opened the cylinder on Honda's revolver and stuck his fingers through it. Then he said "call medical aid and get them here ASAP." After that Officer Metaxas showed Detective Hubbard the handgun and laid it down.

Officer Metaxas heard Officer Marsh shoot because he was right next to him but had no idea that Sergeant Johnson shot also. Officer Metaxas felt that when Honda turned and pointed the pistol at

Officer Marsh and he, Honda left Officer Metaxas and Officer Marsh no option other than shooting.

#### *Summarized Statement of Sergeant Johnson*

Sergeant Johnson was assigned to watch the door to room 110 or hold the perimeter. Accordingly, he went into the hallway in front of room 108 and set down behind a ballistic shield down the hallway to room 110.

After the fourth deployment of CS gas, the door to room 110 cracked open and fluttered. Then it opened approximately three quarters of the way. Sergeant Johnson immediately stood up<sup>12</sup> and moved forward to get a better view and saw Honda's feet. As Sergeant Johnson did this he saw

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<sup>12</sup> Shortly before he had been informed that the negotiation team had heard what they believed was the clicking of a revolver and that Honda was agitated, not willing to surrender and was expressing some suicidal type of threats or behavior.

Officer Metaxas start to advance a few feet in front of him to his left while Officer Harpham and Officer Marsh, with the ballistic shield, were to his right. As they began moving as a line up the hall, Sergeant Johnson could see Honda face down on his stomach with his legs extended out the door. Honda was coming out of the room feet first very slowly.

As they move forward so they could take Honda into custody Sergeant Johnson could hear commands being given such as “police,” “you need to show your hands,” “you need to move nice and slow,” “we’re not going to hurt you.” “just comply with our requests,” and “nobody’s going to hurt you.” Then he heard Detective Hubbard say something like “I’m here, Jon, you need to surrender” and Honda replied “Is that you, Neil?” At that time Honda was about three quarters of the way out of the room, still on his stomach with his right hand tucked underneath his chest and stomach area.

Sergeant Johnson felt it was very obvious that Honda was intentionally concealing something and he assumed it was probably a weapon. He observed Honda move his stomach up as if to let them see under him but when Honda did that he moved his right hand higher up to his chest to keep it concealed.

Sergeant Johnson told Honda that he needed to see his right hand and to move his right hand out. He also told him, “Jonni, whatever you do, don’t bring out the weapon. Don’t bring out the weapon, Jonni.” He told Honda that two or three times.

Despite the officers continued commands for Honda to come all the way into the hall he continued to make very slow and a kind of feigned attempt to keep moving himself into the hallway so it was decided to use Tasers on him. At that point Honda made comments like, “What, tase me?” “You’re going to tase me?” In response Sergeant Johnson told him, “No, we’re not. Nobody’s going to hurt you. We’re not going to do anything to you.”

After that Sergeant Johnson saw at least two Tasers hit Honda and saw Honda’s body react to them. Then, he saw Honda roll on his left shoulder, bringing his right shoulder up and Sergeant Johnson’s first thought was to take cover and he pressed himself as best he could behind the pillar near him while keeping eye contact on Honda. As that was happening he saw the gun sweep forward with Honda appearing to look down the hall toward Sergeant Johnson generally but more specifically toward the officers on the shield. At that point Sergeant Johnson felt an immediate threat, not only his own life but, for the officers who had no cover and were completely exposed and he discharged his weapon probably seven times at Honda. It was not completely aimed shooting because of his position behind the pillar and how quick it transpired – it was more of a point shooting and he fired until he felt Honda was no longer a threat.

When the firing ended Honda was on his back. Somebody said, “He had a gun in his hand, where’s the gun.” Very shortly after that Sergeant Johnson could see the butt end of the gun that was wedged generally in his left elbow and the doorframe.

When they decided that Honda was incapacitated enough for them to move forward and secure the weapon Officer Marsh moved forward with the ballistic shield, grabbed the gun, secured it and backed off. They continued to cover Honda, assessing the situation until, someone moved up and handcuffed him. Once Honda was handcuffed and secured they called for medical aid to come.

While waiting for medical aid, officers moved Honda down the hall and generally to the area in front of room 108. While that was being done, Sergeant Johnson moved out into the alley and gave specific information on where to have medical aid respond.

### *Crime Scene/Forensic Evidence*<sup>13</sup>

The Super 8 Motel is situated between 4<sup>th</sup> Street (southbound U.S. 101) and 5<sup>th</sup> Street (northbound 101) and N and O Streets and consists of three buildings that are connected by a breezeway/hallway, and one building that is separate and unattached from the other three buildings. The motel parallels U.S. 101, which generally runs north/south, however, in the vicinity of the Super 8 Motel, U.S. 101 turns and the true compass direction is east/west.

The motel is a two-story structure made of yellow stucco with an orange tile roof. At the corner of 4<sup>th</sup> and N Streets, there is a large parking area, which is framed by shrubs and plants. From the parking area, one can view the rear side of Building 1, which houses the following downstairs motel rooms: 109, 110, 111, 113, 115, 117, and 119.<sup>14</sup> The access doors to the motel rooms located in Building 1 open into the breezeway shared with building 2. There are no access doors to the motel rooms from the parking area, although each room has a window and/or sliding glass door that faces north toward the parking lot.

To the south of Building 1 sits Building 2. The access doors to the motel rooms located in Building 2 open into the breezeway shared with Building 1. Building 3's access doors face west. Building 4, a separate and unattached building, is located to the South of Buildings 1, 2 and 3.

Room 110 is the next to last room toward the end of a hallway/breezeway. An EPD patrol vehicle occupied two of the three parking spaces in the area across from rooms 109 and 110. Two upright posts, supporting the second floor walkway above rooms 109 and 110, separate this parking area from the breezeway. Cartridge cases and a Taser with wire were present in the breezeway. An apparent bullet strike was noted on a corner of the hallway wall toward the lobby. On the opposite side of the building, the main picture window to room 110 was broken. A large dump truck was parked parallel to the building in front of the window. A maroon Pontiac Bonneville was parked normally perpendicular to the rear of the dump truck.<sup>15</sup>

In the main portion of the motel, the lower floor of the wing paralleling "N" Street (north wing) contained room numbers 101 through 108 and the laundry room. The doors of room numbers 101 and 102 were closed. The doors of the remaining room numbers 103 through 108 and the laundry room were open. Some of these rooms had been used for staging, observation and coverage of room number 110. The curtains in room number 105 and 108 were rolled up. Police tactical gear, including a remote camera/viewing system, a ballistic shield and a battering ram, were present in front of room 108 and a less lethal weapon (FN303) was on the bed. Four expended 37 mm gas cartridges were in the breezeway in front of room numbers 104 and 105. Their locations were measured and they were collected.

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<sup>13</sup> Performed by California Department of Justice, Bureau of Forensic Services.

<sup>14</sup> The second floor rooms are: 209, 210, 211, 213, 215, 217, and 219.

<sup>15</sup> The Pontiac belonged to Charla Rogers

The other wing in the main portion of the motel parallels 4<sup>th</sup> and 5<sup>th</sup> streets. At the south end of the wing is the office area, facing “N” Street. It is separated from the rest of the wing by a short hallway. The lower floor of the wing contains twelve rooms. Ten of these rooms face each other across the hall. The even room numbers, 112 through 120 are on the east side of the hall; the odd room numbers, 111 through 119, are on the west side. Room numbers 110 and 109 are at the north end of this block of rooms, on the west side. These two rooms open to the breezeway area and parking places for three vehicles as previously noted. The windows from room numbers 109, 110 and 111 through 119 look west across the main parking area of the motel to 4<sup>th</sup> Street. The doors to room numbers 109 and 110 were open. The doors of the remaining rooms numbers 111 through 120 were closed and not entered. A large/long smear of blood was present in the breezeway leading to the small parking area.

Room number 109 was used to deliver tear gas into room 110 and for remote observation. A remote camera/viewing system was present in the room. There were six holes in the common south walls of the bedroom and bathroom. The hole in the bathroom was large and appeared to be a combination of three smaller holes. One of the holes in the bedroom was also large, appearing to be a combination of three holes that had been further enlarged. These areas were probably where the remote viewing camera had been inserted. Documentation of the openings was done. A total of ten expended 37 mm CS cartridges were recovered from the bedroom, entryway, and just outside the exterior door of his room. Also present in this room were a 37 mm launcher loaded with an unused gas cartridge and a tactical vest with unused gas cartridges. The launcher and vest were collected. Not collected were a pick-like device used to deliver tear gas and two apparently unused tear gas canisters.

Present in the breezeway area, between room numbers 109 and 110 and near the south support post, was a Taser by a black balaclava. The Taser had its cartridge attached. One Taser wire with a probe strung to room number 111 and other wire, also with a probe, strung in the opposite direction toward room number 109. A spent Taser cartridge was also present in the breezeway, near the north support post. This cartridge’s wires, without probes trailed toward room number 109. The locations of the Taser and spent cartridge were measured and the items collected.

A total of eleven expended cartridge cases, eight rifle and three pistol, were recovered. Their locations were measured. However, due to movement of the body and weather, their locations just after the shooting were unknown.

The cartridge cases and their locations were as follows:

- Two .223 Rem cartridge cases from the entryway of room number 109
- Five .223 Rem cartridge cases from the breezeway outside of room number 109;
- One .223 Rem cartridge cases from the breezeway near room number 110; and
- Three .40 Smith & Wesson cartridge cases from the breezeway between room numbers 109 and 110.

There evidence of a bullet ricochet in the hall. The hall wall outside of room number 120 had fresh plaster damage, and there was a bullet ricochet mark at the bottom of the “Coke” vending machine at the end of the hall near the office. An apparent .40 Smith & Wesson was recovered

from the south lane of "N" Street. The locations of the recovered items were measured. Also recovered from the hall, by room number 115, was a piece of pink insulation.

Outside of room number 111, in front of the threshold, was a Smith & Wesson .38 special model 10 revolver. The cylinder was open and a taser wire was present between the barrel and crane, indicating that the cylinder had been opened after the Taser was fired. The cylinder rotates counterclockwise and contained three chambered rounds. As loaded, the headstamped cartridges chambered would fire in the following order: "Speer" with an apparent misfire; "Speer"; and WCC 95." The pistol's serial number was concealed by aftermarket handgrips. They were partially removed to obtain the serial number (6D60084).

Honda's room, number 110, was heavily contaminated by CS teargas residue. A large quantity of blood was present in the doorway. A pile of bedding was located just inside the door, wet towels were located near the bathroom door, and a towel covered the fan/light of the bathroom. There were five holes in the common north walls of the bedroom and bathroom that corresponded to holes originating in room number 109. The sixth hole in room number 109 did not penetrate into room number 110. The picture window was broken and there was a large amount of gas on the floor both inside and outside of the window. An unopened bag containing the "throw phone" was on top of the broken glass on the floor inside. We recovered the following items from the room; a note from "Charla" in a pair of pants, a wallet containing indicia and \$207.05 in cash, recent K-Mart receipts, and a cell phone and digital camera together in a case.

A number of apparent bullet strikes were present around the exterior entrance of room number 110. Possible trajectories were determined for some. Specifically:

- On the south (left) side of the doorframe was a bullet entry with no exit. The path of the projectile was from northeast to southwest. At the south support post, the one nearest room number 112, its projected height is approximately 20 inches from the ground. An attempt was made to retrieve this projectile without success;
- On the north (right) side was a bullet entry with an exit. The bullet entered the doorframe from the north side and exited on the south side. The path of the projectile was also northeast to southwest and its projected travel was between the two support posts at a height of approximately 36 inches;
- On the north (right) side of the door were two apparent bullet strikes on the wall. There were no corresponding exits, therefore, a definitive "second" point to establish a trajectory could not be determined for either strike. The path of both projectiles appears to be northeast to southwest with the trajectory of the upper bullet strike seemingly passing in the area of the south support post. No attempt was made to retrieve the projectiles from the wall.
- Two bullet strikes were present on the carpet-covered concrete floor in front of and to the north of the room's threshold. Trajectories from these could not be established; however, their appearance suggested a north-south direction. These strikes may be associated with the recovered apparent .40 Smith & Wesson mushroomed bullet from the south end of the hall and/or the copper jacket from "N" street.

A large path of blood traveled from the doorway of room number 110 to the small parking area at the breezeway. A small spatter of apparent blood was located on the windowsill of room number 107. A portion of the splatter and a control were collected onto cotton swabs.

### *Injuries*

Honda received at least nine gunshot wounds described generally as follows:

- Gunshot wound (hereinafter referred to as “GSW”) #’s 1 and 2 to right chest with exit in right middle back moving from front to back, slightly right to left and downward;
- GSW # 3 to left upper arm with exit in anterior left upper arm indeterminate direction;
- GSW # 4 to right forearm with exit to anteromedial right forearm indeterminate direction;
- GSW # 5 to right middle finger with exit to palmar surface of distal phalanx indeterminate direction;
- GSW # 6 to right index finger with exit on palmar aspect of proximal phalanx indeterminate direction;
- GSW # 7 to right upper thigh moving front to back, left to right, and upward;
- GSW # 8 to right thigh with exit to posterior right middle thigh moving front to back, slightly left to right, and upward; and
- GSW # 9 to left thigh moving front to back, left to right and upward.

In addition, Honda’s injuries were listed as follows:

- Gunshot related injuries of left forearm;
- Possible GSW of left ring finger and right posterior flank;
- Gunshot related injuries of the thighs,
- Multiple superficial abrasions of the face and extremities, and
- Frostbite of toes on both feet.

The following was removed from Honda’s body during the autopsy:

- Apparent .223 fragment from the body bag near the right sleeve;
- Copper and lead fragments from the upper left arm;
- Apparent .223 fragment and a copper fragment from the left kidney area;
- Copper and lead fragments from the left forearm;
- Apparent .40 bullet with debris in nose from the right buttock area;
- Apparent .223 bullet from the upper right lumbar area;
- Apparent .223 bullet from upper right gluteus/lower lumbar area;
- Lead fragment from the left triceps;
- Copper and lead fragments from the left thigh;
- Barbed Taser probe and wires; and
- Taser barb from right inner thigh.

### *Coroner results*

The cause of death of Honda was multiple gunshot wounds. Subsequent testing revealed that Honda's blood contained .94 mg/L of methamphetamine<sup>16</sup>, 2.3 ng/mL of delta-9-THC, and 13.9 mg/L of delta-9-THC-COOH at the time of death,.

### CONCLUSION

Police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving about the amount of force that is necessary in a particular situation. California law permits the use of deadly force in self-defense or in defense of others if it reasonably appears necessary to the person claiming the right to self-defense or the defense of others that he actually and reasonably believed he or others were in imminent danger of great bodily injury or death. In protecting themselves or others, a person may use all force that he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent injury that appears to be imminent. Finally, when peril is swift and imminent and the necessity of action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in the killing because he might have resorted to other means to secure his safety.

Compelling evidence establishes that Officer Marsh, Officer Metaxas and Sergeant Johnson were presented with a situation that actually and reasonably appeared to be a life-threatening situation to some or all of them and others. In fear for their lives and the lives of others, and forced to make split second decisions because of the nature of the circumstances and locations of the respective parties, they fired several rounds at Honda ending the threat posed by Honda by his death.

Under these circumstances, Officer Marsh, Officer Metaxas and Sergeant Johnson acted lawfully and in self-defense and the use of deadly force was reasonable and justified. Accordingly, we are closing our file in this matter and no further action will be taken.

On another note, I would like to personally commend Captain Murl Harpham for his handling of this incident. His leadership and decision-making in this matter clearly reflect his dedication to duty, to the people of Humboldt County, the safety of Eureka Police Department staff and others, and his desire to protect human life. While it is always a tragedy when a member of our community dies a violent death, I am deeply grateful to Captain Harpham and to all of the involved officers, individuals and agencies who worked so diligently to bring this matter to a lawful, non-violent and safe conclusion.

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<sup>16</sup> The effective level of methamphetamine and amphetamine is .01 - .05 mg/L and .02 - .15 mg/L, respectively, while potentially toxic level is .2 - 5 mg/L for methamphetamine and .02 mg/L for amphetamines.

A copy of this letter, along with the materials submitted for our review will be retained in our files.

Sincerely,

Paul V. Gallegos  
District Attorney