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THE CITY OF SAN DIEGO

CHIEF OF POLICE

IN REPLYING
PLEASE GIVE
OUR REF. NO.
1914141213

January 20, 2011

John Diaz, Chief of Police
Seattle Police Department
601 Fifth Avenue
P.O. Box 34986
Seattle, WA 34986

Re: August 30, 2010 Shooting Involving Officer Ian Birk #7505

Dear Chief Diaz:

On behalf of the San Diego Police Department's Homicide Unit, I have reviewed your agency's investigation of Officer Ian Birk's fatal shooting of John Williams. I understand that my letter may, at some point, become a public document, so before I discuss your investigation, permit me to discuss my qualifications and the San Diego Police Department's protocols on officer-involved shootings.

PERSONAL/PROFESSIONAL INFORMATION

I have a Bachelor of Arts degree from Columbia University and have been a police officer since April, 1986. I have worked in patrol, investigative, and administrative assignments, and have been a supervisor since 1994. I have been a Police Lieutenant since March, 1999, and have been assigned to the Homicide Unit since March, 2004.

During my tenure in Homicide, I have participated in the investigation of almost 300 murders, suspicious deaths, and officer-involved shootings. Since 2004, the San Diego Police Department's Homicide Unit has investigated 63 officer-involved shootings, 33 of which were fatal.

SAN DIEGO POLICE DEPARTMENT
HOMICIDE SECTION
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SDPD HOMICIDE UNIT STRUCTURE – OIS PROTOCOL

The Homicide Unit is made up of six teams. Each team is comprised of one Police Sergeant and four Police Detectives. On each case, a Crime Scene Specialist (civilian) from the department's Crime Lab assists with scene documentation (photography, measurements) and collection of evidentiary items. On cases requiring specific scientific expertise (e.g. ballistic reconstruction, blood spatter interpretation), a civilian Criminalist, also from our Crime Lab, is utilized. While more investigators can be added as needed, rarely will you see an investigation that lacks the staffing levels mentioned above.

On officer-involved shooting cases, the Homicide team works as fact finders. When the investigation is complete, we present it to the District Attorney's Office. We do not offer an opinion as to whether the use of force was legally justified or not. The District Attorney evaluates the facts and decides if the use of deadly force was reasonable, considering the circumstances.

In my opinion, the most important part of an officer-involved shooting investigation is the shooting officer's statement. Unlike sworn or civilian witnesses, whose physical locations and perceptions may differ, there is no substitute for an officer's description of the events that prompted them to use deadly force. Although the hours after a shooting are undoubtedly traumatic for an officer, the recollection of details are raw and contemporaneous – much more valuable to me than written statements delivered days later, after an officer has consulted an attorney and viewed news reports about the incident.

Other than requiring a Public Safety Statement, the Homicide Unit does not compel statements from shooting officers, since they would be inadmissible in a District Attorney's review. When a shooting incident occurs, a Police Officers' Association Attorney is sent to the scene. After the attorney meets with his/her client, we ask the attorney if the officer is willing to participate in a voluntary walk-through of the incident scene and provide a voluntary statement about the incident. If the answer is yes, the officer participates in both, with an attorney present. The interview can be in a narrative style, allowing the officer to recount the events from call dispatch to the shooting, or in a question-and-answer format, depending on the comfort levels of the officer and attorney.

If the attorney declines to have the officer provide anything voluntary, the investigation continues without their participation. The Internal Affairs Unit has the discretion to compel a statement from the officer, but that statement could only be used for administrative (not criminal) purposes and would not be provided to the Homicide Unit or the District Attorney's Office.

SDPD ROLE IN PEER REVIEW OF SEATTLE OIS INVESTIGATION

On November 29, 2010, I travelled to Seattle, Washington at the request of the Seattle Police Department. The purpose of my visit was to meet with Homicide Unit supervisors and detectives investigating Officer Ian Birk's fatal shooting of John Williams. I travelled to the shooting scene, saw a PowerPoint presentation narrated by the primary detectives, asked questions of those detectives, and came home with a copy of all of the materials developed by them.

For the purpose of peer review, I was asked to respond to two questions:

- Was the investigation thorough?
- Did the investigation show any bias?

REVIEW OF INVESTIGATION

The Seattle Police Department investigation was organized very much like our department's officer-involved shootings. The binder was divided into sections that included information on Mr. Williams, statements from approximately 20 citizens who witnessed portions of the incident, meticulous documentation of the scene (and witnesses' locations at the time of the shooting), evidence reports, and a PowerPoint presentation summarizing the investigation. The investigation was very well-organized, and the questions detectives asked were straightforward and unbiased. In particular, the witness perspective mapping and photographs were excellent, and the submission of the faux Sheffield knife to an outside lab demonstrated tremendous attention to detail.

On January 4, 2011, I presented the Seattle Police Department investigation to our Homicide Unit's command staff, consisting of eight investigative supervisors with a combined 219 years in law enforcement. Their feedback was very positive, and any questions they had (which I could not answer) were quickly answered by Seattle Police Homicide Lieutenant Steve Wilske.

Some additional observations:

- The absence of a legally-admissible officer statement makes it impossible to know what Officer Birk saw, how he felt, and why he chose to use deadly force. This is not meant as a criticism of the Seattle Police Department or Officer Birk's legal representatives, simply an acknowledgement that what is mandated by policy and what is legally entitled resulted in no first person account of what occurred.
- I do not recommend telephone interviews of witnesses. I think in-person interviews are most appropriate, especially in an investigation of this magnitude. In-person interviews enable detectives to make witnesses comfortable, allow them to gauge non-verbal responses to their questions, and help clear up unnecessary confusion. For example, the intersection of Howell Street and Boren Avenue is not purely north-

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- south, and most people had trouble explaining in what direction they were travelling without referring to a landmark or the Interstate 5 on-ramp. [REDACTED] one of the most critical witnesses, had trouble orienting herself over the phone. The result was a confusing and uncomfortable question-and-answer exchange that preceded the most important part of the interview. An in-person interview, with a satellite photo of the scene for [REDACTED] benefit, would have been more appropriate.

The same orientation problems presented themselves in telephone interviews with [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

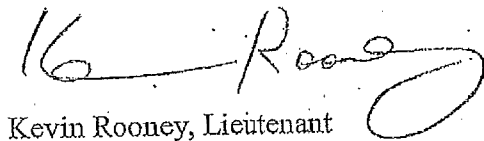
- I think having multiple department spokespersons is unwise, particularly by those having absolutely no involvement in the actual investigation. The initial statement provided by the Media Response Unit was factually inaccurate; as Mr. Williams was never sitting on a retaining wall before Officer Birk shot him. The department was also forced to retract a statement that Mr. Williams advanced towards Officer Birk before the shooting, acknowledging that it is now unclear if Williams advanced or not.

I understand and respect the duty to provide information to the media and to the public. Unfortunately, hastily delivered information is often bad information, and when it is updated, it makes people wonder what other details have been "updated".

I suggest that the release of information be limited to the Commander of the Homicide Unit or a Captain/Chief-level officer in the Homicide Unit's chain of command.

CONCLUSION

The death of John Williams has prompted harsh words about police-community relations, officer training, and law enforcement's use of force in general. In this highly-charged environment, the Seattle Police Department's Homicide Unit was tasked with conducting an expeditious, unbiased, transparent fact-finding of his death. With the exception of the issues mentioned above, your Homicide Unit has done so, and you should be proud of the work they have done.



Kevin Rooney, Lieutenant
Homicide Section

cc: Lieutenant Steve Wilske