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Re: ARS § 21-412 Request  
Demand for Recognition of Victim's Rights

Dear Ms. Wells and Ms. Cohen:

This letter supersedes prior letters regarding this matter. As you know my office has been obtaining records from the Scottsdale Police Department (SPD) regarding their investigation into the shooting of David Hulstedt on November 7, 2008. We issued records requests under state law and have been in communication with Assistant City Attorney Bruce Washburn. We have not received all records responsive to our requests. However, inasmuch as I was advised that a determination would be made regarding whether to file charges against our client, I deemed it prudent to set forth specific items that should deter a finding of probable cause. I hasten to add that in so doing you will also see why David Hulstedt merits treatment as a victim.

I will present information to you in a chronological order to the extent possible. I ask that you listen to the 9-1-1 call audio aided by the transcript. I ask that you view the video. I will make reference to both. When a reference is made to a bate page, a copy of the page is provided in a separate appendix being delivered with this letter. I have also enclosed stills from the video and some pictures of the home that I may refer to during our to-be-scheduled meeting.

On November 7, 2008, at 12:23 hours, 36 years old David Hulstedt (David) contacted a 9-1-1 operator at the Scottsdale Police Department. He demanded the presence of Arizona

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<sup>1</sup> PUBLIC NOTE: This letter is a corrected version of the letter of this date that contained two errors that were corrected by letter dated March 30, 2009.

Governor Janet Napolitano at his parents' home located at 6865 E. Morning Vista Lane, Scottsdale, AZ. David informed the 9-1-1 operator that there was crisis at the scene. David did not elaborate on the nature of the crisis. Dawn, David's two-year old daughter, can be heard crying in the background.

The 9-1-1- operator asked David : (1) Do you have any weapons? (2) Are you hurting that baby? David did not answer either question. He reiterated his demand that Governor Napolitano come to the Morning Vista home to speak with him about the otherwise undefined crisis. After David hung up, the 9-1-1 operator called back. David's mother, Janice Hulstedt (Janice), spoke with the 9-1-1 operator.

Janice, a retired school teacher, did not know about David's call to the Scottsdale Police Department. Janice told the 9-1-1 operator that the baby [Dawn] was alright and that she was probably crying because her diaper needed to be changed. The 9-1-1 operator was dissatisfied with that explanation as evidenced by the CAD entry at 12:25:24, stating: "Female [will] not answer [questions]" followed at 12:28:06 by the entry stating: "Female seems unable to answer questions." These characterizations are not based on fact as shown in the 9-1-1 call.

I am providing the 9-1-1 recording and a transcript. (See, CD and Appendix at 1). You must listen to it because the transcript does not capture *the agitation* of the 9-1-1 operator and *the calm* of Janice Hulstedt. Contrary to the commentary of the 9-1-1 operator, Janice answers questions posed to her and advises that no-one was harming the child. I ask that you pause from reading this letter and listen to the call aided by the transcript. (The 9-1-1 calls last 7:42 minutes and I stress that knowing what was said will aid further reading).

At 12:22 several officers were dispatched to the Morning Vista home for an "Unknown Problem." The Computer Assisted Dispatch (CAD, App. 2) printout shows that the officers were provided with the following information:

Requests Governor to come to his house; baby crying. Male saying there is a crisis; baby crying next to phone; male would not answer questions; said there is a crisis at his house and to get there right now; would not say if child was hurt; sounded like very small infant. ***No history there.***

The fact that there is ***no history*** at the address is significant as that fact should be added to the fact that none of the family members, including David Hulstedt, had any criminal history or criminal index.

As I indicated above, you must have knowledge of the 9-1-1 dialogue to compare with data entries going to the responding officers. While Janice and Walter were still inside their home with David and Dawn the 9-1-1 operator entered the following information regarding Dawn and David.

<u>Time</u>	<u>CAD Entry</u>
12:27:20	[Parents] Trying to get child away from son.
12:28:33	Son now has baby.
12:29:14	Son on line.
12:29:21	[David] refusing to give back the baby.
12:29:25	Son on line saying he will not give the baby up until Jane, the Governor, gets here.
12:30:20	Call taker asked son to give baby to grandmother.
12:30:29	He said that is not going to happen and hung up.
12:31:20	Walt, grandfather, on line saying [his] son will not let baby go.

At no time does anyone in the Hulstedt home state that they are trying to get David to transfer the baby or that their son was refusing to permit them to have the baby. To the contrary, the information being provided was that the baby was not being harmed.

At 12:32:33, the 9-1-1 operator ordered Janice and Walter to leave their home and meet with uniformed officers who had arrived at the scene. Officer Mastroianni #1154 writes in his report that “[**F**]or **their safety**, I asked Walt and his wife to move away from the house. Walt initially refused and told me he wanted to go back inside into the home”. Bate 000081. It must be recognized, it is significant, that neither Walt nor Janice sought police intervention; and, at no time had they voiced a concern for their safety or for that of their granddaughter.

By 12:34 Officer Hertko had arrived on scene and declared a barricade situation. This declaration was preceded by his speaking with David who was in the garage holding Dawn. David repeated his demands to speak with the Governor or Attorney General and said he would not speak with the officer. Hertko noted that “[**T**]he child did not appear in distress and did not make a sound”. David ‘hurriedly retreated back into the home via the interior door and shouted at the officer for him to go away. Bate 000079. It is of note that Officer Hartman, *before the shooting*, checked the entry door leading from the garage and found that it was not locked. Bate 000076.

While David was in the home he telephoned his brother Eric who responded to the scene and was stopped from going to the house. Eric met his parents (Walter and Janice) at the Police Command Post. Officers refused to allow Eric and Walter to go to David **who had agreed to give Dawn to Eric**. See also, Bate 000083 reflecting Walt’s frustration with being refused re-entry into his home.

The SPD created the alleged barricaded situation by ordering Janice and Walter to leave their home and by forbidding them from returning to aid their son. An otherwise benign event was conflated into an alleged *barricaded suspect* situation which morphed into a tactical operation involving approximately thirty five (35) personnel from the SPD and response by Scottsdale Fire Department paramedics, who were staged at the Police Command Post two blocks from the scene.

Police learned from David's family that David was bipolar and under the care of Dr. Koelech. By 1300 hours Officer Stumpf had conferred by telephone conversation with Dr. Koelech. He reported that David was bi-polar and experiencing anxiety, followed by bouts of paranoid schizophrenia. When he was seen earlier that day David was holding his child and did not make threats about hurting himself, his daughter or anyone else. Bate 000096. That David was paranoid harmonizes with information in the reports that note David's verbalizations that police wanted to shoot him. For illustrations, see Bate 000056, 0000247.

David was pleading with his brother to have him and / or his father come to the house. These pleas were noted by police. See, CAD Report 1240 hours, *Subject demands the Atty Gen and for the father to return to the residence*. Police knew David was not armed. See, CAD entry 1329 hours.

At 12:43:01 Sergeant James Dorer arrived at the scene. At 12:44:18, Dorer reported that he had the Crisis Team staged by garage. At 12:50 Dorer radioed his tactical plan. That plan called for officers to enter the Morning Vista home through the attached garage door *if there was any indication that child was being harmed*. Commencing at 13:02 and ending twenty minutes later at 13:22 officers who were staged around the perimeter of the house reported that they heard Dawn crying at least seven (7) times.

When asked "What type of crying is it?" Stumpf (Unit 2L92) replied, "*Just sounds like an infant crying.*" Another officer said: "*I can hear him (sic) from the front as well.*" The following instructions were given:

Guys in the front and back, any time you hear the child crying just make sure that you let me know so we have an indication that she is still breathing and everything is fine.

The relevant CAD entries that note crying (not screaming) are as follows:

<u>No.</u>	<u>Time</u>	<u>Unit</u>	<u>CAD Entry</u>
1	13:02:09	2L15	Can hear baby crying to the rear of residence
2	13:12:57	3L18	Child crying
3	13:14:54	3L18	Child crying
4	13:15:24	3L18	Child crying
5	13:18:05	3L18	Child crying possibly close to garage
6	13:18:34	3L18	Still crying
7	13:22:15	2L15	Child crying

At 13:40 Lieutenant Frank O'Halloran learned that David was talking by cellular telephone to Eric. O'Halloran ordered subordinates to stop family members from communicating with David; he wanted David isolated so that David's sole *lifeline* was officers of

the S.P.D.<sup>21</sup> Approximately a minute after David was cut off from speaking with Eric, Lieutenant O'Halloran broadcast a radio message stating that David threatened to harm Dawn.<sup>2</sup>

The threat uttered by David was conditional. David apparently stated that if police did not permit his brother Eric to come in the house, David would pile drive his 3 year old to the ground. At other times he said that when officers came into the house, he planned to pile drive the baby. Officer Antrim, the negotiator, noted that for the majority of their short conversations, ***David did not want to speak to any police and demanded Eric be allowed to come into the residence and that he would hand the baby over to his brother.*** Bate 000063-64.

You will note that the last report of crying from Dawn appears at 1322 hours. How could it escape officers and parents that the silence, which was preceded by regular crying, whining, would have been an indication that Dawn was having her nap? When David made his *conditional* threat, nearly twenty minutes had passed since any officer reported that hearing crying. David was shot approximately forty (40) minutes after Dawn was last heard crying.

At 1359 David told Officer Antrim (the Negotiator) that he was coming out but he didn't say how. At 1400 David opened the front door. At 1402 the CAD reports that he had the child over his head. At 1403 he was reported to be "right in the middle" and at 1402:22 the code 998 (officer involved shooting announced).

In an earlier letter I provided a copy of the amateur video taken by Michael Pospisil. Just as I asked you to listen to the 9-1-1 call, I must ask that you take pause and watch the video. It was titled by the videographer, THE guy getting shot. It runs 2:18 minutes. Please note that it is a .MOV file and while it does play in a windows environment you may need to let it run through 1-2X to get the sound and picture synched. A view of the file will permit better understanding of the stills captured from the video.

My investigator, Gary Phelps, would present the Pospisil video and also the information Pospisil provided to reporters from Fox Channel 10 television by testimony of file clips. Pospisil told reporters (1) it appeared to him that David was trying to surrender (2) it did not appear to him that David was about to hurt Dawn, and (3) he concluded that David held Dawn above his head because David became confused when all of the police were yelling orders at him to put Dawn down.

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<sup>1</sup>Female Officer: "He is talking to his brother instead." Male Officer: We are sending a negotiator down there. We're going to work on isolating the line. Please let them know understand that we're the ones [indiscernible] today we need to be his lifeline. We're the one's who's setting the hooks so that he'll come out peacefully. Female Officer: "They're working on that."

<sup>2</sup>"Inner perimeter. He has leveled a threat. He said that if his brother doesn't come in, then he is going to pile drive his daughter into the ground. Negotiations are on line." See CAD entry at 13:41:38 – from unit P42, who is believed to be Lt. O'Halloran.

Officers knew that they were dealing with a person who was bi-polar, paranoid and having bouts of schizophrenia. Law enforcement officers are trained in how to deal with persons with mental illness. Arizona P.O.S.T. Training Title, 3.4(July 2006), entitled Mental Illness provides, in pertinent part,

3.4.2. Identify the officers' safety technique to be considered when handling mentally disturbed or irrational persons:

First responder(s) safety and interaction with people in crisis suffering from mental illness or organic disorders.

- A. Ignore Verbal Abuse.
- B. Avoid excitement.

Performance Objective 3.4, subdivision, E. Entitled *Interactions* provides in pertinent part:

1. Command and control techniques in criminal contacts can be counterproductive when dealing with a subject who is mentally ill.
2. Do not threaten the individual
- ...
4. **Avoid exciting** the individual and maintain control of your emotions. **Do not yell, it only confuses them.** (emphasis added).

C. Communication.

1. Only one (1) officer at a time should verbally engage the subject.
2. Tell the subject they are safe and that you are there to help.
3. Speak calmly and slowly using simple language.
  - a. Give firm, clear directions
  - b. Give one (1) direction or ask one (1) question at a time.

Source: Bates 0002783- 002787, Appendix 2.

Contrary to the teachings of POST, when David exited the home he was barraged with commands. The commands were reported as:

- Put your hands up! Bate 000048, 000090.
- Put your hands in the air. Bate 000090.
- Put the child down. Bate 000026, 000040, 000052, 000075-76.
- Put the baby down. Bate 000121.

Several officers, including Sgt. Doer who was in the road to the north of the residence, yelled commands at David. At least one officer recalls hearing someone announce *Scottsdale Police* over a loudspeaker. The officers ignored their State mandated training in dealing with David, a man who was patently exhibiting objective signs of mental illness.<sup>31</sup>

After the short, face to face, encounter between officers on the walkway near the front door to the home, David lifted Dawn from his right shoulder. There were initially 4 officers who were positioned on the north wall of the home and were closest to David. They were Sgt. Dorer, and Officers Garcia, Fellows and Greene. Sgt Smith joined them and had a quick look at David but reportedly lost sight of him due to the angles involved. Bate 000090. Of these individuals it is only Greene who reports seeing blood on or coming from Dawn's ear/s. His report will be addressed below but I shall describe the events through the statements of Garcia, Fellows and shooters Slavin and Dorer.

Officer Golliher interviewed Fellows. He described Greene being positioned along the house and having a long rifle. He and Garcia used their handguns. Fellows said that he never heard the child cry after Greene arrived. When David exited he said, "I want you to go back, I don't want to see you". Officer Garcia began giving commands. Sgt. Smith then arrived at their position with his rifle. Fellows then moved to the left of Greene and Fellows holstered his weapon and pulled out his Taser. Fellows said that that Dawn was face down, and head towards the front of David's body. They were at a distance 20- 25' if not closer.

Fellows described David turning to the north and that Greene shifted in front of him. He lost sight of David for a few seconds. That is when he heard 3-4 pops. *That is when they (David and Dawn) came back into view when David let go of Dawn and they fell to the ground.* Fellows ***never saw any physical injuries to Dawn.***

Det. Salazar interviewed Garcia who had been positioned at the northeast corner of the home by Sgt Dorer. Garcia could hear Dawn cry, off and on, from his position. He was closest to the house with Fellows and Greene next to him. When the front door opened, he gave commands to David to show his hands but David did not comply. Instead he repeatedly told officers to take a step back which they did in order to get him to step out.

When David did step out, he held Dawn above his head. Her head was flopped down and she appeared unconscious. Hulstedt then made a turn as if he was going to go back inside the house and that is when he heard 3-4 shots. He saw David and Dawn go down. David landed in the rocks, lying on his back with his head facing the residence. ***Dawn came to rest on the sidewalk.*** Greene picked her up.

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<sup>1</sup>P.O.S.T defines *Mental Illness* as follows: Any psychiatric or psychological disorder characterized as an illness that affects cognition, perception, or communication which significantly interferes with the performance of major life activities, such as social interaction, learning, thinking, communication or sleeping. [Source P.O.S.T. ¶ "E", *Definitions*, Bates page 02786]

Officer Garcia **did not see blood** coming from Dawn's ear. When asked if he heard David threaten to pile drive Dawn, he indicated that this information was relayed to them by Command.

Det. Salazar interviewed Dorer. He described seeing David out of the house and then Dorer realized that no-one was on the containment position to the north. He moved away for his position along the house, down the driveway and onto the front yard to the north of front of the house.

According to his interview at 1813 hours that day, he made eye contact with the suspect and "very quickly had already determined he (was) gonna kill that kid. ... [H]e (the subject) turned away from me... and I made the decision at that point, I'm gonna stop him. (There was) no doubt in my mind at any moment, **whether its outside or back inside**, he was gonna kill that kid just like he had said, by slamming her. Um, so I shot him.

In his walk through interview at 1952 hours Dorer said that "...once he (David) turned and starting heading back in, I felt I had no choice. The timing had to be now, cause it was clear to me that he was gonna kill this kid. There was no doubt in my mind so when he turned, started heading back in... I shot him."

Dorer did not say that he observed any blood on Dawn. He did not say he saw David arch his back as if to throw Dawn. You must also note that the video DOES NOT show any arching of the back by David prior to the first shot. It is of significance that Dorer is NOT the first shooter. Of the four shots, his were shots three and four. (Note: shot 3 hit the house and the tone of shots 3 and 4 is different that shots 1 and 2).

At 1729 Slavin was interviewed by Det. Salazar. Slavin said that "...when I saw the suspect for the first time... (he was) just away from the front door. I yelled, You put that kid down... he pressed her up so his arms were fully extended and... it appeared to me that he started to rear back, almost as if he were going to throw her forward... I decided to fire... **he was facing me**... I perceive as him rearing back like he was going to throw a beach ball... I seem to recall his body pivoting slightly.... that's kind of the movement that I visualize... his body twisting a little bit... to his right (0149). Part of the Q and A's developed:

Q. So when he rears back with the child, he starts to pivot slightly towards the east, to his right

A. Yeah.

Q. And at that point, as he's rearing back, is when you discharge your first round.

A. Yeah

Regrettably, Slavin's *perceptions* vary significantly from *fact*. If the shooting happened as Slavin described, then David would have been hit from the front or at least his side (as he pivoted). If things happened as Slavin described, as viewed in the Pospisil video David would have been felled as he is seen behind the mesquite tree. But, as the video accurately shows, David had turned away from the north- turned away from facing Slavin- turned 180 degrees to the south and took several steps back towards the house. The undisputable facts are that Slavin's rounds, as all the rounds, hit David IN THE BACK.

Once more, Slavin's statement as that of Dorer, makes no offer of seeing blood on Dawn. This harmonizes with the statements of Fellows and Garcia.

Having established what was said and seen by the other involved officers, I turn to Officer Greene who is the ONLY person that claims to have seen blood coming from Dawn's ear/s.

At 1624 hours Greene was interviewed by Det. Paxson.

Greene told Paxson that he went up towards the front door with Fellows and Garcia. Sgt. Smith then came up. Fellows was to Greene's left, Smith on his right, Garcia somewhere behind him. When David opened the door he said.. All I want to do is to go to the street. Smith, Greene said, told everyone to stop giving commands and just talk to him. Smith started talking to David and he started to exit the house.

Garcia was to use non-lethal force and they were between 10-15 feet away from David and Dawn. Dawn's head was above David's, her face positioned up. Greene said he could see blood coming from the child's left ear (but he pointed to his right ear) and down the jaw. He described it as a nice flow like a cut. The left side of Dawn's face looked deformed and the hair on the left side looked damp or wet. The child had mucus mixed with blood coming out of her nose.

Greene saw drops of blood on the front of the David's shirt. Near his belly button. The drops ran parallel down his shirt. When David moved toward the river rock area, Greene went from safe to fire on his rifle. He had the subject in his sights. He started to pull the trigger when he heard 3-4 shots. While he was still looking through his sights, he saw the child fall down through his site posts.

David was facing south when shot. He turned to the east and began to slump. He brought his hands to his chest and still had the child in his hands. He took a step with his right foot. The child came down David's s right leg and then she slid to the gravel. Her head did not hit the ground first.

Greene picked up child. Her left eye was swollen or somehow not opened all the way. There was blood out of her ear. The left side of her face was swollen and looked deformed.

Detective Lockerby again interviews Greene on December 18, 2008 at the Family Advocacy Center. {Note, Greene is the only percipient witness to be interviewed on a subsequent occasion}. In this interview he says that he saw blood in Dawn's ear. He claims to be looking "... through his rifle and the first thing I was looking at is... what's the kid in the arm?" He describes seeing David walking "... in a straight line and (he) passes the walkway through the gravel and stops right at the river rocks... you could just see his body was getting ready to do something.... he turns, well... and starts walking right - right back to the door.

Q & A's developed:

Q. (He) Turned - turned and walked back, did you see any blood coming out of --- that would be the other ear now then, right?

A. Yes

Q. You saw it on the other side of the ear...

A. It probably would be the right ear...

Q. So my point ... you saw the blood when he first came out of the house, um, coming out of the left side of the ear towards you.

A. I believe so.

Q. Okay.

A. I just remember seeing blood in an ear.  
... I'm pretty positive I'm on the right side.

Greene continued and describes "[T]hen all of a sudden it's just like-- I seen a muzzle flash.. and then I hear you know, a couple of shots go off. And I'm looking right- and I'm ready to do it and I just remember thinking, Oh God don't pull it because I'm thinking about the little girl.

... I remember seeing him coming into my peephole. You - you know just look through it, you know, you can see everything.

... she falls right off his knee, falls broadside.

Q. So, he's already sort to bent down so when she-when he-when he fall- hits her knee and goes to the ground this-this is here"

A. Yeah

Q. I mean it wasn't high at all?

A. No, no, no.

... the distance she fell was from the knee to the ground... and when she fell she didn't hit her head.

... it was almost a three step motion... her body did not hit the sidewalk at all, she was still in the gravel...basically like sand.

Greene's statement fails to match unassailable and known facts in the following particulars.

- The video shows Dawn falling out of David's grasp after the first shot. She DOES NOT slide on his knee. She DOES NOT fall from his knee to the ground.
- Dawn was not in gravel after being dropped by David. See, enclosed photographs. These images show the landscape. The sidewalk has a river rock border. David is felled close to the house but in the gravel/river rock area. At 00:20 in the video you can see Greene bending down. Later images show he has moved Dawn from the east of David's position. This position is on the concrete sidewalk.
- Greene DOES NOT view ANYTHING through his gun sites or scope. The video shows that the long rifles were NEVER brought to a position of aiming through a site or scope. In fact what is shown is the person with the rifle looking to the north (direction of Dorer and Slavin) when the first round is fired and thereafter bring the weapons upward but never before the officers' face.
- Dawn's has hair typical of many 22 month olds. Hers was soft, long and surrounded her face. See, the enclosed stills among which are photographs of her and David playing horsey and others. In the position described by officers, Dawn's hair would have blocked a view of her ears. Further, there could not have been a visualization of her nose with mucous and blood.

Officer Garcia says that Dawn landed on the sidewalk. This position is consistent with the information in portions of Dawn's treatment, both at the scene and upon arrival at Phoenix Children's Hospital (PCH).

My office obtained AirEvac records. That report, in pertinent part, recites.

*... Witnesses reported that the patient was held over of an adult, with arms extended, during a standoff with police. **The patient was then dropped onto concrete (approx 6 feet) after the adult was shot by police. Bate 003120.***

My office also obtained Dawn's medical records. While they are filed with false and defamatory information provided by Scottsdale detectives, the ER note of chief complaint is significant. It notes:

***3 Y/O. Hostage situation. Dad holding patient over head. Police shot dad. Patient dropped from ~ 8 ft height. Bate 02056.***

It is a fact that there was no blood inside of the home and no noted mechanism for the injury. This is contrary to the press releases of SPD. (See, addendum).

Also, paramedic Tami Rosenhagen (Bates 00046-47) offers information that is contrary to the position being advanced in the SPD submittal. Rosenhagen describes seeing blood spatter on Dawn's face, possibly her right cheek and also on the front of her shirt. She said the Chief (Fire Chief) let them know right away that the blood was not the child's. Bate 000046. She was pulled away to treat David. She noted that the bones of his knees were exposed because of the dragging. She was asked if she saw any blood on his clothing that did not appear to be his (David's). She told Paxson that she did not.

In sum, there is no credible evidence that the right temporal skull fracture sustained by Dawn Hulstedt existed ***before she fell*** after being dropped by her father who was shot in the back by Slavin and Dorer. Dawn's fracture was the result of being dropped by her father after he was shot in the back without warning. There is no factual basis to support charging David Hulstedt with Child Abuse as requested by Detective Lockerby.

Lockerby asks that David be charged with Kidnapping. Our client's threats against his daughter were couched in terms of, *if you don't let my brother or father come to the house and if police come inside of the house and shoot me I will drop the child.* The last comment concerning pile drive occurred some 20 minutes before he exited the house, at the request of Antrim and that of Sgt. Smith. There is no report of David threatening Dawn while at his front door, while telling officers to back up, or telling officers that he just wanted to go to the street. What is shown is that David, as he went towards the street faced Slavin. Slavin yelled at him, and targeted David with his rifle. David turned away from the gun. Completely contrary to the exhortation of Lockerby, David NEVER MAKES "*a motion with his arms to throw (his daughter) on the ground*". And, police NEVER warn David that he is about to be shot before they shoot him in the back three times. It strains credulity to offer that David knowingly placed his daughter in substantial risk of immediate physical injury or death. (Recall Michael Pospisil reaction to this needless shooting).

Lockerby caps his request for criminal charges with a reference to Endangerment. Our client still lies in a hospital bed. He has never committed a crime. There has never been a police

callout to the family home. A mentally ill person called police asking for Janet Napolitano or the Attorney General. No one called police asking for their protection. Police knew that David was not armed. The door into the house was not locked. Multiple requests from family members to go to help David were rebuked by police. David had offered to give Dawn to his brother. To submit that David was aware of a risk that he would be shot by police, and ignored that risk, is beyond the pale.

In conclusion of this part to this letter, no criminal charges should be considered against David Hulstedt for two reasons.

The first reason is that a criminal prosecution should not be instituted when the charges are not supported by probable cause. A prosecution should not be instituted in the absence of sufficient admissible evidence to support a conviction. ABA Standard 3-3.9 (a).

The second is that the a prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute, notwithstanding that sufficient evidence may exist which would support a conviction. The ABA lists factors which the prosecutor may properly consider in exercising his or her discretion are:

- (i) the prosecutor's reasonable doubt that the accused is in fact guilty;
- (ii) the extent of the harm caused by the offense;
- (iii) the disproportion of the authorized punishment in relation to the particular offense or the offender;
- (iv) possible improper motives of a complainant...

David Hulstedt will never walk again as a consequence to the destruction of T-10. I have attached a diagram depicting paralysis range by location. Also attached are photographs of David pointing to where his lack of sensation begins and also of him with Dawn. Even if your office were to determine that *some* charge could be initiated, one will ask, why? David is educated, led a lawful life and experienced a mental health situation whose results, whether the fault of law enforcement or his, are simply devastating. Discretion supports declining prosecution.

#### Request for Victim Recognition

David was not shot because there was an imminent threat to Dawn. Slavin fired perceiving David was facing him and pivoting and motioning to throw his daughter to the ground. The video painfully shows Slavin was mistaken. Dorer shot, he says, because he feared that David was going to act on his threat either outside or inside the house. That statement is tantamount to a presumptive first strike with deadly force without immediate need. The mistaken belief of Slavin, and the purported fear on the part of Dorer, are not the threads by

which justification can be woven to shield their actions. The likely reality is that Dorer reacted to the first two shots by Slavin.

David was dragged away from the front yard to safety. There was no-one in the Hulstedt home. There was no threat to officers. There was no threat to David. There was no justification for dragging his body over 200 feet. It was this action that plainly stripped the flesh off his knees. His bone was exposed.

Again, the provisions of the ABA Standards may impinge on a decision to prosecute officers who may have served honorably. But, David Hulstedt is entitled to hear the voice of the Maricopa County Attorney recognizing his injuries and, if prosecution is declined, reasons for that decision.

I look forward to meeting with you and discussing this tragedy.

With best regards, I am,

Very truly yours,

Alan M. Simpson