

[Hpn] Homeless man's murder by cop = \$340,000 settlement

chance martin streetsheet@sf-homeless-coalition.org

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Good cop? Bad cop?

Foes call him a killer. Colleagues say he's a hero. Would the real officer please stand up?

By A. Clay Thompson

IT WAS A mundane assignment that sent veteran Alameda city cop Sean Lynch trudging through a weedy, long-abandoned railroad yard. Someone had set fire to railroad ties lying around the lot two days before. Now, a couple hours into a slow graveyard shift, Lynch was investigating.

As he tramped through the rubble-strewn field, Lynch came upon a blue 10-speed bicycle. What he didn't see right away was its owner, a 30-year-old homeless drifter named Jimmy Robert, sleeping next to his possessions the bike and a backpack and a minefield of drained Budweiser cans.

Less than a minute later Lynch unloaded five shots into Robert at close range. Two bullets punctured the man's cranium, ripping through his brain, probably killing him instantly.

Lynch, a brawny 38-year-old tae kwon do expert, radioed in a Code 33. Man down. There was no other option, he told fellow officers as they arrived on the scene: Robert had lunged at him with a five-inch hunting knife. The killing, Lynch said, was an act of self-preservation and the blade, lying on the ground near the body, was right there for everyone to see.

The November 1998 incident looks clear-cut: an officer under attack defended himself. But not everyone accepts Lynch's account, and here in this quiet island town the fatal encounter remains an enduring controversy. Theories about what exactly happened that night abound, discussed quietly in cafés and dining rooms, thrown out publicly at City Council meetings and on the pages of the local newspaper. Fueling speculation is the officer's history in uniform. Robert was not the first person shot by Lynch. In the past decade the cop has fired on three civilians, more than anyone else on the 111-member force.

Far more damning is the fact that Alameda recently paid out \$340,000 to settle a wrongful-death suit brought by Robert's family. The settlement came after a forensic expert charged Lynch with falsifying his account of the shooting.

At the center of the dispute is a flat-topped ex-military man who paints himself as an honest, hardworking cop who never wanted to do anything but help people. "For whatever reason I don't know why to this day this man

tried to kill me," Lynch says. "He gave me no warning, and I was left to respond to what he did."

Buried beneath these competing versions of reality lies a tale of one of life's winners and one of life's losers, and quite possibly, a tragedy that didn't need to happen.

Think back to high school. Remember the guy bookworm or outsider who was constantly bullied, eyes blackened, head stuck in the toilet? That was Jimmy Robert.

Or it would've been, if he'd made it to the ninth grade.

Flyweight and sandy-haired as a child, Robert grew up in Alameda, the middle kid bookended by a pair of sisters, raised by working-class, flannel-wearing parents. When dad went MIA, Robert's mother, Donna, a housekeeper at Eden Medical Center in Castro Valley, married a building engineer named Paul Graham.

Nothing was ever easy. Teachers blamed his woeful school grades and lengthy disciplinary record on faulty parenting. Shrinks blamed it on attention deficit disorder.

Neighborhood kids trained their sights on him. "The older kids picked on him a lot 'cause he was so much smaller," recalls older sister Gina Sharra, 35. "I think he looked pretty much like an 11-year-old until he was 18, 19 years old. I always had to stick up for him."

He had scant interest in sports and other staples of adolescent masculinity, was attracted to stereotypically feminine pursuits: cooking, poetry, crafts. Hypersensitive, he was prone to tears. When a car accident killed a childhood friend, Robert was crushed and swore off driving; he never did get a driver's license.

By his early teens Robert was ready to quit school and venture out into that much fabled real world. After the boy's frazzled parents shipped him off to a group home for problem kids, Robert ran away repeatedly, formal education falling by the wayside.

As an adult he cultivated a marginal existence, roaming the country like a modern-day hobo, working the occasional cooking job, preferring to sleep under the stars even if it meant sacking out in city parks reading American Indian mythology and Louis L'Amour westerns. He also developed a penchant for binge drinking. The family pleaded with him to go to rehab, find steady employment, secure a permanent address.

"No matter how hard we tried or what we did to get him to settle in, get a job, straighten his life out, it was like he could handle it for six months and he was back out there again," says Donna Graham, who now lives in Pacifica. "It was just the way he liked to live."

Sharra's home was the last place Robert stayed for any length of time. He was crashing on her couch in Lemoore a tiny Central Valley burg 200 miles south of San Francisco earning a little money as a part-time cook at the local Applebee's. And then he fucked up.

About a month before he died, Sharra came home to find Robert, who was supposed to be minding her three children, wasted, slurring. She went off. "I should've let it go, but I had a migraine and was sick," she recounts. "I set him off by being smart-ass sister: you will discuss this with me later, and I'm disappointed in you, and so on."

Wounded, Robert split town, catching the Amtrak back to the island.

A few days before his death Robert called to apologize. "I love you, sis," he intoned.

Sharra wanted more than platitudes. "I said, 'Well, prove it to me. Go get into rehab, get a job, and prove it to me.' "

Those were the last words Sharra would share with her brother.

Lynch's flashlight caught the metallic gleam of Robert's bike. Had it not, the cop might have tripped over the man. Or maybe the two might never have met.

The officer's account of the shooting given in court depositions goes like this:

"I just walked up to the bike. You know my intent was to go up and run the serial numbers, or at least examine it, see what's what's up with the bike. And as I got up to where the bike was, I became aware of somebody on the ground."

Swathed from head to toe in a dark blue sleeping bag, the transient was roused by Lynch, who identified himself as a cop, commanded the man "to come out of the bag," and then radioed for backup.

Robert's response "was fairly hostile ... Before he even came out of the bag, there was a lot of profanity. His language wasn't slurred.... There was nothing about it that made me think he was under the influence of drugs or alcohol. He was talking quite clearly, very animatedly, [in a] very hostile tone.... He was cursing up a storm." (The coroner found that Robert's blood-alcohol level registered well past the legal level at the time of his death.)

Get that fucking light off me, Robert spit, fully clothed in blue jeans and a yellow-and-black flannel. Get the fucking light off me.

"He was facing me, looking directly into my eyes," Lynch testified. "I thought it was possible he was going to flee or attack me."

The cop said he discreetly pulled out a telescoping metal baton and flicked it open, and suddenly Robert yanked out a knife, lunged, and in an instant was virtually "on top" of Lynch, the blade no more than a foot away from the officer's face.

"It happened very fast. I I backed up immediately. I mean, it was he had already acted, and I was trying to react, and I'm backing up. And at some point I drew and fired." As rapidly as he could, Lynch unleashed a fusillade of lead.

The first shot hit Robert low, in the leg or groin, causing him to lurch forward at the waist. Another round, Lynch said, hit the man in the face or head. Robert collapsed. Lynch can't recall how many rounds he popped off.

When backup arrived, the officer briefly sketched out the encounter and then, invoking his Fifth Amendment right, shut his mouth. He did so "to protect myself," he said when deposed. "I knew an investigation was pending, and I wanted it to be the most professional and fact-orientated investigation it could be. Nothing more needed to be said by me until I was formally interviewed by investigators."

Police training manuals use an ironclad formula when it comes to the use of deadly force. If a suspect is wielding a lethal weapon a knife, for example the officer is expected to use a superior armament, i.e., a gun.

And if the cop has to shoot, he or she is supposed to aim for the chest and fire until the suspect has stopped moving. If Robert was truly brandishing a blade, then Lynch was simply following procedure.

David Balash doesn't buy Lynch's story. Balash, an ex-cop who spent 20 years in the Michigan State Police crime lab, was tapped by lawyers for Robert's family to make an independent inquest into the incident. (Lynch has been cleared of any wrongdoing by both the Alameda County district attorney's office and the Alameda city police.) An FBI-trained forensic scientist whose résumé reads like a Thomas Harris novel (example: analyzing the wounds of a woman bludgeoned to death and kept in a freezer for two years), Balash dug into the case, studying Lynch's testimony, test-firing his gun, poring over police records, inspecting the dead man's clothing.

His review of the evidence drew him to a troubling conclusion: Robert wasn't holding the knife when Lynch shot him.

Balash didn't just challenge the officer's account of the incident; he accused the department of failing to mount a real probe into the killing. "The investigation of this shooting was very poorly handled," the forensic expert wrote in a report for the lawyers. "Critical evidence was not collected or analyzed, the scene was poorly photographed and measured, and the evidence available to investigators was clearly misinterpreted."

According to Balash:

Lynch's uniform, which may have been stained with telling blood droplets or gunshot residue, wasn't taken into evidence.

The location of the spent bullet casings wasn't consistent with the officer's account of backing up quickly and firing.

Investigators didn't analyze blood-spatter evidence at the scene and on Robert's clothes.

In an interview the ex-cop details the factors that led him to question the integrity of both Lynch and the Alameda police. To start with, Balash tells me, the crime scene photos weren't "taken with the intent of recording the scene. There was always the supposition that the police officer was attacked with a knife being held in the right hand of the victim."

Robert's final position (he was found flat on his back) bothered the investigator. By Balash's logic, if the scene had unfolded as Lynch had described it with Robert bent forward at the waist when the fatal shots ripped through the top of his skull then the mortally wounded man would've fallen forward. "He would've gone face first, and he would've gone into the ground like you dropped a bowling ball. Boom."

To Balash's eye the evidentiary smoking gun turned out to be a knife. The coroner found as documented in postmortem photos splattered blood all over Robert's right hand. But the knife the man supposedly clutched in that gore-covered paw was stained with only one pinhead-size drop of blood. In Balash's opinion it doesn't add up: if Robert's hand was drenched in blood, then the knife he was holding would've have been as well.

Drawing on this evidence, the investigator has developed an unsettling theory. He thinks Lynch fired three shots at an unarmed Robert, dropping the man to his knees. Then, Balash argues, Lynch put the final two bullets into Robert's brain, execution style, as the wounded man knelt on the ground.

Balash, peppering his comments with sarcasm and attitude throughout our conversation, leaves me with a blunt summary: "This case stinks."

San Francisco attorney Greg Fox has made a career out of defending cops against lawsuits, and he has spent much of that career deflecting legal attacks launched at Sean Lynch. Fox, ruddy complected, with a shock of white hair, has represented the officer in all three of the civil suits he has faced.

Sitting in his low-key office a couple of blocks from Fisherman's Wharf, the lawyer characterizes Lynch as "one of the nicest, most genuine people that I have met."

A man with an apparent death wish helped attorney and cop get acquainted. It was 1990, and Lynch was responding to a high-priority alert: an armed man with a history of mental illness was threatening to gun down his estranged wife. When Lynch intervened, the suspect redirected his rage. "You better shoot me, because I'm gonna shoot you," the man said, a hand stuck in the waistband of his pants. Lynch chose the former, wounding the suspect. But the bleeding man had been bluffing: there was no gun in his pants, only a black hairbrush.

Of course, this being the Land of Litigation, the guy sued. Fox, tapped by Alameda to handle the matter, won at trial, convincing a jury that Lynch had acted reasonably and appropriately.

Round two came in 1992. A Camaro-driving suspect with a suspended license was leading Lynch and another officer on a 70-plus miles-per-hour, Cops-type car chase through Alameda. When the driver crashed near the foot of the Bay Bridge, Lynch, gun drawn, ordered the dude out of the vehicle. The suspect stepped out, plopped himself down on the ground, and then reached back into the Camaro. "Get away from the car!" the officers barked. Fearing the suspect was going for a gun, Lynch unloaded his .357 magnum, blasting the man with three shots.

The suspect, who as it turned out had no weapon, survived and filed suit. Noted Oakland cop-suer John Burris took the case, bringing it before a jury. Again Lynch was vindicated, and Fox racked up another trial victory but the incident would dog the officer.

All of which brings us back to shooting number three, Robert's lifeless body, and Balash's interpretation of the evidence. Preparing to go to trial, Fox lined up his own cast of experts, chief among them Temple University criminologist James Fyfe, a nationally known authority on officer-involved shootings.

Fyfe, himself an ex-cop and the star witness on behalf of the four NYPD officers accused of wrongfully slaying Amadou Diallo, put together a written retort to Balash's assertions. "It is my opinion that Mr. Robert was shot and killed because, when a police officer tripped over him in a dark lot he attacked the officer with a knife and gave the officer no alternative to shooting him," he wrote.

"Any reasonable and competent police investigator or administrator would have expected to find some minor differences between Officer Lynch's account and other objective evidence," Fyfe opined. "In this case, the reports of the forensic scientists do not provide any information that would lead such an investigator to disbelieve Lynch."

I run Balash's key points by Fox. What about the body? Shouldn't Robert's corpse have been found facedown? The lawyer offers a play-acted explanation. Standing, he waves a red rubber knife in my face, while I hold a rubber handgun. Fox slashes at me like Norman Bates in Psycho, stepping into it like a boxer, body twisting 180 degrees as the pseudo dagger arcs in front of my face. The motion would have thrown Robert to the ground shoulder first, rolling him onto his back, the lawyer says.

How about the knife isn't the near-absence of blood on the weapon a little strange? Fox and his team of experts don't think so. "Should there have been more blood on the knife when it was found? I think that's a matter of how the knife was being held relative to the body when Mr. Robert was shot."

It's probably the contention over basic, key facts, coupled with Lynch's track record which was certain to play badly with jurors that prompted the city to cut a check in December 2000. According to Alameda police chief Burnham Matthews, the decision to settle out of court was "strictly a business decision."

If Balash is right, then you can lump Lynch in with the worst characters in American law enforcement the psychos who raped and tormented Abner Louima, Los Angeles's corrupt Ramparts squad, and closer to home, the "Riders" in the Oakland Police Department and this story is yet another case study in the abuse of power.

Which is pretty much how lawyers Julia Sherwin and Mike Haddad see it. Contacted by Robert's kin shortly after his death, the Oakland-based husband-and-wife team lodged the wrongful-death suit against Lynch and the city in federal court in the fall of 1999. "We went into this not knowing whether or not Jimmy Robert had ever pulled a knife on Officer Lynch," Sherwin recounts. "We needed to look at all the facts and be open-minded, but also as critical as possible. We were barraged with information saying, 'There's no way this could've happened the way Officer Lynch said it did.' The evidence kept piling up."

As far as Sherwin's concerned, the Alameda P.D. was unwilling to pick up on obvious clues. "This case from the start was an appalling case of willful ignorance of the facts and the evidence. This police department was going to turn a blind eye to what happened from the start. And they never changed their tune."

But when it comes to Lynch's background, one officer did change his story.

Last fall, a few weeks before hammering out the settlement pact, the lawyers got a shock. They were deposing Alameda police sergeant Mark O'Connell on the subject of Lynch's second shooting, the 1992 car chase ordeal. O'Connell, head of the internal affairs unit, had reviewed the matter at the time and decided the officer had acted correctly.

Under oath, the sergeant now expressed second thoughts.

"I think the question I had was 'Given the circumstances, would any other officer or would a majority of the officers in the Alameda Police Department act in the same way?' O'Connell said. "My conclusion was that I don't think many of us would have acted the same way as Officer Lynch did."

Did Lynch's gunshots breach federal guidelines for the use of deadly force, Haddad inquired.

"Yes," O'Connell answered.

What?

Let's rewind the tape and dissect this curious little vignette. One possible explanation: the sergeant authored a bogus report back in 1992 and now, for some unknown reason, is admitting it. Another view, the official line of the Alameda P.D., is that O'Connell, looking back, simply has a different take on the encounter. Neither choice does much to instill confidence in the department's system of internal checks and balances or in Lynch.

"I was really surprised," Haddad tells me. "I was impressed by Officer O'Connell, and I thought he was one of the rare officers to break the code of silence at that moment." (O'Connell declined to comment for this story.)

Classic liberals a union print shop makes their recycled-paper business cards Sherwin and Haddad are relentlessly skeptical of authority and see conflict between the meek and powerful as a defining aspect of life in America.

Robert's sister Gina Sharra is coming from a very different place. She's at home in down-tempo, conservative King County Bush-Cheney country for sure. At the time her sibling was slain, Sharra, a slight woman with springy beige hair, was testing to become a prison guard. Her late husband, Allen, served as a King County sheriff's deputy until he was killed while responding to an emergency call in 1999.

"I'm for law enforcement, my husband was law enforcement, and in a way it's hard being on both sides." Sharra and I are in the living room of her two-bedroom town house. "In a way I was going against law enforcement [by suing]. It was a weird feeling, a very strange feeling."

She cuts an impassive figure, only once losing her composure during the course of a probing, two-hour interview. When it happens, Sharra shuts down, tears pooling in her gray eyes for a moment, mind stranded somewhere else.

"I'm really angry that [Lynch] is still carrying a badge and gun. He should have been removed a long time ago. Someone like that shouldn't be a police officer to me it's really disgusting that he's still being backed up by the department, knowing he's taken someone's life."

We turn toward the TV as she puts in a videotape. It's Lynch's deposition. The cop is talking calmly about ending her brother's life. Sharra stares at the image intently, lips quavering slightly. It's an odd scene, and I feel a little uncomfortable, like I'm paging through someone's diary.

Robert wasn't a violent person, had no beef with authority he was, on the contrary, apt to call the cops for help. Nobody expected him to go out in a storm of bullets.

Sharra advances a theory of her own. She figures Lynch asked her brother for ID. When Robert reached for his wallet, attached by a chain to his belt, the officer saw a glint of steel and fired.

As Lynch fills the screen, I chew on Sharra's dark scenario for a few minutes before exploring other possibilities. A couple thoughts lodge themselves uncomfortably in my head. Maybe Robert did a stupid, drunken, fatal thing, and all of this the hypothesis, the lawsuit, the rage is really an attempt to absolve him. And maybe, more broadly, the civil suit has become our contemporary grieving ritual.

'My instincts were to contact the family and say, 'I'm sorry this happened, it's a tragedy, it was unavoidable, and I'm sorry for your loss,' " Lynch tells me, words measured, tone level. "But in today's society, with the protocols that you have to face in modern police work, that was not an option."

"Nobody was the winner here. I'm grateful I survived the incident and I'm still here. To have taken a life ..." he says, voice disappearing for a moment, "is never an easy thing."

If Robert was the quintessential outsider, Lynch personable, muscular, handsome is his opposite number. He comes across as someone who has never had trouble making friends, who has always been able to achieve whatever

goals he marked out for himself. Red hair recedes slightly from his freckled, lightly lined face; his suit fits tightly in the shoulders, the product of a lifetime of gym workouts. I was expecting a gruff, drill-sergeant type, and maybe Lynch fits that description when on duty, but here, sitting in Fox's office, his demeanor pure Midwestern civility, the officer reminds me more of a drug counselor.

Lynch was raised in a small Iowa town, did a stint in the armed forces, and followed it with a B.A. in sociology before ending up in Alameda in 1986. Within six months he was hired by the city police force and put in more than a decade as a night-shift beat cop.

Colleagues praise Lynch, now a detective, as a committed, exemplary law enforcer. "Sean is as sincere as a heart attack," Chief Matthews tells me. "He is terribly, terribly dedicated." In 1998 Lynch's fellow cops voted him Officer of the Year.

His tenor conciliatory, Lynch extends an olive branch to Robert's family. "I certainly understand their feelings. They're trying to understand something; they're trying to come to grips with a loss. That's a very hard thing to do. I do not at all begrudge them their perspective."

What does he make of Balash? "I'm not a forensic scientist. All I can say is I believe his whole perspective was to challenge as much of the investigation as he can.... And of course he's getting paid to do just that; he's getting paid to challenge these things.

"I was there, I know what happened, I know the truth of what happened. Residue on clothes and things like that these are all details outside my province. I do know this: the people doing that [internal Alameda P.D.] investigation, I know personally. I've worked with them my entire career. These are good people, some of them are friends, some of them are not, some are just coworkers, but I have no doubt that the best investigation that could've been done was done."

Pressing, I put forth Sharra's hypothesis: that he blew away Robert in a Diallo-esque mishap and lied about it. Stunned, Lynch looks like he's just been jolted with a cattle prod. "Uh, on an emotional level it's very hurtful," he says, grimacing. "That's not saying the officer made a bad call out there. They're saying that I committed one wrong act and compounded it with a deliberately criminal act in terms of trying to cover it up. That's not saying, 'Hey, officer, you were out there trying to do the best job you could, and you made a mistake.' That's saying, 'You're a murderer, and you covered it up and lied about it.' That's hard to hear. I don't care who you are. It's tough enough to take a life and have to look in the mirror when you shave every day and deal with that."

On a bleak, drizzling winter day I take the ferry from San Francisco through flat, gray waters to Alameda, heading for the spot where Lynch and Robert collided. Thick with face-high vegetation, the old Beltline rail yard sits across the street from a Kinko's-equipped strip mall, hemmed in by cottages of mid-20th-century vintage on one side, new plastic condos on the other. Wandering, I pass piles of crumbling asphalt, an abandoned water heater, the rusting, spray-painted husk of a car, emerald beer-bottle shards. Fenced off at one end lies a massive heap of oxidizing industrial detritus.

A white flash of movement registers at the periphery of my vision. A majestic, long-legged heron pokes out from a clump of swampy ferns, its S-shaped neck undulating, its vast wings ready for flight. I think of Jimmy Robert, trapped in an inhospitable world, like this wild creature picking over the dumping grounds of human society. But the analogy only goes so far. The heron is a gorgeous, graceful bird. Robert was ungainly, difficult even for loved ones to handle, a card-carrying member of America's lowest social

strata.

This is the part of the story where you're expecting me to tell you what truly went down in the lonesome place where Robert died. Well, the short answer is that I don't know.

I do know that I have lingering doubts about the Alameda Police Department. I'm worried by the flip-flop of Sgt. Mark O'Connell, the internal affairs head. Frankly, it makes me wonder if some day the sergeant will decide that, actually, on second glance, Jimmy Robert really didn't have to die.

It worries me that the whole thing occurred in Alameda, a city with no civilian police-review board. I'm not sure such a body could have prevented this whole thing, but I've got to wonder, particularly since Lynch has a history of blowing holes in people.

I'm worried because forensic scientist David Balash is firmly convinced that Lynch isn't telling the truth.

Having said all that, let me offer one more scenario. In this picture, Robert, drunk and belligerent, does pull the knife. Lynch, steps back, swings the metal baton, and knocks the shit out of Robert. The next morning Robert wakes up on the cold floor of a jail cell, bruised.

E-mail A. Clay Thompson at ac_thompson@sfbg.com.

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A Publication of the Coalition on Homelessness, San Francisco
468 Turk Street, San Francisco, CA 94102
415 / 346.3740-voice € 415 / 775.5639-fax
streetsheet@sf-homeless-coalition.org
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