

AMERICAN CIVIL LIBERTIES UNION OF NEVADA  
601 SOUTH RANCHO DRIVE SUITE B-11  
LAS VEGAS, NV 89106  
702-366-1226

IN THE MATTER OF A PETITION FOR AN  
INVESTIGATION INTO THE LAS VEGAS  
METROPOLITAN POLICE DEPARTMENT  
BY THE UNITED STATES DEPARTMENT  
OF JUSTICE PURSUANT TO 42 U.S.C. §  
14141

American Civil Liberties Union of Nevada,  
and The National Association for the  
Advancement of Colored People, Las Vegas  
Chapter, Petitioners

BEFORE THE UNITED STATES  
DEPARTMENT OF JUSTICE, CIVIL  
RIGHTS DIVISION, SPECIAL LITIGATION  
SECTION

NO. \_\_\_\_\_

**TO:**

Attorney General for Civil Rights  
Attn: Jonathan M. Smith  
950 Pennsylvania Avenue, NW  
Office of the Assistant Attorney General, Main  
Washington, D.C. 20530

Deputy Assistant Attorney General  
Chief, Special Litigation Section  
Trial Attorney, Special Litigation Section

United States Department of Justice  
950 Pennsylvania Ave., NW, PHB  
Washington, D.C. 20530

United States Attorney Nevada  
Attn: Daniel G. Bogden  
333 Las Vegas Blvd. South  
Las Vegas, NV 89101

**COUNSEL:**

The American Civil Liberties Union of Nevada, (“ACLU-NV” or “Petitioner”) respectfully requests that the Special Litigation Section, acting pursuant to its authority under 42 U.S.C § 14141, commence an investigation into the Las Vegas Metropolitan Police Department (“LVMPD”). LVMPD is Nevada’s largest law enforcement agency, with 2,700 officers policing 1.3 million people. As demonstrated herein, the LVMPD has “engaged in a pattern or practice of conduct by law enforcement officers...that deprives persons of rights, privileges or immunities secured or protected by the Constitution or laws of the United States.” This pattern is manifested through the allegations of police misconduct and the excessive use of force detailed in this document, contrary to the Fourth Amendment right against unreasonable searches and

seizures<sup>1</sup> and the right to due process of law under the Fourteenth Amendment. This petition and its accompanying documents demonstrate that the LVMPD is beset with serious systemic and training problems which include:

- a. recurring, documented instances of violent and often fatal treatment of people who come in contact with the police, through both the intentional use of deadly force, excessive force and/or through negligent actions;
- b. false arrests and stops made without reasonable suspicion of criminal activity, much less probable cause, along with improper searches, malicious prosecutions, and other corrupt practices;
- c. an ineffective process for identifying and deterring such conduct;
- d. insufficient processes for receiving, handling, adjudicating, and announcing the disposition of complaints alleging misconduct or violation of rules, or the excessive use of force;
- e. the failure to have a complete set of modern and meaningful policies, practices or training procedures that effectively prevent the excessive use of force;
- f. the failure to supervise and train officers in association with the use of deadly force;
- g. deliberate indifference to the Constitutional rights of persons with whom the police come into contact;
- h. costly litigation expenses including verdicts, arbitrations, and settlements, together with the expenses of defending those cases: since 1991, the Las Vegas police have paid \$18 million to settle various property damage, excessive force and wrongful arrest claims (LVMPD fiscal affairs committee). At the same time, lawsuits and citizen complaints reveal continuing patterns of misbehavior, as if nothing has been corrected in response to prior lawsuits or complaints.

On behalf of the people who reside, work and visit the city of Las Vegas and its surrounding areas, we implore the Civil Rights Division to investigate the LVMPD. The conduct described herein has left citizens dead, permanently injured and otherwise damaged. Further, this abuse has created an atmosphere of distrust with the local police department.

The citizens of Las Vegas are turning to the Department of Justice as a last resort to obtain the relief that they have been unable to obtain locally for quite some time. Since Jan. 1,

---

<sup>1</sup> *Tennessee v. Garner*, 471 U.S. 1, 22 (1985). The U.S. Supreme Court held that the unnecessary use of deadly force by a police officer amounts to an unreasonable seizure under the Fourth Amendment. The Court observed, "The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so." *Id.* at 11.

1990, police in Clark County have killed 142 people in 378 police shootings. Another 114 of the officer involved shootings resulted in known wounds. Meaningful review of these events simply does not take place. The LVMPD's Use of Force Review Board, consisting of officers and civilians, has cleared more than 97 percent of the 500 plus cases of shootings and other officer use of force incidents it has examined since 1991.<sup>2</sup> Most recently, in 2010, Clark County reached a record of 31 shootings for the year, and 25 of them involved "LVMPD" Officers. As a point of comparison, "The New York City Police Department, with 13 times more officers covering a population of six times larger, shot at people 34 times, killing eight. The Los Angeles Police Department, with more than three times as many officers covering more than double the population served by the Las Vegas police, shot at people 32 times."<sup>3</sup> A comparison of 16 cities demonstrated that LVMPD ranked third in shootings by police per capita and per reported violent crime for the period of 2001 to 2010.

Finally, a Las Vegas Review-Journal ("LVRJ") analysis of all 378 officer involved shootings in Clark County since 1990 showed that roughly 10 percent of the time "a Las Vegas officer fired at an unarmed person".<sup>4</sup> The excessive use of force disproportionately impacts African-American Nevadans. "About half of the 33 unarmed people shot by "LVMPD" police were black. And in an urban area where blacks make up less than 10 percent of the population, they represent 32 percent of (all) shooting subjects<sup>5</sup>." Of the 77 Las Vegas shootings preceded by foot pursuits, nearly half involved black men.<sup>6</sup> Twenty-six percent of Las Vegas police shooting subjects were Hispanic. *Id.* The frequency associated with the use of deadly force against members of minority communities is deeply troubling, and suggests that racial bias plays a significant role in police behavior. Petitioners therefore urge that the Department of Justice ("DOJ") use its powers under 42 U.S.C. § 14141 (a) to commence an investigation and therefore utilize civil litigation to reform the LVMPD.

---

<sup>2</sup>Lawrence Mower, *Troubles Follow Some Officers Who Fire Their Guns On The Job*, Las Vegas Review-Journal Nov. 27, 2011, [www.lvrj.com/news/deadly-force/always-justified/troubles-follows-some-officers-who-fire-their-guns-on-the-job-34253998.html](http://www.lvrj.com/news/deadly-force/always-justified/troubles-follows-some-officers-who-fire-their-guns-on-the-job-34253998.html).

<sup>33</sup>Lawrence Mower, Alan Maimon and Brian Haynes, *Yearlong Investigation Shows Many Police Shootings in Las Vegas Could Have Been Avoided*, Las Vegas Review-Journal, Nov. 27, 2011, <http://www.lvrj.com/news/deadly-force/always-justified/investigation-of-officer-involved-shootings-focuses-on-southern-nevada-law-enforcement-134253648.html>.

<sup>4</sup>Lawrence Mower, *To Shoot Or Not Shoot Is Quandary For Veteran, Rookie Officers*, Las Vegas Review-Journal Nov. 27, 2011, [www.lvrj.com/news/deadly-force/to-shoot-or-not-shoot-is-quandary-for-veteran-rookie-officers-134253878.html](http://www.lvrj.com/news/deadly-force/to-shoot-or-not-shoot-is-quandary-for-veteran-rookie-officers-134253878.html).

<sup>5</sup>Lawrence Mower, Alan Maimon and Brian Hayes, *Yearlong Investigation Shows Many Police Shootings In Las Vegas Could Have Been Avoided*, Las Vegas Review-Journal, Nov. 27, 2011. <http://www.lvrj.com/news/deadly-force/always-justified/investigation-of-officer-involved-shootings-focuses-on-southern-nevada-law-enforcement-134253648.html>.

<sup>6</sup>Lawrence Mower, Alan Maimon and Brian Hayes, *Las Vegas Metro Police Rank High In Using Deadly Force*, Las Vegas Review-Journal. Nov. 28, 2012, <http://www.lvrj.com/news/deadly-force/142-dead-and-rising/las-vegas-metro-police-rank-high-in-using-deadly-force-134255763.html>.

**TABLE OF CONTENTS**

**OVERVIEW**

I. THE PETITIONERS.....6  
II. OVERVIEW OF THE PETITIONERS’ INVESTIGATIVE PROCESS AND FINDINGS.....6

**LVMPD MISCONDUCT**

III. CIVIL LITIGATION AGAINST THE LVMPD: CITIZEN COMPLAINTS OF BRUTALITY, DEADLY FORCE, EXCESSIVE FORCE.....7  
IV. POLICE PRACTICES REFLECT RACIAL BIAS.....11  
V. FATAL POLICE SHOOTINGS AND USE OF EXCESSIVE FORCE UNDERMINE PUBLIC CONFIDENCE IN LVMPD.....14  
VI. DEPARTMENT POLICY ON USE OF DEADLY FORCE IS IGNORED, WITHOUT CONSEQUENCE.....17  
VII. LVMPD’s INTERNAL REVIEW POLICIES AND PRACTICES FAIL TO DETER MISCONDUCT.....20  
    a. USE OF FORCE REVIEW BOARD: RUBBER STAMP ON USE OF DEADLY FORCE.....21  
    b. THE CORONER’S INQUEST: A PUPPET INSTITUTION .....22  
VIII. CLARK COUNTY DISTRICT ATTORNEY REFUSES TO PROVIDE A CRIMINAL CHECK ON USE OF DEADLY FORCE.....26

**REMEDIES REQUIRED**

IX. ROLE OF SPECIAL LITIGATION SECTION.....27  
X. HOW INTERVENTION BY THE DOJ CAN ASSIST CLARK COUNTY RESIDENTS AND ITS POLICEFORCE.....28

**CONCLUSION**.....35

## EXHIBIT LIST

Title	Exhibit Number
Las Vegas Review Journal Series Articles on Las Vegas Police Use of Force.	1
Richard C. McCorkle, <i>A.B. 500 Traffic Stop Data Collection Study: A Summary of Findings</i> , Jan. 29, 2003.	2
Las Vegas Metropolitan Police Department Policy and Procedures Manual(relevant portions).	3
<ul style="list-style-type: none"><li>• Police Assessment Resource Center: <i>Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths Portland's Deadly Force Policy</i></li><li>• Portland Police Bureau: <i>Manual of Policy and Procedure</i></li><li>• New York City Police Department, <i>Annual Firearms Discharge Report</i></li><li>• <i>Los Angeles 2009 Use of Force Annual Report</i></li><li>• U.S. Department of Justice: <i>Principles for Promoting Police Integrity, Examples of Promising Police Practices and Policies.</i></li></ul>	4
Police Assessment Resource Center: <i>The Denver Report on Use of Deadly Force</i> , Merrick Bobb, Bernard K. Melekian, Oren Root, Matthew Barge, Camelia, Naguib. June 2008.	5

## **OVERVIEW**

### **I. THE PETITIONERS**

1. The ACLU of Nevada (“ACLU-NV”) is an organization with approximately 1,500 members throughout the state of Nevada, including at least 825 members residing in Las Vegas, Nevada. The ACLU-NV has been in existence since 1966, and works to defend all aspects of liberty throughout the state of Nevada through advocacy, education and litigation. The aspects of liberty that the Petitioner seeks to defend include (1) the right to be free from unconstitutional, unlawful or wrongful arrest, detention, and force by the police or law enforcement authorities; as well as (2) the right to receive responsible, effective, and nondiscriminatory public services, including law enforcement services and adjudication of complaints.
2. As a civil liberties organization, the ACLU-NV regularly receives complaints from the public regarding law enforcement misconduct, including misconduct by LVMPD. At times the ACLU-NV acts upon these complaints by formal and informal advocacy and at times litigation. The ACLU-NV has sued LVMPD several times.
3. The National Association for the Advancement of Colored People (“NAACP”) is a civil rights organization for ethnic minorities in the United States. The mission of the NAACP is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination.

### **II. OVERVIEW OF THE PETITIONERS’ INVESTIGATIVE PROCESS AND FINDINGS**

1. Initially, the ACLU of Nevada would like to acknowledge the investigatory efforts of the Las Vegas Review-Journal, in producing its series on police shootings titled *Deadly Force: When Police Shoot and Kill*. The series is attached to this petition at Exhibit 1. The factual information presented therein provides a clear and condemning picture of the grave systemic defects associated with LVMPD’s use of deadly force, and the absence of any meaningful review or oversight of those actions.

2. The repeated complaints known to the Petitioners about the LVMPD led the Petitioners to commence an investigation into whether the LVMPD engaged in excessive misconduct, brutality, and failure to supervise officers. Using sources such as records of criminal charges against officers, settled and filed litigation, administrative proceedings, news accounts and its own database of citizen complaints, Petitioners have conducted a systemic evaluation of reported acts of misconduct by the LVMPD.
3. The ACLU-NV's evaluation has revealed that LVMPD is an organization which lacks the ability to refrain from systematic and ongoing violations of the constitutional and legal rights of the people with whom they come into contact. Further, the LVMPD has remained unable to detect, deter or punish these violations, given its reliance upon impotent internal review procedures, and the reluctance of the District Attorney to pursue criminal charges against officers involved in the use of deadly force. In sum, there is little to no evidence that officers who commit offenses against citizens are meaningfully disciplined for their conduct. Even officers with multiple complaints, or substantiated numerous fatal encounters, are allowed to continue with the LVMPD. The operation of the civil and criminal justice system has not been enough to remedy this pattern. The situation warrants prompt federal intervention, pursuant to 42 U.S.C. § 14141.

## **LVMPD MISCONDUCT**

### **III. CIVIL LITIGATION AGAINST THE LVMPD: CITIZEN COMPLAINTS OF BRUTALITY, DEADLY FORCE, EXCESSIVE FORCE**

The sheer number of federal lawsuits filed against the LVMPD indicates that dozens of people have (a) been mistreated at the hands of LVMPD; (b) successfully obtained representation by counsel; and (c) cleared procedural prerequisites to filing suit, such as the statute of limitations. Given the hurdles to bringing litigation, it is manifest there are far more actual incidents of misconduct that occurred against citizens than the number of lawsuits filed. The ACLU of Nevada has reviewed the Public Access Court Administered Records, docketing system, ("PACER") filings against LVMPD for the period between 2000 through 2011 and discovered a range of citizen complaints describing police brutality, deadly force, and excessive force. All of the lawsuit documents described in this Petition are readily available through the federal electronic docket system. The cases that follow are representative of the kinds of citizen complaints we observed.

<b>CASE</b>	<b>TYPE OF VIOLATION</b>	<b>DESCRIPTION</b>	<b>DATE</b>
2:00-cv-00096-KJD-PAL, Leighton Lionel, et al v. Las Vegas Metropolitan Police Department	Unreasonable Search/Stop and Discrimination	Mr. Lionel, his wife and family friend were held for an unreasonable amount of time for allegations that Mr. Lionel said "f*ck you pigs" from his car. Their family friend, who has a kidney problem and is subject to constant visits to the restroom, was not allowed to go and had to urinate in a bottle in the vehicle.	01/21/00
2:00-cv-00499-KJD-RJJ, Charles Lee Couture v. Las Vegas Metropolitan Police Department	Excessive Force/Illegal Detainment	Mr. Couture was forced down to the ground by several heavily armed officers at gunpoint and handcuffed for allegedly kidnapping a female. After minor questioning it was determined that Mr. Couture was not a suspect.	04/14/00
2:01-cv-00442-LRH-LRL, Manuel Silva v. Las Vegas Metropolitan Police Department	Excessive Force/Unreasonable Search	Police officers entered the home of a 71-year-old man and brutally battered him causing him to black out and lose his false teeth. Moments later the officers realized that they had entered the wrong home.	04/18/01
2:02-cv-00054-LDG-RJJ, Brenda Self v. Las Vegas Metropolitan Police Department	Excessive Force	Female was kicked repeatedly in the back while being detained on the ground, hands on her head, in front of her 13 year old son. The female was transported from the scene by ambulance and suffered damage to the discs in her back.	2/25/02
2:02-cv-00628-RLH – PAL, Robert E. Hauth v. Las Vegas Metropolitan Police Department	Excessive Force/Unreasonable Search and Seizure	Mr. Hauth was rendered unconscious when officers forced their way into his home to discuss vehicle storage conditions. He suffered a head injury and had to be transported by ambulance to receive medical treatment at a local hospital because.	05/02/02
2:03-cv-00408-PMP-PAL, John D. Pierce et al v. Las Vegas Metropolitan Police Department	Excessive Force	In the process of taking Mr. Pierce into custody, the police caused Mr. Pierce to enter into an unresponsive medical state. Mr. Pierce now requires 24 hour medical care.	04/17/03
2:03-cv-00783-RCJ –	Excessive	After a confrontation with law	07/03/03

<b>CASE</b>	<b>TYPE OF VIOLATION</b>	<b>DESCRIPTION</b>	<b>DATE</b>
LRL, Christopher Armondo Tortu v. Las Vegas Metropolitan police Department	Force/Unlawful Seizure	enforcement in the airport, Plaintiff was subject to such severe use of force to the genitals that he will not be able to procreate naturally.	
2:03-cv-01395-PMP-RJJ, William J. Tucker v. Las Vegas Metropolitan Police Department	False Arrest/Wrongful Incarceration	Plaintiff was arrested and detained for 34 1/2 hours for calling 911 and reporting his vehicle stolen.	11/10/03
2:04-cv-00502-ECR-GWF, Martinez v. Las Vegas Metropolitan Police Department	Excessive Force	While in pursuit of an unarmed person on foot, police officers used a vehicle to stop the plaintiff and ran over him causing serious bodily injury.	04/22/04
Herrera v. Las Vegas Metropolitan Police Dept., 298 F. Supp. 2d 1043 (D. Nev. 2004).	Excessive Force	Officers arrived to the scene of a delusional individual, and proceeded to shoot him with bean bags in order to detain him. Once he was on the ground officers attempted to remove the knife from his hand and continued to brutally beat him with their batons and sprayed him in the eyes with pepper spray, even though the defendant was not moving towards the officers.  Apprehension by the use of deadly force is a "seizure" within the meaning of the Fourth Amendment and is permitted only where, at minimum, the suspect presents an immediate threat to the officer or others, or is fleeing and his escape will result in a serious threat of injury to persons.	2004
Neal-Lomax v. Las Vegas Metropolitan Police Dept., 574 F.Supp.2d 1170 (D.Nev. 2008).	Excessive Force/Wrongful Death	LVMPD officer used a taser on a man high on PCP, a total of 7 times while attempting to restrain him for medical transport, ultimately contributing to his death.	12/09/05
2:06-cv-01103-KJD-PAL, Bryan et al v. Las	Excessive Force	LVMPD officers shot plaintiff several times in his doorway when	09/07/06

<b>CASE</b>	<b>TYPE OF VIOLATION</b>	<b>DESCRIPTION</b>	<b>DATE</b>
Vegas Metropolitan Police Department		he failed to comply fast enough with officers' demands.	
2:07-cv-00740-PMP-LRL, Walker v. Las Vegas Metropolitan Police Department	Excessive Force/Wrongful Death	LVMPD officers tasered Plaintiff three times while he was on drugs causing his untimely death.	06/06/07
2:07-cv-01188-RLH – LRL, McMurray et al v. Las Vegas Metropolitan Police Department	Wrongful Death	While in the custody of LVMPD, officers refused to alert medical staff or provide medical attention to plaintiff, who was suffering from an overdose, ultimately causing his death.	08/31/07
2:08-cv-00216-PMP-RJJ, Kasilyan et al v. Las Vegas Metropolitan Police Department	Excessive Force/Wrongful Death	Plaintiff called 911 to get help for her son who was mentally disturbed and could be causing bodily harm to himself. Police arrived, tasered the victim, handcuffed him, and tasered him again while in handcuffs. Victim died from a result of his injuries from the taser.	02/21/08
2:08-cv-01231-RCJ-LRL Dimino v. Las Vegas Metropolitan Police Department	Unreasonable Stop/Excessive Force	Plaintiff was stopped by officers, who asked him to get out of the vehicle. When he did not move fast enough, he was pulled from the car and had his head slammed on the ground. Plaintiff was a minor.	09/16/08
2:10-cv-01900-ECR – PAL, William B. Scott et al v. Las Vegas Metropolitan Police Department	Wrongful Death	While shopping at local Costco, Erik Scott was labeled by store employees as being a threat and police were called. The store was evacuated and upon Mr. Scott's exit from the front of the store he was shot several times and later died from his wounds.	10/28/10
2:10-cv-02122-KJD-GWF, Petra Carillo et al, Las Vegas Metropolitan Police Department	Excessive Force/Wrongful Death	Plaintiff was killed during a police Pursuit Intervention Technique (PIT) maneuver after the officers were asked to cease their pursuit. Two officers continued the pursuit and executed a PIT maneuver that caused Mr. Carillo's untimely death.	12/07/10
2:11-cv-00611-GMN – PAL, The Estate of Trevon Cole et al v.	Excessive Force/Wrongful Death	Unarmed Plaintiff was shot in the face in the bathroom of his apartment with an AR-15 assault rifle for	04/20/11

CASE	TYPE OF VIOLATION	DESCRIPTION	DATE
Las Vegas Metropolitan police Department		allegedly selling 1.8 ounces of marijuana to an undercover police officer over the course of a month.	

Our analysis of the federal filings against the LVMPD for the past ten-year period indicates that approximately 47% of the lawsuits involve allegations of civil rights violations and use of excessive or deadly force.

Total Approximate Lawsuits Involving Las Vegas Metropolitan Police Department From January 2000-2011	Approximate Lawsuits That Involve The Use Of Excessive Or Deadly Force	Approximate Percentage Of Lawsuits That Involve Civil Rights And Excessive or Deadly Force
435	205	47%

[The criteria utilized in acquiring the number of court cases involving LVMPD was based off of a ten-year search history through the U.S. Federal Court District of Nevada court's PACER docketing system, and only included cases where the LVMPD was a direct party. These numbers do not accurately reflect any occurrences that may have been filed in State Court, nor against the LVMPD in their operation of the Clark County Detention Center, or any cases that may involve other governmental entities.]

#### IV. POLICE PRACTICES REFLECT RACIAL BIAS

Forty-two percent of all officer involved shootings took place in just seven of Clark County's 136 zip codes: 89101, 89103, 89104, 89108, 89110, 89115 and 89121<sup>7</sup>.

“They include downtown and areas east of downtown; neighborhoods near Nellis Air Force Base; an area south of Spring Mountain Road and west of Interstate 15; and an area between Rancho Drive north of Washington Ave. Most are lower income

<sup>7</sup>Alan Maimon, Lawrence Mower and Brian Haynes, *Las Vegas Police Rank High In Shootings*, Las Vegas Review-Journal, Nov. 28, 2011, <http://www.lvrj.com/news/deadly-force/142-dead-and-rising/las-vegas-police-rank-high-in-shootings-134255763.html>

areas with a high proportion of rental housing. Each had at least 20 police shootings,” according to the Review-Journal. *Id.*<sup>8</sup>

An examination of 2010 Census data for those ZIP codes reveals that they house high concentrations of African-American and Hispanic families.

<b>Clark County Zip Code: LVMPD Jurisdiction</b>	<b>Total Population: All Races</b>	<b>Total Hispanic and African-American Population</b>	<b>Hispanic Population Alone</b>	<b>African-American Population Alone</b>
89101	46,055	73.5 %	60.0 %	13.5 %
89103	50,519	43.8 %	32.0%	11.8 %
89104	39,909	60.9 %	53.5%	7.4%
89108	70,123	53.6 %	39.8%	13.7%
89110	70,994	68.0 %	58.9%	9.1%
89115	58,794	74.6 %	55.5%	18.6%
89121	64,096	45.6 %	36.3%	9.3%

One should consider that for Clark County overall, the demographic breakdown for individuals identifying one racial background, is as follows: 60.9% Caucasian, 10.5% African-American, 29.1% Hispanic, and 8.7% Asian. These data reflect a disturbing picture. Neighborhoods where people of color represent the majority of the residents are the very locations where the largest proportion of police shootings occur.

In response to community concerns that minorities were being unfairly targeted for traffic stops and subsequent searches, the Nevada legislature enacted Assembly Bill 500 on July 1, 2001. AB 500 prohibited racial profiling by law enforcement officers and directed the Nevada Attorney General to conduct a study to determine the extent and nature of racial profiling by the Nevada Highway Patrol, LVMPD and law enforcement agencies in counties with populations greater than 100,000. The LVMPD was required to participate and collected data from January 1, 2002 through December 31, 2002. Overall, the study concluded “the number of Black and Hispanic drivers involved in traffic stops exceeded that expected based on the number of potential Black and Hispanic drivers in the population.” Richard C. McCorkle, *A.B. 500 Traffic Stop Data Collection Study: A Summary of Findings*, [http://ots.state.nv.us/forms/AB\\_500\\_Traffic\\_Stop\\_Data\\_Collection\\_Study.pdf](http://ots.state.nv.us/forms/AB_500_Traffic_Stop_Data_Collection_Study.pdf), (2003). With

<sup>8</sup> United States Census Bureau, “S0201. Selected Population Profile in the United States 2010 American Community Survey 1-Year Estimates – Las Vegas-Paradise, NV Metro Area.” Data Set: Census, 2010, available at <http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>.

reference to LVMPD, the study demonstrates that while African-Americans make up only 8.3% of Clark County’s driving population, they accounted for 15.5% of all traffic stops—a rate almost double what one would expect. *Id.* at 15. Similarly, while Hispanics make up 19.1% of the driving population, they accounted for 23% of all traffic stops. *Id.* (Exhibit 2 provides a copy of relevant portions of the study.) In each case, one witnesses a disproportionate number of traffic stops when a person of color is driving the car.

African-Americans, Hispanics and Asians were also much more likely to be pulled over by LVMPD for stops involving officer discretion, where the officer’s subjective judgment comes into play.

**Table 37. LVMPD Traffic Stops: Low v. High Discretionary Traffic Stops by Race**

	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Other</b>	<b>TOTAL</b>
Low Discretion	45.3	38.2	35.6	38.1	43.1	42.0
High Discretion	54.7	61.8	64.4	61.9	56.9	58.0

Low Discretion: Speeding violations of over 16+ mph

High Discretion: Traffic control device, speeding violations under 16 mph, lane violations, following too close, failure to signal. *Id.* at 19.

According to the study, “disparate treatment is more likely to occur in situations in which an officer has more discretion as to whether to conduct the stop (e.g. expired registration, burned out tail light, etc.). Low-discretion stops are those in which driving behavior represents a clear and serious danger to public safety (high speeds).” *Id.* at vii.

Finally, the study found that “Blacks and Hispanics were more likely than Whites and Asians to be handcuffed at some point during the stop.” *Id.* In addition, they were “also more likely to be detained for longer periods of time.” *Id.* As far as LVMPD, African-Americans were handcuffed in traffic stops at twice the rate of Caucasians. *Id.* Hispanics were 1.4 times more likely to be handcuffed than Caucasians. *Id.* In addition, in looking at the duration of stops, 40.7 % of African-Americans and 39.3% of Hispanics were detained for 16 minutes or more when a stop took place. Only 28% of Caucasians endured stops of this duration. *Id.* at 19, 20.

**Table 38: LVMPD Traffic Stops: Use of Handcuffs and Duration of Traffic Stop**

	<b>Handcuffed during stop (% yes)</b>	<b>Stopped 0-15 minutes</b>	<b>Stopped 16-30 minutes</b>	<b>Stopped 31-60 minutes</b>	<b>Stopped 61 minutes or more</b>
White	2.5	71.9	24.3	3.0	.7
Black	5.0	59.3	33.5	5.9	1.3
Hispanic	3.5	60.7	33.4	4.9	1.0
Asian	1.6	72.6	24.7	2.1	.6
Other	1.0	73.4	24.1	1.8	.6
<b>TOTAL</b>	<b>3.1</b>	<b>67.4</b>	<b>27.9</b>	<b>3.9</b>	<b>.9</b>

LVMPD also conducted more searches of African-American and Hispanic drivers, than Caucasian drivers, once a stop took place. *Id.* For African-Americans, the rate was once again double that of Caucasian drivers (6.3 percent v. 3.0 percent), and for Hispanic drivers the rate was also disproportionally escalated (4.6 percent v. 3.0 percent). *Id.* at 20, 21.

Despite this compelling evidence of racial bias, the LVMPD seems unable to initiate real change. In 2003, LVMPD police officers were involved in 17 shootings, and ten of the subjects were African-American. Then Clark County Sheriff Bill Young and Undersheriff Doug Gillespie formed a task force aimed at improving the relationship between the Metropolitan Police Department and minority communities. Titled the *Multi-Cultural Advisory Council*, (“Council”), the task force was charged with increasing the racial sensitivity of officers and reducing violent confrontations.<sup>9</sup> The Council has yielded few tangible results, however, and no written policy initiatives. While the Council brings the police and community together and creates dialogue, it lacks the authority to mandate departmental transformation. The inability of LVMPD to alter the racial bias evidenced in its practices is a fundamental factor making Department of Justice intervention necessary.

**V. FATAL POLICE SHOOTINGS AND USE OF EXCESSIVE FORCE UNDERMINE PUBLIC CONFIDENCE IN LVMPD**

The most egregious cases of police misconduct in recent Las Vegas history highlight the systemic and ongoing nature of LVMPD’s excessive use of force, including deadly force, against Nevada citizens. These instances stimulate public dismay, and lead the public to question LVMPD’s dedication to the protections enshrined in the laws and the Constitution of the United

<sup>9</sup> Allen Maimon, Lawrence Mower and Brian Hayes, *Las Vegas Metro Police Rank High in Using Deadly Force*, Las Vegas Review-Journal, Nov. 28, 2011, <http://www.lvrj.com/news/deadly-force/142-dead-and-rising/las-vegas-police-rank-high-in-shootings-134255763.html>.

States. The following cases are by no means exhaustive, but rather illustrate a pattern of LVMPD's unnecessary and excessive use of force, particularly against persons of color.

1. **Stanley Gibson, 43**, was the 12<sup>th</sup> shooting fatality by Las Vegas police officers in 2011. The circumstances of his death reveal not only a deliberate indifference to his safety, but also LVMPD's systemic inability to properly train and supervise its officers. Gibson, an African American Gulf War veteran, mistakenly drove into the parking lot of the Alondra apartment complex on December 12, 2011. He was unarmed and lost. Not a suspect in any crime, he suffered from post-traumatic stress disorder and could not recall his apartment's location following a recent move. Alondra residents notified the police, after Gibson spent some time driving slowly through the complex displaying his emergency flashers. Gibson apparently made a call to his wife, indicating that he was unable to find their apartment complex.<sup>10</sup>

LVMPD officers went to the Alondra complex and used two patrol cars to box in Gibson. Gibson evidently refused to exit his vehicle. After a 30 minute standoff, in which Gibson's car was unable to move, a supervisor fired a beanbag shotgun to shoot out one window of the vehicle. Officer Jesus Arevalo, a nine-year veteran of the force, immediately fired seven shots from his AR-15 semiautomatic rifle into the car, killing Gibson. The moments leading up to the shooting were captured by a neighbor's video camera. Notably, before 2003, about 14 percent of those shot at by police were identified as suicidal or mentally ill. Since then the rate has been about 20 percent.<sup>11</sup>

2. **Erik Scott, 38**, a former army officer and medical device salesman, was shot and killed outside a Costco warehouse, in an affluent neighborhood, by three Las Vegas police officers, on July 10, 2010. Scott had a heavy dose of prescription pain pills for a back injury. A store employee evidently thought Scott was acting erratically and dialed 911. Although Scott was not accused of any crime, he had a permitted gun in its holster and refused to leave the store. When officers confronted Scott near the store exit, one yelled "Hands, let me see your hands." Scott reached both hands under his shirt and pulled out the holstered gun. The Las Vegas police officers then fired. The Scott family attorney later described the situation, as one where,

"Erik Scott was walking to the parking lot with his gun in his holster and he was ambushed by these three officers who gave him about three seconds from the initial commands to respond. And as he was turning around, you heard witnesses testify that he was

---

<sup>10</sup> Mike Blasky and Antonio Planas, *Officer Who Shot Veteran Knew Of Plan To Take Man Alive*, Las Vegas Review-Journal, Dec. 22, 2011, <http://www.lvrj.com/news/sources-officer-who-shot-disabled-veteran-knew-of-plan-to-use-nonlethal-force-136115728.html>.

<sup>11</sup> Alan Maimon, Brian Hayes and Lawrence Mower, *Las Vegas Police Rank High in Shootings*, Las Vegas Review-Journal, Nov. 28, 2011, <http://www.lvrj.com/news/deadly-force/142-dead-and-rising/las-vegas-police-rank-high-in-shootings-134255763.html>.

frozen in time, looked like a deer caught in the headlights, and he responded within a few seconds with the best he could do by handing over the holstered gun, at which point they shot him two times in the front and five times in the back.”

Kyle Hansen and Dave Toplikar, *Police Officers Found Justified In Erik Scott Shooting; Family Plans Lawsuit*, <http://www.lasvegassun.com/news/2010/sep/28/jury-shooting-justified/> Sept. 28, 2010 (Last viewed Jan. 12, 2012).

The shooting went to the Coroner’s Inquest process, and was ruled justified. The Scott family was not permitted to obtain the final police report, or view written statements from witnesses, or view any of the evidence in anticipation of the process. After the result of the inquest was announced, the Scott family attorney observed, “this circus, this cop-clearing circus that they call a Coroner’s Inquest process is making Las Vegas the laughingstock of the nation.” He complained that, unlike a regular jury trial, where a prosecutor presents a case and a defense attorney presents a rebuttal, only the district attorney is allowed to present a case in the Coroner’s Inquest. Since the district attorney’s office works hand-in-hand with police, “you’ve got the police’s version and that’s it.” *Id.*

3. **Trevon Cole, 21**, was an African-American insurance salesman, who made three small marijuana deals to undercover agents. He was unarmed and crouching in front of a toilet when he was shot in the face during a botched raid on his apartment on June 11, 2010, a month before the Erik Scott shooting. By a vote of 7 – 0, the Use of Force Review Board found that Detective Bryant Yant was justified in the killing, even though two of the county’s own experts testified that forensic evidence contradicted Yant’s assertion that Cole made a threatening gesture towards him. The Coroner’s Inquest also cleared Yant. Nonetheless, an internal affairs investigation found that Yant violated several agency policies in connection with the shooting, and sanctioned Yant with “a week’s suspension without pay.” The Cole family was outraged by the leniency of the discipline, and their attorney observed, “He falsified paperwork. He killed an unarmed man and was contradicted by physical evidence during the [Clark County Coroner’s] Inquest. And that’s what his punishment is?”<sup>12</sup> Yant, a LVMPD police officer since 2000, has been involved in three controversial shootings resulting in two deaths. Yant remains with the LVMPD at a desk job.

4. **Frankie Davis, 33**, an African-American, was accused of trespassing by a downtown casino in 2001. A surveillance video captured the images of Las Vegas police officer David Miller punching the handcuffed man and breaking his neck in the casino’s backroom. A 9<sup>th</sup>

---

<sup>12</sup>Antonio Planas, *Las Vegas Officer in Trevon Cole Slaying Punished*, Las Vegas Review Journal On The Web. <http://www.lvrj.com/news/las-vegas-officer-in-trevon-cole-slaying-punished-116900543.html?mobile=y> Feb 24, 2011.

Circuit Court of Appeals decision on Davis' federal lawsuit stated that there was "no question that any reasonable officer would have known that the force used was excessive." Nonetheless, while LVMPD department officials found that Miller violated internal policies, they believed his actions did not rise to the level of a "constitutional violation."<sup>13</sup> The department later paid a \$250,000 settlement in the case, and subjected Miller to a 10 hour suspension and more training. Miller is still with the department.<sup>14</sup>

## **VI. DEPARTMENT POLICY ON USE OF DEADLY FORCE IS IGNORED, WITHOUT CONSEQUENCE**

In *Tennessee v. Garner*, the U.S. Supreme Court held that **a police officer may use deadly force in apprehending a fleeing felony suspect only when an officer has probable cause to believe that the suspect poses a threat of serious physical harm to either the officer or others.** 471 U.S. 1, 22 (1985) (emphasis added). In order to ensure appropriate safeguards and constrain the use of deadly force, the Nevada legislature enacted NRS 171.1455. It provides:

If necessary to prevent escape, an officer may, after giving a warning, if feasible, use deadly force to effect the arrest of a person only if there is probable cause to believe that the person:

1. Has committed a felony which involves the infliction or threat of serious bodily harm or the use of deadly force; or
2. Poses a threat of serious bodily harm to the officer or others.

Justifiable homicide by a public officer is defined by Nev. Rev. Stat. § 171.1455 (2010), which states:

Homicide is justifiable when committed by a public officer, or person acting under the command and in the aid of the public officer, in the following cases:

1. In obedience to the judgment of a competent court.
2. When necessary to overcome actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty.

---

<sup>13</sup> Glen Puit, *VIDEOTAPE REVIEWED: Police Conduct Criminal Inquiry*, Las Vegas Review-Journal on the web [http://www.reviewjournal.com/lvrj\\_home/2002/Jan-03-Thu-2002/news/17791089.html](http://www.reviewjournal.com/lvrj_home/2002/Jan-03-Thu-2002/news/17791089.html), Jan. 3, 2002 (Last Viewed Jan. 11, 2012).

<sup>14</sup> Lawrence Mower, *Former Members of Use of Force Review Board Call it Rubber Stamp*, Las Vegas Review-Journal on the Web <http://www.lvrj.com/news/deadly-force/slow-to-change/former-members-of-use-of-force-review-board-call-it-rubber-stamp-134259783.html>. Nov 29, 2011 (Last viewed Jan. 9, 2012).

3. When necessary:

- (a) In retaking an escaped or rescued prisoner who has been committed, arrested for, or convicted of a felony;
- (b) In attempting, by lawful ways or means, to apprehend or arrest a person; or
- (c) In lawfully suppressing a riot or preserving the peace.

The Attorney General has determined that Nev. Rev. Stat. § 200.140 and Nev. Rev. Stat. §171.122 (relating to the manner in which execution of warrant and service of summons are made; issuance of citation in lieu of execution of a warrant of arrest) are not unconstitutional as written, but would be unconstitutional if applied contrary to the holding from *Tennessee v. Garner*. 85 Op.Att’y.Gen. 11 (1985). *Garner*, 471 U.S. 1, supra.

The LVMPD has implemented associated mandates through the LVMPD Policy and Procedures Manual (“Department Policy”). According to the Department Policy<sup>15</sup>:

Department members are not authorized to draw or display their firearms, except for training at the firearms range, unless the circumstances create reasonable belief that it may be necessary to use the firearm in conformance with this order. Before using a firearm, department members will, whenever feasible, identify themselves and state their intention to shoot. Members are to fire their weapons only to stop and incapacitate an assailant from completing a potentially deadly act.

...Department members are authorized to use deadly force in accordance with NRS 171.1455 to:

- 1. Protect themselves or others from what is reasonably believed to be an IMMEDIATE THREAT OF DEATH OR SERIOUS BODILY HARM;
- 2. Prevent the escape of a fleeing felon who the member has probable cause to believe will pose A SIGNIFICANT THREAT TO HUMAN LIFE if escape should occur; and that the justification for the action must be CLEAR and IMMEDIATE

...Department members are not authorized to discharge their firearm:

- 1. As warning shots;

---

<sup>15</sup>Las Vegas Metro. Police Dep’t, Sec. 6/002.00, Use of Force, Policy and Procedures Manual..

2. If it appears likely that an innocent person may be injured;
3. From a moving vehicle, except as a last resort; or
4. At a moving vehicle, unless it is absolutely necessary to do so to protect against imminent threat to life of the member or others. As such, members:
  - a. Will attempt to move out of the path of the oncoming vehicle, if possible, rather than discharge their firearms
  - b. Will not intentionally place themselves in the path of an oncoming vehicle and attempt to disable the vehicle by discharging their firearms; and
  - c. Will not discharge their firearms at a fleeing vehicle (a vehicle moving away from the officer) or its driver.

See footnote 14.*Id.*

The manual anticipates that LVMPD will investigate all use of force incidents to determine justification, as well as to correct any training deficiencies. *Id.* Supervisors are meant to respond to each use of force incident, and assist with the investigation and completion of the use of force report. *Id.* Furthermore, the manual indicates that, in the case of deadly force, “officers will obtain all available evidence at the scene to include, if available (video, audio, suspect/witness statements). *Id.* All reporting in deadly force incidents will be conducted in conjunction and with input of the homicide section.” Essentially, “incidents of deadly force, whether or not they result in fatality, will be investigated by the Homicide Section.” The Homicide Section is asked to conduct a thorough, objective investigation of the incident, “using accepted investigative procedures and techniques,” and submit a written Use of Force Report to the Sheriff. Officers involved in the shooting are placed on relief of duty status, and their identities are protected from the public and media for 48 hours. *Id.* Ultimately, officers who use deadly force are also subject to the Clark County Coroner’s Inquest process and the LVMPD’s Use of Force Review Board. *Id.*

Given the continuing escalation of fatal officer involved shootings, and the numerous occasions on which unarmed and nonthreatening individuals have been subjected to deadly force, it becomes clear that the Department Policy fails to adequately check LVMPD officer misconduct. Further, officers and supervisors appear incapable of abiding by its mandates. The Department Policy must be revised to further restrain the use of deadly force, and make it clear that it is forbidden to use deadly force against nonviolent suspects. Ultimately, the LVMPD fails to follow established legal mandates on the use of deadly force, and fails to implement appropriate training and supervision practices to ensure that these mandates are respected. One must question how individuals such as Stanley Gibson, accused of no crime and sitting unarmed in an immobilized car, pose an immediate threat of death or serious bodily harm to human life.

The Department Policy contains a variety of authorized low lethality tools, restraints, and techniques.<sup>16</sup> These are ignored. Officers fail to follow, and supervisors fail to implement even the existing limitations on the use of deadly force.

As the U.S. Supreme Court observed, “The intrusiveness of a seizure by means of deadly force is unmatched...The use of deadly force also frustrates the interest of the individual, and of society, in judicial determination of guilt and punishment.” *Garner*, 471 U.S. 1, at 9. The Court emphasized, “A police officer may not seize an unarmed, nondangerous suspect by shooting him dead.” *Id.* at 11.

## VII. LVMPD’S INTERNAL REVIEW POLICIES AND PRACTICES FAIL TO DETER MISCONDUCT

Currently, two primary civil mechanisms<sup>17</sup> exist to review an officer’s use of deadly force in the line of duty: the LVMPD’s Use of Force Review Board and the Clark County Coroner’s Inquest process.<sup>18</sup> If the shooting results in death, homicide detectives investigate the case and present it to the Coroner’s Inquest. Citizen jurors then determine if the officer’s actions were justified, excusable, or criminal. The Use of Force Review Board also looks at fatal shooting cases to see if the officer violated Department policy, but it has never disagreed with an inquest

---

<sup>16</sup> Las Vegas Metropolitan Police Dept., Policy and Procedures Manual, Critical Procedures, Sec. 6/002.00, Use of Force pages 644- 645.

<sup>17</sup> Lawrence Mower, *Former Members of Use of Force Review Board Call it Rubber Stamp*, Las Vegas Review-Journal on The Web <http://www.lvrj.com/news/deadly-force/slow-to-change/former-members-of-use-of-force-review-board-call-it-rubber-stamp-134259783.html>. Nov 29, 2011.

<sup>18</sup> An additional ineffectual entity, titled the Citizen’s Review Board, exists to provide for civilian review of the investigations of alleged police misconduct. Due to public dissatisfaction concerning LVMPD’s handling of complaints about alleged police misconduct, in July of 1997, a bill was passed authorizing Clark County and the City of Las Vegas to create a Citizen Review Board. On April 6 and May 29, 1999, respectively, the county and city adopted mutual ordinances to create the Citizen Review Board, jointly funded by Clark County and the City of Las Vegas. The Citizen Review Board is composed of twenty-five citizens (who are appointed by two members of the Las Vegas City Council) and two members of the Clark County Board of County Commissioners. The Review Board was established for the purpose of receiving and investigating complaints of misconduct by peace officers of the LVMPD in the performance of their duties. While the Review Board may investigate deaths which occur in connection with actions of LVMPD police officers, it lacks any enforcement powers. It can only review citizen complaints and make recommendations to the sheriff regarding discipline, policies, procedures, and programs. The sheriff possesses the discretion to address or ignore those recommendations. 16. Las Vegas Metro. Police Dep’t Citizen Review Bd., About Us, <https://www.citizenreviewboard.com/AboutUs.aspx> (last visited Jan. 13, 2012). Ultimately, this Review Board has no authority to enforce any action or instigate any criminal or LVMPD internal investigation into an officer. The Review Board, in essence, collects data and reports this information to the sheriff who can take action if he chooses. Even though the sphere of the Review Board’s influence is severely limited, the Police Protection Association (PPA) sought to evade its examination and challenged the Board’s constitutionality. See *Las Vegas Police Protective Ass’n Metro, Inc. v. Eighth Judicial Dist. Ex. Rel. County of Clark*, 122 Nev. 230, 130 P.3d 182 (2006) (upholding the constitutionality of the Citizen’s Review Board.). While the Citizen’s Review Board serves a valuable function, most of its work involves more routine matters such as discourtesy, improper stops and searches, and even minor use of force issues. It does not become involved in situations where police are under active criminal investigation, and, has not, in practice, become involved in police shootings.

jury. In essence, then, these amount to puppet institutions, and are incapable of providing meaningful review of an officer's misuse of deadly force.

#### **A. USE OF FORCE REVIEW BOARD: RUBBER STAMP ON USE OF DEADLY FORCE**

African-American basketball star Charles Bush played for University of Nevada, Reno and died at the hands of LVMPD on July 31, 1990. As he was sleeping in a residential motel room he shared with his girlfriend, three Caucasian Las Vegas police officers surrounded him. They entered the room without a warrant and without announcing themselves as police. One officer kicked the bed, and in the ensuing fight Bush was choked to death. The Coroner's Inquest cleared the officers. The Clark County D.A. declined to charge the detectives. In response to community outrage, Clark County Sheriff John Moran created an internal review board to look at each incident where a Las Vegas police officer uses deadly force. The Board consists of five officers and two civilians, who possess the power not only to discipline errant officers but also to recommend changes in training and policy. Over time, it has shifted to a configuration of four citizens and three police officers. Any citizen can apply for a seat on the Board, and the Sheriff makes the appointments. This was considered "the linchpin of the Metropolitan Police Department's efforts to police itself."<sup>19</sup>

Unfortunately, the Use of Force Review Board has devolved into a rubber stamp. Officers have appeared before the board 510 times, as of May 2011. Department records reveal, however, that the board ruled in favor of the officer 497 times—a 97% clearance rate. In the last three years, 91 complaints have emerged based on the use of force. Only two complaints have been sustained, and those were in agreement with the conclusions of Internal Affairs. Former undersheriff Rod Jett, who retired as second-in-command of the Las Vegas Police Force last year, criticized the entity. Rulings adverse to officers are so rare that either "every officer that walks to the board has done everything perfectly, or the board has lost its ability to be independent and come to independent conclusions about the use of force." (See footnote 2, page 3). Sheriff Doug Gillespie has acknowledged the weak nature of the board. "My challenge with the use of force board, and this has been for a while, is the fact they are hesitant to administer discipline when they find officers in violation of policy." *Id.*

---

<sup>19</sup> Lawrence Mower, *Former Members Of Use Of Force Review Board Call It Rubber Stamp*, <http://www.lvrj.com/news/deadly-force/slow-to-change/former-members-of-use-of-force-review-board-call-it-rubber-stamp-134259783.html>, Nov. 29, 2011 (Last viewed Jan. 12, 2012).

## Use of Force Review Board Statistics 2009-2011

<u>YEAR</u>	<u>USE OF FORCE</u>	<u>DISMISSED NO MERIT</u>	<u>DISMISSED NO JURISDICTION</u>	<u>REFER TO HEARING PANEL (2009-2010)</u>	<u>REFER TO NJC</u>	<u>SUSTAIN AGREE WITH IA</u>	<u>DISMISS AGREE WITH IA</u>	<u>DISMISS WITH COMMENT</u>	<u>DISMISS NON METRO CIVILIAN</u>	<u>TOTAL ACTION TAKEN</u>
2009	41	6		2		1	16			25
2010	14	5	2	1		1	1	0	0	10
2011	36	2	0	0	0	0	3	0	0	5
Total	91	13	2	3	0	2	20	0	0	40

Arbitrary and inconsistent procedures undermine the independence of the review process. Use of Force Review Board member Will Watson, who served from 1991 to 1993, stated that officers were permitted to sit next to each other and listen to each other's testimony during hearings. "It seemed skewed in favor of police." *Id.* Another Use of Force Review Board member, Robert Kainen, indicated that the process fails to uncover full information. "You're not presented with any other side, other than the report from the police officers, and my feeling from reading the reports was that the questions from the detectives were made in such a way to produce a kind of response that would be the most positive for the police department." (See footnote 2, page 3). Ultimately, Board decisions are only advisory. In the past year, a Critical Incident Review Team (CIRT), formed to study tactics and policy violations after officer involved shootings, began presenting cases to the Review Board. Previously, only homicide detectives made those presentations.

Recent complaints to the ACLU of Nevada reflect community dissatisfaction with LVMPD's use of force practices, and ineffectual pursuit of Internal Affairs/CRB review. For the period between 2008 to 2011, we have received the following intake complaints:

### ACLU of NEVADA INTAKE COMPLAINTS: Use of Force 2008-2011

	<b>Total Number</b>
<b>Intake Complaints for Use of Force</b>	<b>55</b>
<b>Complaints that Sought Internal Affairs/CRB Review</b>	<b>10</b>

## B. THE CORONER'S INQUEST: A PUPPET INSTITUTION

According to Clark County Municipal Code Chapter 2.12, the county coroner has the duty to determine the cause of death of any person reported to him as having been killed by violence, or when any person has suddenly died under such circumstances as to afford reasonable grounds to suspect or infer that death has been caused or occasioned by the act of

another by criminal means. Clark County, Nev., Code § 2.12.060 (2011). When the coroner determines that an officer was involved in the death of an individual, the coroner must call for an inquest, contact the prosecutor, and select a presiding officer. Inquests represent fact finding and investigatory proceedings, rather than adversarial forums. Clark County, NV, Ordinance § 2.12.080 (m) (1979). The presiding officer must call upon the Clark County jury commissioner to select a jury panel. *Id.* at § 2.12.080(m). The presiding officer then selects seven random jurors from the panel to sit as an inquest jury.

Until recently, a majority of inquest jurors decided whether an officer's shooting fell into one of three categories: (1) a justified killing, where an officer felt his or her life or the life of another was in danger; (2) an excusable homicide, if the officer killed another while "doing a lawful act, without any intention of killing, yet unfortunately kills another;" or (3) criminal homicide.<sup>20</sup> In any event, the prosecutor ultimately retains the discretion as to whether to bring charges. While the Clark County inquest system dates back to 1969, only on one occasion has a coroner's jury deemed police actions criminally negligent.<sup>21</sup> In 1976, inquest jurors found that an officer's decision to fire 16 rounds in a residential neighborhood while pursuing a suspect was not justified. The district attorney presented the case to a grand jury, which declined to indict. "That is the last time a district attorney is known to have pursued criminal charges following an inquest," according to the Las Vegas Review-Journal. *Id.*

In a remarkable event, in 1990, then Nevada Attorney General Franki Sue Del Papa charged three officers with involuntary manslaughter for killing casino floorman Charles Bush in his residential motel room. The Attorney General was not satisfied with an inquest jury's verdict finding the killing justified and then District Attorney Rex Bell's inaction following the death. (*See* footnote 5, page 3 ) This extraordinary measure was necessitated by the refusal of the Coroner's Inquest or the District Attorney to meaningfully examine the use of deadly force by LVMPD officers.

Ultimately, the Coroner's Inquest needs to become an objective tribunal capable of overseeing proceedings with full participation by all parties. (Gayan, *Judge Dredd, supra* at 720.). In 2008, the ACLU suggested the following improvements for the process: (1) replace prosecutors from the Clark County district attorney's office with lawyers from the Nevada

---

<sup>20</sup> The prior version of the ordinance stated that, "(a) After hearing the testimony, the inquest jury shall deliberate in secret and render their verdict and certify the same in writing, signed by them, and setting forth (1) the name of the deceased; (2) when, where, and by what means, he came to his death; (3) whether the death was by criminal means or whether the death was excusable or justifiable under the law; and (4) the name of the person causing the death, if factually known or reasonably established." (b) If the inquest jury is unable to reach a unanimous verdict, the presiding officer shall instruct the inquest jury that a four to three majority is required for a verdict." 2.12.140. (Clark County, NV Ordinance 646 § 6, (1979), Clark County NV Ordinance 262 §14, (1967)).

<sup>21</sup> "From 1976, when Clark County began holding inquests, through January 2007, 159 inquests were held with only one jury finding an officer criminally negligent." Michael J. Gayan, *Judge Dredd: Hollywood Fiction or Las Vegas Reality*, 8 Nev. LJ. 698 (2008); Abigail Goldman, *Coroner's Inquest of Police Shootings Out of Step*, Las Vegas Sun, Jan. 14 2007 at 1. Lawrence Mower, *Coroner's Inquests Undercut by Prosecutorial Inaction, Deference to Police*, Las Vegas Review-Journal on the Web. <http://www.lvrj.com/news/deadly-force/broken-system-shattered-lives/coroner-s-inquests-undercut-by-prosecutorial-inaction-deference-to-police-134261653.html>. Nov 30. 2011.

attorney general's office as the main questioners of police during the hearings; (2) require randomly selected justices of the peace to act as hearing masters instead of lawyers from the community; and (3) allow family members and friends of those shot, or their counsel, to question the LVMPD officers during the hearings." *Id.* at 717. Of those recommendations, only the one concerning utilizing Justices of the Peace was adopted at that time.

In 2010, the Clark County Commission revised the Coroner's Inquest process. According to the new Clark County Code, NV § 2.12.080, (2010)

- (c) In a case where the coroner determines that a death was an officer involved death **and the investigation into the incident is complete**, the coroner will call for an inquest, contact the appropriate prosecutor, and utilize the procedure set forth in Section 2.12.020(e) for selection of a presiding officer.<sup>22</sup> (Clark County Ordinance 3920, December 7, 2010). [**emphasis added**].

Pursuant to Clark County, Nev. Code § 2.12.080 (2010), citizen jurors, at the conclusion of the inquest shall "deliberate in secret and answer a set of interrogatories relating to the death that is the subject of the inquest proceeding." These interrogatories do not address any question of criminality, but instead "shall deal only with questions of fact and shall not deal with questions of fault or guilt." *Id.* Most importantly, the new version of the code also authorizes the presiding officer to appoint an inquest ombudsman, to represent the deceased's family in all inquest proceedings. Clark County, Nev. Code § 2.12.075 (2010).

The 2010 modifications to the Coroner's Inquest process were immediately challenged and derailed by the Police Protective Association (PPA), the District Attorney, and the Attorney General. Even though the 2010 version of County Code requires a coroner to call for an inquest only after a criminal investigation is completed, the District Attorney has refused to perform any criminal investigations of officer involved shootings. In practice, the District Attorney will only prepare an investigation of an officer involved shooting, once an Inquest has been scheduled. This circular reasoning has stymied any criminal investigation in regard to officer-involved shootings. It has also prevented any Inquests from taking place.<sup>23</sup>

---

<sup>22</sup>In practice thus far, the deputy district attorney has assumed the role of the "neutral arbiter of the facts" for each inquest proceeding.

<sup>23</sup> The key sticking point has been the creation of the ombudsperson to represent the interests of the deceased's family. The previous system had no such mechanism, leaving the process essentially under the total control of the District Attorney. It was only when the ombudsman was added, to ask questions on behalf of the family that the PPA, with the support of the District Attorney, balked and refused to participate.

Attempts to strengthen the Coroner's Inquest process have also met with vehement police union and Attorney General resistance, in both the legislature and the courts. In the 2011 Nevada legislative session, the PPA introduced a bill and lobbied heavily to get the assembly to overturn the new inquest procedures. In the summer of 2011, two lawsuits were filed to stop the newly implemented Coroner's Inquest Statutes, as codified in Chapter 2.12 of the Clark County Code of Ordinances, from proceeding. The first case was filed in the United States District Court, District of Nevada, on June 20, 2011, by the PPA on behalf of three officers involved in the first Coroner's Inquest scheduled to take place under the new laws on July 12, 2011.<sup>24</sup> The second suit was filed in the District Court for the State of Nevada on September 23, 2011, by the Attorney General of the State of Nevada on behalf of three Highway Patrol troopers involved in the second inquest set to be held under the new ordinance on September 28, 2011.<sup>25</sup> Both cases alleged that the revised Coroner's Inquest procedure violated the constitutional rights of the police officers being investigated. Most notably, the suits claimed that the officer's due process and equal protection rights, along with Nevada's separation of powers doctrine would be violated if the inquests were allowed to proceed as scheduled. The PPA filed the lawsuit in order to hinder the inquest process; since doing so on June 20, 2011, no inquests have occurred.

What is more, the PPA has advised its members not to cooperate with either the Coroner's Inquest or any internal investigation by LVMPD itself. Furthermore, the Clark County District Attorney has refused to engage in any criminal investigation concerning a police shooting or other homicide. The rationale for these decisions is that the Coroner's Inquest is the proper forum for determining criminality. This contradicts the language of the revised Inquest ordinance. The Inquest process, as now written, does not address the question of possible criminality at all and is designed to occur only *after* the District Attorney makes a determination that no criminal charges will be filed. The result is that no one engages in any independent investigation concerning possible criminal behavior by police.

A ruling in the state court case filed by the Attorney General was handed down on November 10, 2011, by the Honorable Joanna S. Kishner. In that ruling, Judge Kishner held that Chapter 2.12 was constitutional and denied Plaintiff's request for an injunction. FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT, *Hernandez v. Bennett-Haron*, No. A-11-648505-C Order, *Zaragoza v. Bennett-Haron*, No. 2:11-CV-01091-PMP-GWF (Dist. Ct. NevDec. 5, 2011). On December 5, 2011, the Honorable Philip M. Pro filed an order regarding the case filed by the PPA in federal court. Federal Judge Pro ruled that the officer's claims that the inquest process violated their due process and equal protection rights were unfounded and held the inquest ordinance constitutional on federal grounds. ORDER, *Zaragoza v. Bennett-Haron*, No. 2:11-CV-

---

<sup>24</sup>Zaragoza v. Bennett-Haron, No. 2:11-cv-1091-PMP-GWF (D. Nev. Dec. 5, 2011).

<sup>25</sup> Case No.: A-11-648505-C

01091-PMP-GWI (Dist. Ct. Dist. Nev., Dec. 5, 2011). However, he remanded the question of the violation of the Nevada constitution's separation of powers doctrine to the Nevada State Court for a decision. *Id.* This case has now been appealed to the Ninth Circuit by the PPA. Therefore, the remand to state court on the separation of powers issue is stayed and more than likely will not be addressed for several years until after the Ninth Circuit makes its ruling on the appeal. There is now no legal impediment to prevent the implementation of the revised inquest system. PLAINTIFF'S NOTICE OF APPEAL, *Hernandez v. Bennett-Haron*, No. A-11-648505-C. See *Hernandez v. Bennett-Haron*, No. A-11-648505-C (Nev. Dist. Ct. Sept. 23, 2011) (notice of appeal received on December 29, 2011).

### **VIII. CLARK COUNTY'S DISTRICT ATTORNEY REFUSES TO PROVIDE A CRIMINAL CHECK ON USE OF DEADLY FORCE**

The Clark County District Attorney possesses the authority to provide a criminal check on a police officer's misuse of deadly force. See generally *Nev. Rev. Stat. Ch. 173 & 252*. Clark County prosecutors should conduct an investigation when a homicide takes place, whether involving a citizen or a police officer. It is their role to follow and guide the investigation, and screen the case to determine which charges to file after an arrest. In a typical case, a team of prosecutors who specialize in homicide cases go directly to the crime scene. Detectives then consult with prosecutors as needed. Deputy district attorneys probe the strength of the case, assess challenges to prosecution, and determine which legal violations took place. After completing the investigation, detectives can recommend particular criminal charges. The district attorney possesses the final authority to decide whether to file charges, and which charges to bring.

Nonetheless, in Clark County the district attorney will not review an officer's use of deadly force, unless the head of the police agency requests it. [Lawrence Mower, *Coroner's Inquests Undercut by Prosecutorial Inaction, Deference to Police*, Las Vegas Review-Journal on the Web. <http://www.lvrj.com/news/deadly-force/broken-system-shattered-lives/coroner-s-inquests-undercut-by-prosecutorial-inaction-deference-to-police-134261653.html>. Nov 30, 2011). "Unless there is an inquest, there's no need for the district attorney to get involved," the DA was quoted as saying, because the sheriff or local police chiefs have already made a "preliminary determination that there is no criminal conduct." *Id.* Clark County's district attorney acknowledged that when an officer kills someone, the DA defers to the homicide detective's report in preparation for the Coroner's Inquest. While the prosecutor possesses the authority and mandate to conduct additional investigation, or require further action on the part of the detectives, this has not occurred in the last 30 years. Essentially, when there is an officer involved shooting, homicide detectives do the full investigation without prosecutor involvement. *Id.* "In most cases, the detectives wrap up their work and send copies of the same report to the county coroner and to the district attorney's office. Prosecutors don't screen the case with an eye

for any criminal charges. They simply assume that if police thought the officer had committed a crime, they would say so.” *Id.* However, only the Sheriff has the authority to send the case to the district attorney for criminal review. Notably, “The Review Journal could find no instance of any sheriff forwarding an on-duty shooting case to prosecutors since 1990.” *Id.*

Prosecutors then bring the detective’s report before the Coroner’s Inquest, which consists of a hearing master and seven citizen jurors. The current district attorney believes that preparing for the Coroner’s Inquest amounts to an adequate review of the case. “If his deputies saw something that indicated a crime by the office, they would file charges.” *Id.* According to the Review Journal’s investigation, “while that can happen, it hasn’t since at least 1990.” *Id.* It is clear that several generations of Clark County district attorneys have completely abdicated their responsibility to pursue a thorough investigation of police involved shootings. Incredibly, the district attorney’s office failed to review a single police homicide in 2011, even though Las Vegas police have shot and killed a record 12 people. *Id.* Even in the case of Stanley Gibson, the Clark County District Attorney has not yet indicated that it plans to open an investigation into the circumstances of his death. The system is altogether broken.<sup>26</sup>

## **REMEDIES REQUIRED**

### **IX. THE ROLE OF THE SPECIAL LITIGATION SECTION**

1. The Special Litigation Section, United States Department of Justice (DOJ), has taken action against local and state agencies who demonstrate disregard for the constitutional and legal rights of people. Pursuant to 42 U.S.C § 14141, when a law enforcement agency has engaged in a “pattern or practice of conduct that has the effect of depriving persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States,” it may file a civil action to obtain necessary systemic remedies to eliminate these patterns and practices.
2. The DOJ is well equipped to investigate the cause of these repeated incidents. The investigation should determine why the LVMPD initiated or escalated the confrontations; whether and why the officers perceived a threat from certain individuals; whether officers view the use of force differently when they are confronting a person of color; why the officers chose not to use de-escalation tactics in responding to perceived law violations in

---

<sup>26</sup> Notably, Clark County Attorney David Roger has left office as of January of 2012. He is currently employed by the Las Vegas Police Protective Association, the Metropolitan Police Department’s rank-and-file officers union. The interim D.A., Marianne Miller, is conducting the job until the commission has selected a new D.A. (Brian Haynes and Lawrence Mower, Cities Find Ways to Reduce Deadly Confrontations With Police, Preserve Safety, Las Vegas Review-Journal, Dec. 1, 201, [www.lvrj.com/news/deadly-force/better-ways/cities-find-ways-to-reduce-deadly-confrontations-with-police-preserve-safety-134262423.html](http://www.lvrj.com/news/deadly-force/better-ways/cities-find-ways-to-reduce-deadly-confrontations-with-police-preserve-safety-134262423.html)).

order to avoid the use of violence; whether LVMPD employees who witness excessive force promptly report it; whether the LVMPD supervisors promptly and properly gathered the evidence and fully investigated the allegations of excessive use of force.

3. The DOJ has investigated and either publicized findings and/or filed complaints and/or entered into consent decrees with at least 21 law enforcement agencies around the United States.
4. The DOJ possesses the capacity to remedy misconduct by a local police department through the imposition of a combination of remedies, including a court-appointed independent monitor, operational policy and oversight mechanisms, training protocols, and accountability systems.<sup>27</sup> When the DOJ issues its investigatory findings, it can ensure that the LVMPD possesses and aggressively implements state-of-the-art policies on use of force, citizen complaints, early intervention systems, officer training and other matters involving policing<sup>28</sup>. We believe that, in Nevada, central to the success of such an effort is the appointment of an independent monitor. In addition, the DOJ plays a critical role in the ongoing and continued review of LVMPD's implementation of recommended policies.
5. The record shows extensive misconduct by the LVMPD against citizens, as highlighted above. The operation of the civil and criminal justice system has not been enough to remedy this pattern. The only thing that can bring this pattern to an end is federal intervention under 42 USC § 14141.

#### **X. HOW INTERVENTION BY THE DEPARTMENT OF JUSTICE CAN ASSIST CLARK COUNTY RESIDENTS AND ITS POLICE FORCE**

1. Notably, Clark County Sheriff Doug Gillespie has publicly stated that he would support a federal investigation into the Las Vegas police shootings. Gillespie has apparently reached out to the local FBI office, and the Justice Department's Civil Rights Division to understand what a "pattern or practice" investigation will entail. "If the DOJ would choose to come here, it would not be an adversarial

---

<sup>27</sup> Joshua Chanin, *Implementing § 14141 "Pattern or Practice" Reform: Evidence from Four Police Departments*, <http://www.pmrnet.org/conferences/OSU2009/papers/Chanin>

<sup>28</sup> See Samuel Walker & Morgan McDonald, *An Alternative Remedy for Police Misconduct: A Model State "Pattern or Practice" Statute*, 19 Civil Rights Law Journal 479, 505-10 (2009).

relationship,” Gillespie indicated. “We’ll participate in the process.”<sup>29</sup>

Gillespie’s welcome is significant, as the LVMPD was formed in 1973 through a merger of the Las Vegas city police and the Clark County Sheriff’s Office, and is run by Gillespie, as an elected official with broad powers under state law.

2. The U.S. Attorney General possesses the ability to “obtain appropriate equitable and declaratory relief to eliminate the pattern or practice” of police misconduct. 42 USC § 14141.
3. The incidents demonstrated in this Petition show that the LVMPD suffers from a series of deficiencies that make structural reform, spearheaded by an outside agency, especially appropriate.
4. There is substantial evidence of failings in the LVMPD’s supervision and management system, in that officers with repeated complaints are allowed to have continued contact with citizens, and in the failure of LVMPD to have a meaningful and independent review process when officers use excessive force or deadly force against citizens.
5. Moreover, there is substantial evidence of failings in LVMPD’s discipline system, with its apparent inability to identify serious misconduct, or punish it appropriately.
6. LVMPD has also failed to respond to the high costs of defending and settling civil litigation, and the associated volume of complaints. Millions of dollars have been paid out to citizens to settle various property damage, excessive force and wrongful arrest claims.
7. Frequent and ongoing civil litigation against LVMPD presents a strong indicator of continued misconduct. Civil litigation, however, cannot bring about the structural reforms necessary to prevent misconduct from recurring.
8. Even though state law empowers the district attorney to address officer-involved homicides, the district attorney has refused to exercise that power as to the LVMPD.

---

<sup>29</sup> Aida Ahmed *Metro's Gillespie Supports Federal Probe Into Las Vegas Police Shootings*  
<http://www.lasvegassun.com/news/2011/dec/15/metros-gillespie-supports-federal-probe-las-vegas/> Las Vegas Sun on the Web, Dec. 15, 2011.(Last viewed Jan. 11, 2012).

9. Federal intervention can bring about real change. In this vein, **we respectfully request that the DOJ appoint an independent monitor to oversee LVMPD and its implementation of fundamental structural change.** The establishment of an independent monitor is an indispensable element in the transformation of the LVMPD, and one that will generate actual modifications and increase public confidence that real change has been effected. The monitor plays a critical and necessary watchdog role.

10. Monitors possess unique strengths. As one commentator has explained:

Monitors do more than simply report on the progress of consent decree and [Memorandum of Agreement] implementation. Because of their capacity to investigate and report to both the district court and the public any implementation shortcomings, they are active agents of implementation.<sup>30</sup>

In addition,

Monitors' reports become extremely valuable sources of information about the agencies they monitor. For example, they provide information about the progress of reform, developments related to use of force policy, and the citizen complaint process. In this respect, Monitors' reports help to reduce or end the historic problem of the closed nature of police bureaucracies.<sup>31</sup>

11. Other jurisdictions have successfully used independent monitors to ensure better training and supervision for police officers<sup>32</sup>. Monitors have also overseen the

---

<sup>30</sup> See generally Walker & McDonald, *Police Misconduct, Supra*, at 494-95.

<sup>31</sup> *Id.* at 514.

<sup>32</sup> "Unlike other versions of civilian oversight, such as review boards and commissions an auditor doesn't focus on individual cases of misconduct but identifies systemic problems with department training and policies. By suggesting fundamental changes, an auditor seeks to improve the entire agency and prevent future incidents instead of meting out individual punishment," as observed by Brian Haynes and Lawrence Mower in the LVRJ. Approximately a dozen have been created, in areas including: Denver, Co, Los Angeles, CA, San Jose, CA, Portland, OR, and Boise, ID. In Denver, following the creation of an independent auditor, police shootings have fallen by more than 25%. "Effective and robust civilian oversight has to be a critical component of any law

reform of department policies and procedures, and the enhancement of police relationships with minority communities. In Las Vegas, the monitor should play a critical role in setting up a LVMPD Reform Commission. In this fashion, the monitor should schedule and oversee a multi-year review of the LVMPD.

12. After conducting the LVMPD investigation, the DOJ should impose remedial steps upon the department and City, including, but not limited to, the appointment of an independent monitor, as well as:

- a. Require that LVMPD develop and implement a **new policy on the use of deadly force**, modeled after policies in place in Portland, Los Angeles and New York City. The Police Assessment Resource Center (PARC) has recommended that the use of deadly force should be done only as a last resort. (Exhibit 4). Further, LVMPD should be required to adopt PARC's **model on disengagement**, which is in place in Denver. (Exhibit 5) As noted by the LVRJ, "This policy allows officers an alternative to forcing a fatal confrontation with someone who might be mentally ill or otherwise unable to understand police commands. Disengagement encourages officers to back off and find ways to de-escalate the situation, a mindset counter to most law enforcement training." (See footnote 11, page 16). Denver adopted this model after police fatally shot a mentally disabled teen in his kitchen.<sup>33</sup> Nonlethal tools permit officers to carry out their duties, with minimal harm. One retired police chief observed, "Officers

---

enforcement agency," Denver Mayor Hickenlooper noted. The Police Assessment Resource Center (PARC), an organization devoted to improving police policies and procedures, considers civilian oversight critical to the integrity and thoroughness of internal investigations. In LA, Denver and Boise, auditors respond to every officer involved shooting and monitor the investigation from beginning to end. They survey the scene and may suggest evidence to collect and witnesses to contact. Denver's independent monitor is appointed by the Mayor and supervised by a civilian board. At the end of every fatal shooting investigation, the monitor can disagree with the findings of an investigation, identify its shortcomings, recommend officer discipline and suggest new training or policies. In addition, Denver's public safety manager, a civilian appointed by the mayor to oversee police and fire agencies, issues a report examining the incident, as well as the associated investigation, and addressing key questions such as whether the officer properly used deadly force. (Brian Haynes and Lawrence Mower, *Cities Find Ways to Reduce Deadly Confrontations With Police, Preserve Safety*, Las Vegas Review Journal on The Web, [www.lvrj.com/news/deadly-force/better-ways/cities-find-ways-to-reduce-deadly-confrontations-with-police-preserve-safety-134262423.html](http://www.lvrj.com/news/deadly-force/better-ways/cities-find-ways-to-reduce-deadly-confrontations-with-police-preserve-safety-134262423.html). Dec. 1, 2011).

<sup>33</sup> Notably, in Portland, in the seven years prior to adoption of PARC recommended disengagement policies, police shot 59 people. In the seven years since adopting PARC policies, the number fell to 29. Brian Hayes and Lawrence Mower, *Other Cities Find Ways To Reduce Deadly Confrontations With Police, Preserve Safety* Las Vegas Review-Journal, Dec. 1, 2011, <http://www.lvrj.com/news/deadly-force/better-ways/cities-find-ways-to-reduce-deadly-confrontations-with-police-preserve-safety-134262423.html>.

are not justice on the street. We don't hand out justice. Justice is handed out by a judge and a jury." *Id.*

- b. Require the Use of Force Review Board to permit the participation of the independent monitor, who will issue public quarterly reports detailing the results of Board deliberations. The independent monitor will also refer policy concerns about an officer's tactical decisions to a separate Tactics Review Board made up of department tactical experts. As a matter of routine, the monitor should also examine and report on any possible racial motivations underlying the incident. This internal review process will enable the department to effectively determine if the officer violated policy and to learn from any mistakes<sup>34</sup>. The Sheriff should also assign investigators to the Use of Force Board, who would possess the responsibility of providing direct reports to the Sheriff and the independent monitor.
  
- c. Collaborate with the District Attorney's office, so that they conduct a thorough independent criminal review and investigation of any officer involved shooting, modeled on successful national programs. For example, Los Angeles sends the District Attorney Response Team (DART), a special unit of investigative district attorneys, to the scene of every officer-involved shooting<sup>35</sup>. Denver prosecutors investigate all shootings where a person is injured or killed, and then issue a letter describing their findings and intentions. This takes place within 30 days, typically. "The police case file, including video recordings of every

---

<sup>34</sup>The internal investigative process should focus on whether the officer violated policy and if the department can learn from any mistakes. "That's lacking in Las Vegas, where the department's Use of Force Review Board is widely seen as offering little critical review in findings that are never fully made public. That in turn contributes to the department's reluctance to learn from mistakes and adopt new policies." Denver addressed problems associated with the reluctance of civilians to criticize police practices by requiring that the city's **independent monitor** participate in board deliberations and disclose decisions in a quarterly public report. Denver's board also has the ability to refer concerns to a separate Tactics Review Board. Notably, LVMPD homicide detectives do not examine officer tactics in officer involved shootings. Last year, LVMPD created a separate tactical review team, but its review is secondary to the homicide investigation and can come weeks later. Other departments integrate the teams.

<sup>35</sup> While DART investigates the shooting, and the District Attorney's office decides whether to charge any of the involved officers criminally. In NYC, prosecutors from the district attorney's office are appointed as counsel to represent the decedent's family and the officer responsible for the death. Each side is questioned before a grand jury, which determines whether to indict the officers involved in the shooting. (Gayan, *Judge Dredd*, *supra* at 717-19). In Seattle, the district attorney holds a public hearing in which the officers involved in the shooting and the family of the deceased individual are represented by counsel. *Id.* A jury determines the facts of the case, and a chief county prosecutor decides whether the officer is criminally liable for the death. *Id.*

officer and witness statement, is then opened for anyone to view.” In Las Vegas, a Deputy District Attorney should be assigned to work with LVMPD’s internal force investigation teams. Full transparency acts as the foundation for an effective system<sup>36</sup>.

- d. Require that LVMPD collect, track, and publicly & regularly disclose statistical data breaking down officer-involved shootings, providing information on the age, gender, mental health status, and race of officers and of shot suspects. Under the review and guidance of the independent monitor, the LVMPD should be required to release an annual comprehensive Use of Force report to the general public.
- e. Require rigorous cultural and racial awareness training for officers, as well as more thorough psychological screening in the recruitment and hiring of officers to test for racial biases, either conscious or unconscious.
- f. Require rigorous mental health awareness training for officers, so that they may better address situations where an individual’s erratic behavior is attributable to his or her mental health challenges, and respond with de-escalation techniques, rather than excessive force. The training should include implementation of appropriate crisis intervention skills.
- g. Require that LVMPD implement a mandatory foot pursuit policy, that limits foot pursuit to the standards set by the International Association of Chiefs of Police (IACP), which strongly discourages solo foot pursuits and requires officers to stop if they lose sight of their target or lose contact with their partner, since 24% of all department shootings were preceded by a foot chase. (See footnote 6, page 3). As commentators have observed, “By restricting certain foot pursuits, police agencies can reinforce safe tactics and strategies that help minimize harm to their officers. That means backing off and using other resources, such as

---

<sup>36</sup> “In Clark County, prosecutors have almost no involvement in the investigation of any police shooting, They don’t go to the scene, rarely discuss the case with investigators, and do little more than receive files used to prepare for an inquest if the shooting subject dies,” as observed by the LVRJ. (*Brian Haynes and Lawrence Mower, Cities Find Ways to Reduce Deadly Confrontations With Police, Preserve Safety*, Las Vegas Review-Journal Dec. 1, 2011, [www.lvrj.com/news/deadly-force/better-ways/cities-find-ways-to-reduce-deadly-confrontations-with-police-preserve-safety-134262423.html](http://www.lvrj.com/news/deadly-force/better-ways/cities-find-ways-to-reduce-deadly-confrontations-with-police-preserve-safety-134262423.html)).

helicopters, dogs and extra manpower, to make the arrest.” (See footnote 15, page 31).<sup>37</sup>

- h. Require mandatory cameras in patrol cars, and on officers, with immediate implementation in ZIP Codes with high numbers of officer involved shootings, and phased implementation in the rest of LVMPD’s jurisdictional area.
- i. Any, and all, other remedies the DOJ deems appropriate to reform the practices of the LVMPD.

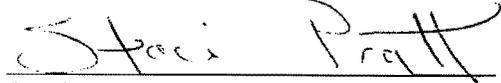
---

<sup>37</sup> LVMPD adopted a foot pursuit policy that mirrors the IACP model early this year, but it is only advisory. (See footnote 11, page 31).

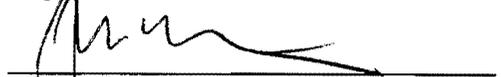
**CONCLUSION**

We request that the Civil Rights Division of the Department of Justice promptly investigate whether LVMPD has engaged in a pattern or practice of violations of civil rights by using unnecessary and excessive force against the residents of Nevada in violation of federal law. The DOJ has the authority and tools to investigate these troubling incidents; to evaluate the LVMPD's policies, practices, training and supervision; and to provide technical assistance, advice and guidance to the City of Las Vegas. Through such an investigation, the DOJ can significantly improve equality, fairness, and public safety throughout Las Vegas.

American Civil Liberties Union of Nevada  
601 S. Rancho Drive, Suite B-11  
Las Vegas, NV 89106  
(702) 366-1226



Staci Pratt  
Legal Director

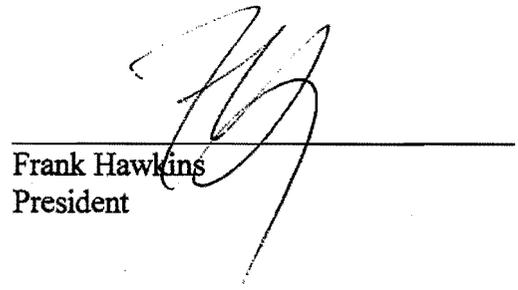


Allen Lichenstein  
General Counsel



Dane Claussen  
Executive Director

National Association for the Advancement of  
Colored People  
1048 West Owens Avenue  
Las Vegas, NV 89106  
(702) 638-1300



Frank Hawkins  
President