

JUDGE DREDD: HOLLYWOOD FICTION OR LAS VEGAS REALITY?

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TABLE OF CONTENTS

I.	INTRODUCTION	699	R
II.	DEADLY FORCE UNDER COMMON LAW AND NEVADA STATUTES	701	R
	A. <i>The Common Law</i>	701	R
	B. <i>Early Nevada Statutory History</i>	702	R
	C. <i>Garner’s Effect on Nevada Statutes</i>	703	R
	D. <i>Nevada Case Law Under Post-Garner Statutes</i>	705	R
III.	THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT’S USE OF FORCE POLICY	706	R
IV.	OFFICERS FELONIOUSLY KILLED IN NEVADA AND THE UNITED STATES	707	R
V.	OFFICER-INVOLVED SHOOTINGS IN LAS VEGAS, NEVADA IN 2006	709	R
	A. <i>Handcuffed, Unarmed Suspect Shot Twice in Back and Killed</i>	710	R
	B. <i>Man Shot and Killed When Stopped for Playing Loud Music</i>	712	R
	C. <i>LVMPD Officers Kill Man After Suspect Murders Police Officer</i>	713	R
	D. <i>Other Notable LVMPD Police Shootings in 2006</i>	713	R
VI.	CLARK COUNTY CORONER INQUEST PROCESS	715	R
	A. <i>Nevada’s Statutorily Established Coroner’s Inquest Process</i>	716	R
	B. <i>Clark County Coroner’s Inquest Controversy</i>	717	R
VII.	EXPLANATIONS FOR THE INCREASE IN OFFICER-INVOLVED SHOOTINGS	721	R
	A. <i>Sociological and Psychological Explanations for the Increase in Las Vegas Officer-Involved Shootings</i>	722	R
	1. <i>Post-Shooting Trauma for Police Officers</i>	722	R
	2. <i>Racial Undertones Combined with Socioeconomic Inequalities of Races</i>	723	R
	B. <i>Empirical Explanations for the Increase in Las Vegas Officer-Involved Shootings</i>	728	R

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Winter 2008] *JUDGE DREDD* 699

1. *Violent Crime and Homicide Rates* 729 R
2. *Strength of Nevada’s Criminal Penalties* 731 R
3. *The Las Vegas Population Explosion*..... 732 R
4. *More Officers, Please!* 734 R

VIII. SUMMARY AND CONCLUSION 738 R

FIGURE 1: NUMBER OF OFFICERS FELONIOUSLY KILLED IN NEVADA PER DECADE (1860-2007) 708 R

FIGURE 2: NUMBER OF OFFICERS FELONIOUSLY KILLED NATIONWIDE AND IN NEVADA (1976-2005)..... 709 R

FIGURE 3: OFFICERS FELONIOUSLY KILLED COMPARED WITH INDIVIDUALS JUSTIFIABLY KILLED BY OFFICERS, ANNUAL TOTALS 715 R

FIGURE 4: HOUSEHOLD INCOME BY RACE IN LAS VEGAS, TABLE (2000) 725 R

FIGURE 5: HOUSEHOLD INCOME BY RACE IN LAS VEGAS, CHART (2000) 725 R

FIGURE 6: VIOLENT CRIME RATE COMPARED WITH JUSTIFIABLE HOMICIDES PER YEAR (NEVADA AND NATIONWIDE) 730 R

FIGURE 7: OFFICERS FELONIOUSLY KILLED IN NEVADA COMPARED WITH NEVADA POPULATION PER DECADE (1860-2007) 733 R

FIGURE 8: JUSTIFIABLE HOMICIDES BY LVMPD OFFICERS COMPARED WITH LAS VEGAS POPULATION (2001-2006)..... 733 R

FIGURE 9: OFFICER-INVOLVED FATAL SHOOTINGS IN VARIOUS UNITED STATES CITIES (2005-2006) 734 R

FIGURE 10: LAS VEGAS POPULATION GROWTH AND INCREASE IN NUMBER OF LVMPD OFFICERS (2001-2006) 735 R

FIGURE 11: THE CUMULATIVE GROWTH IN LAS VEGAS POPULATION AND THE NUMBER OF LVMPD OFFICERS (2001-2006) 736 R

FIGURE 12: OFFICER TO POPULATION RATIOS, VIOLENT CRIME RATES, AND JUSTIFIABLE HOMICIDES BY POLICE IN TWELVE U.S. CITIES (2005) 737 R

I. INTRODUCTION

Police officers are endowed with a mantle of power from the government to enforce the laws and protect the people. They are field soldiers who enforce the laws and preliminarily determine the guilt of those who break the law. The state grants police officers the power to arrest and detain individuals until the courts pass a final judgment of guilt for each alleged offender. Officers also possess the authority to use deadly force in special circumstances that warrant its use. Pragmatic, philosophical, and moral dilemmas surround the use of deadly force by police officers while attempting to arrest suspected criminals. The conundrum lies in determining when peace officers entrusted to secure persons for judicial proceedings may hand down the unappealable judgment of death on the street before guilt has been determined at trial.

Approximately twenty years ago, the United States Supreme Court established greater restrictions on police use of deadly force than common law and

many state statutes had previously imposed.¹ The increased restrictions on police shootings following the *Garner* decision seemed to result in a two-year nationwide reduction in the number of felons² killed by police officers in 1986 and 1987.³ Some statistical studies have shown that the rate of justifiable homicides by police officers is positively related to factors such as birth rates, number of welfare recipients, the overall homicide rate, or the rate of police officers killed by civilians.⁴ Despite a significant reduction in the homicide rate across America since the early 1990s,⁵ the number of police shootings has not followed suit,⁶ leading to an increased rate of fatal police shootings per homicide.⁷ From 2001 to 2005, however, the use of deadly force by police officers in the United States decreased by nearly 10%.⁸

In the first seven months of 2006, a drastic increase occurred in the number of fatal officer-involved shootings by the Las Vegas Metropolitan Police Department (“LVMPD”).⁹ The problem of police officers potentially using unnecessary deadly force impacts the entire nation, but must be solved in each community or possibly within the walls of each home. Therefore, this Note focuses on the use of deadly force by LVMPD, the unique challenges facing Las Vegas, and potential solutions for the Las Vegas community. It covers:

¹ *Tennessee v. Garner*, 471 U.S. 1 (1985).

² In general, officers may only use deadly force against suspected felons and not those suspected of committing misdemeanors. See *infra* Part II.A.

³ JODI M. BROWN & PATRICK A. LANGAN, POLICING AND HOMICIDE, 1976-98: JUSTIFIABLE HOMICIDE BY POLICE, POLICE OFFICERS MURDERED BY FELONS 3 (2001), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ph98.pdf>.

⁴ Richard R.E. Kania & Wade C. Mackey, *Police Violence as a Function of Community Characteristics*, 15 CRIMINOLOGY 27, 27-48 (1977); David Lester, *Predicting the Rate of Justifiable Homicide by Police Officers*, 16 POLICE STUD. 43, 43 (1993) [hereinafter Lester, *Predicting*]; David Lester, *A Study of Civilian-Caused Murders of Police Officers*, 6 INT’L J. CRIMINOLOGY & PENOLOGY 373, 373-78 (1978).

⁵ The U.S. murder and non-negligent homicide rate per 100,000 inhabitants has decreased by nearly forty-three percent during the fifteen-year period from 1991 through 2005. FBI, U.S. DEP’T OF JUSTICE, UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES – 2005, at tbl.1 (2006), available at http://www.fbi.gov/ucr/05cius/data/table_01.html [hereinafter 2005 CRIME REPORT tbl.1].

⁶ The killing of felons by police has decreased approximately seven percent during the fifteen-year period from 1991 to 2005. FBI, U.S. DEP’T OF JUSTICE, UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES – 2005, at tbl.13 (2006), available at http://www.fbi.gov/ucr/05cius/offenses/expanded_information/data/shrtable_13.html [hereinafter 2005 CRIME REPORT tbl.13]; U.S. Department of Justice, Bureau of Justice Statistics: Homicide Trends in the U.S., <http://www.ojp.usdoj.gov/bjs/homicide/tables/justifystab.htm> (last visited Feb. 28, 2008) [hereinafter Homicide Trends in the U.S.].

⁷ The rate of fatal officer-involved shootings per homicide has increased by over thirty-eight percent during the fifteen-year period from 1991 through 2005. In 2005, fatal officer-involved shootings accounted for over two percent of all homicides in America. 2005 CRIME REPORT tbl.1, *supra* note 5; 2005 CRIME REPORT tbl.13, *supra* note 6; Homicide Trends in the U.S., *supra* note 6.

⁸ 2005 CRIME REPORT tbl.13, *supra* note 6.

⁹ By July 9, 2006, the LVMPD already shot fifty percent more people than in 2005 and was on pace to kill twice as many people as in 2005. Francis McCabe, *Officer-Involved Shootings: Police Defend Practices*, LAS VEGAS REV.-J., July 9, 2006, at 1B [hereinafter McCabe, *Officer-Involved Shootings*]; Francis McCabe, *Fatal LV Police Shooting: Hail of Fire at Store*, LAS VEGAS REV.-J., July 10, 2006, at 1A [hereinafter McCabe, *Fatal LV Police Shooting*].

(1) a history of the common law of Nevada regarding the use of deadly force to arrest felons; (2) Nevada's statutory history pertaining to the use of deadly force; (3) the current police policies regarding use of deadly force in Las Vegas; (4) a brief history of officers feloniously killed in Nevada; (5) a chronicling of the most noteworthy Las Vegas officer-involved shootings occurring in 2006; (6) a detailed description of the Clark County Coroner's inquest process, a discussion of the controversy surrounding the current process, and suggestions on how to improve the existing system; and (7) numerous potential factors behind the sudden increase in officer-involved shootings in Las Vegas with practical suggestions on how to cure the problems.

II. DEADLY FORCE UNDER COMMON LAW AND NEVADA STATUTES

A. *The Common Law*

The common law granted police officers the authority to arrest those who broke the law and to use the amount of force necessary to effectuate arrests. Under the common law, an officer could use deadly force only when its use was a "necessity" to prevent a felon from fleeing or resisting arrest.¹⁰ However, the law did not excuse an officer who killed a fleeing felon unless he exercised "diligence and caution" when securing the prisoner.¹¹ Officers could never use deadly force when a misdemeanor suspect fled but could use it sometimes when he resisted.¹² The *Rex v. Finnerty* court explained the difference in treatment for fleeing felons and suspects of a misdemeanor as follows: "In case of misdemeanor, resistance will justify killing, though flight will not; for in such case the law considers it better that the accused should escape, than that life should be taken."¹³

Officers, or even citizens, could also take the life of a criminal in the act of committing a felony or in preventing the commission of a felony.¹⁴ The *In re Neagle* Court handled a remarkable situation where a federal marshal prevented the killing of Justice Field of the United States Supreme Court.¹⁵ David Neagle, a U.S. marshal, shot and killed David Terry to prevent him from killing Justice Field while he ate breakfast at a train station. David Terry became upset with Justice Field after the Supreme Court ruled on a domestic dispute between David and Sarah Terry. Before being removed from the courtroom, David Terry threatened to assault Justice Field. Years later, while Justice Field was traveling in California for work purposes, David Terry approached him in the train station dining room. Neagle saw Terry hit Justice Field in the face. Terry then reached for his knife, at which point Neagle shot and killed Terry.¹⁶ California convicted Neagle of murder, and the Supreme Court granted his habeas corpus petition. In so doing, the Court stated, "[T]here is positive law

¹⁰ Jackson v. State, 5 So. 690, 692 (Miss. 1888).

¹¹ Reneau v. State, 70 Tenn. 720, 722 (1879).

¹² *Id.* at 721.

¹³ Horace L. Wilgus, *Arrest Without a Warrant III*, 22 MICH. L. REV. 798, 808-09 (1924) (quoting *Rex v. Finnerty* (1830) 1 Crawf. & Dix. (Ir.) 167 note b, Bushe, C.J.).

¹⁴ *Id.* at 809-10; see also *In re Neagle*, 135 U.S. 1 (1890).

¹⁵ *In re Neagle*, 135 U.S. at 5.

¹⁶ *Id.* at 42-53.

investing the marshals . . . with powers which not only justify what Marshal Neagle did . . . but which imposed it upon him as a duty.”¹⁷

The principles of the common law allowed officers to use whatever force necessary, including deadly force, to arrest a felon.¹⁸ The common law rule manifested society’s attitude toward felons in fifteenth century England and eighteenth century America.¹⁹ During those periods, being convicted of any felony²⁰ drew the death penalty because the jails were inadequate to hold dangerous criminals.²¹ The use of deadly force to arrest felons simply sped up the penal process and excluded the trial.²² “It made little difference if the suspected felon were killed in the process of capture since, in the eyes of the law, he had already forfeited his life by committing the felony.”²³

B. *Early Nevada Statutory History*

Nevada, along with at least six other states in the Ninth Circuit, codified the common law rule allowing officers to use deadly force to arrest a felon by 1976.²⁴ The early Nevada statutes from 1911 authorized peace officers and private persons to make an arrest for public offenses committed in their presence.²⁵ Nevada law justified homicide

[by a] public officer, or person acting under his command and in his aid, 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 of officer, or in the discharge of a legal duty.
3. When necessary in retaking an escaped or rescued prisoner who has been committed, arrested for, or convicted of a felony; or in arresting a person who has committed a felony and is fleeing from justice; or in attempting, by lawful ways or means, to apprehend a person for a felony actually committed; or in lawfully suppressing a riot or preserving the peace.²⁶

¹⁷ *Id.* at 68.

¹⁸ Floyd R. Finch, Jr., Comment, *Deadly Force to Arrest: Triggering Constitutional Review*, 11 HARV. C.R.-C.L. L. REV. 361, 364-67 (1976) (discussing the common law history of deadly force as used by law officers).

¹⁹ *Id.* at 365.

²⁰ Common-law felonies included murder, rape, manslaughter, robbery, sodomy, mayhem, burglary, arson, prison break, and larceny. *Id.*

²¹ Hugo Adam Bedau, *The Courts, the Constitution, and Capital Punishment*, 1968 UTAH L. REV. 201, 232.

²² Finch, *supra* note 18, at 365.

²³ William Henry Sandweg III, *The Use of Deadly Force in Arizona by Police Officers*, 1973 L. & SOC. ORD. 481, 482.

²⁴ Finch, *supra* note 18, at 368 n.30 (listing the deadly force statutes in Ninth Circuit states as of 1976: ALASKA STAT. § 11.15.090 (1970); ARIZ. REV. STAT. ANN. § 13-461 (1972); CAL. PENAL CODE § 196 (West 1970); IDAHO CODE ANN. § 19-610 (1970); MONT. CODE ANN. § 94-2512 (1973); NEV. REV. STAT. § 200.140(3)(b) (1973); WASH. REV. CODE § 9A.16.040(3) (1975)).

²⁵ NEV. REV. LAWS §§ 6953-6954 (1912) (reprinting of Crimes and Punishments Act of 1911).

²⁶ Crimes and Punishments Act of 1911 § 131, NEV. REV. LAWS § 6396.

Private persons could also use deadly force when a felon resisted a lawful citizen's arrest.²⁷ In *Smith v. State*, the Nevada Supreme Court heard a civil case involving a posse who sought to collect a reward offered by the Nevada Legislature.²⁸ In January 1911, a band of seven Native Americans allegedly murdered four men in Washoe County, Nevada. The state legislature quickly authorized a reward for the arrest and conviction of the person or persons guilty of the murder. Shortly thereafter, Governor Tasker L. Oddie offered a reward of \$1000 in each case. Eight men formed a posse, found the Native Americans, and attempted to arrest them. The posse killed all seven Native Americans when they resisted arrest. The *Smith* court penned only two short sentences to justify the posse's killing of the Native Americans—including two women and a young boy—before determining the reward issue.²⁹

In 1931, the Nevada Legislature codified the common law fleeing felon rule, with a slight twist, and it remained in effect for over sixty years.³⁰ The newly added provision provided:

Homicide is also justifiable when committed . . . [b]y any person, when committed upon the person of another who is engaged in the commission of a felony or an attempted felony, or who after the commission or attempted commission of any such felony, is fleeing from the premises or resisting lawful pursuit and arrest, within twenty miles of the premises where such felony was committed or attempted to be committed.³¹

The statute codified the common law fleeing felon rule but limited lawful pursuit to a twenty-mile radius surrounding the crime scene. One state assemblyman suggested to the Nevada Legislature that section 200.160(3) was enacted because most pursuits occurred on horseback.³² The statute seems to have limited the use of deadly force to pursuits that took place shortly after the felony or attempted felony instead of pursuits that took place days, weeks, or even months later.

C. Garner's Effect on Nevada Statutes

Nevada's statutes regarding the use of deadly force by police officers remained virtually unchanged until the early 1990s.³³ The 1993 Nevada Legis-

²⁷ NEV. REV. LAWS §§ 6396-6397; NEV. REV. LAWS § 6954; *see also* *Smith v. State*, 151 P. 512, 514 (Nev. 1915).

²⁸ *Smith*, 151 P. at 512.

²⁹ "The persons composing the posse were authorized to make an arrest of the murderers. The taking of the lives of the murderers, while resisting arrest by force of arms, was also justifiable." *Id.* at 513 (citation omitted).

³⁰ *See* 1931 NEV. STAT. 160; NEV. REV. STAT. § 171.1455 (2007).

³¹ *Compare* 1931 NEV. STAT. 160, *with* NEV. COMPILED LAWS § 10080 (1929), *and* Crimes and Punishments Act of 1911 § 133, NEV. REV. LAWS § 6398.

³² Assemblyman Williams told the Legislature that the statute originated in 1911 when in fact the Legislature did not codify the fleeing felon rule until 1931. The minutes are inaccurate because they state that Nevada Revised Statutes section 200.160(3) authorized the use of deadly force in pursuits of over twenty miles instead of within twenty miles of the felony or attempted felony. *Revises Provisions Relating to Use of Deadly Force to Effect Arrest: Hearing on Assemb. B. 209 Before the S. Comm. on Judiciary*, 1993 Leg., 67th Sess. (Nev. 1993), available at http://www.leg.state.nv.us/67th/93minutes/S_JD_514.html [hereinafter *S. Comm. Hearings*].

³³ *See* NEV. REV. STAT. § 200.140.

lature enacted substantial changes to Nevada's justifiable homicide statutes in response to a 1985 United States Supreme Court decision that altered the common law fleeing felon rule.³⁴ In *Tennessee v. Garner*, two police officers responded to a "proowler inside call" in Memphis, Tennessee.³⁵ Once at the scene, one officer heard a door slam and saw a person run across the backyard. The suspect stopped at a six-foot-high chain link fence and crouched on the ground. The officer shined his flashlight on the suspect and became "reasonably sure" that the teenage boy was unarmed.³⁶ When the officer moved closer and yelled "police, halt," the suspect began to climb the fence.³⁷ In order to prevent the boy from escaping, the officer fatally shot him in the back of the head. Upon a search of the boy's body, police found ten dollars and a purse taken from the house.³⁸ At that time, the Tennessee statutes authorized the officer's use of deadly force under those circumstances.³⁹

The Supreme Court invalidated Tennessee's statute on Fourth Amendment grounds, defining the unnecessary use of deadly force as an unreasonable seizure.⁴⁰ Justice White explained that courts need to weigh the intrusion on an individual's Fourth Amendment rights and the importance of the government's interests.⁴¹ He reasoned further that deadly force invades the individual's right and society's interest in judicially determining guilt and punishment.⁴² The Court stated:

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.⁴³

Nevada's response to *Garner* occurred over seven years later, but the Legislature eventually protected the State from similar litigation over its unconstitutional statutes. In July 1992, a Nevada assemblyman proposed Assembly Bill 209⁴⁴ to "parallel the language in state law with the language contained in the 1985 Supreme Court" ruling of *Tennessee v. Garner*.⁴⁵ The Nevada Senate also considered the potential cost of litigating future cases that would likely

³⁴ *S. Comm. Hearings, supra* note 32; *Revises Provisions Relating to Use of Deadly Force to Effect Arrest, Hearing on Assemb. B. 209 Before Assemb. Comm. on Judiciary*, 1993 Leg., 67th Sess. (Nev. 1993), available at http://www.leg.state.nv.us/67th/93minutes/A_JD_303.html [hereinafter *Assemb. Comm. Hearings*].

³⁵ *Tennessee v. Garner*, 471 U.S. 1, 3 (1985).

³⁶ *Id.*

³⁷ *Id.* at 4.

³⁸ *Id.*

³⁹ *Id.* at 4-5. Tennessee's statute provided that "[i]f, after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all the necessary means to effect the arrest." TENN. CODE ANN. § 40-7-108 (1982).

⁴⁰ *Garner*, 471 U.S. at 7, 22.

⁴¹ *Id.* at 8.

⁴² *Id.* at 9.

⁴³ *Id.* at 11.

⁴⁴ LEGISLATIVE COUNSEL BUREAU, LEGAL DIV., LIST OF BILL DRAFTS REQUESTED FOR THE 1993 LEGISLATIVE SESSION 31 (1993), available at <http://www.leg.state.nv.us/67th/1993%20FINAL%20BDR%20LIST.pdf>.

⁴⁵ *Assemb. Comm. Hearings, supra* note 34.

challenge the then current statutes under *Garner*.⁴⁶ After lengthy discussions in the State Assembly and Senate and modifications to the proposed language, Assembly Bill 209 unanimously passed and went into effect June 29, 1993.⁴⁷

The bill's passage resulted in the addition of Nevada Revised Statutes ("NRS") section 171.1455, a significant omission from NRS section 200.140, and completely eliminated NRS section 200.160(3).⁴⁸ Section 171.1455 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.⁴⁹

The newly passed bill omitted significant portions in subsection three of NRS section 200.140 with the following language remaining: "[w]hen necessary: (a) [i]n retaking an escaped or rescued prisoner who was been committed, arrested for, or convicted of a felony; (b) [i]n attempting, by lawful ways or means, to apprehend or arrest a person; or (c) [i]n lawfully suppressing a riot or preserving the peace."⁵⁰ Assemblyman Williams recommended the removal of NRS section 200.160(3) because in today's society it could cause problems for any officer acting under this statute.⁵¹

D. Nevada Case Law Under Post-Garner Statutes

Nevada state courts have only decided one case under the post-*Garner* Nevada statutes because most plaintiffs choose to file suit based on federal statutes in the U.S. District Courts.⁵² In *State v. Weddell*, the Nevada Supreme Court heard an appeal by the government after a district court dismissed the government's pending criminal charges against a private citizen.⁵³ In October 1997, a late-model Chevrolet Blazer entered Rolland P. Weddell's construction business property. One of Weddell's employees, Cole, approached the vehicle. The vehicle then accelerated, turned toward Cole, and struck him. The passen-

⁴⁶ Senator Lawrence E. Jacobsen referred to an unidentified Nevada case in which a prisoner was shot while attempting to climb a prison fence when there were enough officers at the base of the fence to apprehend the prisoner. Senator Jacobsen stated that the case went to trial and cost the state over \$300,000 to defend. *S. Comm. Hearings, supra* note 32.

⁴⁷ Assemb. 209, 1993 Leg., 67th Sess. (Nev. 1993), available at <http://www.leg.state.nv.us/67th> (follow "Bill Histories" hyperlink; then search for "Assembly Bill 209").

⁴⁸ *S. Comm. Hearings, supra* note 32; *Assemb. Comm. Hearings, supra* note 34; see NEV. REV. STAT. § 171.1455 (1993); *id.* § 200.140; *id.* § 200.160.

⁴⁹ NEV. REV. STAT. § 171.1455.

⁵⁰ *Id.* § 200.140.

⁵¹ *S. Comm. Hearings, supra* note 32.

⁵² See *Palm v. Las Vegas Metro. Police Dep't*, 142 F.3d 444 (9th Cir. 1998) (unpublished table decision); *Warren v. Las Vegas Metro. Police Dep't*, 111 F.3d 139 (9th Cir. 1997) (unpublished table decision); *Milling v. Las Vegas Metro. Police Dep't*, 67 F.3d 307 (9th Cir. 1995) (unpublished table decision); *Paiva v. City of Reno*, 939 F. Supp. 1474 (D. Nev. 1996).

⁵³ *State v. Weddell*, 27 P.3d 450 (Nev. 2001).

ger in the vehicle threatened Cole and asked where they could find Cole's daughter. Cole then reported the incident to Weddell and the police.⁵⁴

Weddell learned that several individuals were looking for Cole's daughter in relation to a drug transaction. Weddell obtained an address for those individuals and provided the information to the police. Dissatisfied with the police response, Weddell drove to the address and called police dispatch when he found a Blazer matching the description given by Cole. After fifteen minutes with no police response, Weddell saw a man, James Bustamonte, and a woman exit the house and walk toward the Blazer. Weddell parked his vehicle behind the Blazer to prevent it from leaving the scene, approached the vehicle with a gun pointed at Bustamonte, and ordered him to put his hands on the hood. A short verbal dispute erupted, Bustamonte turned and ran, and Weddell fired several shots at him. The police arrested Weddell and he was charged with assault with a deadly weapon and discharging a firearm at another. The district court granted Weddell's motion to dismiss the charges.⁵⁵

The Nevada Supreme Court determined that Weddell did not have an absolute common law or statutory right to use deadly force to make an arrest.⁵⁶ The court declared that the Nevada Legislature clearly abrogated the common law fleeing felon rule in 1993 when it repealed NRS section 200.160(3) and simultaneously enacted section 171.1455.⁵⁷ The court reasoned that the Legislature's abolishment of the common law fleeing felon rule and the narrowing of police use of deadly force showed a clear disavowal for "the unbridled use of deadly force."⁵⁸

Weddell petitioned for rehearing but the Nevada Supreme Court denied his petition.⁵⁹ Weddell then petitioned for en banc consideration, and the court granted his motion to consider the case as a matter of first impression under the new statutes.⁶⁰ The en banc court followed the same reasoning as the three-justice panel and ruled Weddell could be prosecuted for the unnecessary use of deadly force. The court clearly held that in attempting an arrest under NRS section 171.126, a private citizen could use no more force than "necessary and reasonable" to secure the criminal.⁶¹ The legislative changes coupled with the two *Weddell* decisions have unequivocally eradicated the common law fleeing felon rule in Nevada.

III. THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S USE OF FORCE POLICY

The LVMPD, like other police forces, has a written policy regarding the use of deadly force by its officers. The applicable portions of the LVMPD's policy provide:

⁵⁴ *Id.* at 452.

⁵⁵ *Id.* at 452-53.

⁵⁶ *Id.* at 455.

⁵⁷ *Id.* at 451.

⁵⁸ *Id.* at 452.

⁵⁹ *State v. Weddell*, 43 P.3d 987, 988 (Nev.), *cert. denied*, 537 U.S. 1001 (2002).

⁶⁰ *Id.* at 988-90.

⁶¹ *Id.* at 988.

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. Members should shoot at the “center body mass” for maximum stopping effectiveness and minimal danger to innocent bystanders.

... 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.⁶²

The LVMPD follows certain post-incident procedures when a shooting has occurred. An officer involved in a shooting must immediately notify his or her supervisor or, if unavailable, another on-duty supervisor. The officer must complete a Use of Force Report prior to the end of the shift. The officer's supervisor must conduct an investigation and help the officer complete the Use of Force Report.⁶³ When an officer uses deadly force, the LVMPD typically places all officers involved on paid administrative leave.⁶⁴ The officers who used deadly force are also subject to scrutiny through the Clark County Coroner's inquest process (if the suspect died as a result of the officer's use of deadly force) and the LVMPD's Use of Force Review Board.⁶⁵

IV. OFFICERS FELONIOUSLY KILLED IN NEVADA AND THE UNITED STATES

A brief historical overview of feloniously killed police officers is necessary to paint a clearer picture of any potential link between feloniously killed officers and officer-involved shootings. Violence against police officers has a long history in Nevada with the first reported killing of an officer taking place in 1861.⁶⁶ In 1863, two more officers were shot and killed during an encounter with an outlaw in Virginia City.⁶⁷ Since it gained statehood in 1864, Nevada

⁶² LAS VEGAS, NEV., POLICE CODE § 6/002.00 (2007), available at http://www.news.eyewitnessnews8.com/deadly_force.pdf.

⁶³ *Id.*

⁶⁴ Brian Allen, *Metro Launches Investigation into Taser Death*, KLAS TV, June 8, 2005, <http://www.klas-tv.com/Global/story.asp?S=3444256>.

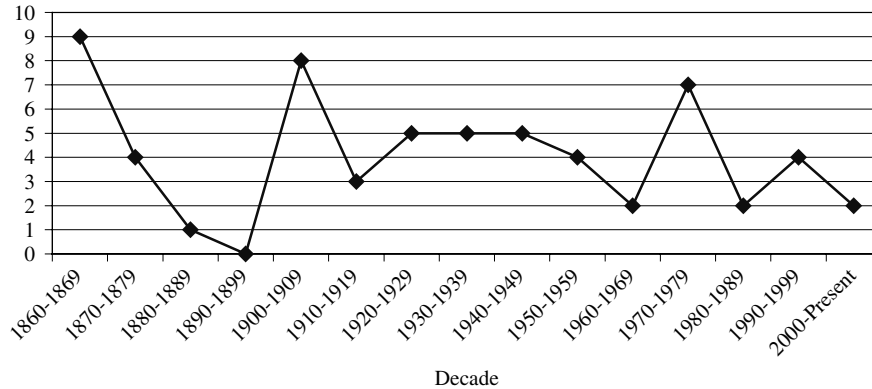
⁶⁵ Francis McCabe, *Department Clears Detectives Who Fatally Shot Teen Suspect*, LAS VEGAS REV.-J., Oct. 26, 2006, at 1B; Clark County Coroner Index, <http://www.co.clark.nv.us/CORONER/inquests.htm> (last visited Feb. 28, 2008).

⁶⁶ Carson County Sheriff John L. Blackburn was stabbed to death while attempting to take a murder suspect into custody. The Officer Down Memorial Page, Inc., Sheriff John L. Blackburn, <http://www.odmp.org/officer.php?oid=1900> (last visited Feb. 28, 2008).

⁶⁷ Officers Thomas Reed and Dennis McMahon were both shot in the chest and killed by the same suspect who was later acquitted at trial. On an interesting side note, Samuel Clemens—better known as Mark Twain—heard the shooting of these two officers. The Officer

has seen an additional fifty-eight officers feloniously killed, averaging just over four officers feloniously killed per decade.⁶⁸

FIGURE 1: NUMBER OF OFFICERS FELONIOUSLY KILLED IN NEVADA PER DECADE (1860-2007)⁶⁹



In Las Vegas, felons murdered five officers in the original Las Vegas Police Department between 1905 and 1967.⁷⁰ In addition, one officer in the Clark County Sheriff’s Department was feloniously killed in 1928 and another in 1957.⁷¹ Since the creation of the Las Vegas Metropolitan Police Department in 1973,⁷² another four officers have been feloniously killed in the line of duty.⁷³ The most recent officer killing occurred in February 2006 when a suspect shot Sergeant Henry Prendes in the head point blank during a standoff with police.⁷⁴ The Prendes murder drew national attention, caused local grief for the loss, and united the Las Vegas community to honor and celebrate his life.⁷⁵

Down Memorial Page, Inc., Virginia City Police Department, <http://www.odmp.org/agency.php?agencyid=4713> (last visited Feb. 28, 2008).

⁶⁸ The Officer Down Memorial Page, Inc., Nevada, <http://www.odmp.org/browse.php?abbr=Nv> (last visited Feb. 28, 2008).

⁶⁹ *Id.*

⁷⁰ The Officer Down Memorial Page, Inc., Las Vegas Police Department, <http://www.odmp.org/agency.php?agencyid=2077> (last visited Feb. 28, 2008).

⁷¹ The Officer Down Memorial Page, Inc., Clark County Sheriff’s Department, <http://www.odmp.org/agency.php?agencyid=703> (last visited Feb. 28, 2008).

⁷² In 1973, the Las Vegas Police Department merged with the Clark County Sheriff’s Department to form the Las Vegas Metropolitan Police Department, which serves within the Las Vegas city limits and the unincorporated areas of Clark County. Las Vegas Metropolitan Police Department, About Us, Consolidation, <http://www.lvmpd.com/about/consolidation.html> (last visited Feb. 28, 2008).

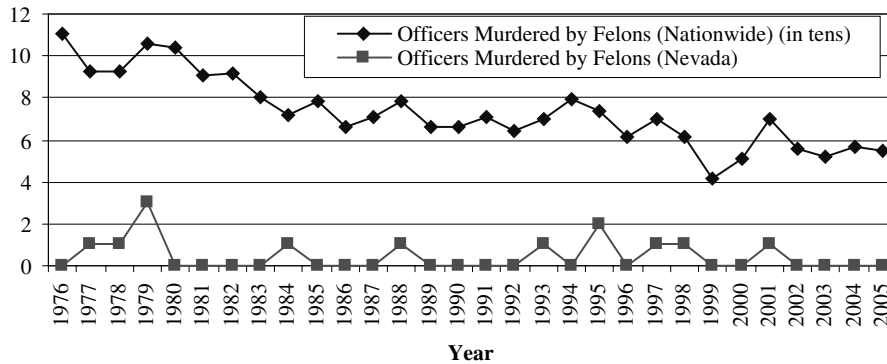
⁷³ The Officer Down Memorial Page, Inc., Las Vegas Metropolitan Police Department, <http://www.odmp.org/agency.php?agencyid=2076> (last visited Feb. 28, 2008).

⁷⁴ See *infra* Part V.C.

⁷⁵ See Lynette Curtis, *Thousands Mourn Officer*, LAS VEGAS REV.-J., Feb. 8, 2006, at 1A; Lawrence Mower, *Residents Want Street Renamed for Officer*, LAS VEGAS REV.-J., Mar. 4, 2006, at 1A; John L. Smith, Commentary, *Cowardly Violence Takes a Man Who Lived ‘To Protect and Serve,’* LAS VEGAS REV.-J., Feb. 8, 2006, at 1B. U.S. Representative Jon Porter from Nevada recently sponsored the Sergeant Henry Prendes Memorial Act of 2006 to amend Title 18 of the United States Code to include federal penalties for killing federally

Over the past thirty years, from 1976 to 2005, felons have murdered an average of seventy-three police officers each year in the United States.⁷⁶ In Nevada, twelve police officers were feloniously killed during the same period, averaging two police officers every five years.⁷⁷ However, national statistics show a noticeable decline in the annual number of officers feloniously killed because fewer than seventy-three officers have been murdered each year from 1995 to 2005.⁷⁸ In the past decade, from 1996 to 2005, the national average of officers feloniously killed has dropped to just over fifty-seven per year.⁷⁹ During that same period, three officers were murdered by felons in Nevada, averaging less than one every three years.⁸⁰ The data, as shown in the following figure, clearly shows a national and statewide trend toward fewer officers murdered by felons over the past thirty years.

FIGURE 2: NUMBER OF OFFICERS FELONIOUSLY KILLED NATIONWIDE AND IN NEVADA (1976-2005)⁸¹



V. OFFICER-INVOLVED SHOOTINGS IN LAS VEGAS, NEVADA IN 2006

During the first seven months of 2006, the LVMPD used deadly force more frequently than in recent years, drawing significant media attention, public criticism, and even lawsuits. During the period from 2001 to 2005, the LVMPD averaged approximately nineteen officer-involved shootings per year

funded public safety officers. The Act would punish anyone who “kills, or attempts or conspires to kill, a federally funded public safety officer” engaged in official duties. The bill provides for a minimum sentence of thirty years imprisonment and a possibility of the death penalty when the offense results in an officer’s death. H.R. 4732, 109th Cong. (2006).

⁷⁶ BROWN & LANGAN, *supra* note 3, at 19; FBI, U.S. DEPARTMENT OF JUSTICE, UNIFORM CRIME REPORTS: LAW ENFORCEMENT OFFICERS KILLED AND ASSAULTED – 2005, at tbl.1 (2006), available at <http://www.fbi.gov/ucr/killed/2005/table1.htm> [hereinafter LEOKA 2005].

⁷⁷ The Officer Down Memorial Page, Inc., Nevada, *supra* note 68.

⁷⁸ BROWN & LANGAN, *supra* note 3, at 19; LEOKA 2005, *supra* note 76.

⁷⁹ LEOKA 2005, *supra* note 76.

⁸⁰ The Officer Down Memorial Page, Inc., Nevada, *supra* note 68.

⁸¹ BROWN & LANGAN, *supra* note 3, at 3, 19; LEOKA 2005, *supra* note 76; The Officer Down Memorial Page, Inc., Nevada, *supra* note 68.

with an average of approximately eight resulting in fatal wounds to suspects.⁸² By July 9, 2006, the LVMPD engaged in nineteen officer-involved shootings with nine fatal incidents in 2006.⁸³ In July, the FBI initiated a civil rights investigation into one unidentified officer-involved shooting.⁸⁴ By July 2006, public concern and criticism over the LVMPD's perceived overuse of deadly force reached a peak, while public confidence in the LVMPD sunk to new depths.⁸⁵ Much of the public also regarded the Clark County Coroner's Inquest process—the mechanism used to review whether officers' use of deadly force was justified, excusable, or criminal—as little more than a rubber stamp for officers' actions.⁸⁶ The Clark County Commission announced a review of the coroner's inquest process in response to public indignation over the increase in officer-involved shootings.⁸⁷

Once the public outcry, the pressure from other governmental agencies, and the civil rights lawsuits reached their climax in mid-July, the LVMPD shot only six more people with no fatal incidents over the remaining five-and-one-half months in 2006. The LVMPD's final officer-involved shooting totals for 2006 were twenty-five shootings with nine fatal incidents.⁸⁸ The sharp decline in the LVMPD's use of deadly force after mid-July may have been nothing more than a coincidence, but LVMPD officers may have responded to the harsh criticism and FBI investigation by exercising greater control before using deadly force. Regardless of the reason behind the sudden reduction, the public questioned the LVMPD's use of deadly force in numerous fatal shootings during 2006, but the Swuave Lopez incident drew more attention and criticism than any other incident.

A. *Handcuffed, Unarmed Suspect Shot Twice in Back and Killed*

On May 13, 2006, LVMPD homicide detectives arrested Swuave Lopez and James Carter, Jr. as suspects in the murder of Kyle Staheli.⁸⁹ An officer searched Lopez, confiscated a 45-caliber handgun, handcuffed him, and placed him in the passenger seat of Detective Jim Mitchell's unmarked squad car.⁹⁰ Detective Mitchell also wrapped a seat belt around Lopez's right arm and buckled it to secure Lopez in the car.⁹¹ Once Detective Mitchell had placed Lopez in the squad car, he walked to the vehicle's trunk to retrieve something and to

⁸² McCabe, *Officer-Involved Shootings*, *supra* note 9.

⁸³ *Id.*; McCabe, *Fatal LV Police Shooting*, *supra* note 9. At this rate of officer-involved shootings, the LVMPD was on pace to shoot thirty-five people and kill sixteen of them.

⁸⁴ Francis McCabe, *Civil Rights Investigation: FBI Reviewing Only One Police Shooting*, LAS VEGAS REV.-J., July 17, 2006, at 2B.

⁸⁵ Edward Lawrence, *Sheriff Young Reacts Strongly to Metro's Use of Force*, July 11, 2006, KLAS TV, <http://www.klas-tv.com/Global/story.asp?S=5133493>.

⁸⁶ Mark Sayre, *Concerns over Clark County Coroner's Inquest Process*, KLAS TV, Aug. 2, 2006, <http://www.klas-tv.com/Global/story.asp?S=5227018>.

⁸⁷ Francis McCabe, *Shootings Spur Review*, LAS VEGAS REV.-J., July 12, 2006, at 1A.

⁸⁸ David Kihara, *Police Kill Burglary Suspect in Residential Neighborhood*, LAS VEGAS REV.-J., Aug. 23, 2007, at 1B.

⁸⁹ *Las Vegas Police Officers Actions Found Justifiable*, KLAS TV, June 12, 2006, <http://www.klas-tv.com/Global/story.asp?S=4990822>.

⁹⁰ McCabe, *supra* note 65.

⁹¹ *Id.*

converse with other officers for several minutes, without watching the suspects.⁹² Lopez was able to get his handcuffed hands from behind his back to his front, free himself from the seat belt restraint, and open the car door.⁹³ Detectives Hardy and Womack looked up and saw Lopez running away. Apparently, without warning and at close range,⁹⁴ they fatally shot him in the back.⁹⁵ On June 9, 2006, a seven-member Clark County Coroner's inquest jury⁹⁶ took less than one hour to find unanimously that the shooting of Lopez by Detectives Hardy and Womack was justifiable, instead of excused or criminal, homicide.⁹⁷

Dissatisfied with the result of the coroner's inquest process, Lopez's father retained a nationally recognized attorney, James Myart, Jr.,⁹⁸ to bring a federal civil rights suit against the police department.⁹⁹ In a maneuver intended to prevent Lopez's father from bringing his lawsuit against the police department,

⁹² *Id.*; *Las Vegas Police Officers Actions Found Justifiable*, *supra* note 89.

⁹³ McCabe, *supra* note 65; *Las Vegas Police Officers Actions Found Justifiable*, *supra* note 89.

⁹⁴ At least three different officers testified concerning the distance from officers Hardy and Womack to Lopez at the time of the shooting. Officer Hardy testified that he was approximately forty-five feet from Lopez when he fired his shot. Officer Womack testified that he was between twenty-five and thirty feet from Lopez when he fired his weapon. A third officer, Christopher Cannon, who did not fire at Lopez, testified that he was only six to eight feet away from Lopez when officers Hardy and Womack fired their weapons. Officer Cannon's testimony conflicted with the testimony given by officers Hardy and Womack who both claimed that no one was close to Lopez when they fired their weapons. According to a diagram shown during the hearing, the bullet casing from Womack's gun was more than twenty feet from where Lopez was struck by the bullet. Francis McCabe, *Coroner's Inquest: Police Cleared in Teen's Death*, *LAS VEGAS REV.-J.*, June 10, 2006, at 1A.

⁹⁵ *Las Vegas Police Officers Actions Found Justifiable*, *supra* note 89; see also *NAACP Responds to Officer Involved Shooting*, *KLAS TV*, June 14, 2006, <http://www.klas-tv.com/Global/story.asp?S=5033299>.

⁹⁶ See *infra* Part VI for a discussion of the Clark County coroner's inquest process.

⁹⁷ *Las Vegas Police Officers Actions Found Justifiable*, *supra* note 89. In Nevada, [j]ustifiable homicide is the killing of a human being in necessary self-defense, or in defense of habitation, property or person, against one who manifestly intends, or endeavors, by violence or surprise, to commit a felony, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, tumultuous or surreptitious manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

NEV. REV. STAT. § 200.120 (2007). Nevada provides additional circumstances specifically for public officers in which homicide is justified, including the lawful arrest or apprehension of a person. *Id.* § 200.140(3)(b). Excusable homicide by misadventure is defined as when "[a] person doing a lawful act, without any intention of killing, yet unfortunately kills another." *Id.* § 200.180(1)(a). In Nevada, neither justifiable nor excusable homicides are punishable under the law. *Id.* § 200.190. When a coroner's inquest jury finds the person was killed under circumstances not justifiable or excusable, the district attorney shall take whatever actions he or she deems necessary. *CLARK COUNTY, NEV., CODE § 2.12.160* (2006).

⁹⁸ James Myart, Jr., represented the Lopez family in this matter. Mr. Myart represented U.S. Representative Cynthia McKinney in her case resulting from a scuffle with the Capitol Hill Police earlier in 2006. Deidre Walsh & Terry Frieden, *Sources: McKinney Case Heading to Grand Jury*, *CNN.COM*, Apr. 5, 2006, <http://www.cnn.com/2006/POLITICS/04/05/mckinney.scuffle/>.

⁹⁹ Ky Plaskon, *Civil Rights Attorney Threatens Lawsuit Against Las Vegas*, *KLAS TV*, July 21, 2006, <http://www.klas-tv.com/Global/story.asp?S=5179210&pass=1#poll53773>.

the Police Protective Association offered to pay for attorneys in an attempt to convince the family of Staheli (the victim Lopez allegedly murdered) to sue the Lopez family.¹⁰⁰ The Staheli family refused to railroad the Lopez family and reported the police union's behavior to the local media.¹⁰¹ As a result of the police union's actions, Myart threatened a lawsuit against Dave Kallas, the leader of the police union, and demanded that Kallas step down.¹⁰² On August 4, 2006, the Lopez family filed a civil complaint in federal court against Sheriff Bill Young, the LVMPD, and Officers Hardy, Womack, and Mitchell, seeking approximately \$23 million in damages.¹⁰³

All officers involved in the Lopez incident also faced potential discipline from the LVMPD for possibly violating department policies in the arrest and fatal shooting of Lopez.¹⁰⁴ In October 2006, the LVMPD's Use of Force Review Board ("UFRB"), comprised of four trained civilians and three members of the police department, cleared Officers Hardy and Womack for the shooting of Lopez.¹⁰⁵ However, the UFRB determined that Detective Mitchell's conduct in securing Lopez may have violated the LVMPD's policies.¹⁰⁶

B. *Man Shot and Killed When Stopped for Playing Loud Music*

On July 4, 2006, in front of dozens, possibly hundreds, of tourists, another locally infamous officer-involved shooting occurred on the Las Vegas Strip near Bally's Hotel and Casino.¹⁰⁷ Tarance Hall, a thirty-one-year-old Las Vegas resident, drove his car too far into a busy intersection on the Strip and played his music too loudly for the likes of two officers patrolling on bicycles as part of Operation Safe Strip.¹⁰⁸ Soon after the officers pulled Hall over, he became belligerent and started to drive away with Officer Noel Lefebvre hanging onto Hall's driver's side door.¹⁰⁹ Hall drove approximately thirty feet before crashing into a taxi and a barricade, which deployed the airbag and knocked Officer Lefebvre, who was now partially inside the car, unconscious.¹¹⁰ Hall then put his vehicle in reverse and backed up toward the pursuing policeman, Officer Ryan McBride.¹¹¹ Officer McBride fired one shot, which incapacitated and fatally wounded Hall.¹¹² Shortly after Hall was shot, Officer Lefebvre gained consciousness, removed Hall from his car, threw him

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Adrienne Packer, *Police Killing Brings Lawsuit*, LAS VEGAS REV.-J., Aug. 5, 2006, at 1B; see also Lopez v. Young, No. 2:06-cv-00951-BES-GWF (D. Nev. filed Aug. 4, 2006).

¹⁰⁴ *Las Vegas Police Officers Actions Found Justifiable*, supra note 89.

¹⁰⁵ McCabe, supra note 65.

¹⁰⁶ *Id.*

¹⁰⁷ *Metro Police Shoot Suspect on Las Vegas Strip*, KLAS TV, July 6, 2006, <http://www.lasvegasnow.com/global/Story.asp?s=5113844>; Lindsay Patterson, *Victim's Family Talks About Fatal Las Vegas Strip Shooting*, KLAS TV, July 10, 2006, <http://www.klas-tv.com/Global/story.asp?S=5122517>.

¹⁰⁸ *Metro Police Shoot Suspect on Las Vegas Strip*, supra note 107.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*; Patterson, supra note 107.

¹¹¹ *Metro Police Shoot Suspect on Las Vegas Strip*, supra note 107.

¹¹² *Id.*

Winter 2008]

JUDGE DREDD

713

to the ground, and handcuffed him.¹¹³ On September 10, 2006, a Clark County Coroner's inquest jury found Officer McBride justified in his use of deadly force against Hall.¹¹⁴ The determination by the UFRB was not made public. However, on November 1, 2006, in response to the incident, Hall's family—mother and two children—filed a civil rights lawsuit against the LVMPD and Officers McBride and Lefebvre.¹¹⁵

C. LVMPD Officers Kill Man After Suspect Murders Police Officer

A third officer-involved shooting receiving national attention occurred on February 1, 2006. Neighbors in a typically peaceful neighborhood called the police after twenty-one-year-old Amir Rashid Crump began beating his girlfriend with a stick in their front yard.¹¹⁶ Crump began firing at officers with an assault rifle as soon as they arrived at the scene. Officer Henry Prendes was hit four times and fell down onto Crump's porch. Other officers took cover and returned fire hoping to be able to retrieve Officer Prendes before he died from his wounds. At that point, Crump stood directly over Officer Prendes and shot a fatal round into his head.¹¹⁷ Officer William Marx arrived and returned fire with his own rifle, but Crump struck him three times in the leg.¹¹⁸ As Crump focused his fire on Officer Marx, another officer was able to fire a clear shot at Crump, which brought him to his knees.¹¹⁹ Several other officers charged Crump, shot him four more times, handcuffed him, pulled Prendes away, and called for ambulances for Prendes and Crump.¹²⁰ Officer Prendes had already died from the head wound and Crump died before paramedics arrived.¹²¹ A Clark County Coroner's inquest jury found the officers were justified in their use of deadly force against Crump.¹²²

D. Other Notable LVMPD Police Shootings in 2006

Descriptions of several other noteworthy LVMPD officer-involved shootings occurring in 2006 are listed below to illustrate the frequency and depth of the problem facing Las Vegas.

July 9, 2006: Police responded to a call for help and confronted Shawn Collins at a local Circle K.¹²³ Police claimed Collins pulled out a revolver that caused five officers to fire a total of twenty-eight times with twenty-three of the

¹¹³ *Id.*

¹¹⁴ *Coroner's Inquest Clears Officer in Fatal Shooting*, KLAS TV, Sept. 10, 2006, <http://www.klas-tv.com/Global/story.asp?S=5357302>.

¹¹⁵ *Black v. McBride*, No. 2:06-cv-01394-KJD-GWF (D. Nev. filed Nov. 1, 2006); Adrienne Packer, *Family Sues Police in Death of Driver*, LAS VEGAS REV.-J., Nov. 2, 2006, at 4B.

¹¹⁶ *Metro Officer Falls in the Line of Duty*, KVBC TV, Feb. 7, 2006, <http://www.kvbc.com/global/story.asp?s=4443042&ClientType=printable>.

¹¹⁷ Omar Sofradzija, *Valley Shootout: Rapper's Killing Ruled Justified*, LAS VEGAS REV.-J., Mar. 18, 2006, at 1A.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² McCabe, *Officer-Involved Shootings*, *supra* note 9.

¹²³ McCabe, *Fatal LV Police Shooting*, *supra* note 9.

rounds striking him.¹²⁴ However, Collins' ex-wife (Joey Collins) who called the police and was at the scene told a different story. She claimed that officers had already drawn their weapons with one officer carrying a rifle before her ex-husband exited the store.¹²⁵ When Collins came out of the convenience store, she said officers asked him for his identification. Officers began shooting when Collins reached into his pocket.¹²⁶ After the shooting, a witness saw one of the officers kick Collins to see if he was alive, but he had died instantly.¹²⁷ A coroner's inquest jury took forty-five minutes to rule the officers' actions were justified.¹²⁸ On October 31, 2006, Collins' two ex-wives retained civil rights attorney James Myart, Jr. and filed a federal lawsuit against Sheriff Bill Young and the LVMPD.¹²⁹

April 28, 2006: A burglary suspect, Aaron Jones, was shot and killed by Officers John Wiggins and William Mosher as he attempted to flee the scene. The coroner's inquest jury took less than thirty minutes to determine the officers' use of deadly force was justified under the circumstances.¹³⁰

March 13, 2006: When police responded to a call for help, John Jackman ran at the officers with two knives.¹³¹ Officer Byron Bunitsky, without any warning that deadly force would be used, immediately shot and killed Jackman.¹³² The seven-member jury, two women and five men, deliberated for only fifteen minutes before returning with their verdict that Officer Bunitsky's use of deadly force was justified.¹³³

February 9, 2006: Officers responded to a complaint, and Christopher Hawkins fired at them when the officers attempted to confront him.¹³⁴ The officers called for backup and engaged in a five-hour stand-off with Hawkins.¹³⁵ After Hawkins fired at officers again, the SWAT team shot Hawkins twenty times.¹³⁶ The coroner's inquest jury took less than fifteen minutes unanimously to find that the officers' use of deadly force was justified.¹³⁷

¹²⁴ *Id.*; Adrienne Packer, *\$71 Million Civil Rights Lawsuit: Man's Ex-Wives Sue Police*, LAS VEGAS REV.-J., Nov. 1, 2006, at 3B.

¹²⁵ Packer, *supra* note 124.

¹²⁶ *Id.*

¹²⁷ McCabe, *Fatal LV Police Shooting*, *supra* note 9.

¹²⁸ Francis McCabe, *Clark County Coroner's Inquest: Officers' Actions Justified*, LAS VEGAS REV.-J., Sept. 30, 2006, at 2B.

¹²⁹ Packer, *supra* note 124.

¹³⁰ Brian Haynes, *Coroner's Inquest: Police Shooting Ruled Justified*, LAS VEGAS REV.-J., June 24, 2006, at 2B.

¹³¹ Francis McCabe, *Coroner's Inquest: Shooting of 43-Year-Old Justified*, LAS VEGAS REV.-J., Apr. 22, 2006, at 3B.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ Francis McCabe, *Sniper Tells of Fatal Shots*, LAS VEGAS REV.-J., May 12, 2006, at 1B.

¹³⁵ *Id.*

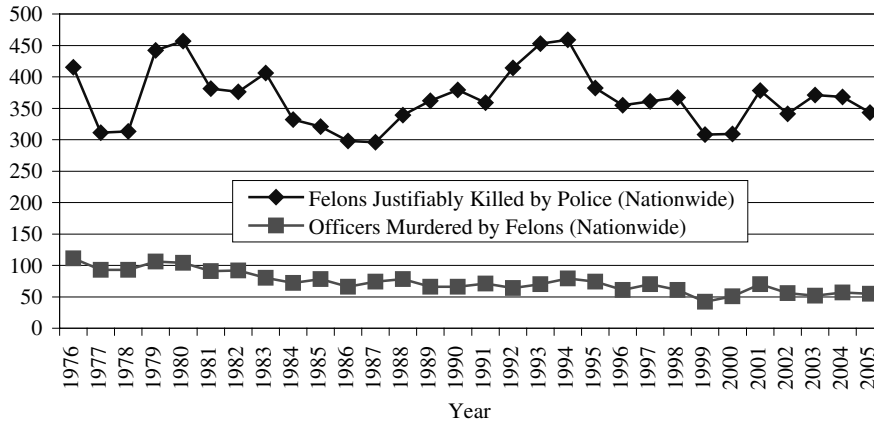
¹³⁶ *Id.*

¹³⁷ *Id.*

January 2, 2006: Five officers surrounded Santana Baca, shot him with a Taser to incapacitate him, and removed him from under a car.¹³⁸ Police then shot and killed Baca after he allegedly pulled a nine-millimeter handgun from his waistband.¹³⁹ A coroner's inquest jury found all three officers who discharged their weapons at the scene were justified in doing so.¹⁴⁰

Police officers' use of deadly force is not an issue unique to Las Vegas. The 2005 FBI *Uniform Crime Reports* showed that officers around the country justifiably killed 341 individuals.¹⁴¹ From 1976 to 2005, police justifiably killed an average of 366 people each year, the vast majority of which are males.¹⁴² The following chart shows the magnitude of the problem.

FIGURE 3: OFFICERS FELONIOUSLY KILLED COMPARED WITH INDIVIDUALS JUSTIFIABLY KILLED BY OFFICERS, ANNUAL TOTALS¹⁴³



VI. CLARK COUNTY CORONER INQUEST PROCESS

The Clark County Coroner's inquest process has come under heavy criticism from local civil rights groups and concerned citizens after the outbreak of officer-involved shootings in early 2006.¹⁴⁴ From 1976, when Clark County began holding coroner's inquests, through January 2007, 159 inquests were

¹³⁸ Frank Curreri, *Las Vegas Police Shootings: 'We Were Prepared for a Shootout,'* LAS VEGAS REV.-J., Jan. 4, 2006, at 1B.

¹³⁹ *Id.*

¹⁴⁰ McCabe, *Officer-Involved Shootings*, *supra* note 9.

¹⁴¹ 2005 CRIME REPORT tbl.13, *supra* note 6.

¹⁴² BROWN & LANGAN, *supra* note 3, at 3, 21; 2005 CRIME REPORT tbl.13, *supra* note 6; Homicide Trends in the U.S., *supra* note 6.

¹⁴³ BROWN & LANGAN, *supra* note 3, at 3, 21; 2005 CRIME REPORT tbl.1, *supra* note 5; 2005 CRIME REPORT tbl.13, *supra* note 6; LEOKA 2005, *supra* note 76; Homicide Trends in the U.S., *supra* note 6.

¹⁴⁴ Edward Lawrence, *Coroner's Inquest is a 'Storytelling Exercise' Says ACLU*, KLAS TV, July 11, 2006, <http://www.klas-tv.com/Global/story.asp?S=5137019>; Ky Plaskon, *Coroner's Inquest Process Under Fire*, KLAS TV, July 6, 2006, <http://www.klas-tv.com/Global/story.asp?S=5121824>; Sayre, *supra* note 86.

held with only one jury finding an officer criminally negligent.¹⁴⁵ Based on these seemingly lopsided results, the American Civil Liberties Union (“ACLU”) and the National Association for the Advancement of Colored People (“NAACP”) are calling for radical changes to the procedure, but the police union strongly objects to any changes in the current process.¹⁴⁶ A brief description of the current system’s foundation and procedural parts is necessary to understand how Clark County would, and whether they should, enact any potential changes to the current process.

A. *Nevada’s Statutorily Established Coroner’s Inquest Process*

Nevada statutes require the coroner to investigate any death that the coroner suspects to have occurred by unnatural means.¹⁴⁷ The Clark County Code specifies the basic requirements of the coroner’s inquest procedure.¹⁴⁸ A coroner’s inquest is a fact-finding procedure held each time a law-enforcement officer kills a person in the line of duty.¹⁴⁹ The stated purpose of the coroner’s inquest hearing is to “publicly bring forth all of the details surrounding the incident causing [the] death.”¹⁵⁰ Therefore, any proposed changes to the coroner’s inquest process would presumably have to come in the form of amendments to the Clark County Code.

The Clark County Code requires certain pre-hearing procedures to take place. The Clark County Coroner initiates the coroner’s inquest process by notifying the district attorney and the police department to request assistance in the investigation.¹⁵¹ The coroner then designates a coroner’s inquest hearing officer or Clark County magistrate as the presiding officer over the inquest.¹⁵² The presiding officer must meet with the coroner and a representative from the district attorney’s office to determine the evidence and witnesses required for the inquest.¹⁵³ Other interested individuals may contact the presiding officer to recommend witnesses and submit a written list of questions to ask the witnesses at the inquest.¹⁵⁴ The presiding officer must request a panel of fifteen people to serve as potential inquest jurors.¹⁵⁵

¹⁴⁵ Abigail Goldman, *Coroner’s Inquest of Police Shootings Out of Step*, LAS VEGAS SUN, Jan. 14, 2007, at 1.

¹⁴⁶ David Kihara, *Hearing Focuses on Coroner’s Inquests*, LAS VEGAS REV.-J., Jan. 11, 2007, at 1B.

¹⁴⁷ NEV. REV. STAT. § 259.050(1) (2007).

¹⁴⁸ CLARK COUNTY, NEV., CODE § 2.12.080 (2006).

¹⁴⁹ Clark County Coroner Index, *supra* note 65.

¹⁵⁰ *Id.*

¹⁵¹ CLARK COUNTY, NEV., CODE § 2.12.080(a).

¹⁵² *Id.* § 2.12.080(c).

¹⁵³ *Id.* § 2.12.080(e).

¹⁵⁴ *Id.* § 2.12.080(f).

¹⁵⁵ *Id.* § 2.12.080(i).

The Clark County Code also dictates the procedures followed in the inquest hearing. The presiding officer must ensure that the inquest remains “an investigatory proceeding and not an adversary proceeding.”¹⁵⁶ The presiding officer randomly selects seven jurors from the fifteen-member panel and conducts a voir dire examination of each juror.¹⁵⁷ Only the presiding officer, representatives of the district attorney’s office, and the coroner’s jurors may ask the witnesses any questions.¹⁵⁸ However, a limited group of “interested parties” may submit questions in writing for the witnesses, which may or may not be asked by the presiding officer.¹⁵⁹ Typically, the police officers involved volunteer to testify, and a prosecutor from the Clark County district attorney’s office questions the officers.¹⁶⁰ Jurors usually determine the outcome of the hearing based solely on the explanations offered by the officers involved in the shooting.¹⁶¹ The jury deliberates to determine whether the death was criminal, excusable, or justifiable under the law with a four-to-three majority sufficient for a verdict.¹⁶² Recent inquest juries have only deliberated from fifteen to forty-five minutes before returning with justified verdicts.¹⁶³

B. Clark County Coroner’s Inquest Controversy

The surging number of police shootings in the first half of 2006 coupled with the nearly guaranteed justified verdicts from the coroner’s inquest hearing created an atmosphere ripe for changing the Clark County Coroner’s inquest process. Civil rights leaders and concerned citizens in Las Vegas spoke out against the coroner’s inquest process by criticizing its one-sided nature.¹⁶⁴ Gary Peck, executive director of the ACLU of Nevada, accused the current coroner’s inquest process of appearing like nothing more than a “dog and pony show” and called for changes.¹⁶⁵ Although the stated purpose of the coroner’s inquest process is to reveal the facts about the officer-involved shooting,¹⁶⁶ the current system allows the police officers to provide an unchallenged “police version”¹⁶⁷ of events that Gary Peck described as “relying on the sound of one hand clapping.”¹⁶⁸ As a result of the events in early 2006, Las Vegas lost confidence in the existing system as an objective method of determining the facts surrounding police use of deadly force.

¹⁵⁶ *Id.* § 2.12.080(j).

¹⁵⁷ *Id.* § 2.12.080(j)(1).

¹⁵⁸ *Id.* § 2.12.080(j)(2).

¹⁵⁹ *Id.*

¹⁶⁰ Goldman, *supra* note 145.

¹⁶¹ *Id.*

¹⁶² CLARK COUNTY, NEV., CODE § 2.12.140.

¹⁶³ See Haynes, *supra* note 130; McCabe, *supra* note 128; McCabe, *supra* note 131.

¹⁶⁴ See Goldman, *supra* note 145; Adrian Arambulo, *Coroner’s Inquest Process in the Spotlight*, KLAS TV, Sept. 14, 2006, <http://www.klas-tv.com/Global/story.asp?s=5403675>; Lawrence, *supra* note 144.

¹⁶⁵ Arambulo, *supra* note 164.

¹⁶⁶ Clark County Coroner Index, *supra* note 65.

¹⁶⁷ Goldman, *supra* note 145.

¹⁶⁸ *Id.*

By September 2006, the public uproar over the coroner's inquest process persuaded the Clark County Commission to assemble a panel of interested parties—including the LVMPD, the Clark County district attorney's office, the ACLU, and the NAACP—to work together to create a list of recommended changes to the coroner's inquest process.¹⁶⁹ However, the Clark County commissioners would make the final decision on whether or not to implement any recommended changes.¹⁷⁰ The ACLU revealed the three changes it wanted made to the system: (1) replace prosecutors from the Clark County district attorney's office with lawyers from the Nevada 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.¹⁷¹

The panel met on numerous occasions over the following four months to discuss the recommendations it would make to the Clark County Commission in public hearings on January 10-11, 2007. The panel achieved consensus on the first two issues—replacing the prosecutors and hearing masters—but reached a stalemate on whether to allow family and friends of the deceased to question the LVMPD officers involved in the shootings.¹⁷² The ACLU's Gary Peck stated that the third issue was the “one non-negotiable part of any reform package” and absent a compromise on this issue, the County may need to “scrap[] the system entirely.”¹⁷³ However, the Las Vegas Police Protective Association (“LVPPA”) sharply opposed any questioning of LVMPD officers by the families of the deceased because it could provide fodder for civil lawsuits.¹⁷⁴ The negotiations broke down after the County published a letter containing false representations regarding the panel's progress.¹⁷⁵ Gary Peck responded to the letter by publicly questioning the County's “ability to facilitate the reforms needed to properly fix a badly broken inquest system.”¹⁷⁶ The panel did not reach a consensus before the County Commission's January 10-11, 2007 hearings and as a result made no recommendations at that time.

The panel continued to discuss changes to the coroner's inquest system during 2007. On November 20, 2007, the Clark County commissioners finally adopted several changes to the Clark County Code relevant to the coroner's inquest procedures.¹⁷⁷ The commissioners revised several definitions, expanded the pool of interested parties allowed to submit questions to the pre-

¹⁶⁹ Arambulo, *supra* note 164.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*; David Kihara, *Police Shootings: Inquest Changes Proposed*, LAS VEGAS REV.-J., Sept. 13, 2006, at 1A [hereinafter Kihara, *Inquest Changes Proposed*]; David Kihara, *Inquest Reform Questioned*, LAS VEGAS REV.-J., Jan. 4, 2007, at 3B [hereinafter Kihara, *Inquest Reform Questioned*].

¹⁷² David Kihara, *Investigation of Shootings by Police: Inquest Reform Work Hits Snag*, LAS VEGAS REV.-J., Dec. 29, 2006, at 1B.

¹⁷³ *Id.*

¹⁷⁴ *Id.*; Goldman, *supra* note 145.

¹⁷⁵ Kihara, *Inquest Reform Questioned*, *supra* note 171.

¹⁷⁶ *Id.*

¹⁷⁷ See Clark County, Nevada, Commission Agenda, Nov. 20, 2007, Items 94-95, <http://www.co.clark.nv.us/Commission/agenda.htm>.

siding officer, and set forth different procedures for officer-involved deaths, such as requiring a qualified magistrate to act as the presiding officer.¹⁷⁸ The ACLU brought about only one of its three proposed changes and strongly criticized the amendments by characterizing them as “completely meaningless.”¹⁷⁹ Robert Langford, a Las Vegas attorney that has represented the family of an individual killed by the LVMPD, said Clark County would be better off getting rid of the inquest system than making the changes it made because the system is expensive and will continue to act as nothing more than a superficial means to clear police officers of wrongdoing.¹⁸⁰ On the other side of the debate, Clark County Sheriff Doug Gillespie expressed his support of the changes, and Commissioner Bruce Woodbury called the changes “meaningful” and “appropriate” while recognizing that both sides would not be satisfied with the changes.¹⁸¹ Based on Commissioner Woodbury’s comments, the Clark County commissioners seem to feel that the issue was rectified by these amendments and the public discussion regarding the inquest system is over.

Despite Commissioner Woodbury’s feelings, the recent changes are not enough to restore the public’s confidence in the LVMPD and the Clark County inquest system. Admittedly, a consensus will be difficult to reach due to the varying interests at stake and the myriad ways to review the use of deadly force by police. A brief look at the systems being used by several other large cities across the country shows a wide variety of methods to evaluate the use of deadly force by police officers. Los Angeles sends the District Attorney Response Team (“DART”), a special unit of investigative district attorneys, to the scene of every officer-involved shooting.¹⁸² DART conducts an investigation of the shooting, and the district attorney’s office decides whether to charge any of the involved officers criminally.¹⁸³ In Phoenix, the district attorney’s office determines if officers involved in shootings should be criminally charged based on evidence collected by police investigators and prosecutors.¹⁸⁴ Prosecutors may interview the family members of the person killed by police if they feel it is relevant.¹⁸⁵ In New York City, prosecutors from the district attorney’s office are appointed as counsel to represent the decedent’s family and the officer responsible for the death.¹⁸⁶ Each side is questioned before a grand jury, which determines whether to indict the officers involved in the shooting.¹⁸⁷ The Seattle 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.¹⁸⁸ A jury determines the facts of the case, and a chief county prosecutor decides whether the officer is criminally liable for the

¹⁷⁸ See Clark County, Nev., Ordinance 3567 (Dec. 4, 2007).

¹⁷⁹ Lisa Kim Bach, *ACLU Chief Slams Rules*, LAS VEGAS REV.-J., Nov. 21, 2007, at 1B.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Goldman, *supra* note 145.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

death.¹⁸⁹ Each city has great discretion to find the method that works best for its police officers and makes citizens confident in the city's ability to find the truth.

The critical issue for the Clark County commissioners is how best to restore the public's confidence in the LVMPD's use of deadly force and in Clark County's system to review the LVMPD's actions. The American legal system is based on the premise that the best way to find the truth is for an objective tribunal to oversee proceedings between adversarial parties with zealous representation. Therefore, the coroner's inquest system should resemble this format, even though the Clark County Coroner's inquest process is not putting the officers on trial, but rather is meant to bring forth the truth publicly surrounding the LVMPD's use of deadly force.¹⁹⁰ If the Clark County Coroner's inquest process resembles the traditional American legal system, it will instill the public with confidence in the system's ability to reach the truth. Dan Satterberg, chief of staff to the King County (Seattle, Washington) prosecuting attorney, essentially agreed with this idea when he said, "Having a hearing with full participation by all parties tends to reduce the number of civil cases later."¹⁹¹ Mr. Satterberg continued, "The potential plaintiffs have seen the witnesses on the stand and heard all the testimony. There aren't as many unanswered questions later."¹⁹² Therefore, the key to boosting the public's confidence in the LVMPD's use of deadly force and the coroner's inquest process is to create a system similar to the traditional courtroom format.

The Clark County commissioners got one change correct by requiring the person acting as hearing master to be someone the public already trusts as an objective, impartial decision maker (a justice of the peace) instead of a Las Vegas attorney. However, the Clark County commissioners must make two additional changes in order to create a fair system in which the public can trust to bring forth the truth. First, if Clark County retains the prosecutor format as opposed to an adversarial system, the Clark County district attorney's office absolutely cannot prosecute in the hearings due to the close working relationship between the district attorney's office and the LVMPD. This close working relationship creates an appearance that the prosecutors will not ask the tough questions. Second, the families of the individuals killed by LVMPD officers must have the opportunity to question the officers in front of the jury to give the proceedings at least an appearance of an adversarial nature and to provide the jury with the necessary information to come to a well-informed verdict. This second suggestion is critical to the public's opinion that the system creates a meaningful opportunity for the truth to come forth. However, such a change in questioning necessitates a change in the entire format of the inquests. One major flaw in the ACLU's proposal¹⁹³ is that the officers face questions from two parties—prosecutors from the attorney general's office and attorneys repre-

¹⁸⁹ *Id.*

¹⁹⁰ Clark County Coroner Index, *supra* note 65.

¹⁹¹ Goldman, *supra* note 145.

¹⁹² *Id.*

¹⁹³ The ACLU wanted to replace Clark County district attorneys with prosecutors from the attorney general's office, to use justices of the peace as hearing masters instead of local attorneys, and to allow the decedent's family members to directly question the officers

Winter 2008]

JUDGE DREDD

721

senting the decedent's family—and must fend for themselves without counsel. Such a system could completely turn the tables from a biased system in the LVMPD's favor to a system stacked against the LVMPD from the start.

In order to restore public confidence in the coroner's inquest process and to ensure fairness and protection for the LVMPD officers, the Clark County Commission should change the coroner's inquest system to resemble the systems used in New York City and Seattle. These two systems do not utilize prosecutors, but instead provide each side, the officers and the family of the deceased individual, with counsel and hold a hearing before a jury. The only substantial difference between the New York City and Seattle systems is in New York City a grand jury decides whether to indict the officers and in Seattle a jury determines the facts and the chief prosecutor decides whether the officer is criminally liable for the death.

The New York City and Seattle systems provide objective, adversarial methods for revealing the truth. However, slight modifications must be made to ensure full objectivity and a truly adversarial process. First, attorneys from the Clark County district attorney's office should not be appointed to represent the deceased individual's family for the same reason those attorneys should not prosecute the coroner's inquest under the current system: the district attorney's office and the LVMPD work closely together on a daily basis. If attorneys from the district attorney's office were allowed to represent the victim's family, it could create the appearance that the victim's family did not receive zealous representation. Attorneys from the attorney general's office should represent both sides in the coroner's inquest process to ensure zealous representation for both parties. These recommendations provide representation for the victims' families and protect LVMPD officers, which solves the major concerns of both the ALCU and the LVPPA. A switch to an adversarial system from a sole prosecutor system would also improve Clark County residents' confidence in the LVMPD and the County's ability to find the truth surrounding officer-involved shootings.

VII. EXPLANATIONS FOR THE INCREASE IN OFFICER-INVOLVED SHOOTINGS

A variety of societal factors may influence the frequency with which deadly force is employed in the line of duty. More specifically, several of these factors can be cited as contributing to the recent outbreak of officer-involved shootings in Las Vegas. The complexity of this societal problem and its two-sided nature—peace officer versus suspect—prevent a single or simple solution. The answer, if one even exists, may lie within an elaborate collage of social ills, systemic flaws, and individual choices. In addition to, or in lieu of, social and psychological theories, more pragmatic and tangible reasons may also account for the increase in officer-involved shootings in Las Vegas.

through counsel. Kihara, *Inquest Changes Proposed*, *supra* note 171; Kihara, *Inquest Reform Questioned*, *supra* note 171; Arambulo, *supra* note 164.

A. *Sociological and Psychological Explanations for the Increase in Las Vegas Officer-Involved Shootings*

The reasons behind the recent pandemic of police shootings in Las Vegas may lie deep within the social fabric and psychological makeup of the community. Some experts suggest that foundational issues—including the erosion of the traditional family, the prevalence of violence on television and in other media outlets, a decrease in respect for authority, and the disappearance of objective moral standards—have created the increase in officer-involved shootings.¹⁹⁴ While those issues may be valid contributors to the problem, they have been discussed ad nauseum, and the discussions have resulted in very few practical suggestions on how to fix the problem. Other experts have investigated links to the birth and welfare recipient rates,¹⁹⁵ while some have studied possible connections to the divorce and unemployment rates.¹⁹⁶

The following sections investigate two potential sociological and psychological causes in Las Vegas: (1) the psychological impact on officers after the felonious killing of a Las Vegas officer in the line of duty and (2) racial undertones combined with socioeconomic inequalities.

1. *Post-Shooting Trauma for Police Officers*

Society often forgets that its heroes—most notably police officers, firefighters, and soldiers—are regular people with feelings, weaknesses, and psychological difficulties. These individuals deal with very traumatic experiences, or critical incidents, that others rarely witness besides on the evening news or in newspapers. Officers often resist treatment for the psychological effects of critical incidents, such as the death of a fellow officer, to avoid appearing weak.¹⁹⁷ After an officer in the same police department has been feloniously killed, officers may be more likely to respond to difficult situations with lethal force.

The murder of Officer Prendes in February 2006 was perhaps the first time many of the LVMPD's young officers ever witnessed the death of a fellow officer. The LVMPD officers, on average, are only twenty-eight years old and have just four years of experience on the force.¹⁹⁸ Civil rights groups and the media suggested the possibility that LVMPD officers are now more apt to shoot earlier than they were before the Prendes murder.¹⁹⁹ LVMPD Sheriff Bill Young objected to those assertions,²⁰⁰ but the murders of Swuave Lopez and Tarance Hall illustrate some degree of a shoot-first attitude.²⁰¹ However, the

¹⁹⁴ Joseph J. Simeone, *Duty, Power, and Limits of Police Use of Deadly Force in Missouri*, 21 ST. LOUIS U. PUB. L. REV. 123, 178-82 (2002).

¹⁹⁵ See Kania & Mackey, *supra* note 4, at 33, 41.

¹⁹⁶ See Lester, *Predicting*, *supra* note 4, at 43.

¹⁹⁷ Arthur W. Kureczka, *Critical Incident Stress in Law Enforcement*, FBI LAW ENFORCEMENT BULL., Feb.-Mar. 1996, at 10, 12.

¹⁹⁸ Don Woutat, *Las Vegas Sees Rise in Officers Shooting Suspects*, DALLAS MORNING NEWS, July 30, 2006, http://www.dallasnews.com/sharedcontent/dws/news/nation/stories/DN-vegastdog_30nat.ART.State.Bulldog.2524414.html.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

same phenomenon took place in Philadelphia in 2006 after an officer was shot and killed in May. Through mid-August 2006, Philadelphia police killed sixteen people, which surpassed any single annual total of people killed over the previous twenty-five years in Philadelphia.²⁰² Thus, the death of Officer Prendes could have affected the decisions made by LVMPD officers when faced with various dangerous situations on Las Vegas streets.

The LVMPD must take affirmative measures to ensure the mental health of its officers because personally unstable officers equipped with the authority to use deadly weapons create a dangerous situation for Las Vegas residents and tourists. The murder of a fellow officer may result in an added measure of fear and logically increases the level of danger perceived by officers who patrol the streets. Officers are not unflappable, and increased access to counseling would help protect the mental health and stability of each officer. Therefore, the LVMPD should provide either mandatory counseling or a more discrete method to obtain counseling for all officers after extreme events such as the death of an officer, a major shootout, or any other unusually violent civilian encounter.

2. *Racial Undertones Combined with Socioeconomic Inequalities of Races*

Violent police-citizen encounters have a long, deep-rooted history that originated with the beginning of organized police forces in America. In the northern states, some social theorists contend that cities organized police forces primarily to guard the property, wealth, and position of the upper classes.²⁰³ In the southern states, early policing consisted of all White males possessing the power to stop, question, and apprehend African Americans under the slave codes.²⁰⁴ Police violence against African Americans, however, has continued throughout American history and has not disappeared even in today's environment of heightened racial tolerance and equality. One study showed that over a two-year period, nearly 90% of police brutality victims were African American while almost 93% of the officers involved were White.²⁰⁵ Other studies showed that with a constant crime rate across cities, the fear of crime by citizens varies with the size of the African American community.²⁰⁶ Thus, the size of the African American population in a city may influence the number of officer-involved shootings by that city's police force because a largely White police force may feel threatened by the African American community.

The recent outbreak of deadly force used by the LVMPD officers may have at least some of its roots in Las Vegas's racial composition. One study

²⁰² *Rise in Police-Involved Shootings Raises Concern in Las Vegas*, USA TODAY, Aug. 15, 2006, http://www.usatoday.com/news/nation/2006-08-15-vegas-police-shootings_x.htm.

²⁰³ See JOE R. FEAGIN & HARLAN HAHN, *GHETTO REVOLTS: THE POLITICS OF VIOLENCE IN AMERICAN CITIES* (1973); TONY PLATT ET AL., *THE IRON FIST AND THE VELVET GLOVE: AN ANALYSIS OF THE U.S. POLICE* (3d. ed. 1982).

²⁰⁴ See *BLACKS AND CRIMINAL JUSTICE* (Charles E. Owens & Jimmy Bell eds., 1977).

²⁰⁵ Kim Michelle Lersch & Joe R. Feagin, *Violent Police-Citizen Encounters: An Analysis of Major Newspaper Accounts*, 22 *CRITICAL SOC.* 29, 38 (1996).

²⁰⁶ See David Jacobs & Robert M. O'Brien, *The Determinants of Deadly Force: A Structural Analysis of Police Violence*, 103 *AM. J. SOC.* 837, 857-58 (1998); Allen E. Liska et al., *Fear of Crime as a Social Fact*, 60 *SOC. FORCES* 760 (1982).

showed that African Americans were victims in 53% of all killings by police in the United States.²⁰⁷ Of the nine people shot and killed by LVMPD officers through July 9, 2006, five were African American (56%), one was Hispanic (11%), and three were White (33%).²⁰⁸ In Clark County, African Americans make up approximately 11% of the population.²⁰⁹ Nationally, African Americans account for 13% of the population and 17% of the population in the thirty-eight U.S. counties with more than one million people.²¹⁰ Thus, the percentage of African American fatalities from officer-involved shootings in Clark County (56%) is greater than the national average (53%) even though the African American population in Clark County (11%) is smaller than the national average (13%). Additionally, between 1990 and 2000, the African American community in Las Vegas grew by 73% while the White population only grew by 49%.²¹¹ This data suggests that race and the growing minority population may contribute to the LVMPD's surge of officer-involved shootings.

Similar to racial considerations, scholars assert the existence of economically unequal classes of citizens as a factor that leads to increased use of deadly force by police officers. One argument alleges that the greater the economic stratification, the greater the need for the dominant class to coerce the norms that guarantee their continued control.²¹² A statistical study of fatal police shootings in 170 U.S. cities identified economic racial inequality as one of the leading explanations for the use of deadly force by police.²¹³ Therefore, it appears that a combination of a large or growing minority population and socioeconomic inequalities between races may create a situation more likely to result in use of deadly force by police.

The racial socioeconomic stratification in Las Vegas also supports an environment for a greater number of officer-involved killings. In Las Vegas, nearly 17% of African American households make less than \$10,000 annually, which is over two times greater than the Las Vegas average (7.8%) and nearly three times greater than the percentage of White households in that income

²⁰⁷ See Jacobs & O'Brien, *supra* note 206, at 843.

²⁰⁸ McCabe, *Officer-Involved Shootings*, *supra* note 9; McCabe, *Fatal LV Police Shooting*, *supra* note 9.

²⁰⁹ Press Release, U.S. Census Bureau, Census Bureau Releases Population Estimates by Race, Hispanic Origin and Age for States and Counties, Table 2 (Aug. 4, 2006), available at <http://www.census.gov/Press-Release/www/2006/cb06-123table2.xls>.

²¹⁰ *Id.*; Press Release, U.S. Census Bureau, Census Bureau Releases Population Estimates by Race, Hispanic Origin and Age for States and Counties, Table 1 (Aug. 4, 2006), available at <http://www.census.gov/Press-Release/www/2006/cb06-123table1.xls>.

²¹¹ The percent change figures reflect growth in the African American and White populations. The African American, not of Hispanic origin, population rose from 28,704 in 1990 to 49,570 in 2000 while the White, not of Hispanic origin, population rose from 186,232 in 1990 to 277,704 in 2000. U.S. DEP'T OF COMMERCE, 1990 CENSUS OF POPULATION: GENERAL POPULATION CHARACTERISTICS: NEVADA 11, available at <http://www.census.gov/prod/cen1990/cp1/cp-1-30.pdf>; U.S. Census Bureau, Las Vegas city, Nevada – DP-1, Profile of General Demographic Characteristics: 2000, http://factfinder.census.gov/servlet/QTTable?_bm=&-qr_name=DEC_2000_SF1_U_DP1&-ds_name=DEC_2000_SF1_U&-_lang=en&-geo_id=16000US3240000.

²¹² WILLIAM CHAMBLISS & ROBERT SEIDMAN, LAW, ORDER, AND POWER (2d ed. 1982).

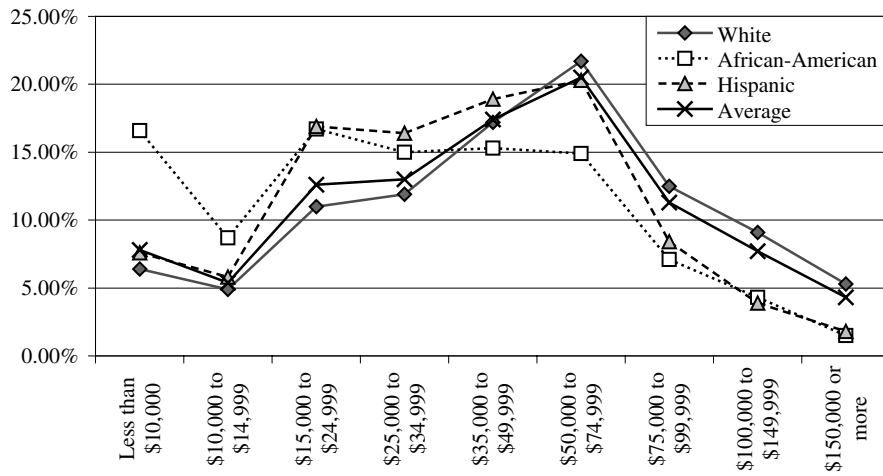
²¹³ Jacobs & O'Brien, *supra* note 206, at 857.

category (6.4%).²¹⁴ On the other end of the spectrum, the percentage of White households making more than \$150,000 per year (5.3%) is over three-and-one-half times higher than the same income level for African American households (1.5%).²¹⁵ Therefore, Las Vegas has significant economic racial inequality that may contribute to the high number of officer-involved shootings. The following two figures show the distribution of household incomes by race in Las Vegas, focusing only on the differences between three of the many races in Las Vegas.

FIGURE 4: HOUSEHOLD INCOME BY RACE IN LAS VEGAS, TABLE (2000)²¹⁶

Household Income	White	African-American	Hispanic	Las Vegas Average
Less than \$10,000	6.4%	16.6%	7.6%	7.8%
\$10,000 to \$14,999	4.9%	8.7%	5.8%	5.4%
\$15,000 to \$24,999	11.0%	16.7%	16.9%	12.6%
\$25,000 to \$34,999	11.9%	15.0%	16.4%	13.0%
\$35,000 to \$49,999	17.2%	15.3%	18.9%	17.4%
\$50,000 to \$74,999	21.7%	14.9%	20.3%	20.5%
\$75,000 to \$99,999	12.5%	7.1%	8.4%	11.3%
\$100,000 to \$149,999	9.1%	4.3%	3.9%	7.7%
\$150,000 or more	5.3%	1.5%	1.8%	4.3%

FIGURE 5: HOUSEHOLD INCOME BY RACE IN LAS VEGAS, CHART (2000)²¹⁷



²¹⁴ Nevada State Data Center, 2000 Census of Population and Housing, Income Profile 1, 4, 8 (on file with the Nevada Law Journal).

²¹⁵ *Id.* at 4, 8.

²¹⁶ *Id.* at 1, 7-8; U.S. Census Bureau, Table DP-3. Profile of Selected Social Characteristics, Las Vegas, Nev. (2000), <http://www.census.gov/Press-Release/www/2002/dptables/2k320065.xls>.

²¹⁷ U.S. Census Bureau, Table DP-3, *supra* note 216; Nevada State Data Center, *supra* note 214, at 1, 4, 7-8.

Unfortunately, racial tension is inextricably intertwined within the historical social fabric of our nation despite the enormous achievements made by the civil rights movement over the past several decades. In today's mainstream society, blatant racism is rightfully abhorred, but the effects of hidden, personal racist feelings may persist. The reaches of racism stretch across our nation with Las Vegas being no exception. The City of Las Vegas must take affirmative steps to root out this oft hidden evil that manifests itself in dangerous ways, such as officer-involved shootings. Las Vegas must take action at the foundational, professional, and accountability levels of the racial problem.

At the foundational level, Las Vegas can decrease the overall amount of racial misconception and misunderstanding among its citizens by incorporating an increased amount of racial tolerance and understanding into the local school system. Children are not born to be racist and only differentiate on the basis of color once they learn such behavior in the home, through the media, or at school. Racism in homes is virtually uncorrectable by the government—at least through an immediate remedy. Today's media generally embraces diversity and encourages people to recognize the equality of all human beings.

Schools create a unique and fertile learning environment in the area of diversity because students leave their homes and must meet people with whom they may not otherwise associate. Depending on each student's individual background, many students may have difficulties adapting to the new, diverse school environment with which they have never had to deal. Schools must teach their students to get along with all class members by embracing physical and intellectual diversity. The Clark County School District should implement social skills groups, interracial activities, and other programs to educate students about racial equality. The lessons of reading, writing, and arithmetic will prove much more beneficial through each student's life when joined with tolerance and understanding. In order to provide a solution to the number of officer-involved shootings in Las Vegas, we must realize that tomorrow's LVMPD officers are today's students.

At the professional level, Las Vegas must improve the training of its officers by including racial instruction for all current and new LVMPD officers. The LVMPD needs to ensure that any racial animosity harbored by the officers will not impair their ability to perform police duties appropriately. One law enforcement officer who allows racism to carry over into work becomes a detriment to the progress of racial relations in our community. As statistics show, racism may play a tragic role in the degree of haste used when determining whether to use deadly force. Additionally, any hint of racially motivated treatment during police duties gives citizens of minority races less confidence in the police. Finally, police officers discriminating on the basis of race may lead to an impression of state-sponsored racism, which could lead to minorities resenting all government action. To prevent these negative results, the LVMPD must take active measures to make sure that race will not play a role in how officers carry out their duties.

Improvements in procedures at the accountability level would create immediate results in the number of use-of-force incidents against minorities in Las Vegas. Admittedly, the two previous levels would likely produce long-term, though hard to quantify, benefits to Las Vegas and any other city that chooses to implement the recommendations. However, a change in how the LVMPD reviews use-of-force incidents could instantly reduce the number of minorities who end up dead at the hands of police officers. The LVMPD's Use of Force Review Board should tighten its standards of review, especially for instances where the race of the victim differs from the race of the officer involved. If the LVMPD is wary of adding scrutiny to the review in only a handful of defined situations, then the review process should include a routine inquiry regarding any possible racial motivations.

The LVMPD should also implement a more independent and adversarial method of scrutinizing an officer's use of deadly force.²¹⁸ Currently, two mechanisms are in place to review officers' use of deadly force—the LVMPD UFRB and the Clark County Coroner inquest process. Each Use of Force Board is made up of four trained civilians randomly selected from a pool of sixty, a captain who does not supervise the officer under review, the officer's training captain, and an officer of the same rank who has not worked with the officer under review.²¹⁹ The Clark County Coroner's inquest process also serves as a check on the officer's decision to use deadly force. However, both procedures are non-adversarial, fact-finding exercises that many citizens do not trust to find all the facts. The American legal system is based on the premise that an adversarial system produces the truth, yet the Clark County Coroner and the LVMPD utilize systems in which officers make seemingly unchallenged claims regarding their own actions in connection with the death of a person. The rash of recent officer-involved shootings and perceived lack of impartiality has shaken Las Vegans' confidence in the current accountability mechanisms. Because the LVMPD UFRB is an internal check, a change to the Clark County Coroner's inquest process is more appropriate due to its public nature.²²⁰ Public confidence in the coroner inquest process would increase and the number of officer-involved shootings would likely decrease if counsel for the family of the individuals killed were allowed to question the officers involved in the incident because officers would at least appear more accountable for their use of deadly force.

Las Vegas must also take steps to improve the socioeconomic status of the minority population. No quick and easy fix exists to pull the city out of the racial economic stratification that we now face, but two long-term efforts may alleviate part of the problem. First, the school district must make a serious effort to provide quality education to all areas within the district. The quality

²¹⁸ See *supra* Part VI.B.

²¹⁹ McCabe, *supra* note 65.

²²⁰ See *supra* Part VI.B.

of education should not be determined by the socioeconomic status of the neighborhood. The City cannot directly solve the problem of poor households but can improve the opportunities for its citizens to help themselves. Nevada provides many opportunities for children from minority households to obtain a college education by providing scholarships. However, the elementary and secondary school levels are where children determine whether they will aspire to attend college. Las Vegas can improve the economic welfare of those households on the lower end of the spectrum by providing quality education to all of its children.

Las Vegas should also improve the economic situation of the poorest households by devoting substantial time and resources to cleaning up the poor, crime-filled neighborhoods that contain a higher concentration of minority households. Children from bad neighborhoods often lack hope for a better life and get caught up in criminal activities that thwart their potential to become productive members of their community. Additionally, children who fear for their safety while attending school often learn much less and perform more poorly on the standardized tests required to attend college. In order to improve conditions in poorer neighborhoods, Las Vegas should establish enhanced community centers, much like the settlement houses of the late nineteenth century that were based on the belief that poverty resulted from numerous social conditions, including lack of access to education, nutrition, health care, and housing.²²¹ The Las Vegas community would benefit by establishing community-based, not-for-profit²²² centers that provide services such as child care, activities for all age groups, cultural and recreational experiences, services for job seekers, parent support groups, meals and snacks, and preschool programs.²²³ Community centers such as this would help to improve notoriously bad neighborhoods in Las Vegas and alleviate the perpetuation of racial economic stratification. As Las Vegas moves closer to racial economic equality, the number of officer-involved shootings will decrease and many other social benefits will flow therefrom.

B. Empirical Explanations for the Increase in Las Vegas Officer-Involved Shootings

While psychological, racial, and socioeconomic circumstances between officers and suspects in Las Vegas may create very real tension, empirical fac-

²²¹ Suzy E. Edelstein & Irma Rodriguez, *Honoring Our Roots in Settlements Today* (Oct. 2003), <http://www.naswnyc.org/HonoringOurRoots.htm>. The settlement houses of the late nineteenth century, like Jane Addam's Hull House, were created in an effort to close the social gap between classes and increase needed resources for underserved populations. Eleanor M. Klosterman & Dorothy C. Stratton, *Speaking Truth to Power: Jane Addam's Values Base for Peacemaking*, 21 J. WOMEN & SOC. WORK 158, 160 (2006).

²²² Unlike the first settlement houses that were funded primarily by private donations, not-for-profit community centers across the United States are now largely funded by the government. Barbara Trainin Blank, *Settlement Houses: Old Idea in New Form Builds Communities*, NEW SOC. WORKER, Summer 1998, at 4, 7, available at <http://www.socialworker.com/settleme.htm>.

²²³ *Id.* at 6. Community centers such as the one described currently operate throughout the United States in places such as New York, New York; Philadelphia, Pennsylvania; Cleveland, Ohio; Salem, Massachusetts; and Columbus, Ohio. *Id.* at 4-7.

tors could provide more tangible answers with simpler solutions. This section attempts to reveal connections between the number of fatal officer-involved shootings and certain statistical and tangible categories including the following: (1) the violent crime and homicide rates in Las Vegas, (2) the strength of Nevada's criminal penalties, (3) the rapidly increasing population of Las Vegas, and (4) the number of the LVMPD officers in relation to the growing Las Vegas population.

1. *Violent Crime and Homicide Rates*

One rather intuitive argument might be that as the overall numbers of violent crimes or homicides increase, the number of officer-involved shootings will also increase. It logically follows that as more individuals commit violent crimes or homicides punishable by lengthy prison sentences, those individuals will be more likely to take greater measures to evade arrest. Scholars have also argued under the danger-perception theory that the number of officer-involved shootings depends on the amount of real or perceived danger police officers experience.²²⁴ Another argument is the ratio-threat model, which claims officer-involved shootings are merely a function of the overall level of real or perceived violence in society.²²⁵ Thus, the violent crime and homicide rates are typically the best measures of real violence in society and may provide some insight into the number of officer-involved shootings in any given city.

A cursory inspection of the violent crime and homicide rates in Las Vegas and the number of justifiable homicides by police officers over the past five years, as compared to the national numbers over the same period, appears to show no direct relationship between the three statistics. From 2001 to 2002, the violent crime rate in Las Vegas increased by over 15% and the homicide rate remained the same, but the number of justifiable homicides by LVMPD officers remained unchanged. Additionally, from 2003 to 2004, the violent crime rate in Las Vegas increased by 2.5% and the homicide rate decreased by 11%, yet the number of officer-involved fatal shootings increased by 25%. Therefore, it appears that the violent crime rate and the overall homicide rate do not accurately predict the number of justifiable homicides by police in Las Vegas. The following figure compares the violent crime rates, homicide rates, and number of fatal shootings by police in Las Vegas and the United States from 2001 through 2006.

²²⁴ John M. MacDonald et al., *The Temporal Relationship Between Police Killings of Civilians and Criminal Homicide: A Refined Version of the Danger-Perception Theory*, 47 *CRIME & DELINQ.* 155, 159 (2001).

²²⁵ *Id.*

FIGURE 6: VIOLENT CRIME RATE COMPARED WITH JUSTIFIABLE HOMICIDES PER YEAR (NEVADA AND NATIONWIDE)

Location	Statistic	2001 ²²⁶	2002 ²²⁷	2003 ²²⁸	2004 ²²⁹	2005 ²³⁰	2006 ²³¹
Las Vegas	Violent Crime Rate ²³²	675.4	778.6	770.0	789.1	743.5	982.9
	Homicide Rate	11.9	11.9	11.9	10.6	11.3	11.6
	Fatal Shootings by Police ²³³	7	7	9	10	9	9
United States	Violent Crime Rate	504.5	494.4	475.8	463.2	469.0	473.5
	Homicide Rate	5.6	5.6	5.7	5.5	5.6	5.7
	Fatal Shootings by Police ²³⁴	378	341	373	367	341	376

The data does not show a direct causal connection between fluctuations in the violent crime and homicide rates and the number of fatal officer-involved shootings in Las Vegas. However, the data shows that Las Vegas has elevated rates of violent crime and homicide, which may explain the high number of fatal shootings by police in Las Vegas. Additional research into crime rates and the number of fatal officer-involved shootings may find a link between the two statistics. However, crime statistics only reflect actual danger and cannot

²²⁶ FBI, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES – 2001, at 76-86 tbl.5, 118-64 tbl.8 (2002), available at http://www.fbi.gov/ucr/cius_01/01crime.pdf [hereinafter 2001 CRIME REPORT].

²²⁷ FBI, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES – 2002, at 78-88 tbl.5, 120-65 tbl.8 (2003), available at http://www.fbi.gov/ucr/cius_02/pdf/02crime.pdf [hereinafter 2002 CRIME REPORT].

²²⁸ FBI, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES – 2003, at 82-92 tbl.5, 131-78 tbl.8 (2004), available at http://www.fbi.gov/ucr/cius_03/pdf/toc03.pdf [hereinafter 2003 CRIME REPORT].

²²⁹ FBI, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES – 2004, at 76-85 tbl.4, 136-83 tbl.8 (2005), available at http://www.fbi.gov/ucr/cius_04/documents/CIUS2004.pdf [hereinafter 2004 CRIME REPORT].

²³⁰ 2005 CRIME REPORT tbl.1, *supra* note 5; FBI, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES – 2005, at tbl.4 (2006), available at http://www.fbi.gov/ucr/05cius/data/table_04.html; FBI, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES – 2005, at tbl.8 (2006), available at http://www.fbi.gov/ucr/05cius/data/table_08_nv.html [hereinafter 2005 CRIME REPORT tbl.8]; 2005 CRIME REPORT tbl.13, *supra* note 6.

²³¹ FBI, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES – 2006, at tbl.1 (2007), available at http://www.fbi.gov/ucr/cius2006/data/table_01.html; FBI, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES – 2006, at tbl.8 (Nev.) (2007), available at http://www.fbi.gov/ucr/cius2006/data/table_08_nv.html [hereinafter 2006 CRIME REPORT tbl.8 (Nev.)]; FBI, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES – 2006, at tbl.13 (2007), available at http://www.fbi.gov/ucr/cius2006/offenses/expanded_information/data/shrtable_13.html [hereinafter 2006 CRIME REPORT tbl.13].

²³² Violent crimes include murder, non-negligent manslaughter, robbery, and aggravated assault. The rate is the number of violent crimes per 100,000 inhabitants. See 2002 CRIME REPORT, *supra* note 227, at 78.

²³³ Kihara, *supra* note 88; McCabe, *Officer-Involved Shootings*, *supra* note 9; McCabe, *Fatal LV Police Shooting*, *supra* note 9.

²³⁴ 2006 CRIME REPORT tbl.13, *supra* note 231; Homicide Trends in the U.S., *supra* note 6.

quantify the level of danger perceived by Las Vegas officers. Las Vegas has a well-known history of mobster ties and the violence that comes with organized crime.²³⁵ The recent “What happens here, stays here” ad campaign promotes the idea that Las Vegas is a place where people commit adultery, cheat, and steal.²³⁶ Thus, the level of perceived danger may be even higher than the level of danger reflected in crime statistics. In fact, LVMPD officers may sometimes react based on a high level of perceived danger instead of the amount of real danger, which may result in a higher number of fatal officer-involved shootings. A study regarding the level of danger perceived by LVMPD officers would shed more light on whether perceived danger affects the number of fatal officer-involved shootings in Las Vegas.

2. *Strength of Nevada’s Criminal Penalties*

Another pragmatic argument for the increase in justifiable homicides by Las Vegas police officers is that more criminals have moved to Las Vegas due to lax criminal laws in Nevada. Officer Laurie Bisch, a thirteen-year LVMPD veteran and recent candidate for Clark County Sheriff, told the *Las Vegas Review-Journal* that Las Vegas has a reputation with criminals from California and Arizona as being an easy place to get away with crimes.²³⁷ Bisch explained, “[Criminals] think it’s easy to beat the system here. In California, they are tough with their three-strikes rule, and Arizona has tough new laws that are keeping criminals in jail for longer periods of time. [Las] Vegas is often the place of choice for these criminals.”²³⁸ Individuals who intend to commit criminal acts on a regular basis would obviously find it advantageous to move their operations to a neighboring state with more lenient criminal laws. Nevada’s allegedly lenient criminal laws may have helped turn Las Vegas into the career criminal’s preferred location. A detailed comparison of the Nevada Criminal Code to the California, Arizona, and Utah criminal codes and the crime rates of those neighboring states are necessary to determine whether Officer Bisch’s assertion carries substantial weight.

On the other hand, the actual deterrent effect of longer prison terms and overall tougher criminal penalties is questionable at best. One study showed that most people, even career criminals, do not have an accurate understanding

²³⁵ Jerry Fink, *Tropicana’s Closing Shuts Door on History*, LAS VEGAS SUN, Apr. 2, 2006, at 9; PBS, American Experience, Las Vegas: An Unconventional History, http://www.pbs.org/wgbh/amex/lasvegas/peoplevents/p_syndicate.html (last visited Feb. 28, 2008).

²³⁶ Steve Friess, *A Firm Hits Jackpot on Las Vegas Ads*, BOSTON GLOBE, Mar. 28, 2004, at A14; Chris Jones, ‘*What Happens Here, Stays Here*’ Strikes Sour Note for Some at Conference, LAS VEGAS REV.-J., Dec. 18, 2003, at 1A.

²³⁷ McCabe, *Officer-Involved Shootings*, *supra* note 9. Officer Bisch also ran for Clark County Sheriff in 2006. Laurie Bisch for Clark County Sheriff 2006, <http://www.lauriebischforsheriff.com/index.php> (last visited Feb. 28, 2008).

²³⁸ McCabe, *Officer-Involved Shootings*, *supra* note 9.

of the law.²³⁹ Lawmakers often believe that their greatest crime-detering tool is the length of prison terms attached to the targeted crime.²⁴⁰ However, one study suggested that punishment's effectiveness hinges on the intensity of the experience rather than its duration. Thus, the overall deterrent effect of prison sentences may decrease as the length of the terms increase.²⁴¹ Therefore, the alleged leniency of Nevada's criminal laws may not have any significant impact on the amount of crime in Las Vegas or the number of officer-involved shootings.

3. *The Las Vegas Population Explosion*

Officers have argued that the massive influx of people into the Las Vegas Valley has created a situation for a natural increase in crime and the number of officer-involved shootings. From 1990 to 2000, Nevada experienced the largest growth rate (66%) of all fifty states, and Las Vegas grew faster (83%) than any other metropolitan area in the country.²⁴² On June 21, 2006, the United States Census Bureau released its list of the fastest growing cities in the country on which North Las Vegas ranked second, Henderson ranked twentieth, Reno ranked thirtieth, and Las Vegas ranked forty-second.²⁴³ The frequency of officer-involved shootings may logically increase with more people in the valley and more police officers patrolling the streets.

LVMPD Officer Laurie Bisch recently argued this theory in a statement to the Las Vegas media. Bisch said, "With the population growth there comes a whole new element, and those criminals are brazen."²⁴⁴ A cursory glance at the number of officers feloniously killed in Nevada compared to the population growth in Nevada shows little relationship between the two statistics (see Figure 7 below). Additionally, a more recent and narrow comparison of the population growth in Las Vegas to the number of justifiable homicides by Las Vegas police officers provides no clarification on the issue (see Figure 8 below).

²³⁹ Paul H. Robinson & John M. Darley, *Does Criminal Law Deter? A Behavioural Science Investigation*, 24 OXFORD J. LEGAL STUD. 173, 174 (2004).

²⁴⁰ Paul H. Robinson & John M. Darley, *The Role of Deterrence in the Formulation of Criminal Law Rules: At Its Worst When Doing Its Best*, 91 GEO. L.J. 949, 954 (2003).

²⁴¹ *Id.* at 955.

²⁴² MARC J. PERRY & PAUL J. MACKUN, CENSUS 2000 BRIEF: POPULATION CHANGE AND DISTRIBUTION 2, 6 (2001), available at <http://www.census.gov/prod/2001pubs/c2kbr01-2.pdf>.

²⁴³ Press Release, U.S. Census Bureau, Elk Grove, Calif., Named Fastest-Growing City, at tbl. 1, (June 21, 2006), available at <http://www.census.gov/Press-Release/www/2006/cb06-95table1.pdf>; Les Christie, *Fastest Growing Cities*, CNN.COM, June 21, 2006, http://money.cnn.com/2006/06/20/real_estate/fastest_growing_cities/index.htm.

²⁴⁴ McCabe, *Officer-Involved Shootings*, *supra* note 9.

FIGURE 7: OFFICERS FELONIOUSLY KILLED IN NEVADA COMPARED WITH NEVADA POPULATION PER DECADE (1860-2007)²⁴⁵

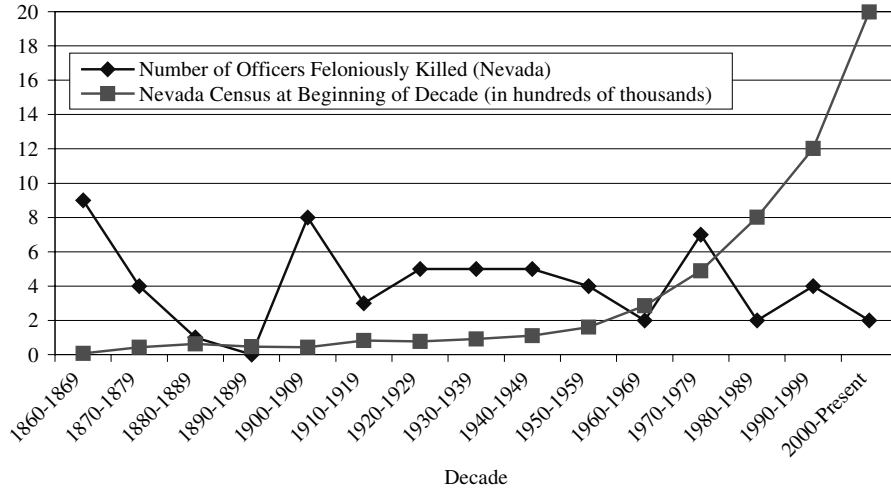
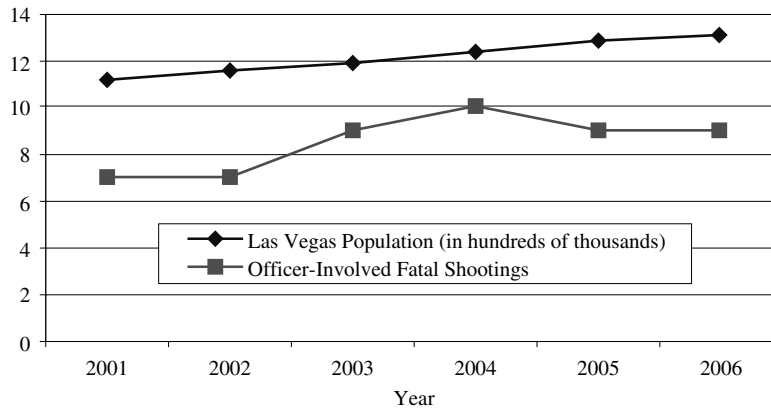


FIGURE 8: JUSTIFIABLE HOMICIDES BY LVMPD OFFICERS COMPARED WITH LAS VEGAS POPULATION (2001-2006)²⁴⁶



Furthermore, a comparison of Las Vegas to other cities across the country shows no obvious connection between population and justifiable homicides by police. Therefore, the population growth may be one factor, but by itself does not shed any significant light on what might be causing the officer-involved

²⁴⁵ PERRY & MACKUN, *supra* note 242, at 2; The Officer Down Memorial Page, Inc., Nevada, *supra* note 68; U.S. Census Bureau, Table 16, Population: 1790 to 1990, <http://www.census.gov/population/censusdata/table-16.pdf>.

²⁴⁶ 2006 CRIME REPORT tbl.8 (Nev.), *supra* note 231; 2005 CRIME REPORT tbl.8, *supra* note 230; 2004 CRIME REPORT, *supra* note 229, at 136-83 tbl.8; 2003 CRIME REPORT, *supra* note 228, at 131-78 tbl.8; 2002 CRIME REPORT, *supra* note 227, at 120-65 tbl.8; 2001 CRIME REPORT, *supra* note 226, at 118-64 tbl.8; Kihara, *supra* note 88; McCabe, *Officer-Involved Shootings*, *supra* note 9; McCabe, *Fatal LV Police Shooting*, *supra* note 9; McCabe, *supra* note 87.

shooting problem. The following figure compares the number of fatal officer-involved shootings in Las Vegas and in ten other cities across the United States during 2005 and the first part of 2006.

FIGURE 9: OFFICER-INVOLVED FATAL SHOOTINGS IN VARIOUS UNITED STATES CITIES (2005-2006)²⁴⁷

Jurisdiction	2006 ²⁴⁸	2005	Population 2005
LVMPD	9	9	1,281,698
San Jose, Calif.	0	2	910,528
San Francisco	2	0	749,172
Austin, Texas	1	1	693,019
Portland, Ore.	0	3	540,389
Oklahoma City	1	3	531,688
Los Angeles	6	11	3,871,077
Gary, Ind.	0	1	100,065
Philadelphia	15	2	1,472,915
Nashville	1	3	557,034
Houston	3	8	2,045,732

The rapid population growth in Las Vegas provides many benefits to the City, such as economic stimulation, more jobs, and higher tax revenues. The City should not take measures to slow the population growth despite any possible link between the rapid growth and an increase in the number of officer-involved shootings. The City of Las Vegas and the LVMPD should take steps to better adjust to the population growth even though the data does not reflect a direct causal link between population growth and the number of officer-involved shootings.

4. *More Officers, Please!*

The rapid population growth could create community imbalances, such as a decline in the officer to citizen ratio, if Las Vegas fails to respond adequately to the growth. Officer Bisch asserted that growth in the number of LVMPD officers has not kept pace with the rapid population increase. Bisch explained, "We used to have two to three officers handling a call. Now there may be only one officer."²⁴⁹ Officers may be more nervous or on-edge when arriving alone at a crime scene, especially if the officer is outnumbered by the suspected criminals. Suspects may be more likely to resist authority and elevate the violence with a single officer than they would be if two or three officers arrived at

²⁴⁷ 2005 CRIME REPORT tbl.8, *supra* note 230; McCabe, *Officer-Involved Shootings*, *supra* note 9; McCabe, *Fatal LV Police Shooting*, *supra* note 9.

²⁴⁸ The 2006 figures include year-to-date statistics through July 9, 2006, for the LVMPD and through July 6, 2006, for the other ten cities. See McCabe, *Officer-Involved Shootings*, *supra* note 9; McCabe, *Fatal LV Police Shooting*, *supra* note 9.

²⁴⁹ 2005 CRIME REPORT tbl.8, *supra* note 230; McCabe, *Officer-Involved Shootings*, *supra* note 9.

the scene. Additionally, suspects may be more likely to resist arrest or try to escape when they outnumber the officers at the scene. One study investigated the relationship between the number of arrestees at the scene and the likelihood of an arrestee resisting arrest.²⁵⁰ The data shows a negative relationship between the number of arrestees at the scene and the amount of resisting arrest; however, the author suggests skewed results due to incomplete data regarding the number of backup officers.²⁵¹ Therefore, the relationship between the presence of multiple arrestees and resisting arrest remains questionable.²⁵²

A look at the statistics shows that Officer Bisch may be on the right track. The following figure shows the Las Vegas population, the number of LVMPD officers, the Violent Crime Rate, and the number of officer-involved fatal shootings in the years 2001 to 2006. The violent crime rate surged from 2001 to 2002 and has stayed approximately the same since 2002. However, the number of officers per 10,000 inhabitants has decreased by nearly six percent over the past five years.

FIGURE 10: LAS VEGAS POPULATION GROWTH AND INCREASE IN NUMBER OF LVMPD OFFICERS (2001-2006)

	2001 ²⁵³	2002 ²⁵⁴	2003 ²⁵⁵	2004 ²⁵⁶	2005 ²⁵⁷	2006 ²⁵⁸
Las Vegas Population (in millions)	1.12	1.15	1.19	1.24	1.28	1.32
Number of LVMPD Officers	1,895	1,951	1,981	2,007	2,053	2,231
Officers per 10,000 inhabitants	17.0	16.9	16.7	16.2	16.0	17.0
Violent Crime Rate	675.4	778.6	770.0	789.1	743.5	982.9
Officer-Involved Fatal Shootings ²⁵⁹	7	7	9	10	9	9 ²⁶⁰

The next figure shows the compounded percent change of the population and number of LVMPD officers from 2001 to each subsequent year. This chart illustrates how the number of officers failed to keep pace with the population growth from 2001 to 2005. During the four-year period, the Las Vegas popula-

²⁵⁰ John Kavanagh, *The Occurrence of Resisting Arrest in Arrest Encounters: A Study of Police-Citizen Violence*, 22 CRIM. JUST. REV. 16, 31 (1997).

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ 2001 CRIME REPORT, *supra* note 226, at 118-64 tbl.8, 363.

²⁵⁴ 2002 CRIME REPORT, *supra* note 227, at 120-65 tbl.8, 369.

²⁵⁵ 2003 CRIME REPORT, *supra* note 228, at 131-78 tbl.8, 411.

²⁵⁶ 2004 CRIME REPORT, *supra* note 229, at 136-83 tbl.8, 417.

²⁵⁷ 2005 CRIME REPORT tbl.8, *supra* note 230; FBI, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES – 2005, at tbl.78 (Nev.) (2006), available at http://www.fbi.gov/ucr/05cius/data/table_78_nv.html [hereinafter 2005 CRIME REPORT tbl.78].

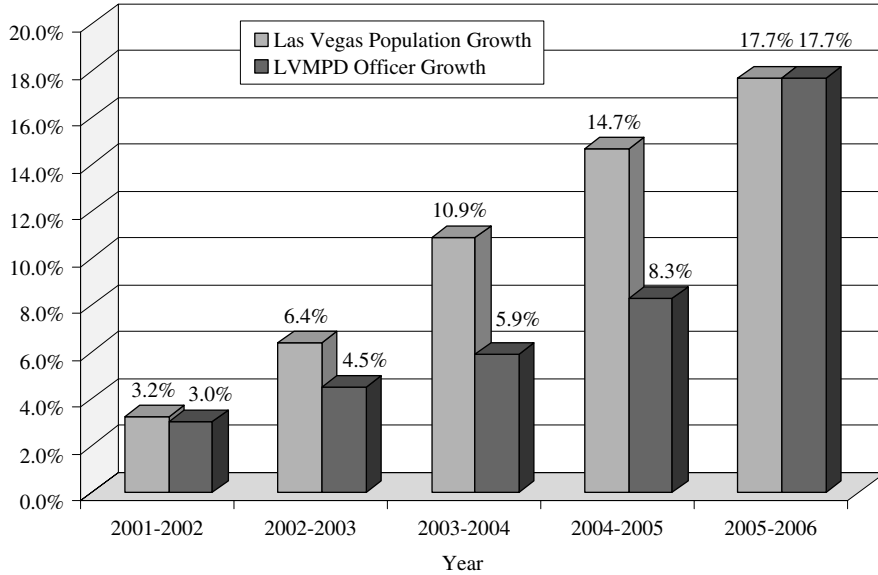
²⁵⁸ 2006 CRIME REPORT tbl.8 (Nev.), *supra* note 231; FBI, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES – 2006, at tbl.78 (Nev.) (2007), available at http://www.fbi.gov/ucr/cius2006/data/table_78_nv.html.

²⁵⁹ Kihara, *supra* note 88; McCabe, *Officer-Involved Shootings*, *supra* note 9; McCabe, *Fatal LV Police Shooting*, *supra* note 9.

²⁶⁰ The nine officer-involved fatal shootings occurred by July 9, 2006. See Kihara, *supra* note 88; McCabe, *Fatal LV Police Shooting*, *supra* note 9.

tion increased at nearly twice the rate as the number of LVMPD officers. However, in 2006, the LVMPD added 178 officers to finally catch up with the population growth and alleviate the growing pressure on an overwhelmed LVMPD police force (see Figure 11 below).

FIGURE 11: THE CUMULATIVE GROWTH IN LAS VEGAS POPULATION AND THE NUMBER OF LVMPD OFFICERS (2001-2006)²⁶¹



The next figure compares the population, number of officers, officers per 10,000 inhabitants, violent crime rate, and justifiable homicides by police in several large cities across the country. All numbers are from 2005. Las Vegas had the second-lowest officer to population ratio among the eleven cities, which ranged from approximately 100,000 to nearly 4,000,000 people. Las Vegas also had the second highest number of officer-involved fatal shootings despite having the fifth lowest violent crime rate.

²⁶¹ See sources cited for Figure 10, *supra* notes 253-60.

FIGURE 12: OFFICER TO POPULATION RATIOS, VIOLENT CRIME RATES, AND JUSTIFIABLE HOMICIDES BY POLICE IN TWELVE U.S. CITIES (2005)²⁶²

City, State	Population	Total Officers	Officers per 10,000 inhabitants	Violent Crime Rate	Justifiable Homicides by Police
San Jose, CA	910,528	1,349	14.8	383.5	2
LVMPD	1,281,698	2,053	16.0	743.5	9
Portland, OR	540,389	989	18.3	713.9	3
Oklahoma City, OK	531,688	989	18.6	853.5	3
Austin, TX	693,019	1,361	19.6	489.6	1
Nashville, TN	557,034	1,244	22.3	1,611.0	3
Houston, TX	2,045,732	4,779	23.4	1,172.5	8
Los Angeles, CA	3,871,077	9,355	24.2	820.6	11
Gary, IN	100,065	272	27.2	717.5	1
San Francisco, CA	749,172	2,193	29.3	798.9	0
Philadelphia, PA	1,472,915	6,636	45.1	1,467.1	2

Based on all of the figures above, the decreasing officer to population ratio was an obvious problem in Las Vegas. However, the number of officer-involved fatal shootings has stayed virtually the same with the declining citizen-officer ratio from 2001 to 2005 and has spiked in early 2006. Therefore, the decrease in officers per citizen has not conclusively led to the increase in justifiable homicides by Las Vegas police officers. Further research on the relationship between the citizen-officer ratio and the number of fatal officer-involved shootings is necessary to determine whether any link exists between the two statistics.

Las Vegas must increase the size of the LVMPD at a higher rate to keep pace with the astounding population growth because a larger police force will effectively deter crime and may lead to a decline in the number of fatal officer-involved shootings. One study found that even moderate levels of punishment adequately deter crime when coupled with a greater likelihood of being caught.²⁶³ Las Vegas can increase the likelihood of criminals being caught by increasing the number of LVMPD officers and establishing more local police substations in the City's newly developed areas. However, the LVMPD recently experienced difficulties in recruiting officers, especially high quality officers, due to the relatively low pay earned by LVMPD officers and disputed contract negotiations.²⁶⁴ Despite these difficulties, a stronger police presence in Las Vegas would improve crime deterrence and ultimately lower the number of officer-involved shootings.

²⁶² 2005 CRIME REPORT tbl.8, *supra* note 230; 2005 CRIME REPORT tbl.78, *supra* note 257; McCabe, *Officer-Involved Shootings*, *supra* note 9; McCabe, *Fatal LV Police Shooting*, *supra* note 9.

²⁶³ Robinson & Darley, *supra* note 240, at 977.

²⁶⁴ Frank Geary, *Panel Votes Down Police Contract*, LAS VEGAS REV.-J., Oct. 25, 2005, at 1A.

VIII. SUMMARY AND CONCLUSION

The post-*Garner* Nevada statutes have certainly imposed greater restrictions on the use of deadly force by officers and citizens than did the common law. Despite the increased statutory limitations, the LVMPD's use of deadly force in Las Vegas spiked in early 2006. The most likely reasons appear to be racial tensions between suspects and officers, racial economic stratification, and the rapid population growth without an equal response in police force growth.

Las Vegas needs to improve race relations, racial perceptions, racial economic stratification, and counseling services for LVMPD officers. The Clark County School District should organize programs and courses focused on racial equality education. Las Vegas needs to combat racial economic stratification by providing quality education to all children regardless of a neighborhood's economic makeup. The LVMPD must include thorough racial instruction for officers and root out officers who act with racist motivations by implementing racial checks in the use-of-force review procedures. Additionally, Las Vegas must establish community centers in poor neighborhoods to supply much needed aid and educational opportunities for underprivileged families. The LVMPD must also create better methods for officers to cope with tragic events, such as the death of a fellow officer, to prevent the mental instability of an officer from adversely affecting the level of force used. The implementation of these changes in Las Vegas will alleviate racial tensions, reduce the racial economic stratification, and prevent LVMPD officers from becoming mentally or emotionally unstable.

In Las Vegas, the violent crime and homicide rates did not appear to have any direct impact on the number of fatal officer-involved shootings. However, further research is needed to determine how the level of danger perceived by officers affects the level of force officers use to effectuate arrests. Nevada's criminal punishments do not have a conclusive impact on the level of criminal activity in Las Vegas or the number of fatal officer-involved shootings. Additionally, the rapid population growth in Las Vegas does not have an obvious statistical relationship with the number of fatal officer-involved shootings. However, the ratio of LVMPD officers to Las Vegas residents steadily declined over the past several years, which resulted in a thinning of law enforcement resources. Las Vegas must increase the LVMPD's officer to citizen ratio to decrease the likelihood of officer-involved shootings.

Further, the Clark County Commission must further amend the coroner's inquest process to make Las Vegans confident in the government's ability to review the LVMPD officers' use of deadly force objectively. The coroner's inquest system should resemble the adversarial process by providing each side with zealous representation from impartial attorneys. If the Clark County Commission makes these additional changes, Las Vegans' confidence in the integrity of the coroner's inquest system will increase and citizens will feel safer knowing that LVMPD officers cannot misuse deadly force without facing appropriate consequences.

Winter 2008]

JUDGE DREDD

739

Las Vegas needs to recognize that the increase in officer-involved shootings is a problem with numerous potential causes and a complex solution. Additional research is necessary to determine the full impact of the causes suggested here. Hopefully this Note can serve as a catalyst for future research and most importantly for the changes necessary to make Las Vegas a better place in which to live.