

Politics or Protection of Your Rights?

By David Roger, General Counsel

By now, you are aware that your legal advisors have recommended that you invoke your constitutional rights, pursuant to *Garrity v. New Jersey*, before you speak with FIT investigators. While most officers have embraced this philosophy, a few question whether they are pawns in a political battle between the Sheriff and the LVPPA leaders.

First, it is important to look back to 2010 to understand the reasons why the LVPPA legal team suggested changes in the way officers interact with investigators during critical incidents.

Clark County Commissioners demand changes to the Coroner's Inquest process

In September 2010, Chairman Rory Reid and Commissioner Steve Sisolak criticized the Coroner's Inquest system and empaneled a group, including representatives from the ACLU and the NAACP, to recommend changes.

In speaking about the Coroner's Inquest process, then Chairman Rory Reid told the *Las Vegas Sun*, "I think it's clear to everyone that it's a kangaroo court and it doesn't do anything to increase public confidence ... and we need to take it to the next step.' 'It's an outrageous process. Trevon Cole and Erik Scott are names that everybody knows.'"ⁱ

Subsequently, Commissioners decided to pay attorneys to represent decedents' family members and cross-examine police officers. However, police officers must come out of pocket to retain their own legal representatives.

The Las Vegas Review Journal publishes a series of articles "Deadly Force, When Las Vegas Police shoot, and kill"

In November 2011, the Review Journal published a five-part series about police shootings dating back to the 1990's.ⁱⁱ Many officers felt the newspaper was unduly critical of police officers. Others, including many special interest groups, applauded the in-depth review of officer shootings. ACLU representatives demanded that the Department of Justice conduct an independent investigation of LVMPD's critical incidents.

DOJ- Community Oriented Policing Service- (COPS) initiates a review of LVMPD's Use of Force policies and procedures

In the wake of the LVRJ's series of articles, which many people felt were critical of LVMPD's handling of critical incidents, Sheriff Gillespie reportedly asked the Department of Justice Community Oriented Policing Service to review the department's five (5) year history of officer-involved shootings and other matters. The group of experts began their research in February 2012.ⁱⁱⁱ

During an interview of Executive Director Chris Collins, one of the COPS experts advised Collins that he believed LVMPD had a history of several "bad" shootings.

Sheriff Gillespie implements changes to the Department's Use of Force Policy recommended by the ACLU

In February 2012, the department began reviewing its Use of Force Policy. During this process, Sheriff Gillespie met with representatives of the American Civil Liberties Union and received their recommended changes.^{iv}

As a result, the department circulated a draft of the new policy that read, "The changes to this policy are a result of recent findings of the Ninth Circuit Court, CIRT reviews, input from various bureaus on the department, in depth review of industry standards, as well as recommendations of the ACLU."^v

Department of Justice- Civil Rights Division chastises the Seattle Police Department for affording Garrity protections to officers

In March, 2011, the Department of Justice- Civil Rights division launched an investigation into the policy and practices of the Seattle Police Department (SPD). When investigators learned that SPD provided officers with Garrity protections, before providing statements concerning use of force investigations and critical incidents, DOJ lawyers fired off a very critical letter to Seattle Mayor Michael McGinn.

Jonathon Smith, Chief of the Special Litigation Section of the US Department of Justice Civil Rights Division wrote: "*Garrity provides important and fundamental protections for police officers, but its protections are limited. Our investigation has shown that SPD attempts to apply Garrity to all use of force and police involved shooting incidents. SPD's inappropriate blanket invocation of Garrity may result in the exclusion of important evidence from an investigation. Moreover, SPD's failure to shield criminal investigators from Garrity materials could taint and render unusable other critical evidence. These practices compromise both the SPD's ability to supervise officers' use of force, and its ability to fully and efficiently conduct criminal and administrative investigations. Put simply: This practice makes it too difficult to quickly exonerate officers who have followed policy and to properly discipline officers who have not. Further, these practices compromise the ability of prosecutors or other outside agencies to adequately assess incidents and to hold officers accountable for their actions. The net effect of these consequences is diminished public trust in SPD.*"^{vi}

DOJ Civil Rights Division's commitment to prosecute Officer Misconduct cases

The Department of Justice- Civil Rights division is the primary group of prosecutors that enforces 18 U.S.C. 242, the criminal Civil Rights statute. In describing DOJ's prosecution of the LAPD officers who beat Rodney King, the website explains, "While this incident received tremendous public attention, it was not unique but rather representative of the numerous incidents of official misconduct regularly reviewed and prosecuted by the Criminal Section."^{vii}

Newly appointed District Attorney Steve Wolfson advises the Sheriff that prosecutors will present evidence concerning the Stanley Gibson shooting to the Grand Jury.

On the evening of December 12, 2011, LVMPD officers responded to an officer's call for assistance. The officer had pulled over a vehicle driven by Stanley Gibson who was reportedly committing an Attempted Burglary. As the officer approached the vehicle, Gibson attempted to run over the officer.

An air unit responded to assist officers who surrounded the vehicle and were evacuating the adjacent apartment complex. The Air Unit officers reported that Gibson was apparently reaching, under the dashboard, for an unidentified object. In addition, dispatch reported that Gibson had prior arrests for Possession of Narcotics, Battery with Deadly Weapon and Resisting Arrest by a Police Officer.

Officers discussed several plans that, at one point, were rejected by supervisors. Officers resumed their tactical positions until SWAT arrived. To compound matters, officers had great difficulty communicating with each other because of the department's arguably flawed radio system.

Gibson continued to accelerate the vehicle in an attempt to escape. As he did so, the vehicle's engine raced, tires squealed and dust enveloped the air.

At some point, supervisors decided to implement a previously discussed plan to fire a low lethal round into the driver's side window followed by the deployment of Oleoresin Capsicum spray. Officers fired a beanbag round into the rear window of the car. However, the officer who was assigned to provide lethal coverage was not informed of the new plans.

When the officer heard what he thought was gunfire, and saw the rear window explode, he believed Gibson was firing at officers and returned fire. Gibson died as a result of the shooting.

In January 2012, the County Commission appointed City Councilman Steve Wolfson as the new District Attorney. Thereafter, Sheriff Gillespie and homicide detectives briefed the appointed DA on the circumstances of the Stanley Gibson incident.

In late September 2012, DA Wolfson notified the Sheriff that he intends to begin presenting evidence of the shooting to the Clark County Grand Jury. The grand jury, set to receive testimony in mid-October, will decide whether officers will stand trial for criminal charges.

Conclusion

Without question, some people in our community are convinced that our officers use excessive force. Those same individuals will not rest until an officer is convicted of murder.

As your lawyers, we believe it is our ethical obligation to vigorously defend your rights. Our advice is based upon solid legal analysis. Political consequences do not factor into our decision making process.

We hope this information allays your fears that you are a political pawn.

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- ⁱ Joe Schoenmann, *Costco Police Shooting Stirs Interest in Inquest Changes*, (September 26, 2010), <http://www.lasvegassun.com/news/2010/sep/26/scott-case-stirs-interest-inquest-changes/>
- ⁱⁱ Lawrence Mower, *Deadly Force, When Las Vegas Police shoot, and kill*, Las Vegas Review Journal, (November 27, 2011), <http://www.lvrj.com/news/deadly-force#part-1>.
- ⁱⁱⁱ Sheriff Douglas Gillespie, *Sheriff's View*, Vegas Beat, (May/June 2012). http://www.mydigitalpublication.com/display_article.php?id=1050571
- ^{iv} LVMPD PIO Press Release, *LVMPD Responds to Recommendations by the ACLU*, (March 27, 2012). <http://www.lvmpd.com/News/PressReleases/tabid/288/EntryId/147/LVMPD-Response-to-the-ACLU-Suggestions.aspx>
- ^v GO-xxx-12, Use of Force- Draft #20 (May 2012).
- ^{vi} Jonathon Smith, DOJ letter to Seattle Mayor Michael McGinn, (November 23, 2011). http://www.justice.gov/crt/about/spl/documents/seattlepd_TA_11-23-11.pdf
- ^{vii} United States Department of Justice, Official Misconduct- U.S. v. Koon, et al <http://www.justice.gov/crt/about/crm/selcases.php>