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## **Proposed Revisions to the Las Vegas Metropolitan Police Department's “Post Use of Force Procedures”**

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## I. INTRODUCTION

On January 13, 2012, the American Civil Liberties Union of Nevada (“ACLU”) submitted a petition to the U.S. Department of Justice (“DOJ”) requesting for a “patterns and practices” investigation of the Las Vegas Metropolitan Police Department (“LVMPD”). Consistent with the ACLU’s petition, the ACLU reviewed the LVMPD’s “Post Use of Force Procedures”<sup>1</sup> (“LVMPD Reporting Procedures” or “Reporting Procedures”) with the goal of improving the Reporting Procedures and ensuring officer accountability with regards to excessive force complaints. The ACLU evaluated post use of force and officer accountability systems from various police departments and law enforcement agencies in Los Angeles, Denver, Seattle, New Orleans, and Portland (Oregon) in order to recommend substantive revisions to the LVMPD Reporting Procedures. The ACLU referred to recommendations by the Department of Justice (“DOJ”) in several “patterns and practices” investigations from other jurisdictions. The ACLU also reviewed policy recommendations from the DOJ’s Office of Community Oriented Policing Services, the International Association of Chiefs of Police, and the Police Assessment Resource Center (“PARC”).

After careful review of the LVMPD Reporting Procedures, the ACLU concluded the following:

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<sup>1</sup> Las Vegas Metropolitan Police Department, Department Manual, 5/109.01 Post Use of Force Procedures (current as of April 10, 2012).

- LVMPD's directives regarding an officer's duty to report use of force incidents are unnecessarily narrow and vague. As a result, serious use of force incidents may go unreported.
- LVMPD's investigation procedures for officer-related use of force incidents are not consistent with national best practices.

This report summarizes the ACLU's findings and recommendations to improve the LVMPD Reporting Procedures. LVMPD must ensure that its policies and practices comport with national standards regarding use of force reporting and investigation procedures. This is the second in a series of three memoranda that the ACLU will submit to LVMPD. The scope of this memorandum is limited to the LVMPD Reporting Procedures. The ACLU will submit a final memorandum on the problems associated with LVMPD's use of force training procedures.

LVMPD has expressed that its Use of Force Policy and Reporting Procedures are currently being revised. The ACLU is committed to assisting LVMPD during the revision process. The ACLU's second set of recommendations should assist in addressing the flaws associated with the Reporting Procedures. The ACLU's recommendations will also help rebuild public confidence in LVMPD's use of force reporting, internal investigations, and accountability processes. The ACLU is devoted to providing LVMPD with any resources it may need going forward.

## **II. RECOMMENDATIONS REGARDING AN OFFICER'S DUTY TO REPORT USE OF FORCE INCIDENTS**

Generally, police departments and law enforcement agencies require its officers to report any and all use of force incidents through policies that establish an officer's duty

to report.<sup>2</sup> Many police departments provide additional guidance by delineating a non-exhaustive list of specific use of force incidents that require a use of force report.<sup>3</sup> The non-exhaustive list of use of force incidents is designed to provide officers with greater guidance on their duty to report use of force incidents.

As a best practice, “[a]ny use of force, whether to gain control or compliance, above ‘unresisted handcuffing’ should be a reportable use of force.”<sup>4</sup> National best practices also require officers to immediately report incidents involving “the active pointing of firearms.”<sup>5</sup> The Denver Police Department (“Denver PD”), for example, requires officers to “immediately report the circumstances of all resistances or incidents involving use of force to a supervisor or command officer . . . related supervisory investigation and reports are required in any of the following circumstances”<sup>6</sup>:

1. An officer discharges a firearm other than in training or for bona fide recreational purposes.
2. A person is injured or dies while in custody . . .
3. A person is injured or complains of injury as a result of use of any physical force including the use of any weapon, chemical agent or deployment of a Police Service Dog.
4. A defendant is charged with resistance, interference and/or assault to a police officer.
  - a. In any case of assault on a police officer, "Investigation of Assault" will be charged. The suspect should not be charged with resistance or any additional charges at this time, however, a General Sessions Summons and Complaint

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<sup>2</sup> See, e.g., Denver Police Department Use of Force Policy 105.02 (2010).

<sup>3</sup> See, e.g., *id.*

<sup>4</sup> Memorandum from Shanetta Y. Cutlar, Chief – Special Litigation Section, United States Department of Justice, to the Honorable Roosevelt F. Dorn, Mayor, City of Inglewood, California, at 17 (December 28, 2009).

[http://www.justice.gov/crt/about/spl/documents/inglewood\\_pd\\_Jail\\_findlet\\_12-28-09.pdf](http://www.justice.gov/crt/about/spl/documents/inglewood_pd_Jail_findlet_12-28-09.pdf).

<sup>5</sup> US Department of Justice, Civil Rights Division, *Investigation of the Seattle Police Department*, at 16 (2011). [http://www.justice.gov/crt/about/spl/documents/spd\\_findletter\\_12-16-11.pdf](http://www.justice.gov/crt/about/spl/documents/spd_findletter_12-16-11.pdf).

<sup>6</sup> Denver Police Department Use of Force Policy 105.02 (2010).

containing any additional charges is to be made describing details of the incident. Upon completing the GSS&C, the "service" area will be left blank and the form will be forwarded to the Assault Unit along with all necessary paperwork.

5. An officer encounters an individual with obvious injuries, and the circumstances of the encounter coupled with the nature of the injuries are such that the person may claim the injuries resulted from contact with the officer.
6. An officer applies force through use of the following, whether an arrest is or is not made:
  - a. Any tool, object or device used as an impact weapon.
  - b. Carotid compression technique.
  - c. Chemical agent.
  - d. Pepper Ball.
  - e. ERD (Taser).
  - f. Shotgun or forty (40) mm less lethal round.
  - g. Police service dog.
  - h. Hand strike, leg thrust/kick.<sup>7</sup>

In contrast to Denver PD, the LVMPD Reporting Procedures instructs officers that “[t]he department reviews or investigates all reportable use of force incidents to determine their justification, as well as to correct any identifiable training deficiencies.”<sup>8</sup> Furthermore, a use of force report “will be required by each member involved in a use of force incident *when reportable force is used*.”<sup>9</sup> The LVMPD provides the following list of reportable use of force incidents that “require” mandatory officer reporting:

1. Any use of force greater than “restraint;”
2. Any takedown which causes injury or verbal complaint of injury;
3. Use of OC Spray;
4. Lateral Vascular Neck Restraint;

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<sup>7</sup> *Id.*

<sup>8</sup> Las Vegas Metropolitan Police Department, Department Manual, 5/109.01 Post Use of Force Procedures (current as of April 10, 2012).

<sup>9</sup> *Id.* (emphasis added).

5. Use of an Electronic Control Device or a Spark Demonstration;
6. Baton Takedowns;
7. Baton Strikes and Jabs;
8. Empty Hand Strikes, Punches, and Kicks;
9. Use of a Low Lethality Shotgun;
10. A use of force results in death or serious bodily injury;
11. A citizen or person arrested complains that an injury has been inflicted as the result of the use of force; or
12. PIT and/or ramming is used, attempted, or declared.<sup>10</sup>

As an initial matter, the ACLU finds LVMPD's directive requiring officers to only report *reportable* instances of force unnecessarily narrow. Specifically, the LVMPD Reporting Procedures mandates officers to report use of force situations based on a limited and exhaustive list of incidents. In contrast, national best practices require an over-inclusive duty to report.<sup>11</sup> Specifically, officers must report "any use of force above unresisted handcuffing, including the active pointing of firearms."<sup>12</sup>

**The ACLU recommends that LVMPD amend its duty to report policy to make the duty more inclusive. Specifically, LVMPD should require officers to report any and all use of force incidents above unresisted handcuffing. LVMPD should also require officers to report instances where an officer draws and points their firearm at another person. Accordingly, LVMPD should include the following language to the Reporting Procedures:**

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<sup>10</sup> *Id.*

<sup>11</sup> Memorandum from Shanetta Y. Cutlar, Chief – Special Litigation Section, United States Department of Justice, to the Honorable Roosevelt F. Dorn, Mayor, City of Inglewood, California, at 17 (December 28, 2009); US Department of Justice, Civil Rights Division, *Investigation of the Seattle Police Department* (2011).

[http://www.justice.gov/crt/about/spl/documents/spd\\_findletter\\_12-16-11.pdf](http://www.justice.gov/crt/about/spl/documents/spd_findletter_12-16-11.pdf).

<sup>12</sup> US Department of Justice, Civil Rights Division, *Investigation of the Seattle Police Department* (2011). [http://www.justice.gov/crt/about/spl/documents/spd\\_findletter\\_12-16-11.pdf](http://www.justice.gov/crt/about/spl/documents/spd_findletter_12-16-11.pdf).

Officers shall immediately report the circumstances of all resistances or incidents involving use of force to a supervisor or command officer and complete the Use of Force Report in Blue Team (“Report”). Drawing and pointing a firearm at another person is considered a use of force incident and must be reported. The Report should distinguish which force option was selected and why it was selected to the exclusion of other options. Examples of use of force incidents that warrant a Report include, but not are limited to:

1. Any use of force greater than “restraint;”
2. Any situation where an officer draws and points a firearm at or in the direction of a person;
3. Any situation where an officer discharges a firearm other than in training or for bona fide recreational purposes.
4. Any takedown which causes injury or verbal complaint of injury;
5. Use of OC Spray;
6. Lateral Vascular Neck Restraint;
7. Use of an Electronic Control Device or a Spark Demonstration;
8. Baton Takedowns;
9. Baton Strikes and Jabs;
10. Empty Hand Strikes, Punches, and Kicks;
11. Use of a Low Lethality Shotgun;
12. A use of force results in death or serious bodily injury;
13. A citizen or person arrested complains that an injury has been inflicted as the result of the use of force;
14. An officer encounters an individual with obvious injuries, and the circumstances of the encounter coupled with the nature of the injuries are such that the person may claim the injuries resulted from contact with the officer; or
15. PIT and/or ramming is used, attempted, or declared.

The Reporting Procedures also lists several use of force incidents where a “Use of Force Report is not required [if] no injury or complaint of injury occurs” as a result of the officer’s use of force<sup>13</sup>:

1. Low Profile Pat Down/High Profile Pat Down/Arm Lock/Standing Search;
2. Routine Handcuffing;
3. Felony Prone Handcuffing (Front and Rear);
4. Felony Prone Search Felony Kneeling;
5. Baton Escort Technique;
6. Takedown;
7. A firearm is discharged outside the LVMPD Range (requires a Firearm Discharge Report);
8. A firearm is discharged resulting in death or serious bodily injury (requires a Firearm Discharge Report);<sup>14</sup>

The Reporting Procedures’ section on specific incidents that do not “require” a use of force report is problematic because the current policy “leaves too much room for officer discretion in reporting force, and excludes the reporting of force that should be reported.”<sup>15</sup> Generally, having an over-inclusive duty to report is an “effective way to establish both individual and departmental accountability [by] collecting, maintaining,

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<sup>13</sup> Las Vegas Metropolitan Police Department, Department Manual, 5/109.01 Post Use of Force Procedures (current as of April 10, 2012).

<sup>14</sup> *Id.*

<sup>15</sup> See, e.g., US Department of Justice, Civil Rights Division, *Investigation of the Seattle Police Department*, at 16 (2011). [http://www.justice.gov/crt/about/spl/documents/spd\\_findletter\\_12-16-11.pdf](http://www.justice.gov/crt/about/spl/documents/spd_findletter_12-16-11.pdf). (DOJ concluded, in its investigation of the Seattle Police Department, that the duty to report should “emphasize the importance of use of force reporting requirements . . . [and] avoid any uncertainty” on whether a particular use of force situation should be reported.).



and analyzing all complaint data.”<sup>16</sup> Furthermore, the DOJ advises police departments to avoid “vague” policies concerning an officer’s duty to report.<sup>17</sup>

In the case of LVMPD, many of the incidents not requiring a use of force report are vague. As a result, some use of force incidents may be left unreported, and an offending officer may avoid being reprimanded or disciplined for their actions. For example, under the Reporting Procedures a “Takedown” does not require a use a force report if no injury or complaint of injury occurs.<sup>18</sup> However, takedowns can result in serious injuries that have latent or intermittent symptoms and may go undetected for weeks. In the case of head injuries or concussions, symptoms “can be subtle and may not be immediately apparent.”<sup>19</sup> Symptoms could appear “days, weeks or even longer” after the incident.<sup>20</sup> Hypothetically, an officer who improperly uses a “tackle,” which consequently results in a latent head injury, may choose not to report the incident and avoid discipline.

Categorizing the discharge of a firearm as a non-reportable use of force incident is even more problematic because the directive creates confusion. Under the Reporting Procedures:

A Use of Force Report is not required when no injury or complaint of injury occurs as a result of:

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<sup>16</sup> US Department of Justice, Office of Community Oriented Policing Services, *Building Trust Between the Police and the Citizens They Serve: An Internal Affairs Promising Practices Guide for Local Law Enforcement*, at 32 (2010).

<sup>17</sup> US Department of Justice, Civil Rights Division, *Investigation of the Seattle Police Department*, at 15 (2011). [http://www.justice.gov/crt/about/spl/documents/spd\\_findletter\\_12-16-11.pdf](http://www.justice.gov/crt/about/spl/documents/spd_findletter_12-16-11.pdf).

<sup>18</sup> Las Vegas Metropolitan Police Department, Department Manual, 5/109.01 Post Use of Force Procedures (current as of April 10, 2012).

<sup>19</sup> Mayo Foundation for Medical Education and Research, Concussion – Symptoms. <http://www.mayoclinic.com/health/concussion/DS00320/DSECTION=symptoms>.

<sup>20</sup> *Id.*

...

- [1.] A firearm is discharged outside the LVMPD Range (requires a Firearm Discharge Report);
- [2.] A firearm is discharged resulting in death or serious bodily injury (requires a Firearm Discharge Report)[.]<sup>21</sup>

Pursuant to the Reporting Procedures, an officer could reasonably interpret this provision as allowing the discharge of a firearm to go unreported so long as the discharge does not result in death or serious bodily injury. Further complicating the matter, officers are required to complete two separate forms for a firearm discharge incident and a use of force incident. In stark contrast, national best practice requires all firearm discharges, even those not resulting in death or serious bodily injury, to be reported as a use of force incident.<sup>22</sup>

**The ACLU recommends that LVMPD remove the section regarding non-reportable uses of force from the Reporting Procedures. Removing this section will eliminate possible confusion and further emphasize the need to report: (1) all situations involving use of force above unresisted handcuffing; and (2) all situations where an officer draws, points, or discharges a firearm (except training or recreation). LVMPD should also consolidate its Firearm Discharge Report with its Use of Force Report to improve the simplicity and efficiency of its use of force reporting process.**

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<sup>21</sup> Las Vegas Metropolitan Police Department, Department Manual, 5/109.01 Post Use of Force Procedures (current as of April 10, 2012).

<sup>22</sup> Denver Police Department Use of Force Policy 105.07 (2010) (“The Use of Force Report, DPD 12, related supervisory investigation and reports are required in any of the following circumstances . . . An officer discharges a firearm other than in training or for bona fide recreational purposes.”).

### III. RECOMMENDATIONS REGARDING LVMPD'S USE OF FORCE

#### INVESTIGATIONS

##### A. Deadly Force Investigations

A proper investigation of an officer-involved shooting or deadly force incident (hereinafter "deadly force incident") requires a reconstruction of the incident, documentation of necessary facts, and collection of evidence.<sup>23</sup> As an introductory matter, LVMPD's investigation of a deadly force incident requires multiple steps and collaboration between various sub-departments and sections. Under the LVMPD Reporting Procedures:

When a department member intentionally discharges a firearm at a human being, uses deadly force, has an unintentional discharge of a firearm, causes serious bodily injury or becomes aware of an in-custody death, the department member will [among other duties] . . . Notify both Communications (via radio if on-duty) and a supervisor without delay.<sup>24</sup>

Once a deadly force incident has been reported, four LVMPD details/sections are tasked with the responsibility of investigating the incident: (1) Major Crimes or Violent Crimes Detail; (2) Force Investigation Team ("FIT") of the Homicide Detail; (3) Critical Incident Review Team ("CIRT"); and (4) Crime Scene Investigations Section ("CSI").<sup>25</sup>

The Major Crimes or Violent Crimes Detail usually responds to the scene "immediately" to perform the following functions:

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<sup>23</sup> Shannon Bohrer and Robert Chaney, *Police Investigations of the Use of Deadly Force Can Influence Perceptions and Outcomes*, FBI Law Enforcement Bulletin, January 2010, at 2.

<sup>24</sup> Las Vegas Metropolitan Police Department, Department Manual, 5/109.01 Post Use of Force Procedures (current as of April 10, 2012).

<sup>25</sup> *Id.*

- 1) Begin “a preliminary investigation”<sup>26</sup>;
- 2) Ensure “the Major Incident Log has been assigned and is being completed”<sup>27</sup>; and
- 3) Assist in “the early management of the crime scene, the identification and separation of witnesses, and the canvass.”<sup>28</sup>

FIT determines “whether the use of deadly force was legally justified under criminal law.”<sup>29</sup> Therefore, FIT “directs” the criminal investigation against both the officer and the “suspect who either committed crimes which led to the use of deadly force or who has committed crimes against an officer.”<sup>30</sup>

CIRT is responsible for “non-criminal, administrative examinations of uses of deadly force or other high-risk police operations as directed by the Sheriff.”<sup>31</sup> CIRT’s primary goal is:

[T]o improve individual and agency performance through the evaluation of [officer] decision making, tactics used, supervision and the actual use of force. CIRT will then make recommendations to the Sheriff that may identify possible training needs (for the individual, squad, unit, section or department) and/or changes to policies and practices.<sup>32</sup>

CSI “responds to a deadly force incident to complete crime scene documentation.”<sup>33</sup> CSI also assists FIT in its criminal investigation. Specifically, “the

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

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

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

ranking FIT detective and ranking member of the CSI Section shall confer to determine the actions to be taken by those persons assigned to the scene, including which officers, detectives, and crime scene analysts shall be authorized to enter the crime scene perimeter.”<sup>34</sup>

With regards to LVMPD’s investigatory framework of deadly force incidents, the ACLU has noted several flaws associated with the following: (1) documentation of the investigation and evidence preservation; (2) interviews of witnesses; (3) lack of concurrent criminal and administrative investigations; and (4) absence of interview checklists.

#### **1) Documentation of the Investigation and Evidence Preservation**

Proper documentation and preservation of evidence is integral to a deadly force investigation “[b]ecause eyewitness accounts can be imperfect or biased.”<sup>35</sup> Generally, law enforcement agencies have documentation and evidence preservation guidelines for deadly force investigations.<sup>36</sup> Some departments go as far as creating a checklist of items that should be documented or collected as evidence.<sup>37</sup>

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<sup>34</sup> *Id.*

<sup>35</sup> Merrick Bobb, Bernard K. Melekian, Oren Root, Matthew Barge, Camelia Naguib, *The Denver Report on Use of Deadly Force*, Police Assessment Resource Center (June 2008).

<sup>36</sup> *See, e.g.*, Los Angeles Police Department, Department Manual, 792 - Adjudication of Categorical Use of Force Incidents and 793 - Adjudicating a Non-Categorical Use of Force Incident *available at* [http://www.lapdonline.org/lapd\\_manual/](http://www.lapdonline.org/lapd_manual/).

<sup>37</sup> *See* Los Angeles County Sheriff’s Department, Manual of Policy and Procedures, 5-09/432.00 Deputy-Involved Shootings—Person Hit (2010).

#### Commander Responsibilities

It shall be the responsibility of the involved employee’s Division Commander to complete the “Deputy Involved Shooting Commander’s Checklist.” For shootings which involve employees from different Divisions, the Commander responsible for completing the checklist will be decided upon mutual agreement

Currently, the LVMPD Reporting Procedures mandates the following documentation and evidence preservation policies for deadly force incidents:

Witness members will provide information as needed and directed either by supervisory personnel or the FIT. FIT will provide a timely briefing on the walkthrough to CIRT.

Upon release of the crime scene by FIT to CSI, subsequent walkthroughs of the immediate crime scene will be limited to personnel who demonstrate an investigatory purpose, including CIRT personnel, and will be conducted at the discretion and at the direction of Crime Scene Investigations supervisory personnel only after initial documentation, primarily the overall photography, of the scene has been completed and potential areas containing physical evidence have been identified and protected.

Crime Scene Investigations personnel will collect, preserve, and book physical evidence within the identified crime scenes. The FIT supervisor is responsible for determining the steps taken in the handling of any potential video surveillance. Such video surveillance evidence shall be seized and booked in accordance with LVMPD Search and Seizure Policy, Section 4.

No photographs of the crime scene shall be taken independent of the Crime Scene Investigations Section. If other photographs, audio or video recordings have been taken, such evidence will be reported to the Force Investigation Team by any member who has such knowledge.

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Direct the documentation of the member's immediate condition. Standard documentation will include, but is not limited to:

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by the involved employees' Division Commanders. It is critical that the Commander review each section of the checklist for applicability to the incident and implement the recommended actions as needed. The checklist shall be submitted to the involved employee's Division Chief on the first business day following the incident. It shall be retained within the Division's shooting book.

- 1) Photographs of at least four full-length views of the member (front, back, right and left sides) in a standing position;
- 2) Items of evidence or injuries to show general location and condition;
- 3) Items of evidence or injuries (with and without scale) so they can be recognized and identified;
- 4) Items or areas (patterned injuries, bloodstains, bite marks, etc.) where it is necessary to document class and individual characteristics for future comparison, and at least one facial view.<sup>38</sup>

Although the LVMPD Reporting Procedures has some valid directives, such as its policies regarding photographs of involved officers, the Reporting Procedures can be improved. First, the Reporting Procedures should delineate a non-exhaustive list of important documents or evidence items that should be included in an investigation file, including, *inter alia*, all relevant background information on involved officers, photographs, video and audio recordings from the incident, and medical reports.

Second, the Reporting Procedures make no mention of gunshot residue (“GSR”) evidence—evidence of the “powdery residue created when a firearm is discharged.”<sup>39</sup> GSR evidence “can be helpful in forensically linking a suspect to the scene of the gunshot.”<sup>40</sup> Law enforcement experts advocate for the collection and analysis of GSR evidence in officer-involved shootings because “investigators can enhance their ability to establish or corroborate which persons fired a weapon and where they were positioned

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<sup>38</sup> Las Vegas Metropolitan Police Department, Department Manual, 5/109.01 Post Use of Force Procedures (current as of April 10, 2012).

<sup>39</sup> K. Lee Lerner and Brenda Wilmoth Lerner, *World of Forensic Science* 334 (Vol. 1, 2005).

<sup>40</sup> *Id.*

when they fired.”<sup>41</sup> The Reporting Procedures, however, do not require the collection of GSR evidence.

**The ACLU recommends the following additions to the Reporting Procedures’ policies on documentation and evidence collection:**

**The investigative file for an officer-involved shooting, in-custody death, or deadly force investigation *should include all relevant evidence and information, including, but not limited to:***

- (a) Color copies of pertinent crime scene photographs;**
- (b) All videotapes taken of the scene;**
- (c) All autopsy, toxicology, and medical reports obtained by investigators (or a memorandum explaining why it was impossible to obtain such reports);**
- (d) Transcripts and audiotapes of all 911 calls, radio broadcasts, and other relevant transcripts and audiotapes;**
- (e) All ballistics and firearms evidence, including GSR evidence; and**
- (f) A memorandum presenting in summary fashion certain background information on the involved officers, including:**
  - (i) Date of hire and prior law enforcement experience;**
  - (ii) Training history;**
  - (iii) Assignment and promotion history;**
  - (iv) Prior shootings or in custody death cases, if any; and**
  - (v) A record of any discipline, pending investigations, and awards or commendations.<sup>42</sup>**

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<sup>41</sup> See, e.g., Merrick Bobb, Bernard K. Melekian, Oren Root, Matthew Barge, Camelia Naguib, *The Denver Report on Use of Deadly Force*, Police Assessment Resource Center, at 72 (June 2008) (“The Department of Justice has taken the position that GSR analysis should be a standard part of officer-involved shooting investigations.”).

<sup>42</sup> Derived in part from Police Assessment Resource Center, *The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths Third Follow-Up Report*, at 57 (2009).



## 2) Interviews of Witnesses

A key component of a proper deadly force investigation is identifying and comprehensively interviewing involved witnesses.<sup>43</sup> Properly conducted interviews assist investigators in constructing a factual narrative of the circumstances surrounding a given deadly force incident.<sup>44</sup> Absent the requisite facts surrounding a given deadly force incident, an investigation may fail to reach a conclusion on whether the officer's use of force was justified.<sup>45</sup> The LVMPD Reporting Procedures implements the following policies regarding witness interviews:

### Force Investigation Team's ["FIT"] Interview Guidelines

1. The involved members have the same rights and privileges regarding criminal investigation interviews that other citizens have.
2. When practical, involved members will be interviewed last to ensure investigators have as complete a picture as possible prior to the interview.
3. FIT will conduct a voluntary interview, a minimum of 48 hours after the incident, with the member whose use of force resulted in death. Since the interviews are voluntary, involved members have the power to decline to be interviewed. A pre-interview which discusses details of the incident prior to recording a statement shall be avoided.
4. If any involved member refuses to provide a voluntary statement, the Force Investigation Detail may submit the case to the District Attorney's Office without such a statement. If any member refuses to provide a voluntary statement or decides to wait before giving one, he or she will be admonished not to discuss the incident with any other department

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<sup>43</sup> International Association of Chiefs of Police, *Investigation of Employee Misconduct*, at 13 (2007).

<sup>44</sup> US Department of Justice, Office of Community Oriented Policing Services, *Building Trust Between the Police and the Citizens They Serve: An Internal Affairs Promising Practices Guide for Local Law Enforcement*, at 25-26 (2010).

<sup>45</sup> Merrick Bobb, Bernard K. Melekian, Oren Root, Matthew Barge, Camelia Naguib, *The Denver Report on Use of Deadly Force*, Police Assessment Resource Center (June 2008).

members involved in the incident. In those cases where a member declines to provide a timely interview, investigators shall document their efforts to obtain the interview, including when the request was made and to whom it was directed. A subsequent compelled interview, conducted by the Critical Incident Review Team, may be scheduled at a later date and in compliance with the rights and obligations set out in NRS 289.

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Interviews with a suspect or person involved in a use of deadly force will be tape recorded. If a suspect has been transported to a hospital, a FIT detective will arrange for a timely interview when it becomes permissible. Additional evidence from the suspect, such as blood or ballistic evidence will be collected at the hospital.<sup>46</sup>

There are several notable issues regarding the LVMPD Reporting Procedures' interview policies. First, under the Reporting Procedures interviews of officers involved in a deadly force incident are not conducted immediately. Instead, involved officers must be given "a minimum" of 48 hours prior to being asked for a voluntary interview.<sup>47</sup>

Contrary to LVMPD's interview procedures, national best practices require an immediate interview of all witnesses involved in a deadly force incident, including officers.<sup>48</sup> According to PARC:

[The] problem with delaying [officer] interviews is that it increases the possibility of officer collusion or inadvertent contamination of witness memory. Once the involved officers leave the crime scene, there is no one

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<sup>46</sup> Las Vegas Metropolitan Police Department, Department Manual, 5/109.01 Post Use of Force Procedures (current as of April 10, 2012).

<sup>47</sup> *Id.*

<sup>48</sup> Police Assessment Resource Center, *The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths*, at 58 (2003).

to prevent them from “getting their stories straight.” In addition, an officer’s recollection may be tainted, subconsciously or otherwise, by something read or heard during the waiting period.

. . .

Investigators at other police agencies [nationwide] take the view that officers should be interviewed as soon as possible so as to obtain an uncontaminated, unfiltered account of the incident.<sup>49</sup>

Furthermore, PARC finds that even “the delay of 24 hours creates a risk of collusion or other improper influences that would not exist if statements were taken before an involved officer went off duty.”<sup>50</sup> Therefore, PARC adheres to the position that involved officers should be interviewed “before they go off duty.”<sup>51</sup>

**Consistent with national best practices, the ACLU recommends that LVMPD revise its Reporting Procedures to require FIT and CIRT to interview officers involved in deadly force incidents as soon as possible. Ideally, FIT and CIRT should interview an involved officer by the end of the officer’s shift. Because officer interviews are voluntary, FIT and CIRT members should document their attempts to procure an interview from an officer and include it in the investigation file. Documentation should include (1) the date of the request; (2) the name of the**

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<sup>49</sup> *Id.*

<sup>50</sup> Police Assessment Resource Center, *The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths, First Follow-Up Report*, at 38 (2005).

<sup>51</sup> *Id.*

**officer to whom the interview request was directed; and (3) the reason(s) for the declination.<sup>52</sup>**

Second, the Reporting Procedures do not require videotaped interviews of involved officers. Video-recorded interviews are beneficial because: (1) video records provide an accurate account of the facts associated with an officer-involved shooting; and (2) videotaped interviews allow witnesses to demonstrate specific actions that are not possible with audio-recordings.<sup>53</sup> Given the benefits of videotaped interviews, Denver PD “use[s] videotaped interviews in every officer-involved shooting case.”<sup>54</sup> The DOJ also supports video-recorded interviews, and recently recommended that the New Orleans Police Department “[r]equire video recording of all phases of interviews and interrogations.”<sup>55</sup>

**The ACLU recommends that LVMPD videotape all phases of interviews and interrogations in deadly force incidents, including interviews of all supervisors, police officers, and civilian witnesses who have significant knowledge about a deadly force incident.<sup>56</sup>**

The third issue involves simultaneous witness interviews—the practice of interviewing multiple witnesses simultaneously between two or more investigators.<sup>57</sup>

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<sup>52</sup> Derived in part from *id.*

<sup>53</sup> Merrick Bobb, Bernard K. Melekian, Oren Root, Matthew Barge, Camelia Naguib, *The Denver Report on Use of Deadly Force*, Police Assessment Resource Center, at 76 (June 2008).

<sup>54</sup> *Id.*

<sup>55</sup> US Department of Justice, Civil Rights Division, *Investigation of the New Orleans Police Department* (2011). [http://www.justice.gov/crt/about/spl/nopd\\_report.pdf](http://www.justice.gov/crt/about/spl/nopd_report.pdf).

<sup>56</sup> Derived in part from Merrick Bobb, Bernard K. Melekian, Oren Root, Matthew Barge, Camelia Naguib, *The Denver Report on Use of Deadly Force*, Police Assessment Resource Center, at 75 (June 2008).

<sup>57</sup> *Id.* at 77.

Generally, simultaneous witness interviews are problematic because “investigators are unaware of inconsistencies—sometimes very important inconsistencies—between different witnesses’ accounts.”<sup>58</sup> In contrast, having one investigator conduct all witness interviews gives the lone investigator the advantage of spotting inconsistencies in witness accounts instantaneously.<sup>59</sup>

**The ACLU recommends that, to the extent feasible, LVMPD should appoint one investigator—in each respective criminal and administrative investigation—to conduct all the interviews in a deadly force incident. The ACLU recognizes that having a lone officer conducting all interviews may be a time consuming process; however, the ACLU believes that the single-interviewer method leads to better investigations. In the event that a single interviewer is impracticable, LVMPD should explicitly require investigators to compare notes and findings to determine whether there are relevant inconsistencies between witness statements.**

The fourth issue involves the use of interview checklists. As a best practice, many law enforcement agencies use interview checklists to ensure “that all applicable [question] areas are covered.”<sup>60</sup> For example, the Portland Police Bureau requires investigating officers to use an “interview outline/checklist” for all deadly force and in-custody death investigations.<sup>61</sup> Portland’s checklist includes seven sections that asks questions on the following areas:

- 1) An officer’s background (i.e. training record and level of experience);

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Police Assessment Resource Center, *The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths, First Follow-Up Report*, at 43 (2005).

<sup>61</sup> *Id.* at 33.

- 2) An officer's physical and mental state prior to the incident;
- 3) The officer's activities prior to the incidents (i.e. the officer's whereabouts prior to working his/her shift);
- 4) Prior information or contacts the officer had with the subject;
- 5) The details of the incident;
- 6) Events immediately after the encounter; and
- 7) Questions pertaining to in-custody death situations.<sup>62</sup>

The ACLU believes that an interview checklist will ensure that all essential questions will be asked of witnesses. Therefore, **the ACLU recommends that LVMPD create an interview checklist for deadly force incidents. The checklist should include, at minimum, the categories from the Portland Police Bureau's checklist and contain all pertinent questions regarding the incident.**

### 3) Concurrent Investigations

Pursuant to national best practices, separate criminal and administrative investigation bodies must perform concurrent criminal and administrative investigations of use of force incidents.<sup>63</sup> Immediate concurrent investigations are beneficial because the facts of a case are fresh, it reduces the likelihood of evidence or witness contamination, and it prevents unnecessary delay of case resolutions.<sup>64</sup> Furthermore,

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<sup>62</sup> A version of the checklist is attached at the end of this memorandum as Exhibit 1.

<sup>63</sup> Merrick Bobb, Bernard K. Melekian, Oren Root, Matthew Barge, Camelia Naguib, *The Denver Report on Use of Deadly Force*, Police Assessment Resource Center, at 63-64 (2008).

<sup>64</sup> Police Assessment Resource Center, *The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths*, at 56 (2003).

better fact gathering and efficient case resolutions eventually lead to greater public confidence in the “integrity” of a department’s internal investigation procedures.<sup>65</sup>

Contrary to national best practices, however, LVMPD does not implement concurrent investigations of deadly force incidents. Under the Reporting Procedures, CIRT’s investigation is dependent on the progress of the FIT investigation:

Following such an incident, the Force Investigation Team (FIT) or ISD detectives will maintain responsibility over any criminal investigation. The tactical/administrative review will be conducted by CIRT.

CIRT will complete its review and report on its findings at the Use of Force Review Board. In furtherance of their review, CIRT may speak with employees who have been involved in a particular critical incident; however, *CIRT will not interview employees until after CIRT has received either an investigative package or a briefing by FIT.* In the circumstances where an employee provides a statement to FIT, *CIRT may interview the employee several weeks later.* If an employee chooses not to provide a voluntary statement to FIT, then CIRT will begin their review at an earlier date. Prior to beginning any compelled interviews, CIRT will provide employees with the 48-hour Notification of Employee Administrative Investigation.<sup>66</sup>

Making matters worse, the Reporting Procedures explicitly allows CIRT to interview witnesses “several weeks” after the deadly force incident if the officer provides a voluntary statement to FIT.<sup>67</sup> Ultimately, the Reporting Procedures allow FIT and CIRT to conduct separate investigations that are potentially several weeks or months

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<sup>65</sup> *Id.*

<sup>66</sup> Las Vegas Metropolitan Police Department, Department Manual, 5/109.01 Post Use of Force Procedures (current as of April 10, 2012) (emphasis added).

<sup>67</sup> *Id.*

apart from each other. Administrative investigations that are conducted “weeks or months after the incident prejudices any investigation that is necessary because the facts are cold and witnesses' memories may have dimmed.”<sup>68</sup>

**The ACLU recommends that LVMPD launch concurrent criminal and administrative investigations immediately after an officer-involved shooting. The Reporting Procedures should be revised to give CIRT the authority to begin its administrative investigation immediately, without waiting for “an investigative package or a briefing by FIT.”<sup>69</sup> Furthermore, the Reporting Procedures’ language permitting CIRT to initiate its interviews “several weeks” after a deadly force incident should be deleted and replaced with language requiring CIRT to begin its interviews “immediately.”**

#### **B. Investigations of Non-Deadly Use of Force**

The LVMPD Reporting Procedures includes a separate set of investigatory directives for “non-deadly” use of force incidents. Specifically, the Reporting Procedures require the following process in situations where officers use “non-deadly force” and a person suffers an injury or complains of an injury:

Non-Deadly Force requiring a Use of Force report but not resulting in death or serious bodily injury will be investigated by the members’ chain of command (excluding the low lethality shotgun).

. . .

The member’s Supervisor will:

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<sup>68</sup> Merrick Bobb, Bernard K. Melekian, Oren Root, Matthew Barge, Camelia Naguib, *The Denver Report on Use of Deadly Force*, Police Assessment Resource Center, at 67 (June 2008).

<sup>69</sup> Las Vegas Metropolitan Police Department, Department Manual, 5/109.01 Post Use of Force Procedures (current as of April 10, 2012).



- [1.] Interview the subject(s) and member(s) involved and document their statements;
- [2.] Locate and interview any witnesses and on-scene medical personnel (when applicable) and document their statements and/or log the names of any potential witnesses who claim no first-hand knowledge;
- [3.] Collect evidence and ensure photographs are taken of the subject(s), the scene and member(s) involved when possible and appropriate;
- [4.] Ensure all reports are completed and that the incident is properly documented;
- [5.] Notify the area lieutenant or watch commander when an Electronic Control Device has been used;
- [6.] Notify Communications and the area lieutenant/DSD lieutenant or watch commander when significant force was used or alleged.

The Area Lieutenant/Watch Commander will:

- [1.] Personally examine and interview the subject regarding the incident when significant force is used and if unable to respond, request an alternate supervisor at the same level respond to the scene;
- [2.] Ensure interviews, photographs and reports are properly completed;
- [3.] Notify Internal Affairs Section Lieutenant if significant force is used;
- [4.] If the incident rises to the level of serious bodily injury, ensure all notifications are made and all appropriate action is being taken.

The Bureau/Area Commander will:

- [1.] Complete the Use of Force administrative review and forward to IAB.<sup>70</sup>

Pursuant to the Reporting Procedures, non-deadly force incidents “not resulting in death or serious bodily injury will be investigated by the members’ chain of command (excluding the low lethality shotgun).”<sup>71</sup> Therefore, in non-deadly police interactions that

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

do not result in serious bodily injury, LVMPD does not require a thorough bifurcated investigation for criminal and administrative violations. As a result, the Reporting Procedures' broad language has the potential to leave "many allegations of illegal arrests and related misconduct, such as improper stops, detentions, searches, and seizures" to be investigated by the offending officer's supervisor.<sup>72</sup> Law enforcement experts believe that supervisor investigations of direct subordinate officers may lead to improper bias.<sup>73</sup>

LVMPD needs a bifurcated investigation for all incidents of serious police misconduct, even incidents that do not result in serious injury or death. Generally, "[i]t is common and acceptable in policing to have field supervisors investigate less serious allegations, such as those concerning demeanor, verbal abuse, neglect of duty and poor response to calls for service."<sup>74</sup> However, pursuant to national best practices, if a complaint "reveals both administrative and criminal behavior," the ensuing investigation must be bifurcated into two separate investigations, "one administrative and one criminal."<sup>75</sup> The bifurcated investigations must have "a separate investigator" assigned to each segment of the investigation.<sup>76</sup>

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<sup>72</sup> US Department of Justice, Civil Rights Division, *Investigation of the New Orleans Police Department*, at 82 (2011). [http://www.justice.gov/crt/about/spl/nopd\\_report.pdf](http://www.justice.gov/crt/about/spl/nopd_report.pdf).

<sup>73</sup> See, e.g., International Association of Chiefs of Police, *Investigation of Employee Misconduct*, at 6 (2007) (Investigations of officer-related use of force incidents must be unbiased. Having direct managers lead investigations is problematic because some "managers are uncomfortable with the prospect of administering discipline to fellow officers for misconduct. Often, they retain the perception that everything is different on the street and that any subsequent review of the facts to determine potential misconduct cannot accurately reproduce the event or duplicate the officer's feelings while involved in the incident.").

<sup>74</sup> US Department of Justice, Civil Rights Division, *Investigation of the New Orleans Police Department*, at 83 (2011). [http://www.justice.gov/crt/about/spl/nopd\\_report.pdf](http://www.justice.gov/crt/about/spl/nopd_report.pdf).

<sup>75</sup> US Department of Justice, Office of Community Oriented Policing Services, *Building Trust Between the Police and the Citizens They Serve: An Internal Affairs Promising Practices Guide for Local Law Enforcement*, at 24 (2010).

<sup>76</sup> *Id.*

The DOJ further recommends law enforcement agencies to refine its “[c]omplaint classification” process—the process of classifying whether an officer’s misconduct is both criminal and administrative.<sup>77</sup> The DOJ recommends that the complaint classification process “should be allegation-driven, not outcome-driven.”<sup>78</sup> Thus, DOJ adheres to the position that a department’s respective criminal and administrative internal investigation bodies must investigate all allegations of serious police misconduct, even allegations that do not involve serious bodily injury.<sup>79</sup> Ultimately, LVMPD must thoroughly investigate “all allegations of misconduct” and give “a formal disposition of sustained, not sustained, exonerated, or unfounded.”<sup>80</sup>

**The ACLU recommends that LVMPD revise the Reporting Procedures to require a bifurcated investigation for all complaints/allegations of serious officer misconduct. FIT should be assigned to the criminal investigation and CIRT should be assigned to the administrative investigation. The investigation process for non-deadly force incidents should mirror the process for deadly force investigations. The investigations should occur concurrently in order to effectively resolve the complaint in a timely manner.**

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<sup>77</sup> US Department of Justice, Civil Rights Division, *Investigation of the New Orleans Police Department*, at 83 (2011). [http://www.justice.gov/crt/about/spl/nopd\\_report.pdf](http://www.justice.gov/crt/about/spl/nopd_report.pdf).

<sup>78</sup> *Id.*

<sup>79</sup> Memorandum from Shanetta Y. Cutlar, Chief – Special Litigation Section, United States Department of Justice, to the Honorable Roosevelt F. Dorn, Mayor, City of Inglewood, California, at 20-21 (December 28, 2009) *available at* [http://www.justice.gov/crt/about/spl/documents/inglewood\\_pd\\_Jail\\_findlet\\_12-28-09.pdf](http://www.justice.gov/crt/about/spl/documents/inglewood_pd_Jail_findlet_12-28-09.pdf).

<sup>80</sup> US Department of Justice, Civil Rights Division, *Investigation of the New Orleans Police Department*, at 83 (2011). [http://www.justice.gov/crt/about/spl/nopd\\_report.pdf](http://www.justice.gov/crt/about/spl/nopd_report.pdf).

## EXHIBIT 1

### Interview outline \ checklist

Witness and involved officer interviews related to use of deadly force and  
in-custody death investigations

#### I. Officers Background

☐ Training and experience ☐ Prior law enforcement ☐ Prior Military experience  
☐ Other employment

Basic Academy Y / N  
Advanced academy Y / N  
In-Service Training Y / N  
Active Shooter Y / N  
Street Survival Y / N  
AR-15 Y / N  
Less Lethal Shotgun Y / N  
Taser Y / N  
CIT Y / N

☐ Involvement in any other deadly force encounters  
☐ Current Assignment ☐ Shift ☐ Days off

#### II. Physical / Mental State of Involved Officer

☐ Generally how was the officer feeling that day?  
☐ Illnesses?  
☐ Amount of sleep?  
☐ Normal amount of sleep?  
☐ Use of any medication (prescription and non-prescription)  
☐ Use of Narcotics or other intoxicants  
☐ Use of Alcohol  
☐ Any arguments or disagreements with spouse, child, supervisor, partner etc.?  
☐ Any other factors that may have affected the officers mental state

#### III. Officers Activity Prior to the Incident

☐ Tell about the 24 hour period prior to the event  
☐ Activity the night prior to the event (Movies, TV, Party etc)  
☐ Trip to work  
☐ Activity prior to work (Court, Workout, Golf, Sleep etc.)  
☐ Work activity prior to incident? (Number and Type of calls)

#### IV. Prior information the officer had

☐ Did the officer have any prior contacts with the involved subject?  
☐ Had the officer been on any prior calls to the location?  
☐ How familiar is the Officer with the geographic area?  
☐ Did the officer have any prior information about the individual or location?

(roll call info, teletypes, radio broadcasts, MDT messages, other officers, TPS files).  
 \_\_\_ Any other information that the officer had about the person or location

IV. Details of the incident.

\_\_\_ (obtain a diagram from officer depicting scene to include positions and locations)

- \_\_\_ How did the officer get to the location? (code or not, route taken, speeds, traffic etc.)
- \_\_\_ Where/ how did the officer park and approach?
- \_\_\_ Was the vehicle used for cover? Describe
- \_\_\_ If traveling on foot describe route, running, walking, use of cover, and what objects were available for cover?
- \_\_\_ While travelling to location or making approach, were there conversations with partner (plans, tactics)
- \_\_\_ Radio transmissions while in route
- \_\_\_ What was the officers thought process while in route and approaching?
- \_\_\_ Describe the topography of the areas involved. (footing, obstacles, high ground, possible threats)
- \_\_\_ Describe the lighting at the location
- \_\_\_ What cover was available
- \_\_\_ Were you fully identified as law enforcement officers?
- \_\_\_ Were other officers present and where were they before, during and after the encounter?
- \_\_\_ Were there other witnesses or participants? What were they doing before during and after?
- \_\_\_ Describe in detail what was observed by you that made you take the actions you did.
- \_\_\_ Describe how the actions of the subject made you feel
- \_\_\_ What were you thinking during the encounter?
- \_\_\_ What was your thought process?
- \_\_\_ What did you say and how did you say it.
- \_\_\_ What did other officers say?
- \_\_\_ What did the suspect say?
- \_\_\_ Did you hear anyone else (other suspects, witnesses)
- \_\_\_ Describe when and why you drew your weapon.
- \_\_\_ Describe when and why you pointed your weapon at the suspect.
- \_\_\_ Describe your stance, grip, (flashlight in hand), cover.
- \_\_\_ Did you use your sights when you fired?
- \_\_\_ What was your point of aim?
- \_\_\_ What was your backdrop?
- \_\_\_ What do you think the distance was between you and the subject?
- \_\_\_ How many rounds do you think you fired? What sequence did you fire these rounds?
- \_\_\_ Do you know where your rounds impacted
- \_\_\_ What was the subject's reaction?
- \_\_\_ Did you reload? If so what did you do with the magazine you removed?
- \_\_\_ How is your weapon usually carried? Number of magazines, rounds?
- \_\_\_ Were other force options available? What were they and why were they used or not used?

VI. Immediately after the encounter

- \_\_\_ Describe your actions immediately after the encounter?
- \_\_\_ Did you approach the subject?
- \_\_\_ Who approached the subject?

- \_\_\_ Was the subject handcuffed? Who did the handcuffing?
- \_\_\_ When and why did you lower your weapon?
- \_\_\_ When and why did you holster your weapon?
- \_\_\_ Was the subject moved at all? How was the subject positioned?
- \_\_\_ Was medical assistance requested and did they respond?
- \_\_\_ What was broadcast on the radio?
- \_\_\_ Who approached you and what was said or done?

- \_\_\_ In hindsight do you think incident could have been approached in a way that presented less risk to yourself or others. How?
- \_\_\_ Do you have any suggestions for improving relevant PPB training?

- \_\_\_ Has anyone discussed the details of this case with you or have you learned information about the incident from sources other than your own observations?

VII. In-custody death investigations

- \_\_\_ What contact did you have with the deceased?
- \_\_\_ What contact did you observe others having with the deceased?
- \_\_\_ What were your observations of the subject's physical condition prior to the subject being restrained?
- \_\_\_ How was the deceased restrained and what tactics were used?
- \_\_\_ How was the deceased positioned? Where was the deceased positioned, by whom, and for how long?
- \_\_\_ Did you observe any injuries to the deceased?
- \_\_\_ When did you notice the deceased was having medical problems?
- \_\_\_ How did you and others respond to the medical problems?
- \_\_\_ What is your training regarding the positioning of restrained persons?