

Justice for All Americans? Fatal Shootings by Police

The Honorable Cruz Reynoso*

INTRODUCTION: THE ISSUE

Since the fatal shooting of Michael Brown, a young African American man, on August 9, 2014, in Ferguson, Missouri, by a white police officer, the national media has reported a series of similar deaths.¹ More recently, the death of Freddie Gray in Baltimore and the resulting riots pose a different question: is the issue simply a black/white conflict?² In March 2015, the U.S. Department of Justice determined that the Ferguson Police Department had engaged in a “pattern and practice of unlawful conduct” by discriminating against African American residents.³

There have been many such fatal shootings by police departments prior to August 2014. Why did the incident in Ferguson earn media headlines? It seems to me that, sadly, it was the aftermath of the shooting—the “looting and violent unrest”—that caught the media’s attention rather than the fatal shooting itself.⁴ However, without the videos of the shooting, which raise questions about the fatality, the press would not have reported the questionable nature of the shooting. The Ferguson incident highlights a many decades long reality in our country—the shooting by police of blacks, Latinos, and

* Former Associate Justice, Supreme Court of California, Professor of Law Emeritus, University of California Davis School of Law; B.A. Pomona College; J.D. University of California (Boalt Hall).

1. See Betsy Bruce, *Teenager Shot, Killed in Ferguson Apartment*, FOX 2 NOW (Aug. 9, 2014), <http://fox2now.com/2014/08/09/man-shot-killed-in-ferguson-apartment-complex/>.

2. See generally Editorial, *How Racism Doomed Baltimore*, N.Y. TIMES (May 9, 2015), <http://www.nytimes.com/2015/05/10/opinion/sunday/how-racism-doomed-baltimore.html>.

3. Jack Cloherty & Mike Levine, *Ferguson Report: Rampant Racism and Other Scathing Findings from Probe*, ABC NEWS (Mar. 4, 2015), <http://abcnews.go.com/Politics/ferguson-report-rampant-racism-scathing-findings-probe/story?id=29385473>.

4. Scott Calvert & Kris Maher, *Violence Breaks Out in Baltimore After Freddie Gray’s Funeral*, WALL ST. J. (Apr. 28, 2015, 12:18 AM), <http://www.wsj.com/articles/violence-breaks-out-in-baltimore-as-freddie-gray-is-laid-to-rest-1430169131>.

other minorities. Changing that reality requires both long-term and short-term solutions.

Why have we, the American people, suffered these killings and riots? The death of Freddie Grey on April 19, 2015, while in police custody, and the riots that followed in Baltimore tell us why.⁵ President Obama has called upon Americans to think deeply. He laments that the country pays attention when the media runs headlines but forgets with time. The poverty, crime, and alienation in West Baltimore had reached a breaking point.⁶

In this Article I discuss the ramifications of the many reported incidents and possible solutions.

I took a leave of absence in 1965 from my law firm to serve as Assistant Chief of California's Fair Employment Practices Commission (FEPC). The Los Angeles Watts race riots shook the nation in August of that year.⁷ The Watts section of Los Angeles was predominantly Black and poor—much like the reported poverty and alienation in West Baltimore today.⁸ Commissions were formed by the city, the state, and the federal government to examine the causes of the Los Angeles riots.⁹ They all concluded, as did we in the FEPC, that the root causes were poverty, high unemployment, poor schools, and other living conditions.¹⁰ But nothing changed.¹¹ That was half a century ago.

What action can the people of our country take so that we do not repeat the Watts, West Baltimore, and similar riots? There are

5. David D. Graham, *The Mysterious Death of Freddie Gray*, THE ATLANTIC (Apr. 22, 2015), <http://www.theatlantic.com/politics/archive/2015/04/the-mysterious-death-of-freddie-gray/391119/>.

6. Joe Mozingo & Timothy M. Phelps, *Black Power in Baltimore: When African American Leaders Confront Racial Unrest*, L.A. TIMES (Apr. 29, 2015, 8:54 PM), <http://www.latimes.com/nation/la-na-black-power-20150429-story.html#page=1>.

7. Peter Bart, *New Negro Riots Erupt on Coast: 3 Reported Shot*, N.Y. TIMES, Aug. 12, 1965, <http://www.nytimes.com/learning/general/onthisday/big/0811.html#article>.

8. *Id.*

9. See Darrell Dawsey, *25 Years After the Watts Riots: McCone Commission's Recommendations Have Gone Unheeded*, L.A. TIMES (JULY 8, 1990), http://articles.latimes.com/1990-07-08/local/me-455_1_watts-riots/2.

10. Alicia di Rado, *After the Unrest, Will the Response Meet the Task?*, L.A. TIMES (June 18, 1992), http://articles.latimes.com/1992-06-18/news/ti-1064_1_east-los-angeles.

11. Dawsey, *supra* note 9.

immediate steps to be taken which I discuss at the end of this Article. The long-term solution is more difficult and broader in scope.

I. THE LONG-TERM SOLUTION

In short, we must modernize the social compact we Americans live by. It must include all Americans as deserving of a livable income and a better standard of living. Studies in industrialized countries tell us that when residents are well educated, crime rates go down, as does prison incarceration. As poverty is lessened, education is equalized. As housing is made affordable, the family is strengthened.¹² This sense of community would not tolerate, for example, that the chief executives in the 365 largest American corporations earn well over five hundred times more than the pay of their average employee.¹³ It would be viewed as immoral. Because the necessary changes are socially and politically difficult, these changes cannot happen unless Americans, as a whole, accept such a social compact. There is no danger to the wealthy. Studies examining life expectancy, health, happiness, trust in neighbors, income, child wellbeing, anxiety, self-esteem, and other measures of wellbeing tell us that several Scandinavian countries and Japan enjoy such social compacts; those in the upper levels of income are happier and more satisfied than those in the United States who also enjoy upper levels of income.¹⁴

What brings about change in the social compact? I believe it is the experience of the American people (1) recognizing that the stereotype does not fit those who are discriminated against, and/or (2) the subjection of a class of people has too great a social and economic cost.

Those who suffer from discrimination must struggle to convince those who discriminate that they, the discriminated, deserve to be treated as fellow human beings. The struggle will take many forms to educate the discriminators. Those being discriminated against may

12. RICHARD WILKINSON & KATE PICKETT, *THE SPIRIT OF LEVEL, WHY GREATER EQUALITY MAKES SOCIETY STRONGER* (2009) (explanatory note).

13. *Id.* at 243.

14. *Id.* at 15 (explanatory note).

suffer being arrested when protesting. They must write and speak their minds even when the majority does not want to hear.

Yet changing the social compact will take time. Our own American history is rife with examples. Women had earned the right to vote in several states in the second half of the nineteenth century, yet it was not until the 1920's that the Nineteenth Amendment to the United States Constitution included all women as voters.¹⁵ Despite the beginning of the Reconstruction Era civil rights movement in the late 1860s and 1870s, segregation was introduced in former slave states, and the nation's social compact permitted the hanging and murder of individuals who protested.¹⁶ It was not until the 1960s that statutes were passed protecting employment rights¹⁷ and the right to vote.¹⁸ Finally, gay and lesbians had long suffered discrimination, and in 1969 made headlines protesting police arrests in Greenwich Village.¹⁹ Yet, it took until 2015 for the Supreme Court to recognize that the constitutional provisions *in effect long before the Stonewall riots* guaranteed the right of same-sex couples to marry.²⁰ Often times the social compacts in the United States have often allowed and even encouraged discrimination against historically oppressed groups, regardless of the letter of the law.

15. See Tessa Melvin, *1917: When Women Won Right to Vote*, N.Y. TIMES, Nov. 1, 1987, <http://www.nytimes.com/1987/11/01/nyregion/1917-when-women-won-right-to-vote.html>.

16. Eric Foner, *Why Reconstruction Matters*, N.Y. TIMES (Mar. 28, 2015), <http://www.nytimes.com/2015/03/29/opinion/sunday/why-reconstruction-matters.html>.

17. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 445 (codified as amended beginning at 42 U.S.C. § 2000e (2012)).

18. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 445 (codified as amended at 42 U.S.C. §§ 1973 to 1973aa-6 (2012)).

19. The Leadership Conference, *Stonewall Riots: The Beginning of the LGBT Movement*, CIVILRIGHTS.ORG (June 22, 2009), <http://www.civilrights.org/archives/2009/06/449-stonewall.html?referrer=https://www.google.com/>.

20. *Obergefell v. Hodges*, 576 U.S. 1732 (2015).

II. THE SHORT-TERM SOLUTION

Four personal experiences lead me to the conclusions I note at the end of this part.

A. El Centro, California

During most of the 1960s, I practiced law in El Centro, California, a small community in Imperial County. The county is situated in the southeast corner of California, by the Mexican border. In the early 1960s, a white police officer fatally shot a young man who was Mexican-American (Chicano).

Late one evening police officers arrested the young Chicano at a bar. They took him outside and asked him to wait by the police car while they went back into the bar to make a second arrest. He ran, and a young police officer gave chase. The Chicano ran into an alley, which had no exit. A lightbulb at the end of the alley was out, leaving the alley pitch black. A struggle ensued and the officer fatally shot and killed the young Chicano.

Members of the Latino community protested the killing and demanded to know what had happened.

The County corner decided to have a public hearing to determine how the Chicano died. The family of the deceased retained me to represent them. I requested permission to participate in the inquest, and the coroner agreed. The young officer testified at the hearing. I knew him; he was a fine young man who had always hoped to be an officer and once sworn, was very proud of his uniform. I examined the witnesses, including the officer. No testimony was presented that indicated the fatality was caused by racial or ethnic prejudice. Rather, it was simply poor judgment by an inexperienced officer. He simply was trying to make an arrest.

When it became clear that it was poor judgment and not ethnic animus that caused the fatal shooting, the Latino community accepted the findings, and the family decided not to file suit.

B. The Bronx, New York

While I was Vice Chair of the United States Commission on Civil Rights, we held hearings when we were presented with civil rights

issues between police and minority communities. We held one such hearing in New York City regarding the fatal shooting of Amadou Diallo. On February 4, 1999, Diallo, a twenty-two-year-old African American immigrant from Guinea, was fatally shot by four New York City police officers from the Street Crimes Unit.²¹ The officers fired forty-one shots, nineteen of which struck Diallo.²² Diallo was unarmed.²³ He was standing by the building where he lived, having returned from a late dinner shortly after midnight. The police claimed that they identified themselves.²⁴ Diallo reached into his pocket for his wallet. An officer yelled “gun” and, thinking Diallo was reaching for a weapon, opened fire.²⁵ When another officer tripped, the other officers believed that officer had been shot and continued shooting.

The shooting caused a firestorm of protests within and outside New York City. At our hearing, the mayor and the police Commissioner supported the findings of the police department that the officers had acted properly, based on what a reasonable police officer would do under similar circumstances. However, the officers were charged with second degree murder and reckless endangerment. The jury found them not guilty. Nonetheless, the city settled a lawsuit for \$3 million.²⁶

Diallo’s mother, interviewed recently, expressed concern for the harsh reality that such fatal shootings still exist nearly a quarter of a century after her son was fatally shot.²⁷

C. The University of California at Davis

More recently, I was involved in a much-publicized incident dealing with the non-fatal pepper spraying of students at the

21. Jane Fritsch, *The Diallo Verdict: The Overview; 4 Officers in Diallo Shooting Are Acquitted of All Charges*, N.Y. TIMES, Feb. 26, 2000, <http://www.nytimes.com/2000/02/26/nyregion/diallo-verdict-overview-4-officers-diallo-shooting-are-acquitted-all-charges.html>.

22. *Id.*

23. *Id.*

24. *Id.*

25. *See id.*

26. *Id.*

27. Sasha Goldstein, *Amadou Diallo’s Mother Says Country ‘Going Backwards’ as Cops Continue to Kill Unarmed People Without Consequence*, N.Y. DAILY NEWS (Dec. 8, 2014, 12:46 PM), <http://www.nydailynews.com/news/national/amadou-diallo-mom-u-s-kills-article-1.2037815>.

University of California at Davis, California. Students protesting tuition hikes placed tents in a large open quad stayed overnight.²⁸ A senior police officer calmly pepper sprayed several students who sat on a wide sidewalk and refused to get up and leave.²⁹ The police chief reported that the students had been sprayed because the officers, who allegedly were surrounded by students, feared for their lives.³⁰ The University President asked me to chair a task force to report on the incident and make recommendations.³¹ The task force was composed of representatives from various university interests, including undergraduate and graduate students, faculty members, and personnel from the offices of the Chancellor and President.

Fortunately, the University had hired expert investigators. The investigators gathered videos taken by many who were present and assembled a second-by-second compilation of the sequence of events. The officers were never surrounded. Instead, prepared plans for police action were ignored and unauthorized pepper spray was used. The task force, despite the diversity of its members, reached a unanimous decision that the pepper spray should not have been used. We also found fault with the Chancellor, who insisted that the protesters and the tents be removed midday when so many students were present. The Police Chief did not exercise control of the police and falsely issued a statement that the officers were in danger for their lives. Two lieutenants ignored instructions from the chief that they not dress in battle gear, and failed to follow previously agreed-upon plans. The lieutenant who pepper sprayed the students had not been authorized to use that type of pepper spray. These and other missteps contributed to what turned out to be a disaster.³²

28. Brian Stelter, *California University Puts Officers Who Used Pepper Spray on Leave*, N.Y. TIMES (Nov. 20, 2011), <http://www.nytimes.com/2011/11/21/us/police-officers-involved-in-pepper-spraying-placed-on-leave.html>.

29. *Id.*

30. *Id.*

31. Jennifer Medina, *Campus Task Force Criticizes Pepper Spraying of Protestors*, N.Y. TIMES (Apr. 11, 2012), <http://www.nytimes.com/2012/04/12/us/task-force-criticizes-pepper-spraying-of-protesters-at-uc-davis.html>.

32. Sam Stanton & Denny Walsh, *UC Pepper-Spray Settlement About \$1 Million*, THE SACRAMENTO BEE (Sept. 27, 2012), <http://blogs.sacbee.com/crime/archives/2012/09/pepper-spray-settlement-about-1-million.html>; UC DAVIS, THE TASK FORCE, NOVEMBER 18, 2011 “PEPPER SPRAY INCIDENT” TASK FORCE REPORT: “THE REYNOSO TASK FORCE REPORT” (2012).

During the course of our task force work I met with several experts on police practices. One had been hired by over fifty-seven police departments to evaluate practices. Of those police departments, he informed me, only one met the standard that all departments should meet. For example, the officers should treat their fellow officers the way they treat any resident. If a fellow officer violates the law, he or she should be reported and arrested. All the other police departments had a culture of protecting one another—a sort of bunker mentality. In my view, the reality that officers will protect one another even when a fellow officer violates criminal laws is one of the most serious problems that leads to distrust of the police by many members of poor and minority communities.

D. Yolo County, California

On the afternoon of April 30, 2009, a 24-year-old Mexican immigrant, Luis Gutierrez, was killed by police. Gutierrez, a farm worker, was shot in the back by two members of the Yolo County Gang Task Force. Yolo County is a rural county adjacent to Sacramento County. The shooting took place in Woodland, a city of fifty-five thousand people. The Gang Task Force had a practice of stopping individuals at random to speak to them, presumably in hopes of discovering illegal activity. The task force had originally been established by the district attorney and later turned over to the sheriff. Police had stopped Gutierrez, who had immigrated ten years before his death, approximately seventeen times—once he was stopped for riding a bicycle on the wrong side of the street.

In response to his death, the Chicano community, led by a coalition representing various community groups, held marches and rallies but no details were released by the police or the District Attorney. Over four months after the fatal shooting, the District Attorney issued a report, but it did nothing to quell the concerns of the Chicano community and it raised more questions than it answered. The various citizen groups called for an independent

investigation as did the editor of the local newspaper, the Woodland Democrat.³³

A representative of the group came to see me to ask if I would accept the chairmanship of an Independent Citizens Civil Rights Commission to investigate the killing. The Commission, as constituted, included a retired police officer, a former prosecutor, and a former president of the Yolo County Bar Association. The Commission received funds from two foundations to hold hearings and investigate the killing.

The hearings raised serious questions. We heard testimony that Gutierrez was walking home from the Department of Motor Vehicles. Suddenly an unmarked black Ford Taurus stopped in front of Gutierrez. The men in the vehicle, members of the Gang Task Force, were dressed in civilian clothes. One man, Sgt. Johnson, exited the vehicle quickly. He claimed in a police interview that he showed Gutierrez his badge on his belt.³⁴

Gutierrez immediately ran. All indications are that he was frightened by the sudden stop of the unmarked car and the quick exit from the car by a person who appeared to be a gang member. Sgt. Johnson gave pursuit. He explained that he had drawn his gun as he pursued Gutierrez.³⁵

Some accounts claimed that Gutierrez reached into his pocket, was armed with a knife, and later lunged at pursuing officers. Other witnesses did not report seeing a knife or aggression from Gutierrez. These drastically conflicting accounts were troubling for the Commission, and led us to wonder how and why the situation was escalated so quickly and drastically.³⁶ What is perhaps most

33. Laura Keene, *Gutierrez Civil Lawsuit Goes Before Jury*, DAVIS ENTER. (Sept. 30, 2012), <http://www.davisenterprise.com/local-news/crime-fire-courts/gutierrez-civil-lawsuit-goes-before-jury/>.

34. Melody Stone, *Yolo Deputies Cleared in Woodland Shooting of Luis Gutierrez*, DAILY DEMOCRAT (July 17, 2015), <http://www.dailydemocrat.com/general-news/20091125/yolo-deputies-cleared-in-woodland-shooting-of-luis-gutierrez>.

35. *Id.*

36. Katherine Jarvis, *DA's Report "Great Variance" Over Gutierrez Shooting*, DAILY DEMOCRAT (Feb 17, 2011), <http://www.dailydemocrat.com/20110217/das-report-great-variance-over-gutierrez-shooting>.

disturbing is the fact that a seemingly unnecessary confrontation ended with the death of a man.³⁷

It is a painful reminder that in many situations, even after the incident, the true facts may never be known. But such situations can be prevented from ever happening with better training and community involvement.

CONCLUSIONS AND RECOMMENDATIONS

We live in two Americas: one has had no problems with the police and view the police as protectors, while another needs police protection and often calls for such help, but nonetheless fears the police. In general, the first category is mostly made up of Anglo-American, middle class families. The second are poor or minority families, often black or Mexican-Americans. Thus, even when criminal charges or civil actions are filed against police officers, a predominantly Anglo-American jury will find the police not guilty or will rule against the plaintiffs seeking damages for physical pain, mental anguish, and irreplaceable loss. A potential juror who questions police actions would likely be challenged and would not sit on a jury. A Pew Research Poll after the Ferguson fatal shooting found “stark racial and political division” to the shooting—80 percent of African Americans agreed that the shooting raised serious racial issues, but only 47 percent of whites felt that race was receiving more attention than it deserved.³⁸

These experiences lead me to conclude that when a fatal shooting takes place, the most important consideration is to present the facts of what happened in a manner that will be accepted by the family and the community. The El Centro procedure is an example.

37. In particular, it is extremely difficult to justify shooting at Gutierrez under the well-known jurisprudence of the Supreme Court when the facts regarding Gutierrez's actions are in such dispute. If he did not slash or lunge at the officers, based on the reports it is unlikely one can consider him a fleeing *felon*, subject to the use of deadly force; instead he simply becomes a fleeing *person*. See *Tennessee v. Garner*, 471 U.S. 1 (1985).

38. Bruce Drake, *Divide Between Blacks and Whites on Police Runs Deep*, PEW RESEARCH CTR. (Apr. 28, 2015), <http://www.pewresearch.org/fact-tank/2015/04/28/blacks-whites-police/> (citing *Stark Racial Divisions in Reactions to Ferguson Police Shooting*, PEW RESEARCH CTR. (Aug. 18, 2014), <http://www.people-press.org/2014/08/18/stark-racial-divisions-in-reactions-to-ferguson-police-shooting/>).

Too often there is not a willingness to bring to light all that happened. In California, we see a statutory confirmation of that reluctance. The “Public Safety Officers Procedural Bill of Rights Act,” sponsored by powerful police unions, creates a wall of silence.³⁹ The El Centro experience could not take place in today’s California or other states with similar legislation. All efforts to gain information in the Gutierrez case were rejected. It was the cooperation of plaintiffs’ counsel in its civil suit that opened the doors to our investigation. Sworn police officers are among the most powerful public servants: they deal with life and death. Such public servants should have accountability to the public.

The role of judges can help the relations of the police and their residents. I have seen many judges meet with community groups to help residents understand the legal system, which helps to reduce tensions. More often, the role of a judge in fatal shootings is limited. At times, a judge may issue mistaken rulings that hide what happened from the public, as illustrated in the addendum.

In light of the many reports of fatal shootings, public officials are beginning to respond. California has seen two such efforts. Assemblyman Kevin McCarthy has introduced AB 86, which would require “the Attorney General to appoint a special prosecutor to direct an independent investigation” if a police officer uses “deadly physical force” which results in death.⁴⁰ The independent panel, not the local district attorney, would investigate the fatal shooting. The Assemblyman is quoted as follows:

For far too long there has been a cloud of confusion surrounding police shootings, now is the time for California to be a leader on this issue. The creation of an independent police review panel is a common sense solution which will create trust between the police and the community.⁴¹

39. CAL. GOV’T CODE § 3300 (2015).

40. Assembly. B. 86, 2014-15 State Assemb., Reg. Sess. (Cal. 2015).

41. David Greenwald, *Legislation Would Create Independent Review in Police Shootings*, DAVIS VANGUARD (Feb. 26, 2015), <http://www.davisvanguard.org/2015/02/legislation-would-create-independent-review-in-police-shootings/>.

The second response is by California's Attorney General. She spoke of the "sacred trust" between the men and women in law enforcement and the community. The Attorney General proposes (1) new procedures to train officers in implicit bias on the basis of race, ethnicity, national origin, gender, sexual orientation, religion, socioeconomic status and/or age; (2) formation of a 21st Century Policing Working Group which will share "best practices" in improving community trust; (3) training for command-level staff in fair and impartial policing; (4) promotion of a body camera program; (5) modification of hiring qualifications; and (6) incorporation of community involvement. The plan is to review the reports of local police departments. Without an independent investigation, the "sacred trust" will not be fulfilled.⁴²

Hopefully in the future, independent investigations, much like the recent U.S. Department of Justice investigation in the Ferguson, Missouri, where the investigators perform their own outside inquiry into the fatal shooting will become the standard. Communities can only begin to trust the police when they can be provided with a reliable set of facts and narrative.

ADDENDUM

I received the following memorandum as I finish this Article. I print it verbatim. It was sent by attorneys for the plaintiffs. Taken at face value, it illustrates that (1) the fatal police shootings were unjustified, (2) the police chief did not investigate, (3) the judge did not make public the video of the shooting, and (4) the city council has cooperated with the police chief in hiding the facts of this fatal shooting from the public.

42. Press Release, State of Cal. Dep't of Justice, Attorney General Kamala D. Harris, Releases Results of 90-Day Review of Special Agent Training on Implicit Bias and Use of Force (May 15, 2015), *available at* <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-releases-results-90-day-review-special-agent>.

A Police Shooting—A Sham investigation—No Accountability
The Police Killing of Ricardo Zerefino
(L.A. Federal District Court Case No.2:13-cv-9042 SVW (AJWX)
Eutiquio Mendez, Ricardo Diaz Zeferinon, et al V. City Of
Gardena, The Gardena Police Department; Chief Edward; Sgt.
Christopher Calvin Cuff, Christopher Anthony
Mendez, Christopher Andrew Sanderson And Mathew Steven-
Fong Toda)

This case was approved by the City of Gardena City Counsel for a total of \$4.5 million paid to the family of Ricardo Zeferino and to Eutiquio Mendez, with separate prior “confidential” settlement to Jose Amado. The city council of Gardena, however, has yet to release to the public any notice of this settlement or the car cam video which captured the shooting of the unarmed men (Gardena Police Department asked the Court to maintain the video “confidential.”)

The Innocent Unarmed Men Committed No Crime

On June 1, 2013, Ricardo Zeferino, his brother Agustin, and their good friends Eutiquio Mendez and Jose Amado, left their restaurants jobs in the City of Gardena, and as they sometimes did on Saturday night, they headed ~~to have a beer~~ at a nearby restaurant on Redondo Beach Boulevard before heading home.

They lived nearby and all four traveled to and from work on bicycles with Ricardo and Agustin sharing one bike. Agustin bicycled to a CVS Store across the street and while inside his bike stolen. The store security guard called 911 to report the theft and Agustin telephoned his brother Zeferino and told him of the theft and that he would stay behind and wait for the police to arrive.

Stopped by the Gardena Police

Eutiquio and Amado headed home on their bikes on Redondo Beach Boulevard, an open well-lit busy commercial main street, while Zeferino walked home at a distance behind them. Gardena Police Sgt.

Christopher Calvin Cuff, spotted Eutiquio and Amado and illuminated them with his patrol car's high beam headlights and spotlights, pointed his gun at them, and ordered them to stop. They immediately stopped, put their hands up above their heads in front of the Carrow's Restaurant, which was open and well-lit outside. As Eutiquio and Amado was standing with their hands up while straddling their bikes, Zeferino approached on foot. As Zeferino stood between his two friends, also hands up, simply trying to explain to Sgt. Cuff that his friends were not the bike thieves reported by his brother, more police cars arrived. All three men were visibly unarmed—nothing in their cell phone on hands—holding their hands up in the universal sign of surrender when officers Christopher Anthony Mendez, Christopher Andrew Sanderson, and Matthew Steven-Fong Toda, stood in front of their patrol cars pointing guns at the three friends.

The Shooting Frenzy

Although Sgt. Cuff had everything under control and was safely standing behind his patrol car door, the newly arrived officers began yelling contradictory commands—hands up, put hands on your head, get on the ground. Zeferino put his hands on top of his head and then gestured holding his baseball cap in his left hands away from his body, showing he had nothing but a cap on his hand, and trying to explain to Sgt. Cuff that his friends were not the bike thieves. Suddenly, within 20 seconds of arrival, and without any justification or warning, Officer Christopher Anthony Mendez began shooting and Christopher Andrew Sanderson and Matthew Steven-Fong Toda ~~simultaneously~~ joining in the shooting frenzy. Sgt. Cuff, the senior officer present and in charge of the stop, never shot his pistol—~~clear proof~~ that there was no threat of harm to officers or others.

All four officers testified they never saw a weapon and they never saw anything that even looked like a weapon. All four officers created a chaotic situation and even though they had been on scene for 20 seconds, rather than communicating with Sgt. Cuff, the superior in charge, they opened fire ~~on the three unarmed men holding their hands in surrender~~. In total, the three officers fired 13 shots: eight hollow point bullets, many of them fatal shots, ripped

through Zeferino's body; one went into Eutiquio's back where a fragment remains lodged; other bullets whisked by Amado missing him. After the shooting stopped, Eutiquio and Amado heard Zeferino agonizing in pain, his last words to his friends were, "hasta aquí llegué" (translation: this is as far as I go). He died on the scene. Eutiquio fell to the ground severely wounded and was taken to a hospital; Amado was handcuffed and arrested.

A Sham Investigation

Rather than investigate these three officers' wrongful killing and, ~~rather than~~ enforce the law and their own polices, Gardena Police Department shifted to cover up mode treating the innocent killed Zeferino, the injured Eutiquio and Amado like criminals—knowing they had committed no crime. Amado was arrested, placed in custody, taken to the station and interrogated that night. Eutiquio was taken to the hospital where LASD homicide investigators tried to obtain incriminating information from him after he exited surgery for the bullet wounds. ~~The homicide investigation identified the officers as the "victims" and Eutiquio, Amado and the dead Zeferino as the "suspects."~~

A series of car cam videos captured the shooting, however, the Gardena Police Department convinced a judge to keep the videos "confidential" although they were introduced into the court record by the plaintiffs and defendants. The videos have yet to be released.

Police Chief Medrano was also sued for failure to investigate these officers and failure to investigate. In prior shorts by his subordinates since 2009. In four of those shootings the victims did not have a gun. Many Gardena police shooting cases were settled.

In his deposition, Chief Medrano expressed approval of the shooting officers' conduct in this case; he testified that he had not done an internal administrative investigation of the shooting which is mandated by police policy and had not evaluated the shooting. He admits that he has taken no action with retraining, disciplining or discussing this shooting with either the involved officers or his department leadership. By disregarding the video evidence, ~~in this shooting~~ which contradict officers' accounts, Chief Medrano has

approved of the shooting ~~at~~ of two unarmed innocent persons and the killing of another.

Although the City of Gardena Council and Mayor have to approve the settlement of \$4.5 million dollars, and a prior settlement with Amado, they have failed to publicly inform their public of this settlement as required by state law. ~~Contrary to law.~~

The Los Angeles county district attorney simply adopted the investigation results by the LASO, using as their “expert” an ex-police officer who always testifies on behalf of police shooters and always finds the shooting to be within policy. Of no surprise, the District Attorneys’ Office concluded that it would not prosecute the shooting officer(s).

~~Plaintiffs ask the DOJ take action and to investigate this killing of an innocent unarmed man. Plaintiffs will ask the DOJ to create a truly independent body that will investigate policed killings.~~