
"Police Excessive Force Policies: Have US Latinos Become the Invisible Majority?"

Friday, Sept. 4, 2015

*1:45 PM – 3:00 PM*

**Panel Description:** Our nation has recently seen an incredibly high volume of perceived violations of civil rights of individuals taken into police custody. Suspects of all races are victims, but those from racial minority backgrounds are disproportionately victims of excessive, and oftentimes, excessive force. Latinos, in particular, have been victims of the cruel and inhumane treatment. One notorious incident involved the May 2010 beating by federal agents of Anastacio Hernandez-Rojas in California. This most recent incident was captured on video, has been investigated by a federal grand jury, but nothing official has been heard from the Department of Justice. Understandably, police officers encounter dangers on a regular basis in their profession. The panelists will address available criminal and civil remedies for violations of civil rights, including those resulting in death. They will also address federal remedies that the Department of Justice can negotiate with police departments that have a pattern of excessive force usage and discriminatory policing.

Moderator:

Professor Lupe S. Salinas
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Panelists:

Denise Maes
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Tab 1 – Biographies or CVs

Judge Lupe S. Salinas

The Honorable Lupe S. Salinas, retired judge of the 351st Criminal District Court of Harris County, Texas, is the author of *U.S. Latinos and Criminal Injustice* (2015), a book that includes chapters on deprivations of civil rights by state and federal police agents. Salinas currently serves as the Eugene Harrington Professor of Law at Texas Southern University's Thurgood Marshall School of Law in Houston. His research focuses on criminal procedure and Latino civil rights issues. As a federal prosecutor, Salinas prosecuted Houston police officers accused of excessive fatal force against a suspected car thief and a subsequent cover-up. The case led to the production of a movie entitled "The Killing of Randy Webster." He then served as Special Assistant to the US Attorney General in Washington, DC where he advised General Benjamin R. Civiletti on civil rights and immigration policy.

Denise Maes

Denise Maes is the Public Policy Director for the ACLU of Colorado. Her duties include interaction with state legislators; drafting bills for potential legislation; testifying in favor or in opposition to proposed legislation; advocating on policies that may affect civil liberties; participating on working groups; and presenting the ACLU position on panels. Prior to her duties with the ACLU, Ms. Maes served in Washington, DC as General Counsel for the White House Office of Administration in the Executive Office of President Barack Obama and then as Director of Administration for the Honorable Joe Biden in the Office of the Vice President of the United States.

Scott Martinez, Denver City Attorney

As Denver City Attorney, Mr. Martinez serve as Denver's Chief Legal Officer responsible for providing legal guidance to all of the City of Denver's elected officials and employees. His

charge is to protect the city and its people by making it easy for Denver's city employees to find solutions to problems that have a legal component and to apply the law consistently so Denver's residents can trust they will always be treated fairly. He also views the role of the Denver City Attorney as someone who can bring focus and energy in five unique roles, including: 1) lead counsel to all elected city officials, city departments, boards and commissions regarding municipal law issues, transactions and taxation; 2) defender of the City and its 11,000 employees against legal claims and lawsuits; 3) prosecutor of municipal crimes, ranging from domestic abuse to graffiti and traffic offenses; 4) chief counsel to the country's third busiest transportation hub, Denver International Airport; and 5) protector of the most vulnerable as the county attorney for Human Services. He supervises more than one hundred attorneys and another similar number of support staff.

Steven Chavez

Steven Chavez is an attorney in private practice and CEO of Chavez ADR Services in Denver, CO. A graduate of the University of Colorado School of Law, Mr. Chavez previously served as the Director of Civil Rights Enforcement for the State of Colorado. Most recently, Mr. Chavez assisted the City and County of Denver in implementing reforms to the Denver Sheriff's Department after a series of high profile cases of abuse. He serves as the Chair of the HNBA's Civil Rights Section.

**Tab 2 – Course Materials (articles, publications, other materials)**

**Remedies for State and Federal Police Use of Excessive Force against Latinos**

**Lupe S. Salinas © 2015**

**Several Latino organizations have been active for decades in the battle for justice for U.S. Latino equality. These groups, in chronological order, include LULAC, the League of United Latin American Citizens, founded in 1929; the American GI Forum, 1948; MALDEF, the Mexican American Legal Defense and Educational Fund, 1968; NCLR, the National Council of La Raza, also 1968; and the Puerto Rican Legal Defense and Educational Fund, 1972, known today as LatinoJustice PRLDEF. Fortunately, other groups, like the ACLU, the American Civil Liberties Union, and government agencies like the Department of Justice (DOJ) assist in the vindication of civil rights. During the early years the Latino population was a small percentage of the population, numbering about one million in 1929. By 2015, the US Latino population increased to over 55 million. Many assert that Latinos thus graduated from being an "invisible minority" to becoming the "invisible majority." In other words, although this population has been victimized by police excessive force and other official abuses, the governmental response has not been as immediate as it has been in other communities involving whites and blacks.**

**An unfortunate misconception abounds that undocumented aliens in the United States do not merit protection under the Constitution. The Fourth Amendment refers to**

**the right of the "people" to be free from "unreasonable searches and seizures."[1] Another relevant constitutional provision is the Fourteenth Amendment. This amendment mentions both "citizens" and "persons," an indication that the Founding Fathers distinguished between the 2 groups. In other words, persons subject to the jurisdiction of the United States include undocumented persons who receive constitutional protections.[2] This principle was confirmed in *United States v. Otherson*,[3] a case that involved an admission by Border Patrol agents to beating aliens who had entered the United States without permission.**

**In recent years, federal immigration agents have been more active in the use of deadly force. This prompted a review of U.S. Customs and Border Enforcement and Border Patrol policies on the use of deadly force after a wave of shootings by agents along the U.S.-Mexican border. One of the fatal shootings included a teenager who agents said was throwing rocks at them from across a fence in Mexico. Since 2010, at least 18 people have been killed by Border Patrol agents. Eight of the deaths involved rock throwers.**

**In one of the rock-throwing allegations, a Border Patrol agent, Jesus Mesa, Jr., shot and killed 15-year-old Sergio Hernández-Guereca near the El Paso-Juarez bridge. The family sued the United States and the agent. The Fifth Circuit Court of Appeals affirmed the dismissal against the government, but it allowed the action against the agent to proceed.[4] The family of the deceased alleged multiple avenues for liability, but the court allowed a trial only on the personal claim against the agent.[5] Judge Edward Prado concluded that a "noncitizen injured outside the United States as a result of arbitrary official conduct by a law enforcement officer located in the United States may invoke the protections provided by the Fifth Amendment,"[6] which include the right not to be subjected to the "conscience-shocking use of excessive force across our nation's borders."[7] The Fifth Circuit, acting en banc, later reversed the three-judge panel.**

**In another case, in 2008 prosecutors dismissed murder charges against a Border Patrol agent after 2 mistrials. Agent Nicholas Corbett arrested Francisco Javier Dominguez and 3 family members near the Arizona border. When he ordered the Mexican nationals to surrender, Corbett claims Dominguez refused and threatened him with a rock. The witnesses contradict this story and claim the agent shot him without provocation. Corbett initially claimed that Dominguez was holding a rock while standing a few feet away.[8] A forensic problem with Corbett's claim is that he was so close that his weapon upon discharge left powder burns on the victim's clothing. This means that the shooting occurred within a distance of one to 2 feet.**

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[1] U.S. CONST. amend. IV.

[2] Mathews v. Diaz, 426 U.S. 67, 77 (1976) (The Fifth Amendment Due Process Clause provides protection from discrimination against undocumented persons); Plyler v. Doe, 457 U.S. 202 (1982) (The Fourteenth Amendment Equal Protection Clause provides protection from discrimination against undocumented alien children).

[3] 637 F.2d 1276 (9th Cir. 1980).

[4] Hernandez v. United States, 2014 U.S. App. LEXIS 12307 (5th Cir. June 30, 2014).

[5] Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971).

[6] Hernandez v. United States, 2014 U.S. App. LEXIS 12307, at 55 (5th Cir. June 30, 2014).

[7] Ibid., 57.

[8] Holstege, Sean. 2008. "Mistrial ends murder case against Ariz. border agent." *Arizona Republic*, November 5.

**The evidence also indicates the shot came from slightly behind and above the smaller man. Under those circumstances, the much larger agent was close enough to easily and physically control a man with a rock in his hand. This claim of being threatened by a rock, however, sufficed to create reasonable doubt among a jury of 12 citizens having to make a decision under circumstances where the volatile national immigration debate had inflamed emotions. After a second mistrial, the victim's family filed a civil lawsuit which alleged that Corbett had a reputation of anti-Latino hatred and violence. The government and Corbett, without admitting guilt, settled with Dominguez's family for $850,000.[9]**

**The Border Patrol considers the use of deadly force against rock throwers generally acceptable, noting that rocks can be deadly, but critics question comparing a bullet to a rock, particularly when the agent can retreat to a safer location. The Department of Homeland Security (DHS) Inspector General began an investigation. In 2014, the commissioner of Customs and Border Protection (CBP) presented a report entitled *Use of Force Policy, Guidelines and Procedures Handbook* which provides CBP law enforcement agents with rules related to the use of force.[10] The agency recognized that agents face hazardous conditions, but it found that "in several cases where agents shot at rock throwers, the force appeared to be excessive" (Preston 2014). The commissioner's most emphatic words zeroed in on the major purpose of the review: "The use of excessive force by CBP law enforcement personnel is strictly prohibited."[11]**

**Another section of the handbook addresses the use of safe tactics in a confrontational situation Primarily, the guidelines urge agents to "employ enforcement tactics and techniques that effectively bring an incident under control, while promoting the safety of the officer/agent and the public." Specifically, the procedures dictate that agents "should not place themselves in the path of a moving vehicle or use their body to block a vehicle's path," particularly when this action predictably necessitates the use of deadly force. Firing at the driver of a vehicle could disable that person, and the results of an out-of-control vehicle could result in the death of innocent passengers and bystanders or fellow officers.[12] Further, to avoid the use of deadly force, agents are urged to seek cover or distance from the immediate area of danger and thus gain a tactical advantage.**

**According to the DHS inspector general, rocks are the most common weapon used to assault agents. Another factor to consider is that the Border Patrol has grown quickly and is now the nation's largest police force.[13] As stated in another part of the book, the department hired several agents to meet time quotas and, as a result, background checks were waived. The rapid growth has thus produced an agency with many officers with limited aptitudes and extremely dangerous attitudes about immigrants. Perhaps this combination has resulted in the numerous reports of excessive force, mostly along the border with Mexico. With almost 20 Border Patrol-attributed deaths since 2010, no one has**

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[9] Jackman, Janet Rose. 2011. "$850k settlement for family of slain illegal immigrant." *Tucson Sentinel*, September 8.

[10] U.S. Customs and Border Enforcement. 2014. *Use of Force Policy, Guidelines and Procedures Handbook*. Pp. 38-42. Washington, D.C.: U.S. Government Printing Office. Accessed June 22, 2014. http://www.cbp.gov/sites/default/files/documents/UseofForcePolicyHandbook.pdf.

[11] Id. at i.

[12] Ibid. at 6.

[13] Id.

**been held accountable. One death, for example, included an agent shooting a 16-year-old boy 11 times for throwing rocks at him.[14]**

**The Brutal Death of Anastacio Hernández-Rojas**

**The death of Anastacio Hernández-Rojas[15] at the age of 42 is among the many fatalities involving immigrants and immigration agents since 2010. Hernández died in late May 2010, 3 days after being subjected to multiple baton strikes and electric shocks from a Taser repeatedly administered by an enforcement agent.[16] According to an investigator who talked to the agents, Hernández became "agitated and confrontational" after he was detained.[17] San Diego police conducted Hernández's death investigation pursuant to an agreement the city has with Customs and Border Protection where deaths involving officers occur.[18] The County Medical Examiner's autopsy report attributed his death to a heart attack and included as contributing death factors an enlarged heart, the presence of methamphetamine, and a "prolonged struggle" which resulted in 5 broken ribs.[19]**

**Witnesses to Hernández's detention and assault by agents did not notice a confrontational person. Instead, they observed several federal agents surround Hernández as he lay handcuffed on the ground. Several witnesses recorded the action (PBS, You Tube.Com Video, 2010). The eerie sounds of Hernández crying out in pain for those 2 ½ minutes in the first referenced video affect even those aware of the worst crime stories. The word "torture" immediately surfaces. In the video, Hernández can be heard crying out in apparent pain for help. For 20 seconds, he cries out in a prolonged and horribly-sounding "Noooh."**

**Hernández then pleads with the men surrounding him in Spanish: "*ayúdenme, por favor, señores, por favor*" (Help me, please, sirs, please). One can only imagine his hope that the crowd of *señores* (the male federal agents) will stop their colleagues who are beating and shocking him. These observant federal agents had a legal duty, but they did not intervene. They even stepped back so the stuns could be administered. One account claims a supervisor arrived and allowed the assault to continue.[20] The civil case reveals a total of 12 agents, including 4 supervisors.[21]**

**At 44 seconds, another voice is heard yelling, "*Ya, déjenlo*," which basically means, "Enough! Leave him alone." Then at 1 minute and 7 seconds, a voice states in English, "Hey! He's not resisting!" From 1:49 to 2:07, about 20 seconds, a voice exclaims: "Why you guys keep pushing on him? He's not even resisting!" (You Tube.Com Video 2010). SDIRC, The. 2010 The Customs and Border Protection (CBP) federal agency insisted that Hernández's "combative" behavior necessitated the use of a baton and stun gun to "subdue**

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[14] Id.

[15] According to cultural tradition in Latin American nations, a Latino uses both the name of his father (Hernández) and his mother (Rojas). For brevity, Mr. Hernández-Rojas will be generally referred to as Hernández. His first name is spelled Anastasio in early media reports, but the family lawsuit lists his name as Anastacio.

[16] Moran, Greg. 2013. "Agents Give Their Account of Border Death." *U-T San Diego*, June 2.

[17] Associated Press. 2012a. "Homeland Security probing Border Patrol's use of force policies amid claims of brutality." *Washington Post*, October 18. Accessed Oct. 21, 2012.

[18] Archibold, Randal C. 2010. "San Diego Police Investigate the Death of a Mexican Man Resisting Deportation." *New York Times*, June 2.

[19] Moran, Greg. 2013. "Agents Give Their Account of Border Death." *U-T San Diego*, June 2.

[20] Frey, John Carlos. 2012. "What's Going on with the Border Patrol?" *Los Angeles Times*, April 20.

[21] Hernandez-Rojas v. United States, 2014 U.S. Dist. LEXIS 138495 (S.D. Cal. Sept. 29, 2014).

**the individual and maintain officer safety."[22] At the time of the application of this force, Hernández was handcuffed and unable to attack and harm the agents.**

**Additional footage later discovered by John Carlos Frey, an investigative reporter, raises questions about the propriety of the excessive force which agents directed at Hernández. The video, taken by Seattle resident Ashley Young as she crossed the bridge from Mexico to the United States, shows the crowd of agents standing around Hernández, who does not appear to be moving. Ms. Young asserts that Hernández was handcuffed. She did not witness Hernández lash out at the agents, but she heard an agent inexplicably yell for him to "quit resisting."[23] The agents surely knew they were being watched by civilians, an apparent explanation as to why the agent yelled for him to cease moving. One must wonder whether a person who is subjected to a beating that resulted in broken ribs and to painful electrical shocks would not move involuntarily.**

**The agent with the Taser shot him 5 times with electric charges.[24] As people gathered on the bridge and yelled to officers to stop the attack, Young says other agents approached and told them to keep moving. One officer demanded that 2 witnesses hand over their cell phones or delete the video they had taken, but she kept walking. She described the incident like witnessing a man being "murdered."[25] Agents had reportedly hogtied Hernández prior to subjecting him to the Taser gun.[26]**

**According to Eugene Iredale, an attorney representing Hernández's widow and 5 citizen children in a civil lawsuit, the DOJ civil rights division began presenting evidence to a federal grand jury. Another family friend said 2 eyewitnesses to the incident were called to testify in July 2012. One possible witness is Humberto Navarrete, who made a cellphone video that included audio of Hernández pleading for help and passersby asking that he be left alone.[27]**

**As often occurs in the use of physical force against individuals being subjected to arrest, the stories vary. It occurred in the Rodney King beating case several years ago. The police claimed King resisted. The federal jury eventually found some of the officers guilty. The video in the Hernández case should assist the prosecution. First, the video captures an agent sadistically applying electric shocks on a handcuffed man who is not in position to harm an agent. Second, the audio portion of the video captures the pleas for mercy of the victim as well as the invaluable present sense impressions and excited utterances of those persons whose voices are heard describing what they are observing. These comments represent potent prosecution evidence. Neither the identification nor the presence at trial of these individuals is required for the comments to be admissible since these types of out-of-court statements are generally deemed reliable and trustworthy.[28]**

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[22] Costantini, Cristina, and Elise Foley. 2012. "Anastasio Hernández-Rojas Death: Border Patrol Tasing Incident Complicated by New Footage (VIDEO)." *Huffington Post*, April 20.
[23] Id.
[24] Id.
[25] Caulfield, Philip. 2012. "PBS Airs New Footage in Case of Illegal Immigrant Killed at Border (VIDEO)." *New York Daily News*, April 23.
[26] Costantini, Cristina. 2012. "Anastasio Hernández Rojas Death Sparks Nationwide Call For Justice in Alleged Border Patrol Abuse." *Huffington Post*, May 4, 2012 (updated August 7, 2012).
[27] Spagat, Elliot. 2012. "Grand Jury Probes Anastasio Hernández Border Death." *KPBS*, July 12.
[28] Fed. R. Evid., 803 (1) & 803 (2).

**In the event of a civil rights deprivation criminal prosecution, the government lawyers must contend with Hernández's enlarged heart and methamphetamine consumption. Methamphetamine causes increased heart rate and blood pressure and can cause irreversible damage to blood vessels in the brain, producing cerebral vascular accidents (strokes).[29] Those eventually accused in a criminal trial and those who face civil litigation will likely claim the methamphetamine caused his fatal heart attack.**

**The federal prosecution, if it ever occurs, and it should, will have to deal with these medical and social issues of Hernández's bad heart and his drug use, which may have been a small or a large amount of methamphetamine. Reports in the press have not been clear as to what amount he consumed or its effect. At the time the agents and Hernández had their encounter, however, the agents did not know Hernández consumed drugs or that he had an enlarged heart. In other words, the heart condition and drug use is irrelevant to the fact that officers acting under color of law summarily punished Hernández and, in the process, violated his civil rights. The appellate courts have universally held that the resulting death only has to be a proximate or foreseeable result of the wrongdoer's willful violation of the victim's rights.[30] Any factors that contribute to a quicker death obviously are relevant to a determination of an appropriate punishment.**

**The applications of the painful Taser stun gun, in addition to the baton strikes Hernández sustained, constitute a deprivation of a person's right not to be punished without due process of law. The relevant statue provides: "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death."[31]**

**If death results, the punishment ranges from one year to a maximum period of life in prison. The likelihood of a death sentence in this type of case is minimal. In determining intent, jurors are often confused by the intent issue as it relates to the violation of one's rights and the resulting death. In other words, the federal prosecutor, in a criminal civil rights deprivation trial, does not have to prove the person acting under color of law acted with the intent to kill. A prosecutor only has to prove that the agent acted with the intent to deprive the victim of his right not to be deprived of liberty without due process of law.**

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[29] Methamphetamine. 2005. "Child Welfare Manual, Section 7: Glossary/Reference, Chapter 27: Methamphetamine ("METH") Use." July 12. http://dss.mo.gov/cd/info/cwmanual/section7/ch1_33/sec7ch27.htm.

[30] United States v. Hayes, 589 F.2d 811, 820 (5th Cir. 1979).

[31] 18 U.S.C. § 242 (Deprivation of rights under color of law).

**Once that is shown, the penalty increases if the death resulted in any way from the deprivation.**

**As an appellate court stated in a civil rights case, "No matter how you slice it, 'if death results' does not mean 'if death was intended.'"[32] If a federal agent, in order to teach Hernández a lesson for resisting arrest, as the reports suggest, beats him and applies electric shocks multiple times while he is restrained, this conduct violates the deprivation of a right to due process which the Constitution guarantees to all "persons."[33] In a case where death results from a deprivation of rights, the punishment range is the only aspect of the statute that is affected.**

**Other legal concepts implicate a person's initial improper actions. Our law recognizes that the wrongdoer takes the victim as he finds him. In addition, our law recognizes what is called the acceleration theory, i.e., the idea that a wrongdoer can engage in an act which hastens or speeds up the inevitable result. If an agent's act accelerated Hernández's death, then he can be found criminally liable. Hernández's heart condition independently could cause medical problems. Even if Hernández was on the verge of death, American criminal law nonetheless permits a finding of culpability if his death is accelerated. Once again, these facts all go to the assessment of punishment and do not or should not relate to the issue of guilt.**

**What role the electric shocks played in Hernández's death will perhaps remain a mystery, but medical studies indicate risks increase when Tasers are applied to persons suffering from heart problems or to anyone when the Taser is applied to the chest. For example, in August 2013, a healthy 18-year-old man ran from police after painting graffiti. The youth died from cardiac arrest within minutes after the officer applied a stun gun to his chest.[34]**

**Stun guns are used to physically incapacitate a person by discharging controlled electrical energy into the body with the intent to provide a safe means of subduing an uncooperative person.[35] A team of Canadian medical doctors and other scientists conducted a study and determined that stun guns stimulate cardiac muscle in addition to skeletal muscle, thus potentially promoting lethal cardiac arrhythmias. While primarily utilized to impact motor function, intense pain is a collateral effect of the application of a stun gun. These experts observe that, depending on pre-existing defects (e.g., a previous heart attack, drug intoxication), each person's heart may have a different susceptibility to life-threatening arrhythmia during stimulation.[36]**

**The Canadian experts utilized real stun guns operated by qualified law enforcement personnel to test the effects on a pig's heart. They confirmed that stun gun discharges on the chest can stimulate the heart. They thus found it inappropriate to conclude that stun gun discharges cannot lead to adverse cardiac consequences in all real world settings. As a**

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[32] United States v. Hayes, 589 F.2d 811, 821 (5th Cir. 1979).
[33] U.S. Const. amends. V, XIV.
[34] Fagenson, Zachary. 2013. "Miami Teen Graffiti Artist Dies after Being Tasered by Police." *Reuters*, August 8. http://www.reuters.com.
[35] Nanthakumar, Kumaraswamy, and Stephane Massé. 2008. "Cardiac Stimulation with High Voltage Discharge from Stun Guns." *Canadian Medical Association Journal* 178: 1451–57.
[36] Id.

**result, they recommend future studies involving people in order to resolve the conflicting theoretical and experimental findings and ultimately lead to the design of devices with electrical pulses that cannot stimulate the heart.[37]**

**After 3 stun gun-related deaths in Houston, Texas, a review of Taser usage found that deputies appear to disregard national guidelines or product warnings in 3 key areas: stunning suspects in the chest, using Tasers against people who are not physically resisting, and stunning subjects multiple times.[38] Even though the Taser manufacturer has warned law enforcement agencies to avoid stunning suspects in the upper chest over concerns of an adverse effect on the heart, officials with the sheriff's office in Houston say chest hits are safe.[39]**

**As to Hernández, considering what he endured in the custody of the federal agents, his death was foreseeable. Although he was only 42 years old, he experienced electric shocks from a stun gun and severe physical injuries, which included broken ribs associated with brutal force. His injuries were admittedly aggravated by his own debilitating health conditions. One thing is clear: Anastacio Hernández-Rojas would have continued to live if his rights had not been violated. Whether he would have lived one day, one month, or one more year and then suffered a fatal heart attack is irrelevant. As the medical examiner stated, Hernández died from the totality of the experiences he suffered.[40]**

**Many Latino activists fear that the "just another Latino" attitude will prevail, with nothing being done to vindicate the deprivation of the rights of Anastacio Hernández-Rojas. It has happened before in recent history. Houston police officers drowned the heavily intoxicated Army veteran Jose Campos Torres in 1977 and the federal judge granted the police probation, discounting completely the life of a Mexican from the barrio. Even the renowned journalist Ruben Salazar proved to be an invisible Latino. During the 1971 anti-Vietnam march, police used excessive force against Latinos. Salazar, a Los Angeles Times reporter, took cover in a café and received a fatal head injury from a tear gas canister fired directly into a crowd in violation of instructions.**

**Mexican Americans and other Latinos also encounter discriminatory treatment in state and local police enforcement of criminal and other laws. This treatment, combined with prejudicial attitudes among some police officers, often leads to psychological and physical injury, with the latter at times resulting in death. Like other minority groups, Latinos encounter difficulties in convincing grand juries to return indictments for an officer's use of excessive force and the violations of civil rights.**

**Negative experiences at the hands of law enforcement have been documented during the entire U.S. Latino history. These northward travels from Mexico and Central America have made their presence felt all over the United States. Latinos have made their presence known not only in the South but also in the North along the border with Canada. In 1928 Chicago, Illinois, an estimated 30,000 Latinos, mostly men, were employed in steel plants,**

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[37] Id.
[38] Pinkerton, James. 2011. "Taser warnings go unheeded among Harris County deputies." *Houston Chronicle*, June 27, at A1.
[39] Id. at A1, A8
[40] Moran, Greg. 2013. "Agents Give Their Account of Border Death." *U-T San Diego*, June 2.

**meat-packing plants, and on the railroads.[41] Today, that initial migration, along with the increased Mexican immigration and the migration of a significant Puerto Rican population, has converted South Chicago into a distinguishable Latino neighborhood whose principal thoroughfare includes several miles of Latino-named businesses.**

**Cultural and racial conflict unfortunately led to hostile police and Latino community relations. Sociologist Paul S. Taylor refers to incidents where persons of Mexican descent complained of arrests for allegedly being drunk in public while those of Polish descent were just told to go home to sleep it off. An Anglo observed that Polish men get drunk too, but the press highlights the conduct of the Mexicans who police arrest, contributing to the stereotype that Mexicans are drunks. Taylor also documented Mexican complaints that police discriminatorily focus on their alleged misbehavior, a claim corroborated by the fact that misdemeanor convictions among Latinos included 67% on disorderly conduct charges.[42]**

**The noted Chicano historian, Rodolfo Acuña documents the endless abuses of Latinos by the Texas Rangers and other law enforcement agencies.[43] Francisco E. Balderrama and Raymond Rodriguez provide incredible documentation of the immigration enforcement abuses of the 1930s, including cases where federal agents collaborated with local police and sheriffs.[44] Little has changed during 80 years, with collaborations continuing by virtue of federal law which allowed enforcement agreements with local police. Arnoldo De Leon documents injustices at both the vigilante level and police assistance for anti-Latino private efforts during the 19th century in Texas.[45] David Montejano emphasizes the use of police forces to crush labor organizing and commercial competition efforts.[46] Regrettably, documented cases of police abuse continue even though abusive and lawless cops have been prosecuted over the years.[47]**

**An extreme example of police abuse against Latinos occurred in 1943 on the West Coast. A group of Latinos wearing zoot suits allegedly attacked Anglo sailors on leave. Another version alleges that white military men instigated the brawl by ridiculing the Latinos' gaudy attire.[48] The sailors returned to their ship. Shortly thereafter, military men of all branches entered the East Los Angeles (East LA) *barrio*. The military men looked for anybody that fit the description of a "zootsuiter." Once they identified one, the military**

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[41] Cortes, Carlos E., ed. 1974. *The Mexican American and the Law*. "The Mexican Immigrant". New York: Arno Press.

[42] Ibid.

[43] Acuña, Rodolfo. 1972. *Occupied America: The Chicano's Struggle toward Liberation*. Pp. 34-41; 46-52; 253-54; 269-70. San Francisco: Canfield Press.

[44] Balderrama, Francisco E., and Raymond Rodriguez. 1995. *Decade of Betrayal: Mexican Repatriation in the 1930s* at 55. Albuquerque: University of New Mexico Press.

[45] De Leon, Arnoldo. 1983. *They Called Them Greasers: Anglo Attitudes toward Mexicans in Texas, 1821-1900*, at 87-102. Austin: University of Texas Press.

[46] Montejano, David. 1994. *Anglos and Mexicans in the Making of Texas: 1836-1986*, at 113-25. Austin: University of Texas Press.

[47] Morales, Armando. 1972. *Ando Sangrando (I Am Bleeding): A Study of Mexican American—Police Conflict* 20-46; 67-73. La Puente, CA: Perspectiva Publications; Paredes, Américo. 1958. *"With His Pistol in His Hand": A Border Ballad and Its Hero* 58-64. Austin: University of Texas Press; Rosales, F. Arturo. 1999. *Pobre Raza!: Violence, Justice, and Mobilization among México Lindo Immigrants, 1900-1936* at 75-93. Austin: University of Texas Press.

[48] Los Angeles Zoot Suit Riots, available at http://www.laalmanac.com/history/hi07t.htm, last visited on July 9, 2013.

**men and civilian companions stripped, humiliated, and beat the Latino men because of the actions of a few.[49] The Los Angeles Police Department (LAPD) basically declared the crisis to be a military matter while the military police claimed they lacked jurisdiction to act on civilian turf in what became known as the Zoot Suit or *Pachuco* Riots.**

**Media reported the events with an anti-Latino malice. The Los Angeles Herald Express reported that 200 Navy men formed a task force and launched a reprisal attack on zoot suit "gangsters" in East LA. Time Magazine reported that LAPD officers, with orders from their superiors to accede to the military police to handle the rioting men in uniform, accompanied the military taxi caravans in police cars, watched the beatings, and then jailed the Latino victims.[50] Once the Mexican government protested, the attacks ended.**

**Earl Warren, who 10 years later would assume the position of Chief Justice of the U.S. Supreme Court, served as governor during the Zoot Suit episode. He appointed a commission to assess what occurred between Americans, right in the middle of a war that all, regardless of ancestry, fought as one united nation. Even though city officials denied allegations of racism, Governor Warren's commission found violations of the rights of Mexican Americans. Warren specifically stated that he would protect the "lives and property of all people, regardless of race or creed."[51]**

**Latinos have sadly been victimized throughout the years. Federal prosecutors file charges against officers of all races and ethnicities who literally take the law into their own hands and violate the rights of people in their custody. In some cases, both the offenders and the victims are Latinos. Exemplary cases include *United States v. Morales*,[52] where a jury found the La Joya, Texas Chief of Police guilty of perjury for his denial under oath of having engaged in an assault of a handcuffed prisoner. A patrol officer had provided the federal prosecutor with a recording of an incriminating telephone conversation in which Chief Morales urged the officer to represent under oath that Morales had used only reasonable force to subdue the unruly drunk. He persisted in his denial of using excessive force. In *United States v. Contreras*, the jury convicted a Hidalgo, Texas police officer for conspiring with Mexican agents to have a U.S. citizen falsely arrested, abducted, and taken by force into Mexico.[53] In a final exemplary case, *United States v. Ramos*,[54] after a high speed chase, a McAllen, Texas supervisor assaulted the detained driver and instructed his officers to claim they did not see anything.[55]**

**Civil Remedies for Vindication of Civil Rights Deprivations**

**Civil litigation to seek vindication for civil rights violations has become a necessary alternative since prosecutors at both the state and federal level often decline to prosecute lawless cops. Once the Court held in *Monell v. Department of Social Services* that**

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[49] Acuña, Rodolfo. 1972. *Occupied America: The Chicano's Struggle toward Liberation* 203-08. San Francisco: Canfield Press.
[50] Morales, Armando. 1972. *Ando Sangrando (I Am Bleeding): A Study of Mexican American—Police Conflict* 16. La Puente, CA: Perspectiva Publications.
[51] Acuña, Rodolfo. 1972. *Occupied America: The Chicano's Struggle toward Liberation* 207. San Francisco: Canfield Press.
[52] 675 F.2d 772 (5th Cir. 1982).
[53] No. 82-2172 (5th Cir. Nov. 24, 1982) (Per Curiam).
[54] Criminal No. 81-775 (S. D. Tex., Brownsville Div. 1982).
[55] Hanners, David. 1982. "Deadlocked Jury Get the 'Dynamite' Charge." *Brownsville Herald*, January 18.

**municipalities can qualify as "persons"[56] for civil rights liability purposes, victims have resorted to hiring excellent lawyers to recover damages and, in the process, to convince the taxpaying citizenry to demand more supervision of officers from sheriffs, police chiefs, and mayors. Several reasons emerge for the high rate of non-prosecutions of officers. First, prosecutors usually note the need to maintain a good working relationship with cops since they are the ones who investigate and make the cases against the murderers, robbers and rapists. Second, other prosecutors want to win and prefer not to blemish their success record by taking on a tough case against an accused officer. Finally, if the prosecutor has political ambition and wants to become a judge, an unpopular prosecution or litigation against an officer accused of violation of civil rights may contribute to thwarting the dream of judicial service. It happened to Samuel Paz, a prominent civil rights attorney in California whose federal bench nomination fizzled when President Clinton succumbed to pressure from police organizations and withdrew his nomination in the 1990s.**

***Lucero v. Donovan*** **addresses an all-too-common stereotype: all Latinos are from Mexico and all Latinos are "illegals." In reality, Mexican-descent Americans account for only 60% of the Latino population.[57] Even the large U.S. undocumented population is not exclusively Latino. Some members of society, however, see the issue as one involving "Mexicans." In the *Lucero* case, Irene Lucero, a U.S.-born citizen, sued LA police officers under the civil rights deprivation statute[58] after being subjected to the trite "go back to Mexico" insult when she demanded respect after an unauthorized police entry into her home.[59] LA officers entered Lucero's home with questionable consent from her intoxicated brother and without any probable cause to believe narcotics existed in her home.**

**When Ms. Lucero demanded a search warrant, the officer made the rude statement about Mexico. She expressed her anger, and they arrested and handcuffed her. The officers seized a bottle of pills. Since the pills proved to be lawfully possessed medications, the jail released Lucero the next morning.[60] However, Ms. Lucero experienced the humiliation of being subjected to a degrading strip search.[61]**

**The appellate court found that the police lacked authority either to conduct a search without a warrant or to conduct a search incident to the arrest of Ms. Lucero's brother. They also lacked probable cause to arrest her. As a result, her allegations should have been submitted to a jury for resolution.[62] According to the appellate court, finding blue and yellow capsules in an unmarked bottle in Lucero's kitchen does not constitute probable cause to believe Ms. Lucero was in possession of a drug.[63]**

**Beginning in 1966, the United Farm Workers Organizing Committee, AFL-CIO, engaged in union recruitment efforts of the predominantly Mexican-descent agricultural**

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[56] Monell v. Department of Social Services of City of New York, 436 U.S. 658 (1978).

[57] Logan, John R., and Richard N. Turner. 2013. "Hispanics in the United States: Not Only Mexicans." March 20. http://www.s4.brown.edu/us2010/Data/Report/report03202013.pdf.

[58] 42 U.S.C. § 1983 (2006).

[59] Lucero v. Donovan, 354 F.2d 16, 18 (9th Cir. 1965).

[60] Ibid.

[61] Ibid., 19.

[62] Ibid., 21-22.

[63] Ibid., 21.

**workers in the South Texas Rio Grande Valley.[64] The Valley historically served as an area where Anglos made every effort to keep Mexicans "in their place," including the maintenance of separate Mexican schools. The reactions to Latino abuses included retaliatory attacks by Juan "Cheno" Cortina against police and Rangers in the Brownsville, Texas area. In San Antonio, another substantial Latino-populated area, Anglos threatened Juan N. Seguin, notwithstanding his service as a captain of the Anglo rebels in the 1836 Texas Independence War. The threats forced him to flee to Mexico in 1842.[65] Eventually, *La Raza*, this so-called "sleeping giant," awoke and began to demand fairness and justice, concepts that Anglo ranchers did not deem appropriate for "Mexicans."[66]**

**In pursuit of their objectives, the Texas Valley farm workers called for strikes, picket lines, rallies, and demonstrations to enlist nonunion laborers. These activities provoked strong emotions among the growers, resulting in acts of violence and illegal arrests of the workers.[67] Soon, local and state authorities initiated prosecutions under various state laws. At one point, a state district judge ordered the end to all pro-strike picketing.[68] During the activities, a railroad bridge suffered partial burn damage, prompting the Missouri-Pacific Railroad to request Texas Rangers assistance to preserve law and order.[69]**

**Texas leaders formed the Texas Rangers in the 1830s to patrol the border and to combat Mexicans, whom Anglos categorized as violent bandits and cattle rustlers. Ranger atrocities and murders committed against the Mexican population in the early years of Texas history prompted Latinos to refer derisively to the Rangers as *Rinches Cobardes*, the last word meaning "cowards" and the other word connoting "rangers" in the Tex-Mex Spanish dialect.**

**Ranger mistreatment of Latinos continued through the early 1970s when federal judges in *Medrano v. Allee*[70] utilized the injunction provisions of the federal civil rights act to order an end to the state police force's abuses. The three-judge panel in *Medrano* ordered the termination of the state prosecutions of the farm workers and their companions and also enjoined the Rangers from interfering with labor disputes.[71] Prompted by the union-busting tactics by the combined efforts of Rangers, local police, and public officials, the farm workers' litigation sought to address violations of the First and Fourteenth Amendment rights of workers. The organizers also questioned the constitutionality of certain state statutes and requested a halt to their enforcement. The federal court judgment favored the farm workers by holding certain statutes unconstitutional and protecting their federally-protected constitutional rights.[72] Simply**

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[64] Medrano v. Allee, 347 F. Supp. 605, 609-10 (S.D. Tex. 1972), aff'd in part and vacated in part, 416 U.S. 802 (1974).

[65] Novas, Himilce. 2008. *Everything You Need to Know About Latino History* 81-83. New York: Penguin Group.

[66] Castro, Rafaela G. 2000. *Chicano Folklore: A Guide to the Folktales, Traditions, Rituals and Religious Practices of Mexican Americans* 138. Oxford: Oxford University Press.

[67] Medrano v. Allee, 347 F. Supp. 605, 612-17 (S.D. Tex. 1972).

[68] Ibid., 610.

[69] Ibid., 612.

[70] Ibid., 609-10.

[71] Ibid., 610, 615, 634.

[72] Ibid., 617-18.

**stated, the Rangers and those who collaborated with them stepped over the line of neutral law enforcement and took sides in the labor controversy.[73]**

**Briefly, Texas Rangers arrested 10 strikers for allegedly attempting to block a train carrying produce.[74] Shortly thereafter, the Reverend Edgar Krueger and 3 others organized pickets. The Rangers then arrested Krueger and another union member, Magdaleno Dimas, and engaged in the intimidating tactic of holding their faces inches from a passing train.[75] Allee later arrested Dimas for allegedly brandishing a gun in a threatening manner. The Rangers had neither an arrest warrant nor a formal complaint on which a warrant could be based, so they put in a radio call for a justice of the peace to prepare a warrant. Upon obtaining the warrant, the Rangers approached the house. Without saying a word, Captain Allee jabbed a man present at the Dimas home in the ribs with his shotgun barrel.[76] The Rangers thereafter broke into the house and arrested Dimas and his friend in what the court described as a "violent and brutal"[77] fashion.**

**Captain Allee admitted that he struck Dimas on the head with his shotgun barrel, but he testified that neither man was hit or kicked at all except for that one blow.[78] Allee added that both men fell when they attempted to run from the room. In the process, they collided with a door and each other at the same time. Dimas remained hospitalized 4 days with a brain concussion. X-rays revealed that he had suffered such a hard strike to his back that his spine was curved out of shape. The judge expressed serious doubts that 2 grown men could suffer the extensive injuries in the fashion described by Allee.[79]**

**Some consider police brutality a horror of the past, but unfortunately this is not the case. Physical injustices against Latinos and others continue. In Los Angeles, Kam Santos was staggering down the street in an intoxicated state when he was allegedly tackled by LA police officers.[80] Mr. Santos, a man with a history of mental illness, was stopped because he fit the description of a burglary suspect.[81] During the takedown, Santos did not remember exactly what transpired, but remembered yelling, "Why did you have to break my back?"[82] The medical evidence included an x-ray which revealed a recent compression fracture of his L-2 vertebra.[83]**

**As is common in police-civilian encounters, the respective descriptions differ. The arresting officer claimed he "walked up" and grabbed Santos's wrists to handcuff him, but Santos slumped to the ground. He added that to prevent Santos from hitting his head on the sidewalk, he grabbed his arm and shoulder and "guided" Santos to the ground.[84]**

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[73] Ibid., 618.
[74] Ibid., 615.
[75] Ibid.
[76] Medrano v. Allee, 347 F. Supp. 605, 616-17 (S.D. Tex. 1972).
[77] Ibid., 616.
[78] Ibid., 617.
[79] Ibid.
[80] Santos v. Gates, 287 F.3d 846 (9th Cir. 2002).
[81] Ibid., 849.
[82] Ibid., 848.
[83] Ibid., 850.
[84] Ibid., 849.

**After a brief trial, the judge concluded that since Santos "did not specifically remember being forced to the ground," he could not prove excessive force.[85] As a result, the judge dismissed the case, depriving Santos of the opportunity for a jury to decide whether the officer had utilized excessive force. The medical evidence clearly established that extreme force had occurred, whether justified or not.[86] With all due respect, the *Santos* case judge apparently forgot basic evidentiary principles which permit as probative evidence both direct (eyewitness) evidence and circumstantial or indirect evidence (scientific proof, such as a fingerprint).**

**Clearly, the medical evidence in *Santos* proves indirectly that someone used extreme force. The officer was the only one who had contact. He claimed that he gently grabbed Santos to handcuff him. Then, as Santos went to the ground, he tenderly helped him to avoid his head hitting the street surface. The trial jury could easily have determined, based on the totality of the evidence, that the officer's version was untruthful and that he used excessive and therefore unreasonable force that led to the severe injury. This version is particularly substantiated by the officer's claim that Santos did not provide any major resistance and the doubtful assertion that he did not use substantial force in his contact with Santos.**

**The appellate court reversed and returned the case to the trial court, concluding that there was more than enough evidence from which the jury could reasonably have found liability.[87] Although Santos does not recall what the officer did, he does recall the pain and yelling at him about breaking his back.[88] The appellate court held that when the disputed facts and inferences are treated in the manner required by law, a jury could properly find an unreasonable seizure occurred under the Fourth Amendment.[89]**

**In Santos's second opportunity, the jury ruled against him. He then sought to appeal *pro se*, serving as his own counsel, without any professional assistance. He contended that the jury's finding was unsupported by the evidence and that judicial bias, jury bias, and ineffective assistance of counsel tainted the outcome.[90] The appellate court dismissed the appeal for failure to provide a transcript, but Santos asserted he was financially unable to provide a transcript and the judge had denied his application to proceed *in forma pauperis*.[91] The appellate court justified its decision since Santos "made only conclusory statements about the issues he would raise on appeal."[92] Not surprisingly, a person who is somewhat challenged in not only his day-to-day life but also his mental abilities and intellectual powers will have a difficult time addressing legal issues.**

**In 1997, Ricardo Perez, a City of Miami police officer, shot Juan Pablo Hernandez in the back as he was running away. The shooting victim then filed a civil rights lawsuit**

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[85] Ibid., 851.

[86] Ibid., 850.

[87] Ibid.

[88] Ibid., 851-52.

[89] Ibid., 856. In Graham v. Connor, 490 U.S. 386, 394-95 (1989), the Court held that claims alleging excessive force by officers in seizing a person were properly analyzed under the Fourth Amendment's "objective reasonableness" standard.

[90] Santos v. Gates, 141 Fed. Appx. 534, 2005 U.S. App. LEXIS 14250 (9th Cir. July 13, 2005).

[91] Ibid.

[92] Ibid.

**against Perez and the city for damages.[93] The facts establish that during daylight hours and good visibility, Perez, while on patrol, saw Hernandez walking in a middle class neighborhood not regarded as a "high crime" area. Perez noticed Hernandez fumbled around with his waistband and froze momentarily when they made eye contact. Although Officer Perez neither saw a gun nor believed Hernandez had committed a crime, Hernandez actually had a gun in his waistband. The officer's only perception was that Hernandez was acting suspiciously.[94]**

**Officer Perez, still in his patrol car, told Hernandez to stop and ordered him to approach the car and to pull his shirt up. Hernandez complied, raised his shirt, took the gun from his waistband so that the barrel was pointed down, and released the gun inside the open front passenger window. Hernandez then immediately turned and started running. While sitting in the driver's seat, Officer Perez fired and wounded Hernandez.[95]**

**Officer Perez requested summary judgment and unsuccessfully asserted his defense of qualified immunity. Essentially, Perez claimed that his use of deadly force had not been clearly established to constitute a violation of the victim's constitutional right to be free from excessive force. The judge, however, determined that Hernandez's rights were clearly established in that "it would have been clear to a reasonable officer that the defendant's conduct was unlawful."[96] Stated another way, the development of the law as to an officer's right to use deadly force gave Perez "fair warning" that his conduct was unconstitutional.[97]**

**The standard for a Fourth Amendment excessive force claim is objective reasonableness from the "perspective of an officer on the scene."[98] In a previous ruling, the Supreme Court held the use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable.[99] Specifically, where the suspect does not pose an immediate threat to the officer and others, the failure to apprehend him does not justify shooting to kill him.[100] As to whether Officer Perez's conduct was unlawful, the court concluded that qualified immunity applies unless "the use of deadly force would have been seen as plainly unlawful by all objectively reasonable officers."[101] Relying on Hernandez's version, no objectively reasonable officer in Officer Perez's position could have reasonably believed the officer could lawfully use deadly force to apprehend Hernandez.[102]**

**The Texas Rangers and the Latino Community**

**Early tales of Anglo-Mexican relations reveal horrific violence by Anglos against persons of Mexican descent.[103] The controversies often centered on desires to acquire land,**

[93] Hernandez v. City of Miami 302 F. Supp. 2d 1373, 1374 (S. D. Fla.).
[94] Ibid., 1375.
[95] Ibid.
[96] Ibid.
[97] Ibid.
[98] Ibid., 1376.
[99] Tennessee v. Garner, 471 U.S. 1, 11-12 (1985).
[100] Hernandez v. City of Miami 302 F. Supp. 2d 1373, 1376 (S. D. Fla.).
[101] Ibid., 1379.
[102] Ibid.
[103] Montejano, David. 1994. *Anglos and Mexicans in the Making of Texas: 1836-1986*, at 26-37. Austin: University of Texas Press.

**cattle, and other livestock owned by Latinos. In addition to the violence from whites, Latinos suffered law enforcement brutality. The Texas Rangers were notorious among the police outlaws, those who abused and misused their authority. The Rangers developed a reputation for shooting first and determining later if the Mexican was armed.[104] Many complaints indicate the Rangers knew that the person they shot to kill was not a threat to them. In the early days of the Anglicization of Texas and through the 1960s, the aura surrounding the Rangers allowed them to abuse and kill with impunity.**

**Anglo land speculators and Midwestern farmers moved in large numbers to the Valley during the early 1900s. These newcomers brought their socioracial prejudices with them. "Foreigners" and dark-skinned people were not to be trusted. The term "American" became a synonym for "white" and any brown-skinned person was a "Mexican" regardless of origin.[105] In one exemplary case, the acquisition of land motivated killing 2 members of the De La Cerda family in Brownsville, a prosperous ranching family. The De La Cerdas had the misfortune of living next to Richard King, a cattle baron who desired to expand his holdings. Three Rangers killed one of the sons, claiming that he allegedly shot at them while in the act of stealing cattle (Paredes 1958, 29-30).**

**Alfredo, the brother of the deceased, escaped into Mexico. A few months later, Alfredo returned and put the word out concerning a revenge bounty. However, Ranger A. Y. Baker shot first, shooting Alfredo in the back. The murder occurred while the unarmed Cerda stood at the doorway talking to the owner of a downtown Brownsville store (Ibid.). The blatantly unjustifiable shooting led to a murder charge for Ranger Baker. Perhaps the real parties in interest were those who posted bail for the Ranger: The King Ranch interests, specifically Richard King and Major John Armstrong (Acuña 1972, 40).**

**The Plan de San Diego: Retaliation and Justification for More Racial Violence**

**In 1915, the Texas Rio Grande Valley experienced a brief revolt of mostly U.S.-born Latinos who sought to reclaim the area for Mexico. The uprising, known as the Plan of San Diego, lasted slightly more than a month. Nonetheless, a frenzy of shootings and lynchings by Texas Rangers and local Anglo vigilantes raged across the Valley for years after the conflict ceased, taking over 3,000 lives (McLemore 2004, A1). The rebellion aggravated race relations, resulting in Latino-Anglo segregation in housing, schools, swimming pools, and other public accommodations through the 1970s (Paredes 1958, 29-30; Perales 1974, 137-213).**

**The San Diego rebellion began when armed rebels attacked an Anglo's ranch, killing the owner and his adult son. Scattered attacks on other ranches occurred over the next few months. Panic among Anglos led to the creation of vigilante groups. Large landowners then asked the governor for assistance, and the Rangers moved in and launched a reign of terror in which being "Mexican" sufficed for being a threat to Anglo life. Both the guilty and the innocent were turned over to the Rangers, who utilized lynchings and impromptu firing and left the bodies to teach Latinos a lesson as to what happens to those who threaten Anglo-dominance (McLemore 2004, A1). Another Ranger execution involved a Latino who refused to leave his Valley ranch (Acuña 1972, 41). The unarmed man received Ranger gunfire. When his sons ran to care for him, the Rangers killed both as well (Paredes 1958,**

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[104] Paredes, Américo. 1958. *"With His Pistol in His Hand": A Border Ballad and Its Hero* 23-32. Austin: University of Texas Press.

[105] McLemore, David. 2004. "The Forgotten Carnage 89 Years Ago, Rangers Singled Out Hispanics, and Thousands Died." *Dallas Morning News*, A1, November 28.

**27). Historian Acuña (1972, 36-40) viewed the Rangers as uniquely serving a lethal function against Latinos.**

**Since similar attacks and lynchings of Latinos continued, State Representative J. T. Canales demanded an end to Ranger and vigilante oppression of Latinos of the lower Rio Grande Valley. In January 1918, he filed 19 charges against this Ranger violence and demanded a reorganization of the force. In response, a Texas Ranger threatened the legislator. As a result, Canales, a descendant of another rebel, Juan "Cheno" Cortina, opted not to seek reelection in 1920 (Anders 2010). For 2 months, witnesses gave testimony about Ranger brutality during the San Diego revolt.**

**Rangers also engaged in "revenge by proxy" by eliminating innocent persons in a process aimed at controlling Latinos.[106] For example, if a person of Mexican descent was wanted for a crime, or if a Ranger merely sought to retaliate against a particular individual, the Ranger would shoot and kill someone close to that person.[107] The Texas Rangers' terroristic approach expanded quickly to other law enforcement officers in the Southwest where lawless cops began operations in the newly-conquered territories.**

**By law, the use of excessive force to arrest an individual is prohibited. Force necessarily has to be used during an arrest. If that person resists arrest, then the amount of force necessary to control and detain the person increases. However, it should never rise to the level where the force is "for the purpose of giving any peace officer the opportunity of wreaking the public's or his personal vengeance upon the prisoner."[108] Unfortunately, this type of excessive force sadly epitomized the force which has been not only historically but also recently applied against Latinos.**

**As of the 2000 census, Los Angeles, California represented the largest Mexican-descent city outside of Mexico with a Latino population of 1.7 million.[109] The city also is well-known for its notorious police brutality. Since time immemorial, the city has been known for its unprofessional and sometimes clearly racist actions by police. To make matters worse, several LAPD police chiefs, by their management styles and disrespect for the rights of minorities, exacerbated the excessive uses of force.[110] One such case, a 1948 fatality, involved the shooting of 17-year-old Augustin Salcido by LA officer William J. Keyes.[111] Keyes, working outside his assigned patrol district, detained Salcido without probable cause. Why Keyes had a gun in his hand is puzzling since Salcido was not armed, and Keyes had a partner assisting him. Despite this domination, Keyes shot and killed Salcido with several shots to the head, one of them from such a close distance that Salcido had powder burns. Only 5 days later, the LA County Coroner's inquest returned a finding of "Justifiable Homicide" after only 5 minutes of deliberation.**

**In the foreword to the *Justice for Salcido* report, Carey McWilliams decried the majority group's process of suppression of the Latino community in order to monopolize**

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[106] Paredes, Américo. 1958. *"With His Pistol in His Hand": A Border Ballad and Its Hero* 26. Austin: University of Texas Press.

[107] Weber, David J., ed. 1973. *Foreigners in Their Native Land: Historical Roots of the Mexican Americans* 153-54. Albuquerque: University of New Mexico Press.

[108] U.S. Commission on Civil Rights. 1970. *Mexican Americans and the Administration of Justice in the Southwest* 2. Washington, DC: U.S. Government Printing Office.

[109] Gopel, Erik C., ed. *The World Almanac and Book of Facts 2005*, at 9. New York: World Almanac Books, 2005.

[110] Morales, Armando. 1972. *Ando Sangrando (I Am Bleeding): A Study of Mexican American—Police Conflict* 47-48. La Puente, CA: Perspectiva Publications.

[111] Cortes, Carlos E., ed. 1974. *The Mexican American and the Law*. "Justice for Salcido" New York: Arno Press.

**social, economic, and political power. McWilliams lamented that, as the size of the minority population grew, the majority began to use force to teach the minority a "lesson" as to their rank in society.[112] While the majority previously engaged in suppression by periodic lynchings, the approach evolved into "police brutality," killings, beatings, and other acts of violence protected from condemnation by the belief that police officers can do no wrong and that the "arm of the law" must be upheld at any cost.[113]**

**On August 29, 1970, Salazar covered a march against the war in Vietnam in his dual role as a *Los Angeles Times* columnist and as news director of the Spanish language television station in LA. Rosalío Muñoz, the UCLA student body president, and the National Chicano Moratorium Committee organized the event. Rodolfo Acuña, the renowned Chicano historian, and thousands more participated. Acuña himself was arrested, and he observed police use pepper spray on detainees. Acuña writes about "a row of gold helmets marching across the park," an incident witnessed by Dr. James Koopman of the UCLA Medical School.[114] Photographs taken by 2 *La Raza* newspaper photographers show people with helmets like those Dr. Koopman described. These photographs further establish that police confronted demonstrators outside the café where reporter Salazar sought refuge from violence that erupted during the anti-Vietnam rally.[115]**

**While Salazar sat inside the café, a county sergeant fired a tear gas projectile which struck him in the head.[116] The tear gas forced people out. When Salazar's colleagues noticed his absence, they unsuccessfully begged the officers to allow them to re-enter. Two hours later they found Salazar's body. Ruben Salazar died at the age of 42, leaving his wife and 3 daughters. Like other personalities, he was expected to continue his professional work and gracefully retire like Walter Cronkite. His death, unfortunately, became just another heartbreaking incident in Latino-police relations. Salazar had prepared to issue a news series regarding LA police-community relations. Entitled "What Progress in Thirty Years of Police Community Relations?," the series could today be incredibly repeated by merely changing its title to reflect current years.**

**Progress has been made in LA, notwithstanding continual cases of police abuses. Accountability has improved. LA, however, maintains its negative reputation by paying millions of dollars in damages because of incidents like the police violence and the unjustified use of pepper spray on Latino participants during the 2007 Immigration Day demonstrations. This most current police terror resurrected the ugly memories of Salazar's death during a police-initiated riot as well as the suffering of those who vicariously experienced the 1970 brutality.[117]**

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[112] Ibid., "Justice for Salcido."
[113] Ibid., "Justice for Salcido."
[114] Acuña, Rodolfo. 1972. *Occupied America: The Chicano's Struggle toward Liberation* 259-60. San Francisco: Canfield Press.
[115] Morales, Armando. 1972. *Ando Sangrando (I Am Bleeding): A Study of Mexican American—Police Conflict* 100, "Photographs." La Puente, CA: Perspectiva Publications.
[116] Los Angeles County Office of Independent Review. 2011. *Special Report, Review of the Los Angeles County Sheriff's Department's Investigation into the Homicide of Ruben Salazar* 2. February 22.
[117] Reston, Maeve and Joel Rubin. 2009. "Los Angeles to Pay $13 Million to Settle May Day Melee Lawsuits." *Los Angeles Times*, February 5; Chemerinsky, Erwin. 2001a. "An Independent Analysis of the Los Angeles Police Department's Board of Inquiry Report on the Rampart Scandal." Pp. 603-04. *Loyola of Los Angeles Law Review* 34: 545-655.

**Dallas, Texas—Police and the Death of a 12-Year-Old Handcuffed Kid**

**Although the Salazar case ended with no prosecution, the fatal shooting of 12-year-old Santos Rodriguez by Dallas police officer Darrell Cain resulted in a state murder charge. However, the ultimate disposition—a 5-year sentence—angered Latinos. In Cain v. State,[118] the jury convicted the Dallas police officer of murder with malice for shooting the handcuffed boy in the head during an attempt to get him to confess.[119]**

**The 1973 incident began when another officer observed 2 individuals behind a service station and recognized them as the Rodriguez brothers. The officer radioed their description and provided their home address. The officers arrived simultaneously. The 2 officers, Arnold and Cain, entered the house and arrested the 2 juveniles. David Rodriguez, Jr., 13 years old, testified that the officers handcuffed them behind their backs. Santos Rodriguez was placed in the front seat of the patrol car with Officer Arnold, and David was placed in the rear seat with Officer Cain. They were then taken to the service station.**

**When Officer Arnold asked Santos if anybody else had been with them, Santos replied they had not been at the station. David described how Officer Cain took out his pistol, opened the cylinder, and twirled it. David could see bullets in the cylinder and saw no empty chambers. Cain then shut the cylinder and aimed it at Santos's head. David observed no attempt to unload the pistol. Cain told Santos to tell them if he and his brother had burglarized the service station. When Santos denied the burglary, Officer Cain stated the pistol had a bullet in it and told Santos to tell the truth.**

**Officer Cain then clicked the gun and it fired, striking the handcuffed Santos in the head. Cain jumped out of the patrol vehicle and stated, "Oh, my God."[120] Cain's gun was taken from him by a third officer, Foster, within 10 seconds of the shooting.[121] An officer dusted for fingerprints at the service station. None of the prints recovered belonged to the Rodriguez brothers.[122] After the officer immediately took custody of Cain's pistol, he unloaded the weapon and found five live rounds and one empty cartridge.[123]**

**Cain contradicted the State's version at trial. He claimed he had unloaded the weapon and merely tried to "make him tell the truth."[124] He then picked up the bullets from his lap before leaving the car and reloaded the pistol before the investigator took the gun from him. The investigator who retrieved the pistol from him only seconds after the incident stated he did not observe Cain replace any bullets.[125]**

**The incredibly low sentence for this execution-type killing angered the Latino community. Again, the message was incredibly clear to many in the community: Latinos, including children, did not have much personal worth. Consequently, in 1978, LULAC and other civil rights groups urged the DOJ Civil Rights Division to prosecute Cain for**

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[118] 549 S.W.2d 707 (Tex. Crim. App. 1977).
[119] Ibid., 709.
[120] Cain v. State, 549 S.W.2d 707, 710 (Tex. Crim. App. 1977)
[121] Ibid.
[122] Ibid., 710-711.
[123] Ibid., 710.
[124] Ibid., 711.
[125] Ibid., 710.

**depriving Santos of his right not to be deprived of liberty without due process of law. The efforts proved unsuccessful.**

**Several factors influenced the federal government's refusal to charge Cain. First, and probably the strongest point, is that even though the sentence was inadequate, the Criminal Section of the Civil Rights Division must have concluded that the state handled the prosecution in good faith. Generally, when the effort is inadequate, i.e., not diligent, the federal government intervenes. A second factor which prompts federal intervention involves the presence of prejudice or irregular behavior among officials or the jury at the local level. Objectively, it appears the DA prosecuted the case properly. However, the low sentence indicates that something extraordinary occurred in the jury room. As in other cases, such as in the low sentence for the Torres drowning by Houston officers, the system places the officers in the position of victims over the deceased Latino.**

**In federal civil rights cases, the burden of proof requires that the accused act with the specific intent to violate a person's rights.[126] The Supreme Court has noted that a "generally bad purpose" is insufficient to meet the intent requirement.[127] In order to violate these statutory requirements, the accused must instead have a specific intent and must act willfully to violate a defined right.[128] Some believe Cain did not intend to shoot and kill Santos since he immediately appeared sorrowful. On the other hand, he definitely acted with the specific intent to deprive the child of his right to remain silent and not to be compelled to incriminate himself.[129] As a juvenile suspect, Santos possessed additional protections under the law.[130]**

**The DOJ misapplied its discretionary policy known as the "Dual and Successive Prosecution Policy (Petite Policy)") in a few basic regards.[131] First, a mere 5 year sentence for such a vicious act is zilch. What deterrence value can this sentence possibly convey to another wayward cop? Second, the state and the federal government have quite distinct interests. The state seeks to deter dangerous behavior that leads to the loss of life. The federal government, on the other hand, seeks to protect and encourage respect for constitutional rights. In seeking to force Santos to confess, Cain violated clearly established law. Aggravating the situation, Cain may have killed a completely innocent kid. The fingerprints found at the burglary did not match either of the Rodriguez brothers.**

**United States v. Hayes—The Unlawful Arrest and Shooting of Richard A. Morales**

**In 1975 Frank Hayes, the Castroville, Texas Chief of Police, directed his officer, Donald McCall, to arrest Richard A. Morales. He further ordered McCall to obtain the serial numbers from a stereo and TV set at the Morales residence to determine if these items were stolen, notwithstanding the absence of a search warrant.[132] McCall arrested**

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[126] United States v. Hayes, 589 F.2d 811, 820 (5th Cir. 1979).
[127] Screws v. United States, 325 U.S. 91, 107 (1945).
[128] United States v. Hayes, 589 F.2d 811, 820 (5th Cir. 1979).
[129] In Miranda v. Arizona, 384 U.S. 436 (1966), the Court, in an extremely well publicized opinion, dictated that a person in custody must be advised of his right to remain silent and to have a lawyer before interrogation occurs.
[130] In re Winship, 397 U.S. 358 (1970); Tex. Fam. Code art. 51.09 (2002) provides that juveniles have additional safeguards, such as informing the guardian/parent and taking the child before a magistrate for statutory warnings.
[131] The policy is derived from Petite v. United States, 361 U.S. 529 (1960) (Per curiam), which resulted in the successive prosecution policy which impacts criminal civil rights prosecutions like the Santos Rodriguez deprivation.
[132] United States v. Hayes, 589 F.2d 811, 815 (5th Cir. 1979).

**Morales, and he then obediently conducted a warrantless search. Hayes arrived shortly and called Morales a "thieving son of a bitch," told him numerous times that he was going to kill him, and struck him in the stomach with his fist.[133]**

**The officers took Morales and travelled down a gravel road to a deserted area. Hayes insisted that Morales confess to the location of stolen merchandise, or he would kill him. Hayes stated that he had killed one "Mexican" and was "fixing to kill" another one.[134] Hayes also directed all those who accompanied him to leave the scene. Hayes then pushed Morales with the barrel of the shotgun. As Hayes explained, the "shotgun discharged, killing Morales."[135] Obviously, shotguns do not discharge without the application of some force on the trigger. The rest of this horrific and inhumane treatment of a Latino involves concerted efforts by Hayes, his wife, and his sister-in-law to cover up the allegedly "accidental" shooting.[136] Hayes initiated the obstruction by falsely claiming that Morales escaped.[137]**

**Once authorities discovered the wife's burial of Morales's body, the state grand jury indicted Frank Hayes for capital murder, which was later reduced to murder. At the trial, the jury found Hayes guilty of aggravated assault and assessed a 10-year prison sentence. A federal grand jury thereafter returned an indictment charging Hayes with depriving Morales of the right to liberty without due process of law, resulting in his death.[138] A jury found Hayes guilty, and the federal judge later assessed a life sentence.[139]**

**Finally, the court concluded that deprivations of rights which result in death are clearly those that demand more severe punishment to deter dangerous conduct. The court further noted that an effort by an officer to force a prisoner to confess and who kills him while engaged in the persuasion process has obviously committed a deprivation of civil rights.[140] A comparison of the Morales to the Santos Rodriguez outcomes raises serious questions as to distinctions. Both involved efforts to extract a confession from a person in custody. Both involved the use of loaded weapons. Both involved extremely dangerous uses of these weapons. In Morales, Hayes used the barrel of the shotgun to push the victim. In Rodriguez's case, Cain used a loaded weapon to play his version of Russian roulette. Whether Morales and Rodriguez are guilty or not guilty should be irrelevant to the application of the dual prosecution policy. What is odd is that the DOJ took such a conservative approach where a child was the victim. Assessment of the lowest sentence in the most egregious of circumstances in and of itself should open the door to a dual prosecution in order to vindicate the right not to be forced at gunpoint to confess.**

**As traditionally occurred in the South involving black victims, juries mostly acquitted white defendants. In Texas, the largest state in the South, the jury, a major institution in our criminal justice system, apparently allowed stereotypes about Latinos and sympathy for the police officer to overcome their deliberations. If the jury permitted**

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[133] Ibid.
[134] Ibid.
[135] Ibid., 815-16.
[136] Ibid., 816.
[137] Ibid.
[138] Ibid.
[139] Ibid., 817.
[140] Ibid.

**irrelevant factors, such as the immigration or ethnic status of a victim of brutality, then the jury verdict is not rendered pursuant to their oath.**

**United States v. Denson—The Beating and Drowning of Jose Campos Torres**

**The facts of this horrific 1977 crime by several officers against Jose Campos Torres in Houston arise, in great part, from the author's personal knowledge. In October 1977, during his last days as a Harris County Assistant DA, the author heard testimony and oral argument during the state prosecution. Within a week of the verdict, he then began his assignment as a federal prosecutor in Houston. As part of his duties as a civil rights prosecutor, the author observed the federal trial which began in January 1978.**

**One of Houston's worst incidents of inhumanity began when a bar owner in a Houston *barrio* called police because of an unruly intoxicated man. Police arrested Torres for public intoxication (PI), indicating that he constituted a threat to himself or others. An Army veteran, Torres's attire included army fatigue pants and combat boots. His later toxicology report revealed a blood-alcohol concentration of .22, indicating the presence of at least 11 beers or ounces of liquor in his body. The cruelest aspect includes the fact that officers knew that a person intoxicated to this degree could not fend for himself. Yet, these culpable individuals, led by Stephen Orlando and Terry Wayne Denson, caused Torres to end up in a bayou.**

**Once arrested and placed in the police car, Torres became a pest and kicked at the windows while the officers chatted nearby. One officer suggested taking action to quiet Torres. Another then brandished a new service revolver. Still another officer remarked that the gun would be excellent for shooting "wetbacks" as they swam across the Rio Grande River. These insensitive and racist comments set the stage for the evening.**

**In retaliation for Torres's behavior, Orlando, who had custodial control over Torres, took the prisoner to "The Hole" at 1200 Commerce to teach him a lesson. The Hole, known by that name only to the cops, was a downtown location ironically a mere 2 blocks from the county's criminal courthouse. Practically hidden from street-level view, the Hole permitted 5 of the 6 police officers to beat the handcuffed Torres with clubs and flashlights in the dark of the early morning of May 5, 1977. The sixth officer, Carless Elliott, a rookie and son of a high-ranking detective, did not participate.**

**After the officers completed their "Ring around the Wetback"[141] beating, Officer Orlando took Torres to the city jail. The sergeant refused to admit the bloodied prisoner and ordered that he be taken to the hospital. Orlando disregarded the sergeant and radioed Denson to meet him at the Hole. The other 2 officers, Lewis Kinney and Glen Brinkmeyer, heard Orlando's call and appeared uninvited. Once all 6 officers reconvened, Torres's handcuffs were removed. Orlando then told Denson this would be a good time to see a prisoner in the water since he had expressed the desire one swim. Denson agreed, stating "Let's see if the wetback can swim" (Ibid.). Orlando and Denson escorted Torres to the edge of the lot overlooking Buffalo Bayou. Some officers, including Stephen Orlando, the**

[141] Special Prosecutor Erwin Ernst of Walker County used these words in final arguments at the state trial. The "wetback" term derived from an officer's reference to shooting people swimming across the river into Texas and the "ring" refers to the positions assumed by the rogue cops during the brutality.

**son of a homicide detective, claimed Denson pushed Torres into the bayou; others claimed Torres jumped in. Either way, the officers' intimidating actions violated his civil rights by causing Torres to end up in the water where his death was highly probable. Denson later justified his actions by complaining that the legal system was not punishing the criminals properly. He exaggeratedly complained that people he arrested would be "out the front door before I'd complete the paperwork" or their case would be dismissed on some technicality or they would receive a probated sentence.[142]**

**Beyond all doubt, the act of returning Torres to the scene of the beating and then marching him to the water's edge can only be interpreted as a vile and despicable act of instilling more fear, i.e., to punish him further in violation of his civil rights. Death predictably occurred, his bloated body surfacing a few days later. The autopsy revealed bruises on the head, body, stomach, and shins, consistent with the description of the beating he received.[143]**

**The state indicted Denson and Orlando for murder. By their verdict, the state jury acquitted the officers of murder and manslaughter. Instead, they found the officers guilty of negligent homicide, at the time a Texas misdemeanor which carried a maximum one-year jail sentence. To rub salt into the Latino community's wounds, the jury assessed a probated sentence with not a single day to serve in jail.[144] About 2 weeks after the state verdict, J. A. "Tony" Canales, the recently confirmed United States Attorney for the Southern District, had his newly-established Civil Rights Division take the Torres civil rights deprivation case to a federal grand jury. On October 20, 1977, the federal grand jury returned a 4-count indictment charging former officers Terry Wayne Denson, Stephen Orlando, Joseph James Janish, and Louis Glenn Kinney with violations of the civil rights deprivation and conspiracy statutes. Count One of the indictment, the most serious charge, accused the men with conspiring to injure, oppress, threaten, and intimidate Torres in the free exercise of his constitutional right not to be deprived of liberty without due process of law. The charge claims the officers struck Torres while he was handcuffed and asserts Denson then pushed Torres into Buffalo Bayou in Houston, Texas. Count Two charged Denson and other officers with willfully striking Torres, thereby depriving him of his constitutional right not to be deprived of liberty without due process of law.[145]**

**The federal prosecution commenced in January 1978. On February 8, 1978, 15 days later, the jury found Defendants Denson, Orlando, and Janish guilty on Counts One and Two of the indictment.[146] Count One, the most serious, prescribed imprisonment for any term of years or for life. In a rather strange decision, regardless of the role of each officer in the conspiracy or the extent of their participation in the brutality, U.S. District Court Judge Ross Sterling sentenced each convict identically. As to the conspiracy resulting in death, Judge Sterling assessed 10 years imprisonment with execution of the sentence**

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[142] Curtis, Tom. 1977. "Support Your Local Police (or else)." *Texas Monthly* 5. September.

[143] Wilson, Steven H. 2002. *The Rise of Judicial Management in the U.S. District Court, Southern District of Texas, 1955-2000*, at 251. Athens, GA: University of Georgia Press.

[144] Langworthy, David. 1977. "Fast U.S. Action on Torres Case Is Predicted." *The Houston Chronicle*, § 1, 1. October 9.

[145] United States v. Denson, 588 F.2d 1112, 1114 (5th Cir. 1979). Counts 3 and 4 resulted in acquittals.

[146] Ibid., 1115.

**suspended for 5 years. On Count Two, which alleged a deprivation of liberty not resulting in death, the judge assessed imprisonment for one year.[147]**

**Without a doubt, Torres was not an ideal person. He would get drunk and unruly, a factor that led to his discharge from the Army (Curtis 1977, 4). The officers could charge him for public intoxication and disorderly conduct, but they could do no more than arrest him and book him. Once the accused goes to court, the judge will decide what punishment should be administered, which for these crimes was limited to a fine. Regardless of their frustrations in having to deal with people they regard as contemptible, officers do not possess authority to conclude guilt and assess their own style of punishment. When they do, they become as disgraceful as the people they regard with contempt. Yet, it appears the federal judge's sentencing effectively condoned this lawless behavior.**

**Julio Valerio, Phoenix, Arizona Police Department, 1996**

**Four Phoenix police officers responded to an emergency call from Julio Valerio's mother about a domestic dispute between Julio and his father. Within 5 minutes, the officers confronted Julio and ordered him to drop the knife. Shortly thereafter, an additional 8 officers arrived and reported they had cornered a subject armed with a knife in a fenced area. They requested a canine unit. Instead of waiting for the police dog to arrive and assist in persuading Julio to give up, an officer attempted to spray Julio with pepper spray gas. In reaction to the gas, Julio stepped in the direction of the officers.**

**Six police officers wearing bullet-proof vests fired 25 rounds at Julio. Only 8 minutes after the officers responded, Valerio died from the barrage of police gunfire.[148] Sixteen-year-old Julio Valerio stood 5'8" and weighed 120 pounds. In justification, the officers claimed they feared for their lives. In contrast to Julio's confrontation, police disarmed a white person armed with a knife without firing a single shot just one week before.[149]**

**The following day, the Arizona Republic published an article with the headline "Police Kill Teen Armed With Knife." The police chief justified not shooting Julio in the legs because that would have still endangered the officers if he fell forward with the knife still in his hands. When officers use deadly force, they often file some alleged violent charge against the wounded or deceased victim. In this case, the police report alleged aggravated assault on a police officer, even though the accused had to have the present ability to carry out that threat. Additionally, after the death, as part of a pro-police campaign, the Phoenix Police Union portrayed Julio as being a gang member who sold drugs and carried a firearm.[150]**

**Luis Alfonso Torres, Baytown, Texas, the "Knee to the Throat" Arrest Manuever**

**Luis Alfonso Torres died in 2002 shortly after an alleged "fight" with 3 Baytown officers. A police car video documents that Torres did not throw a punch, an action which could qualify the encounter as a "fight" or struggle. Police, instead, swept Torres's feet and**

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[147] Ibid., 1145.
[148] Romero, Mary. 2001. "State Violence, and the Social and Legal Construction of Latino Criminality: From El Bandido to Gang Member." *Denver University Law Review* 78: 1081-1118, at 1082.
[149] Ibid., 1082, 1105.
[150] Ibid., 1106, 1108.

**took him down. Torres never attempted to harm or subdue any officer. In fact, he appeared quite cordial with the officers before the physical encounter.**

**One of the officers applied his knee on or near the neck while Mr. Torres was on the ground. To aggravate respiratory matters caused by the knee to the throat, an officer then applied pepper spray to Torres's face. Mr. Torres died at the scene a few minutes later of mechanical asphyxiation, suffocated by an improper arrest tactic. The Harris County, Texas grand jury returned a "no bill," meaning that the grand jury concluded they did not have probable cause to indict the officer who applied the improper, fatal force. By its action, the grand jury even rejected a negligent homicide charge.[151] The negligence standard generally is applied by informing the jury that a person "acts negligently if he *should have been aware of a substantial and unjustifiable risk that a certain result would occur*, or that a certain circumstance would exist."[152] The Texas statute more specifically provides that a person "acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint."[153]**

**Notwithstanding the aggravated facts, the Department of Justice also declined to prosecute the officer. To add insult and suffering to this already distraught family, the major newspaper in Houston published a story that suggested that the Torres family had pulled a "fast one" on the City of Baytown by obtaining a settlement in a civil claim.[154]**

**In a Houston Chronicle editorial, the author questioned the newspaper's characterization of Mr. Torres as a "Mexican national" since this might cause some to conclude that he had no rights.[155] The relevant civil rights statute provides protection for "any citizen of the United States or other person within the jurisdiction thereof."[156] The criminal equivalent seeks to protect any "inhabitant" of the United States.[157] Unfortunately, many U.S. citizens view lawfully-admitted aliens as lacking civil rights, even though many permanent resident aliens valiantly fought and some have died for the United States in various wars. Without a doubt, any reference to one's foreignness can only result in injustice in a court setting.[158]**

**Pedro Oregon Navarro—A Warrantless Home Entry by Police to Search for Drugs**

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[151] Tex. Pen. Code art. 19.02 (Negligent homicide is a state jail felony).
[152] Model Penal Code 2.02 (1962).
[153] Tex. Penal Code § 6.06 (d).
[154] Horswell, Cindy. 2003a. "Baytown to Pay $350,000 to Torres' Family." *Houston Chronicle*, A25, August 27; Horswell, Cindy. 2003. "Torres' Family Unsatisfied by Settlement." *Houston Chronicle*, August 28.
[155] Salinas, Lupe S. 2003. "Learning from Errors in Torres case." Editorial. *Houston Chronicle*, A41, September 13.
[156] 42 U.S.C. § 1983 (2006).
[157] 18 U.S.C. § 242 (2006).
[158] *See* Agosto, Benny Jr., Lupe Salinas, and Eloisa Morales Arteaga. 2011. "'But Your Honor, He's an Illegal!'—Ruled Inadmissible and Prejudicial: Can the Undocumented Worker's Alien Status Be Introduced at Trial?" *Hispanic Journal of Law & Policy,* 17: 27-51.

**Pineda v. City of Houston[159] involves a nightmarish and unconstitutional warrantless entry[160] into the residence of Pedro Oregon Navarro in July 1998. While patrolling a Latino *barrio* in southwest Houston, 2 officers conducted a traffic violation stop which resulted in a drug arrest. The driver identified his supplier, a person called Rogelio, in exchange for lenient treatment. Rogelio was Pedro Oregon Navarro's brother. The driver's information provided sufficient basis for probable cause which a neutral detached magistrate could have found if the officers would have only taken a little more time to follow the law.**

**The 2 officers contacted their sergeant, Darrell Strouse. In collaboration with others, they devised a plan to seize the supplier. They would return to Oregon's apartment about 1:30 a.m. and arrange to enter without a search or arrest warrant, i.e., illegally. The arrested driver would knock on the door. Upon the door opening, the driver would drop to the ground, and the officers would rush into the apartment. All occurred pursuant to this plan.**

**In the commotion, however, an officer tripped and accidentally shot another officer. The sound of gunfire provoked other officers to shoot, believing the occupants had fired on them. This illegal entry resulted in the killing of Pedro Oregon Navarro with nearly 10 shots to his body, most of them to his back.[161] A pistol found near Pedro's body was identified by Rogelio as belonging to his brother. Pedro Oregon never used the gun to threaten the officers.[162]**

**A state grand jury declined to indict for any homicide. The Oregon family and LULAC then asked the Department of Justice to conduct a criminal investigation. In August 1999, several members of Congress also requested an investigation. The Civil Rights Division conducted a grand jury investigation for at least 6 months, but no federal criminal charges ever surfaced.[163] The victim's family then turned to the federal courts and filed a civil rights claim. They alleged that the officers engaged in a pattern of unconstitutional searches pursuant to a custom of the city.**

**However, the federal appellate court concluded that one act is not itself a custom. Instead, there must be a "persistent and widespread practice"[164] to constitute a custom. The court further concluded that 11 incidents of equivocal compliance with the Fourth Amendment cannot support a pattern of illegality in one of the nation's largest cities and police forces.[165] The court ruled that the Pineda (Oregon) litigants established neither a custom nor an inadequate training case.[166] Once again, notwithstanding clear illegality, injustice prevailed with not one person suffering the consequences for Oregon's death.**

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[159] 291 F.3d 325 (5th Cir. 2002). The case is also discussed at Pineda v. City of Houston, 124 F. Supp. 2d 1057 (S. D. Tex. 2000) and Pineda v. City of Houston, 175 S.W.3d 276 (Tex. App. [1st Houston] 2004).

[160] Ibid., 327.

[161] Ibid..

[162] Ibid., 327-28.

[163] Associated Press. 1999. "Officials Urge Justice Department Vigilance in Oregon Shooting Case." *Lubbock* (TX) *Avalanche-Journal*, August 25.

[164] 291 F.3d 325, 329 (5th Cir. 2002).

[165] Ibid.

[166] Ibid., 336, affirming and modifying in part, Pineda v. City of Houston, 124 F. Supp. 2d 1057 (S.D. Tex. 2000).

**State v. Carbonneau/Eli Escobar, Victim—Houston Police Department**

**In November 2003, Houston police officer Arthur Carbonneau fatally shot 14-year-old Eli Eloy Escobar II.[167] Carbonneau's murder indictment was the first for a Houston police officer since a state grand jury indicted officers in Jose Campos Torres's death in 1977. Hopes momentarily rose among Latinos of finally reaching a degree of respect with regards to life. Another unarmed Latino teenager, Jose Vargas, died in a police shooting the previous month, but that case ended in a grand jury no-bill.**

**In addition to the police, prosecutors, and judges, the "system" includes juries comprised of people with different prejudices. It is difficult to explain what could have occurred at a trial that began with a murder charge and ended at the lowest level, a negligent homicide. The jury necessarily concluded that the evidence against Carbonneau lacked proof of either intent to kill or even of recklessness (for a manslaughter conviction) in handling a weapon placed at the head of an unarmed youth where deadly force or serious threat had not been displayed by the child.[168]**

**Escobar had been playing video games minutes before his fatal encounter. The officer approached a group of youths, looking for 2 teens who had assaulted a 10-year-old boy. When Escobar, who had not been involved in the assault, tried to leave, Carbonneau detained him while holding his firearm. Evidence from a civil case discovery revealed Carbonneau had failed his firearms testing, but the department disregarded this fact and approved him for employment.**

**Witnesses claimed that Carbonneau drew his gun and put the gun to Eli's head while wrestling him to ground. Carbonneau claimed that he feared for his life, alleging that Eli's hands were going to the small of his back and that he feared Escobar had a weapon. The incident began when a man named Rodriguez took Carbonneau and his partner to an apartment where he believed that an older boy who physically assaulted his son lived. Rodriguez described Carbonneau as being "pretty pumped up" on the way. Rodriguez pointed out his son's assailant, but the officers kept their attention on Escobar and continued assaulting him. Rodriguez affirms Eli had nothing to do with his son.[169]**

**The experience in Houston, Texas is sadly typical for big city police departments. When a police officer uses deadly force, wounding or killing a civilian, prosecuting attorneys present facts, and grand jurors weigh whether the actions constitute criminal behavior. From the author's personal observation, beginning in the 1970s, Harris County grand juries as well as those in other parts of the nation, seldom returned an indictment in a police shooting or beating death of a civilian. For example, the Harris County grand jury in Houston, Texas presented the shooting death of Randy Webster twice, resulting in two**

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[167] Tilghman, Andrew, and Dale Lezon. 2005. "Carbonneau Sentenced to Jail, Told to Apologize." *Houston Chronicle*, B1, January 25.

[168] A person acts "recklessly" or is reckless with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. TEX. PEN. CODE art. 6.03(c).

[169] Khanna, Roma, and Allan Turner. 2009. "Prosecutors Struggle in Deadly-force Cases Against Officers." *Houston Chronicle*, April 12.

**no-bills. The author later presented this case to a federal grand jury in 1978 and obtained a true bill for deprivation of civil rights.**

**Two things occur in this setting that might explain the improbability of an indictment. First, when prosecutors present the case professionally, i.e., without bias, the grand jury majority might not want to place the police officer's liberty in danger. Second, when prosecutors present the case with a pro-police bias to obtain a no bill, then our system of justice is compromised. This can easily be done if the prosecutor advises the members of the grand jury that the district attorney's office will have a tough time proving the intent to kill or the recklessness element. Unquestionably, biased grand jury presentations have occurred in Houston, Texas as in other major metropolitan areas of the nation. The other obvious problem is the following: Even when a homicide indictment is returned, a conviction seldom results.[170]**

**After the negligent homicide conviction in the death of Eli Escobar, Houston attorney J. Michael Solar sued the City of Houston for the civil rights violation. The city reached an agreement in which it paid a 1.5 million dollar settlement to the parents for the loss of their only child.[171] The agreement included other unique features. First, the mayor wrote a letter expressing condolences to the parents. Second, the mayor announced the implementation of the Escobar Rule for police training as to when it is appropriate to have a gun drawn and when not to shoot. Finally, the city agreed to honor the child with a plaque placed on city property.**

**State v. Buckaloo & Jones, Pasadena, Texas—Pedro Gonzales, Victim**

**A Harris County grand jury charged Officers Jason W. Buckaloo and Christopher S. Jones of the Pasadena, Texas Police Department, a municipality contiguous to Houston, with criminally negligent homicide in the death of Pedro Gonzales, Jr. The trial jury returned an acquittal. Buckaloo, and Jones allegedly caused Gonzales's death by breaking eight of his ribs and puncturing a lung. The officers arrested Gonzales for alleged public intoxication in July 2007.**

**The police version as to what occurred and the objective facts clash. The department found no evidence that the officers violated department policy. Claims of a cover-up surfaced when Pasadena police initially said Gonzales stumbled in a parking lot, but the police department later acknowledged the officers used "knee strikes" to subdue Gonzales who allegedly resisted. The cover-up claim gained credibility when 9 minutes after the officers came in contact with Gonzales at 2 a.m., a woman called 911 to report that officers were beating a man, later identified as Gonzales.[172]**

**The reports indicate officers left the arrest scene at 2:30 a.m. and booked him at the jail 4 minutes later. Between 2:34 to 3 a.m., paramedics examined Gonzales after he**

[170] An example is the beating death of Bobby Joe Conner, an African American, by two white Houston police officers, in the early 1970s. Both state and federal prosecutions ended in acquittals. United States v. McMahon, 339 F. Supp. 1092 (S.D. Tex. 1971).

[171] George, Cindy. 2008. "Parents Get $1.5 Million Settlement." *Houston Chronicle*, B3, July 16.

[172] Rogers, Brian. 2008. "Jury acquits 2 officers in Pasadena inmate beating." *Houston Chronicle*, June 3.

**complained of pain and failed to find major injuries. Gonzales orally refused further treatment and was placed into a holding cell. At 6:30 a.m., when Gonzales was removed from the holding cell for further processing, he exhibited "detox symptoms" and required assistance to walk. Gonzales was then left in on the floor of the holding facility without medical assistance. Shortly before 7:30 a.m., a police service officer noticed Gonzales lying motionless and discovered he had died.**

**The Medical Examiner conducted an autopsy that same day. On the following day, Pasadena issued a press release stating "While being escorted to the patrol car, Gonzales tripped on an elevated portion of the concrete parking area." The police department indicated Gonzales may have been "possibly injured from the fall," but he initially refused medical attention. The official autopsy report concluded that Gonzales's death was a homicide resulting primarily from lung injuries experienced when he suffered eleven fractures on eight ribs. Even with such extensive evidence of excessive force, the prosecutor failed to obtain a conviction. Of course, one has to also consider the jury in the equation of justice and the competing medical experts, who contradicted themselves in this case.[173]**

**Private Federal Civil Litigation under Sections 1983 and 1985**

**Persons who believe that their civil rights have been violated by a person acting under color of law may initiate private civil litigation for damages or other relief. Section 1983 provides that "every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, a suit in equity, or other proper proceeding for redress."[174]**

**Another provision, Section 1985,[175] addresses conspiracies to interfere with civil rights. For our focus on Latino justice, the relevant third subsection addresses private conspiracies to deprive persons of rights or privileges. It provides that if 2 or more persons conspire or go in disguise on the highway or on the premises of another for the purpose of depriving a person of the equal protection of the laws or of equal privileges or immunities under the laws, the injured or deprived party can maintain an action for the recovery of damages against any one or more of the conspirators.[176] Many hate crimes, for example 3 fatal assaults in 2008, where several men agreed to go looking for a "Mexican" to assault, qualify potentially for such damages, even though the involvement of state officials is lacking.[177]**

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[173] Ibid.

[174] 42 U.S.C. § 1983 (2006).

[175] 42 U.S.C. § 1985 (2006).

[176] 42 U.S.C. § 1985 (3).

[177] The incredibly odious conspiracy involved in *United States v. Price* serves as an example where state action existed since officers conspired with private racist citizens to do harm. 383 U.S. 787 (1966). Griffin v. Breckenridge, on the other hand, permitted a racially-based deprivation in the absence of state action. 403 U.S. 88, 102 (1971).

**Sections 241 and 242 and the Criminal Prosecution Remedy**

**In appropriate cases, prosecutors from the DOJ Civil Rights Division or from a U.S. Attorney's Office, initiate an investigation and subsequent prosecution of a law officer who has engaged in a civil rights violation. While many such cases have been discussed, enforcement in the Latino community has run into a few inconsistent applications. As a result, Latino civil rights activists have been less than pleased with the overall degree of commitment from the Department of Justice.**

**A person has a right not to be subjected to the deprivation of rights by police or other state agents. The pertinent right involves the right of a person not to be deprived of liberty without due process of law. In other words, a person has a right not to be subjected to punishment without authority or justification. Auto theft carries probation or up to 10 years in prison. An officer who believes the system too easily allows "criminals" to get off lightly might decide to impose an unauthorized physical assault to teach the thief a lesson. The officer could then face prosecution in state court for official oppression or in federal court for violation of civil rights.**

**DOJ enforces federal statutes which protect against the deprivation of rights. The usual procedure is that prosecutors will allow state authorities to discharge their duties with regards to local crimes. Pursuant to internal DOJ policy and primarily in the name of comity, or mutual respect, between the two governments, the "Feds" will allow the state to proceed without interference. If the state prosecutor's efforts fairly vindicate the civil rights deprivation interests of the federal government, the DOJ generally will not proceed with a second prosecution.**

**The outcome of this policy application is not always satisfactory, as shown in the case of 12-year-old Santos Rodriguez. The DOJ declined a civil rights prosecution, content that a 5-year state sentence vindicated civil rights interests. Objectively, since he was a child, he had more rights than an adult. Four decades later, many still recall this tragedy as a glaring example of DOJ's failure to address the desires of the Latino community for a sincere semblance of justice.**

**If officials determine that a federal prosecution is mandated, prosecutors will conduct a second proceeding without violating the Double Jeopardy Clause's prohibition of placing a person twice in jeopardy for the "same offense." In other words, the Court essentially will permit a state prosecution of an officer for a state law assault and a subsequent federal civil rights prosecution based on the same unlawful activity. The separate sovereignties doctrine dictates that each government may prosecute the unlawful activity to address the unique interest each has.[178]**

**Justice Department Investigations of Widespread Civil Rights Violations**

**Where widespread discriminatory police violations exist, the U.S. Department of Justice (DOJ) initiates investigations pursuant to several statutory provisions enacted by Congress. These include the Violent Crime Control and Law Enforcement Act of 1994**

[178] Abbate v. United States, 359 U.S. 187 (1959); Bartkus v. Illinois, 359 U.S. 121 (1959); United States v. Hayes, 589 F.2d 811, 818 (5th Cir. 1979).

**(VCCLEA),[179] the Omnibus Crime Control and Safe Streets Act of 1968,[180] and Title VI of the Civil Rights Act of 1964.[181] The VCCLEA prohibits "any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers" that deprives persons of rights, privileges, or immunities secured or protected by law.[182] The Supreme Court considers a "pattern or practice" present only where "the denial of rights consists of something more than an isolated, sporadic incident, but is repeated, routine, or of a generalized nature."[183] Most importantly, the VCCLEA grants power to the Attorney General to initiate a civil action to "obtain appropriate equitable and declaratory relief to eliminate the pattern or practice."[184]**

**Title VI and its implementing regulations provide that recipients of federal financial assistance, which include cities and their police departments, may not discriminate on the basis of race, color, national origin, and other bases.[185] This civil rights law authorizes the United States to file a legal action and obtain the necessary relief to ensure compliance with U.S. law. As an enforcement method, the United States may suspend or terminate certain federal funding if a recipient does not voluntarily address the violations. DOJ usually expresses to recipients that the government prefers to avoid either litigation or funds termination by entering into a binding court enforceable agreement.[186]**

**After an investigation pursuant to the 3 referenced statutes, DOJ found that East Haven Police Department (EHPD) engaged in a pattern or practice of discrimination against Latinos. The investigation began after news reports about and specific complaints by Latinos and their sympathizers. According to the DOJ, the investigation focused on allegations that EHPD officers engaged in biased policing, unconstitutional searches and seizures, and excessive force.[187]**

**DOJ concluded that EHPD engaged in discriminatory policing against Latinos for failing to provide for language assistance, targeting Latinos for discriminatory traffic enforcement, treating Latino drivers more harshly than non-Latino drivers, and intentionally failing to design and put into practice internal systems of control that would identify, track, and prevent such misconduct.[188] The DOJ concluded that this behavior substantially interfered with EHPD's ability to deliver services to the entire community**

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[179] 42 U.S.C. § 14141.

[180] 42 U.S.C. § 3789d (Anti-discrimination provisions).

[181] 42 U.S.C. § 2000d (Prohibition of discrimination in federally-funded programs or activities).

[182] 42 U.S.C. § 14141 (a).

[183] International Brotherhood of Teamsters v. United States, 431 U.S. 324, 336 n. 16 (1977) (Interpreting the pattern or practice language of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e).

[184] 42 U.S.C. § 14141 (b).

[185] 42 U.S.C. § 2000d (2006).

[186] Perez, Thomas E., Assistant Attorney General, U.S. Department of Justice, Civil Rights Division. 2011. *Letter to Joseph Maturo, Jr., Mayor, Town of East Haven, Connecticut, Re: Investigation of the East Haven Police Department* 2. December 19.

[187] In Jones v. Town of East Haven, 493 F. Supp. 2d 302, 338 (D. Conn. 2007), a federal judge found sufficient evidence for a jury to find within the EHPD "a custom or practice of deliberate indifference to the constitutional rights of African-Americans."

[188] Perez, Thomas E., Assistant Attorney General, U.S. Department of Justice, Civil Rights Division. 2011. *Letter to Joseph Maturo, Jr., Mayor, Town of East Haven, Connecticut, Re: Investigation of the East Haven Police Department* 1-2. December 19.

**since the actions excluded Latinos from the benefits incidental to the receipt of federal funds.**

**The primarily Spanish-speaking population growth in East Haven created an additional police obligation. EHPD has a duty under Title VI to provide language services to persons with limited English proficiency. Notwithstanding this obligation, DOJ found that EHPD made negligible and inadequate efforts to provide Spanish language assistance. DOJ advised the mayor that the government would defer on taking final action and would allow the city to seek compliance to avoid the loss of federal funds.[189] DOJ took the position that unless EHPD officers can communicate with the people they serve, they cannot adequately conduct investigations of crimes through questioning of victims and witnesses, explain the reasons behind a traffic stop, or communicate various rights guaranteed by the Constitution and by federal law.[190]**

**The DOJ review of records found that the evening shift stopped a clearly high proportion of Latinos during motor vehicle stops (24.8%). Proper oversight would have caused EHPD supervisors to investigate this shift immediately. The review also discovered one officer with a considerable disparity in the stop rate of Latinos (40.5%), and concluded that EHPD essentially permitted officers to operate without oversight. According to DOJ, this omission reflects strong evidence that EHPD tolerated discriminatory conduct.[191]**

**Additionally, EHPD officers engaged in uncoordinated immigration traffic enforcement even though EHPD never formally entered into a 287 (g) agreement with the federal government. DOJ had granted authority to investigate immigration issues, but only after they had made a felony arrest. The evidence, however, indicated that EHPD conducted immigration enforcement regardless of the nature of the stop.[192] Moreover, EHPD supervisors failed to review this behavior. As a result, DOJ concluded that EHPD engaged in this activity without guidance or oversight.**

**DOJ found EHPD officers deliberately chose Latino businesses in order to initiate traffic stops as Latinos left. Targeting drivers on the basis of their ethnicity is improper. As a result of this evidence, the DOJ informed the Town of East Haven that EHPD engages in a pattern or practice of biased policing against Latinos. Although the Town and EHPD commanders pledged their full cooperation, DOJ learned that EHPD officers, staff, and others who cooperated were subjected to retaliation and intimidation.[193] The DOJ asserted that a pattern of hostility towards Latinos as a distinct community serves as important evidence of discriminatory conduct.**

**One incident notoriously stands out. After Latinos began to complain, a local priest began documenting EHPD activity. In 2009, EHPD officers entered a Latino-owned**

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[189] Perez, Thomas E., Assistant Attorney General, U.S. Department of Justice, Civil Rights Division. 2011. *Letter to Joseph Maturo, Jr., Mayor, Town of East Haven, Connecticut, Re: Investigation of the East Haven Police Department* 18. December 19; Executive Order 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000); Dep't of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002).

[190] Ibid., Perez, 16.

[191] Ibid., Perez, 2.

[192] Ibid., Perez, 9.

[193] Ibid., Perez, 3-4, 8.

**business and accused the owner of attempting to sell license plates, at most a minor infraction. Notwithstanding any concrete evidence of guilt, the police initiated an investigation. In response, the priest began to videotape the officers' activities in the store. The officers ordered the priest to stop and arrested him upon his refusal.**

**The officer thereafter falsely claimed he thought the priest was holding a weapon. However, DOJ reviewed a videotape in which the officers can be heard acknowledging that the priest had a video recorder. EHPD command staff conducted no meaningful investigation and failed to discipline the false representations and the conduct.[194] The police also tried to find the store's security camera, an action that realistically had no other purpose than to destroy the incriminating evidence.[195]**

**In addition to the civil action by DOJ against the Town of East Haven, the original indictment of several EHPD officers stated that once the DOJ investigation became public knowledge, a picture of a rat appeared on a police union bulletin board. In the locker room, someone posted an ominous note: "You know what we do with snitches?" A "rat," as utilized in a police investigation, refers to somebody regarded as a sneaky and deceitful person, especially somebody who betrays friends or confidences. A rat or a snitch is that person who would dare to detour from adherence to the "code of silence," the unwritten rule among many police officers that police misconduct seen or heard remains confidential.[196]**

**Notwithstanding the threats, a few brave souls cooperated with the federal investigation. On January 18, 2012, a federal grand jury in Bridgeport returned the first indictment charging Sergeant John Miller and 3 officers under his command with various civil rights criminal offenses. The FBI described the indicted group as a "cancerous cadre that routinely deprived East Haven residents of their civil rights" and as "bullies with badges."[197] In late 2012, Sergeant Miller pled guilty to a civil rights deprivation charge. Miller ironically served as president of the EHPD police union and headed the evening shift. His squad, referred to as "Miller's Boys," accounted for the disparate and excessive number of Latino arrests.**

**The superseding indictment charged the 3 officers with conspiring to violate civil rights. The activities alleged against individual officers included the use of unreasonable force when an officer struck a motorcycle carrying 2 individuals with his police car, causing the motorcycle to crash and the 2 victims to be thrown to the ground. He then punched one of the victims who was injured and prepared a false report to justify the assault. Two of the officers received accusations of conducting arrests without probable cause.[198] After the indictments, the town's mayor, when asked what he was going to do for the Latino community in reaction to their claims of discrimination, sarcastically responded**

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[194] (Ibid., Perez, 11).

[195] Applebome, Peter. 2012. "Police Gang Tyrannized Latinos, Indictment Says." *New York Times*, January 24.

[196] Klockars, Carl B., Sanja Kutnjak Ivkovich, William E. Harver, and Maria R. Haberfeld. 2000. "The Measurement of Police Integrity." May. https://www.ncjrs.gov/pdffiles1/nij/181465.pdf.

[197] U.S. Department of Justice. 2012. "Four East Haven Officers Charged with Civil Rights Offenses." News release. January 24. http://www.justice.gov/usao/ct/Press2012/20120124.html.

[198] U.S. Attorney's Office (District of Connecticut). 2012. "Superseding Indictment Returned Against East Haven Police Officers." News release. September 25. http://www.fbi.gov/newyork/press-releases/2012/superseding-indictment-returned-against-east-haven-police-officers.

**"I might have tacos when I go home. I'm not sure yet." The state's governor called these comments "repugnant," and the mayor reluctantly apologized for what he called an "insensitive and off-collar comment."[199]**

**In 2013 a federal jury convicted the two officers who had not entered guilty pleas of conspiracy to violate civil rights and violating the civil rights of Latinos by making unlawful arrests and using excessive force. The illegal arrests also included the Catholic priest who assisted the victims in recording police misconduct. The sentences ranged from 4 months to 60 months for the 4 officers involved. The police sergeant, who cooperated, received the least sentence.[200] The officer who engaged in obstruction of justice received the maximum sentence.[201] Hopefully, these prosecutions will deter lawless cops from venting their prejudice and hatred against Latinos.**

**The DOJ-East Haven Settlement Agreement**

**During the pendency of the criminal proceedings, East Haven entered into a proposed settlement with DOJ. East Haven and the EHPD agreed to changes in order to address the investigative findings. The settlement resolved allegations that officers engaged in a pattern of excessive use of force and retaliation. The court-enforceable pact calls for changes including mandatory training in unbiased policing, improvement of procedures for obtaining search warrants, and community engagement efforts to address the needs of the Spanish-speaking population. A proposed agreement was signed by all the relevant parties in November 2012 and later approved by the district court.[202] In February 2013, the DOJ Civil Rights Division and the U.S. Attorney's Office for the District of Connecticut, together with the Town of East Haven and the East Haven Board of Police Commissioners, selected a Joint Compliance Expert (JCE) to assess and report on the implementation of a comprehensive settlement agreement to monitor the EHPD.[203]**

**City of Miami Police Department**

**In July 2013 the DOJ Civil Rights Division informed the City of Miami of the results of their investigation into claims of police shootings and excessive force. A comprehensive investigation concluded that the city of Miami Police Department (MPD) engaged in a pattern or practice of excessive force through officer-involved shootings. Between 2008 and 2011, DOJ found that Miami officers intentionally shot at individuals on 33 separate**

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[199] Ferrigno, Lorenzo. 2013. "Feds: Two Connecticut Cops Found Guilty of Civil Rights Violations Against Latinos." *CNN*, October 21.

[200] U.S. Attorney's Office (District of Connecticut). 2014. "Former East Haven Police Sergeant Sentenced to Four Months in Federal Prison." News release. February 12. http://www.fbi.gov/newyork/press-releases/2014/former-east-haven-police-sergeant-sentenced-to-four-months-in-federal-prison

[201] Ibid.

[202] United States, Plaintiff, v. Town of East Haven and East Haven Board of Police Comm'rs, Defendants, Settlement Agreement and [Proposed] Order, No. 3:12-CV-1652 (AWT) (D. Conn. filed Nov. 20, 2012), AGREEMENT FOR EFFECTIVE AND CONSTITUTIONAL POLICING, available at http://www.justice.gov/crt/about/spl/documents/ehpdsettle_11-20-12.pdf, last visited on Aug. 1, 2013.

[203] U.S. Department of Justice. 2013. "Justice Department and Town of East Haven, Conn., Select Kathleen O'toole as Joint Compliance Expert for Police Reform Agreement." News release. February 19. http://www.justice.gov/opa/pr/2013/February/13-crt-211.html.

**occasions. In 3 of those cases, MPD itself concluded that officers unjustifiably used deadly force.[204] DOJ discovered that deficient tactics, improper actions by specialized units, and egregious delays and substantive deficiencies in deadly force investigations contributed to the pattern or practice of excessive force in the MPD.[205] In addition, MPD did not supervise diligently or hold individuals accountable in the shootings. For example, 5 years passed without any definitive action in one case while 2 investigations remained open more than 3 years before the submission of findings.[206] The DOJ further noted that between 2008 and 2011, MPD officers intentionally shot at individuals 33 times and had fully investigated only 24 of these shooting incidents.[207]**

**Albuquerque Police Department**

**The DOJ also reviewed excessive force complaints involving Albuquerque, New Mexico Police Department (APD) officers and advised the mayor in a lengthy 46-page letter that reasonable cause existed to believe that APD engaged in a pattern or practice of use of excessive and deadly force. DOJ found insufficient oversight, inadequate training, and ineffective policies as contributory causes of the use of improper force and pointed to the duty to protect individuals from unreasonable seizures. DOJ offered to work with the APD to develop sustainable reforms that will resolve the findings. If the effort to resolve the problems failed, the DOJ advised the city that the federal government could file a civil lawsuit to "eliminate the pattern or practice" of police misconduct involving the use of excessive force.[208]**

**DOJ particularly found that APD used non-deadly excessive force in its application of electronic control weapons, or Tasers as they are generally called. DOJ reviewed several situations where officers used Tasers on people who did not comply with orders due to their mental state or did not engage in threatening behavior or who posed only a minimal threat to officers. In several cases, it appeared the arrestees did not resist but instead responded reflexively or submissively to actions by the officer. DOJ found systemic deficiencies which led to the failure to implement an objective and rigorous internal accountability system.[209]**

**DOJ findings as to Tasers concerned primarily their unreasonable deployment. Residents complained that APD officers used Tasers in a manner that was disproportionate to the threat encountered and in situations where lesser force options were available.**

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[204] Perez, Thomas E., Assistant Attorney General, U.S. Department of Justice, Civil Rights Division. 2013. *Letter to Tomas P. Regalado, Mayor, City of Miami, and to Chief Manuel Orosa, City of Miami Police Department, Re: Investigation of City of Miami Police Department* 1, 2. July 9.

[205] U.S. Department of Justice. 2013. "Justice Department Releases Investigative Findings on the City of Miami Police Department and Officer-involved Shootings." News release. July 9. http://www.justice.gov/opa/pr/2013/July/13-crt-770.html.

[206] Perez, Thomas E., Assistant Attorney General, U.S. Department of Justice, Civil Rights Division. 2013. *Letter to Tomas P. Regalado, Mayor, City of Miami, and to Chief Manuel Orosa, City of Miami Police Department, Re: Investigation of City of Miami Police Department* 9. July 9.

[207] Ibid., 2.

[208] Samuels, Jocelyn, Acting Assistant Attorney General, U.S. Department of Justice, Civil Rights Division. 2014. *Letter to Richard J. Berry, Mayor, Albuquerque, New Mexico, Re: Investigation of the Albuquerque Police Department* 1, 2. April 10. http://www.justice.gov/crt/about/spl/documents/apd_findings_4-10-14.pdf.

[209] (Ibid., Samuels, 3).

**Specifically, officers once used a Taser where the individual had soaked his clothing with gasoline, creating a death or serious bodily danger when his shirt caught on fire; against individuals experiencing mental health crises or who, due to inebriation or inability, could not comply; and where the officer applied the Taser in a punitive fashion, such as when several officers were present to help resolve the conflict. The letter to the mayor also cited a Tenth Circuit case which provided "it is excessive to use a Taser to control a target without having any reason to believe that a lesser amount of force—or a verbal command—could not exact compliance."[210]**

**The DOJ letter further described the Taser's capabilities of discharging up to 50,000 volts through a person's body, causing temporary paralysis and severe pain. As such, Tasers constitute a severe intrusion of a person's interest not to be subjected to punishment or to an unreasonable seizure. The severity of the pain inflicted by a Taser further depends on the method and the frequency of its discharge into a subject. Although a Taser application does not constitute deadly force *per se*, its inappropriate multiple or prolonged deployments can be fatal.[211] DOJ closed the letter to the mayor with the hopes of working together to promote constitutional policing in Albuquerque.[212]**

**Conclusion**

**Several other U.S. city police departments could easily be targets of the DOJ under a pattern and practice of excessive force. In the 1970s the Houston Police Department had several cases of brutality, some of which have been discussed. In recent years, incidents involving the use of excessive and deadly force have increased. The most notorious involved the shooting death in 2012 of a double amputee confined to a wheelchair. The one-armed, one-legged man held a pencil as an alleged weapon. The 2 HPD officers apparently did not exercise patience to disarm the man. Instead, one resorted to deadly force. The departments of the city and county of Los Angeles also keep civil rights attorneys busy. The generous settlements by the LA police agencies with victims perhaps explain why the DOJ has not intervened under the statutes referred to in this chapter. Time will tell if more vigilance under the criminal civil rights provisions and the government's civil actions might be necessary to bring the excessive force issues under better control.**

**Unfortunately, the DOJ response in recent years in cases involving Latina and Latino victims has been less than adequate. The 5 years since the infliction of Taser punishment and the brutality against Anastacio Hernandez-Rojas in only one indication. While the court has denied summary judgment and has permitted the trial to proceed, the criminal investigation has quietly disappeared. Yes, Latinos now constitute the majority group among minorities, but this has not resulted in respect from government in general and the federal government in particular. Although the DOJ has taken action in many cases, the leadership has ignored serious cases of abuse and brutality. Shootings of unarmed Latinos have occurred, but there is no indication of federal criminal civil rights prosecutions. The DOJ visibility has been appropriately high in cases involving Trayvon**

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[210] Walton v. Gomez, 745 F.3d 405, 421 (10th Cir. 2014), citing Casey v. City of Federal Heights, 509 F.3d 1278, 1286 (10th Cir. 2007).

[211] Samuels, Jocelyn, Acting Assistant Attorney General, U.S. Department of Justice, Civil Rights Division. 2014. *Letter to Richard J. Berry, Mayor, Albuquerque, New Mexico, Re: Investigation of the Albuquerque Police Department* 17. April 10. http://www.justice.gov/crt/about/spl/documents/apd_findings_4-10-14.pdf.

[212] Ibid., Samuels, 46.

**Martin and Eric Garner and other African Americans. On the other hand, the stereotype that Latinos do not have similar rights to legal protections should not be perpetuated by the primary agency in our federal government that includes the word "Justice" in its title.**