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**Written Submission of the American Civil Liberties Union of Michigan on  
Lack of Accountability for the Fatal Police Shooting of Milton Hall**

**Hearing on Reports of Racism in the Justice System of the United States**

**Submitted to Mr. Emilio Álvarez Icaza, Executive Secretary  
Inter-American Commission on Human Rights  
153<sup>rd</sup> Session, October 27, 2014**

The American Civil Liberties Union (ACLU) of Michigan welcomes the opportunity to provide a written submission to the Inter-American Commission on Human Rights for its hearing on racism in the criminal justice system of the United States. Our submission focuses on the United States government's failure to hold accountable those responsible for the Saginaw Police Department's July 2012 fatal shooting of a black<sup>1</sup> homeless man named Milton Hall, to provide adequate remedies for law enforcement officers' lethal and excessive use of force in this case, or to adequately investigate other police practices that appear to illustrate a pattern of racial profiling in the city of Saginaw, Michigan.

The issues of police practices that illegally target communities of color and lack of accountability for fatal police shootings are critical ones in the United States. In a new report, Amnesty International states:

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<sup>1</sup> The term "black" is not used in this submission as a formal group name for the people of Africa and the continent's diaspora. Immigration rates and trends have rendered the community of people of African ancestry in the United States increasingly diverse with respect to their most recent points of geographic origin, and the popular term "African American" is both overly exclusive and imprecise when referring to those who have been targeted for police violence because of their racial identity.

Police officers are responsible for upholding the law and protecting the rights of all members of society. Their jobs are difficult and often dangerous. However, the shooting of Michael Brown has highlighted on a national level the persistent and widespread pattern of racially discriminatory treatment by law enforcement officers across the United States, including unjustified stops and searches, ill treatment and excessive, and sometimes lethal, use of force. .... Policies and procedures on the use of firearms need to be reviewed nationwide; a key concern in recent cases has been the apparently excessive number of shots fired by officers. Michael Brown, for instance, was shot six times, and Kajieme Powell was shot nine times. The firing of so many shots in an urban environment would often be reckless, and indicates an intentional use of lethal force ["shoot to kill"] which may only be employed when strictly unavoidable to protect life. The United States government can and must to do much more to ensure policing practices nationwide are brought into line with international human rights standards, and to address systemic racial discrimination. For years, the monitoring of police conduct and excessive use of force has been hampered by the failure of the DOJ to collect accurate, comprehensive national data on police use of force, including the numbers of people killed or injured through police shootings or other types of force.<sup>10</sup> Because this data is not being consistently collated at a national level, no one currently knows how many people are shot and killed by police officers in the United States. Without that information, it will be even more difficult to develop concrete and workable strategies to address the issue.<sup>2</sup>

The ACLU of Michigan hopes the Commission will submit questions and recommendations to the United States Government with respect to the need for accountability and effective remedies in Mr. Hall's case.

### **I. The Fatal Police Shooting of Milton Hall**

On July 1, 2012, six<sup>3</sup> white Saginaw, Michigan police officers shot at and killed a homeless black man named Milton Hall even though Mr. Hall posed no threat, and certainly no imminent threat to the officers or any other person. The officers shot a total of 46 bullets in what has been

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<sup>2</sup> <http://www.amnestyusa.org/research/reports/on-the-streets-of-america-human-rights-abuses-in-ferguson>

<sup>3</sup> Two additional officers were present, but according to the local prosecutor they did not shoot at Mr. Hall. One of the two officers held the leash of a police canine.

accurately described by the victim's family as a police "firing squad." The execution was recorded by police cruiser dashboard cameras<sup>4</sup> as well as lay witnesses.<sup>5</sup>



#### **A. The Victim of the Crime**

Milton Sherman Hall was born on April 25, 1963 in Saginaw, Michigan, to his parents Fred J. and Jewel L. Hall. As a child Mr. Hall attended Saginaw schools, owned pets, and enjoyed sports – particularly football and fishing. His family described him as an avid reader, and as he grew older he completed two years of college, attending Knoxville College and the University of New Mexico. He also underwent training to become a civil rights activist. Mr. Hall's mother, a retired teacher, said evidence of a mental illness appeared early in Mr. Hall's adult life and it may have "impacted his ability to work." He became eligible to receive Social

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<sup>4</sup> Available at <http://youtu.be/MSwdRvqUJN8>. Also, a special video produced by the ACLU of Michigan about this incident can be viewed at: <http://youtu.be/2Iigvm5iPkU>

<sup>5</sup> Available at <http://youtu.be/vp6WbSV--2k>.

Security Disability payments. At the time of his death, Mr. Hall was homeless. He had previously resided in Saginaw's City Rescue Mission, but, according to media reports, he was removed because of his aggressive behavior and refusal to submit to a mental health examination. He was arrested on various occasions for vagrancy related charges.

## **B. The Shooting**

According to media accounts, on July 1, 2012, Mr. Hall got into an argument with a convenience store clerk. When eight police officers arrived he was standing alone in a parking lot on West Genesee Ave. As the videos make clear<sup>6</sup>, the police officers stood well beyond Mr. Hall's reach or wingspan – an estimated distance of at least fifty feet in a semi-circle with weapons drawn. One of the officers held a leashed police dog, which apparently agitated Mr. Hall. Mr. Hall shouted to the police officers that he had called 911 (the emergency phone number) for the police to help him and he was very angry. As the police dog began to bark at Mr. Hall, he held a small knife with a three-inch blade in the direction of the dog and challenged the officer to release the canine, proclaiming his lack of fear of the animal. The canine officer repeatedly and deliberately allowed or directed the dog to lunge at Mr. Hall. This caused Mr. Hall finally to turn towards the dog - a move which apparently prompted officers to shoot a reported 46 bullets at Mr. Hall, continuing to shoot into his body even after he had fallen.

## **C. The United States Government's Response to the Killing**

In or about September 2012, Michael Thomas, the then-Saginaw County Prosecutor announced that he would not bring criminal charges against the police officers who killed Milton Hall. The U.S. Department of Justice commenced its own investigation of the Milton Hall

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<sup>6</sup> See footnotes 4 and 5 above.

shooting in or about August of 2012. While that investigation was pending, the ACLU of Michigan provided the U.S. Attorney's office with information about other law enforcement practices in or near Saginaw that showed that the killing of Milton Hall was not an isolated act of racially motivated police misconduct.<sup>7</sup> Nevertheless, on February 25, 2014 the U.S. Department of Justice announced that, like the Saginaw County prosecutor's office, the federal government would not bring criminal charges against the officers.

In a statement, the Justice Department said:

After a careful review of all of the evidence, experienced prosecutors from the Criminal Section of the Civil Rights Division and the United States Attorney's Office for the Eastern District of Michigan have determined that the evidence in this case is insufficient to prove, beyond a reasonable doubt, that the [Saginaw Police Department] officers willfully shot Hall for an unlawful purpose, rather than for their stated purpose of preventing Hall from harming [Saginaw Police Department] staff. Even if the officers were mistaken in their assessment of the threat posed by Hall, this would not establish that the officers acted willfully, or with an unlawful intent, when using deadly force against Hall. Accordingly, this tragic event does not present sufficient evidence of willful misconduct to give rise to a federal criminal prosecution of the police officers involved.<sup>8</sup>

In a memorandum to the U.S. Attorney's office dated March 12, 2014,<sup>9</sup> the ACLU of Michigan questioned the Justice Department's use of the "willful misconduct" standard. Citing U.S. Supreme Court precedents, the ACLU's memorandum said:

[W]hen considering whether officers willfully deprived Milton Hall of a constitutional right, the Justice Department was not limited to a determination of whether the officers had a particular purpose. "... '[W]illful' in Sec. 242 means either particular purpose *or* reckless disregard." [emphasis added, citation omitted].

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<sup>7</sup> See memorandum at Tab A. Also available at: [http://www.aclumich.org/sites/default/files/ACLU\\_Racial\\_Profiling\\_Saginaw\\_92013.pdf](http://www.aclumich.org/sites/default/files/ACLU_Racial_Profiling_Saginaw_92013.pdf).

<sup>8</sup> Statement attached to memorandum at Tab B. It is also available at: <http://www.justice.gov/opa/pr/justice-department-announces-results-investigation-death-milton-hall>.

<sup>9</sup> See Tab B: Memorandum to U.S. Attorney (March 12, 2014).

In other words, the Justice Department's implicit suggestion that in order to obtain convictions it would be necessary to prove the officers' precise mental state at the time of the shooting was not quite correct. All that was actually required was proof that the officers were aware of Mr. Hall's rights and they recklessly disregarded them. The memorandum further explained:

In Milton Hall's case, the officers' purpose to use excessive force in violation of Mr. Hall's Fourth Amendment rights is "plain" from the fact that they fired at him when none of the officers were in immediate danger, and they continued to shoot numerous rounds into Mr. Hall's collapsed and probably dead body after any conceivable imagined danger had passed. Such conduct is at minimum a reckless disregard for a right definitely established in law, and it should be regarded as willful and sufficient to satisfy the requirements of Section 242<sup>10</sup>

A written response to the ACLU of Michigan memorandum was not provided, but the U.S. Attorney's office did orally advise that the Justice Department's investigators were aware of, and considered the "reckless disregard" standard, even though no reference was made to it in the public statement.

## **II. Lack of Accountability and Effective Remedies for Police Violence**

Government prosecutors' refusal to hold Milton Hall's killers criminally accountable illustrates one of various deficiencies of the U.S. criminal justice system's response to law enforcement officers' excessive use of force. In cases where abusive police officers are not prosecuted, the victims' only option may be to pursue their claims in civil courts.

A civil wrongful death lawsuit was filed and successfully concluded by Mr. Hall's survivors, but that case and other cases like it are not believed to have a deterrent effect on police criminal misconduct that is in any way comparable to the deterrent effect of a criminal

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<sup>10</sup> See full memorandum attached at Tab B.

prosecution of individual police officers. Civil lawsuits against police officers for police brutality are usually statutorily authorized (42 U.S.C. Sec. 1983) and substantively based on violations of constitutional rights. Plaintiffs often (as in this case) seek and receive monetary damages to compensate for injuries and losses. The offending officers' government employers often pay these damages and settlements leaving the officers financially unscathed when individual accountability is what is often needed to create a deterrent to future comparable conduct.<sup>11</sup>

The best evidence of the ineffectiveness of this method of addressing police misconduct is that police violence targeting black men remains a chronic epidemic. The list of victims includes, among many others: **Michael Brown** (18-year-old unarmed pedestrian killed in 2014 on a Ferguson, Missouri street); **Eric Garner** (killed by a police choke hold in New York 2014); **Kimani Gray** (16-year-old shot multiple times in New York 2013); **Kendrec McDade** (19-year-old shot in Pasadena, California 2012); **Timothy Russell** (police fired 137 bullets into his car in Cleveland, Ohio 2012); **Timothy Stansbury, Jr.** (shot in a stairwell in Brooklyn, New York 2004); **Sean Bell** (police fired 50 bullets into his car in Queens, New York 2006); and **Amadou Diallo** (shot to death at the entrance to his New York residence 1999).

The killings of all of these individuals received widespread attention, but there are also an unknown number of other persons whose deaths under suspicious circumstances while they were

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<sup>11</sup> Between 1994 and 1996, New York City's taxpayers paid about \$70 million in settlement or jury awards in claims alleging improper police actions. Los Angeles paid approximately \$79.2 million in similar cases between 1991 and 1996. (see: Human Rights Watch "Shielded From Justice" website <http://www.columbia.edu/itc/journalism/cases/katrina/Human%20Rights%20Watch/uspohhtml/uspoh30.htm> ) In a Bridgeport, Connecticut case, three police officers were caught on video shooting a man with a stun gun twice and then stomping on him as he lay unconscious on the ground. (see: "City Settles Police Brutality Lawsuit," Daniel Tepfer, Connecticut Post (5/28/14) <http://www.ctpost.com/local/article/City-settles-police-brutality-lawsuit-5508039.php>.) In that case, the victim's lawyer was quoted regarding the settlement: "The agreement was reached after a number of settlement discussions *with the city*." (emphasis added) The officers themselves were placed on paid administrative duty. In a rare case where officers were actually held to be accountable for their actions, the city of Chicago agreed to pay Harold Hill \$1.25 million after he was sent to prison for twelve years for a rape and murder that he did not commit. Although the officers responsible were made to contribute to the award, they each contributed only \$7,500. Further, neither of them admitted wrongdoing in the settlement. (see: "Rare Legal Settlements Demand Officers Pay Too," Steve Mills, Chicago Tribune (4/15/12) [http://articles.chicagotribune.com/04-15/news/ct-met-settlement-cops-pay-20120415\\_1\\_police-officers-damages-settlement](http://articles.chicagotribune.com/04-15/news/ct-met-settlement-cops-pay-20120415_1_police-officers-damages-settlement)

in police custody attracted so little attention that their names are practically unknown.<sup>12</sup> In addition, there is a long list of black males who were victims of police violence, but who somehow survived the attacks. They include **Abner Louima** who was sodomized and beaten by New York police. In fact, in 2005 the IACHR considered a petition complaining of long-term systemic torture of black men by Chicago police under the leadership of Detective Jon Burge.<sup>13</sup>

With respect to Milton Hall, the failure of the government to ensure the individual accountability of the officers responsible for his death constitutes not only a failure to meet the government's responsibility to Mr. Hall, but it also placed at risk other residents of that community who remain subject to the authority of police officers who might either perceive there are no significant personal consequences for police misconduct, or who have been emboldened by the handling of the Milton Hall killing to exercise their authority in impermissible ways. A recent study conducted by ProPublica shows that black males have a 21 times greater risk of being shot dead by police officers than their white counterparts.<sup>14</sup>

The failure to criminally charge police officers in Milton Hall's case is representative of many comparable cases across the United States. For example, a recent report indicates that no homicide charges have been brought against police officers in Florida in 20 years.<sup>15</sup> As the New York Times reported:

No police officers have been charged in cases involving lethal use of force in recent years, [a county prosecutor] said, because the cases are difficult and

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<sup>12</sup> For a number of years black men were found hanging in Mississippi jail cells under mysterious circumstances. See: "Protests Planned For Suspected Lynching," ABC News <http://abcnews.go.com/US/story?id=96223>

<sup>13</sup> Chicago Torture Probe Draws Worldwide Attention," Peoples World (6/30/06) <http://peoplesworld.org/chicago-torture-probe-draws-worldwide-attention/>. See also Peoples Law Office website: <http://peopleslawoffice.com/issues-and-cases/chicago-police-torture/>

<sup>14</sup> "Deadly Force In Black and White," Ryan Gabrielson, Huffington Post (10/10/14) [http://www.huffingtonpost.com/2014/10/10/racial-disparity-police-killings\\_n\\_5965706.html](http://www.huffingtonpost.com/2014/10/10/racial-disparity-police-killings_n_5965706.html)

<sup>15</sup> "Florida Prosecutors Face Long Odds When Police Use Lethal Force," by Lizette Alvarez, The New York Times, (Sept. 3, 2014).



because the courts and laws grant officers wide latitude to defend themselves, particularly in Florida.<sup>16</sup>

The pattern of police officers' shootings of black people with impunity demands answers to questions about:

- prosecutors' failure to use - or improper use of - applicable legal standards when making charging decisions in cases involving police who kill persons of color, especially young men of African descent.
- the frequency of improper decisions to decline prosecution; and
- institutional factors that contribute to the failure to prosecute police officers involved in lethal violence.

When local governments fail to protect human rights, other mechanisms and options exist for the U.S. government to do so. Specifically, in matters involving police brutality, such as Milton Hall's case, the failure or inability of local prosecutors to obtain criminal convictions of offending police officers can prompt the U.S. Department of Justice to initiate the prosecution of the officers for criminal civil rights violations. Historically, however, communities of color have not been able to count on the federal government to protect them in this way. Although the Justice Department's current civil rights division has opened a record number of pattern and practice investigations that have resulted in settlements with police departments across the United States, a 1998 Human Rights Watch report made observations that are no less valid today:

Except in rare instances, such as the Rodney King beating<sup>17</sup> in Los Angeles, federal prosecutors do not pursue cases in which local prosecutors attempt but fail to indict or convict. In deciding whether to proceed with a case in which local prosecutors have failed to obtain a conviction, federal prosecutors

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<sup>16</sup> *Id.*

<sup>17</sup> Rodney King was brutally beaten by Los Angeles police officers in 1991 after a car chase. The beating was captured on videotape and the footage triggered international outrage.

consider whether the original trial was affected by prosecutorial incompetence, corruption, or jury tampering, whether they can introduce crucial evidence not allowed in state proceedings, or whether there is a compelling federal interest to prosecute. In practice, following a high-profile failure to indict or convict, federal prosecutors generally report that they are “reviewing” the case, but that is often the last the public hears about federal action. In the vast majority of cases, the Civil Rights Division “declines” prosecution for a variety of reasons.<sup>18</sup>

When local prosecutors have failed to pursue criminal convictions, the federal government has the authority to prosecute for federal civil rights violations. Nevertheless, a staggering number of complaints of civil rights violations do not result in prosecutions by the Justice Department. The Department’s 2013 budget proposal reported: “Each year, [the Justice Department] receives more than 10,000 complaints alleging criminal interference with civil rights.” Yet, the document goes on to say that in fiscal year 2010 there were only 126 criminal civil rights cases filed, and only 218 defendants charged with crimes.<sup>19</sup>

There are countries where the government infrastructure has crumbled, or the government has been corrupted and there is little expectation of consistent protection of human rights. But the United States of America has the capacity to defend those, who like Milton Hall, are poor, vulnerable and members of an oppressed class. There is no reasonable explanation for the State’s failure to hold the police officers who killed Milton Hall accountable for their actions.

### **III. Pattern of Racial Profiling in the City of Saginaw, Michigan**

Milton Hall’s death did not occur in isolation, but in the context of local law enforcement practices that included “jump-outs,” where groups of police officers staked out communities of color and stopped and handcuffed residents for minor violations. The interrogations that occurred

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<sup>18</sup> *New Data on Federal Prosecutions and Sentencing*, Human Rights Watch (June 1998).

<sup>19</sup> The references are to general statistics that are not limited to incidents of police misconduct involving people of color.

during these stops were wide-ranging and concerned crimes presumed to be occurring in these neighborhoods in a way that crime is not presumed to occur in white communities.<sup>20</sup>

Additionally, in at least one incident, a police officer allegedly admitted that noise ordinances are enforced in a racially discriminatory manner, and in that incident a purported noise ordinance violation was the pretext for racial profiling.<sup>21</sup>

#### **IV. Conclusion and Suggested Questions and Recommendations**

Against a long historical backdrop of violence against black males on a national scale, and racial profiling and racial harassment in Saginaw, Michigan, the U.S. government had sufficient knowledge and information to prompt the establishment of rules, policies, procedures and structures that will prevent these crimes. Having failed to take these measures, Milton Hall became yet another in a long line of victims, and his human rights were grossly violated. These rights included, among others: the right to life, liberty and personal security; the right to equality before the law; the right to a fair trial; and the right to due process of law. Compounding these human rights violations was the State's refusal to hold those responsible for this and comparable killings accountable. The ACLU of Michigan urges the Commission to consider the inclusion of Mr. Hall's case as a case study in its thematic report on race and criminal justice in the United States, and ask the United States Government about the following matters:

- a.) Why local and federal prosecutors either failed to use applicable legal standards when making decisions about whether to prosecute police officers for the killing of Milton Hall; or if they did use them, why details of their analysis were not disclosed;

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<sup>20</sup> See ACLU of Michigan memo at Tab A

<sup>21</sup> *Id.*

b.) Whether, and to what extent there have been other cases where available evidence reasonably demanded prosecution of police officers for violence against black persons but prosecutions did not occur.

c.) Whether there are policies and practices in the Justice Department that account for any decisions to forego prosecution in Milton Hall's case and comparable cases.

Additionally, the Justice Department should be asked to formally respond to the ACLU of Michigan's request for reconsideration of the decision to decline to bring charges against the officers who killed Milton Hall.

We also bring to the attention of the Commission the following significant recommendations for the reform and elimination of police abuse, made by several civil rights and human rights groups, including the ACLU, in the aftermath of Michael Brown's killing in Ferguson, Missouri:

- A comprehensive federal review and reporting of all police killings, accompanied by immediate action to address the unjustified use of lethal and excessive force by police officers in jurisdictions throughout this country against unarmed people of color,
- A comprehensive federal review and reporting of excessive use of force generally against youth and people of color and the development of national use of force standards,
- A comprehensive federal review and reporting of racially disproportionate policing, examining rates of stops, frisks, searches, and arrests by race, including a federal review of police departments' data collection practices and capabilities,

- A comprehensive federal review and reporting of police departments' racial profiling and racially bias practices, as well as any related policies and trainings,
- A final update and release of the Department of Justice's (DOJ) June 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies (hereinafter "Guidance"), with substantive reforms including updates that would 1) make the Guidance enforceable; 2) apply the Guidance to state and local law enforcement who work in partnership with the federal government or receive federal funding; 3) close the loopholes for the border and national security; 4) cover surveillance activities; and 5) prohibit profiling based on religion, national origin, and sexual orientation,
- Required racial bias training and guidance against the use of force for state and local law enforcement that receive grants,
- The required use of police officer Body-Worn Cameras (BWC) to record every police-civilian encounter in accordance with and policy requiring civilian notification and applicable laws, including during SWAT deployments, along with rigorous standards regarding the retention, use, access, and disclosure of data captured by such systems,
- The universal use of dash cameras in police vehicles,
- Concrete steps to ensure that federal military weapons do not end up in the hands of local law enforcement and, if they do, to prevent the misuse of those weapons in communities of color,
- On the ground community training to educate residents of their rights when dealing with law enforcement,

- The elimination of the "broken windows" policing policy initiated in the 1980's which encourages overly aggressive police encounters for minor offenses and the promotion of community-based policing,
- Greater and more effective community oversight over the local law enforcement and policing tactics, and
- The establishment of a law enforcement commission to review policing tactics that would include in its composition leaders/experts from civil rights advocacy groups who represent the most impacted communities.

As the world watches events in Ferguson, Missouri and has ever-growing grave concerns about the interactions of communities of color with law enforcement agencies, the Commission is well placed to ask the critical questions and to make demands necessary to protect the human rights of those who have been the targets of racially motivated police violence.

Respectfully submitted,

/s/ Mark P. Fancher

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Date: October 24, 2014

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TAB

A

September 19, 2013

Barbara L. McQuade  
U.S. Attorney  
U.S. Department of Justice  
211 W. Fort Street, suite 2001  
Detroit, MI 48226

Re: Race and Policing in Saginaw, Michigan

Dear Ms. McQuade:

The American Civil Liberties Union is aware that the Department of Justice is investigating the disturbing shooting of Milton Hall, a black homeless man, by a squad of six Saginaw police officers.<sup>1</sup> We are writing to request that you expand your inquiry to investigate what appears to be racial profiling by law enforcement officers in Saginaw.

From the racially biased stop-and-frisk policies of the New York Police Department to the shooting of Trayvon Martin in Florida, the evidence of widespread discriminatory law enforcement continues to mount, and there is a growing demand across the country to expose and take immediate action to end racial profiling. There is also a growing awareness about the devastating consequences that racial profiling and biased police practices have in communities of color.

Complaints about racial profiling come from cities throughout Michigan, and Saginaw is not an exception. In fact, the American Civil Liberties Union of Michigan has received complaints about what seems to be a significant problem in the city. As described in detail below, these complaints fall into three distinct areas: (1) so-called “jump-out” stops, which appear to be similar in some ways to the unconstitutional New York-style stop-and-frisks; (2) noise ordinance pretext stops; and (3) general harassment stops. We believe that these practices help to place the Milton Hall shooting in context and are serious enough to warrant a broader investigation.

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<sup>1</sup> For video of the shooting, see the witness video aired on CNN, <http://www.cnn.com/2012/08/16/us/michigan-police-shooting/index.html>, and the final police video on this MLive.com page: [http://www.mlive.com/news/saginaw/index.ssf/2012/09/video\\_police\\_dashboard\\_footage.html](http://www.mlive.com/news/saginaw/index.ssf/2012/09/video_police_dashboard_footage.html).



## Jump-Out Stops

The ACLU of Michigan learned of the police practice of “jump-outs” from media reports. The practice itself is perhaps best explained by excerpts from articles in the Saginaw News:

During weekly operations that sometimes included up to 30 officers from at least five different agencies, the officers would take to the streets in Saginaw that had experienced some of the city’s recent homicides. As the officers drove the streets, they would stop, or “jump out,” on anybody doing anything from breaking state law to violating a city ordinance.

After “jumping out,” the officers would search the individuals and ask them for identification to determine whether they are named on any warrants. As that happened, other officers – at most “jump-outs,” upwards of six vehicles would show up on scene – would speak to the individuals and anybody else in the vicinity about the city’s crime problems and ask if they had any information that could aid their efforts.<sup>2</sup>

Another article explains how the officers might use even the most minor offense as the basis for intrusive questioning and searches:

During a recent Saginaw County Major Crimes Unit operation, officers “jump out” on three men as they walk in the street, a civil infraction that gave the officers an opportunity to jump out of their vehicles, search the men and ask if they might have information about recent homicides.

A quick search of the men reveals a small baggie of crack cocaine, and the man who had it is placed in the back of a state police cruiser.

He claims the crack wasn’t his, and in a way, he’s right – an FBI-funded detective tests it, and it isn’t actually crack.<sup>3</sup>

In response to ACLU concerns about racial profiling, a sergeant was quoted as saying, “the officers are not engaging in racial profiling and instead are focusing on anybody in the target areas who can offer assistance.”<sup>4</sup>

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<sup>2</sup> “Saginaw Undercover: Attorney, ACLU Member doubts longterm effectiveness of Major Crimes Unit ‘jump outs’, predicts racial profiling complaints,” by Andy Hoag, MLive, Oct. 28, 2012.

[http://www.mlive.com/news/saginaw/index.ssf/2012/10/saginaw\\_undercover\\_attorney\\_ac.html](http://www.mlive.com/news/saginaw/index.ssf/2012/10/saginaw_undercover_attorney_ac.html).

<sup>3</sup> “Saginaw Undercover: Another Day on the Streets with the Saginaw County Major Crimes Unit,” by Andy Hoag, MLive Oct. 24, 2012.

[http://www.mlive.com/news/saginaw/index.ssf/2012/10/another\\_day\\_another\\_gun\\_a\\_day.html](http://www.mlive.com/news/saginaw/index.ssf/2012/10/another_day_another_gun_a_day.html)

<sup>4</sup> “Saginaw Undercover, Attorney, ACLU Member doubts.” *supra* f.n. 2.

The ACLU of Michigan has concerns not only about the strong possibility that stops and searches are occurring without the requisite reasonable suspicion and/or probable cause, but also about how a neighborhood becomes a “target area” and whether race-based presumptions may drive those decisions. The targeted neighborhoods have “very high African American or Hispanic populations.”<sup>5</sup> In an attempt to learn more, the ACLU of Michigan submitted Freedom of Information Act (FOIA) requests for documents related to the jump-outs. The request was denied on grounds that it is “overly broad.” (See enclosed denial letter, attached as Exhibit C.)

### Noise Ordinance Pretext Stops

Kevin Jones is a 34-year-old black man who resides in Saginaw. As he was driving on October 6, 2011 at about 7:30 p.m. listening to music, he says he approached a corner where police officers were on foot. He turned down the volume of his music and continued driving, but almost immediately noticed flashing emergency lights in the rear. He pulled over and gave the officer his documents as requested. Moments later he was asked to step out of the car. Mr. Jones reports:

The officer then turned me around and asked for my consent to search my vehicle. When I declined to give consent, the officer said: “Why? Is there any reason why you don’t want me to search it?” I then answered: “No. I don’t have any weapons, drugs, or anything else, and I know my rights.”

Mr. Jones said he was then escorted to the back seat of the police car where he remained for 15 to 20 minutes without any explanation. After the search of Mr. Jones’ car, another officer reportedly said that while he was not “trying to be racial,” he reserves special treatment for people who live in Mr. Jones’ predominantly black neighborhood. Mr. Jones explains:

I then asked the officer who initially detained me why my car was being searched. He replied: “Because I’m arresting you and impounding your car for loud music coming from your vehicle.” I asked if he was kidding me and he said he was not. As I was explaining that I had never heard of anything like this, the other officer approached and said that there was a new local ordinance. He then said: “I’m not trying to be racial or anything but what y’all do over there (gesturing across the bridge toward my neighborhood) I don’t care, but over here if we hear it we are going to take your vehicle and arrest you.”

Mr. Jones was then arrested, taken to police headquarters and booked for violating a local misdemeanor noise ordinance. He was released and he later appeared in court twice before charges were voluntarily dismissed by the prosecutor who, according to Mr. Jones, claimed he was doing so because the arresting officers failed to appear in court. The officer’s assertion that he was “...not trying to be racial or anything...” can reasonably be regarded as evidence that he at least contemplated race at the time of the incident.

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<sup>5</sup> *Id.*

The ACLU of Michigan sent a Freedom of Information Act (FOIA) request to the Saginaw police to determine the racial demographics of persons stopped during a one year period for noise ordinance violations by the officers who stopped Mr. Jones. The police department provided copies of criminal complaints against nine individuals stopped for noise violations. Four of the individuals who were stopped were identified in the report as black, two have Spanish language surnames, and the remaining three are not identified by race. Police logs indicate that additional stops were made, but full reports (if any) were not provided.

### **Community Fear Caused by Actual and Perceived Harassment**

Based on interviews conducted by the ACLU of Michigan, a significant number of people of color perceive that they are unfairly targeted by police for relatively innocuous conduct. Further, they suffer an emotional impact because of their fears of potential encounters with police. For example, as a result of repeated stops (once for having dice hanging from his rear-view mirror) a black male in his mid-30s said that he refuses to go to certain areas in Saginaw where he is at risk of being pulled over, and that he even avoids fast food restaurants in those areas. He explained that he has been pulled over four or five times “for no good reason.” He said he is convinced that police pull him over because he is a tall, heavy-set black man who drives a 1966 Pontiac. In describing his last encounter with police, he said he was in full compliance with all speed and signaling laws, but police claimed he failed to come to a full stop at a blinking red light.

Another black male in his early 40s explained that his fear of racial profiling limits his movements. He told us: “I don’t go out in my car after 9 p.m.” A woman in her 30s said she does not want to raise her children in Saginaw because of police harassment and racial profiling. Her fears were reinforced when police recently pulled her husband over for driving in the wrong lane. She is convinced that a white driver would not have been pulled over for that reason.

The emotional impact of harassment stops is compounded if the reasons for stops are believed to be either knowingly false or imagined. A truck driver in his 40s described how, during a stop, police claimed that they had determined that his license had expired. He said he knew this to be false, and that he had placed a new registration sticker on his license plate. After a few moments, he asked again about the reason for the stop. The officer responded by saying, “Have a nice day” before he unceremoniously left the scene.

### **Legal Concerns**

#### **1. Equal Protection Clause**

There is some historical context for the ACLU of Michigan’s concerns about these matters. We successfully litigated *Bennett v. City of Eastpointe*, 410 F.3d 810 (6<sup>th</sup> Cir. 2005), where black teenagers asserted that police violated their equal protection rights by stopping and harassing them when they rode their bikes across Eight Mile Road from Detroit into Eastpointe. In that case a police shift commander issued a written directive “to investigate any black youths riding through our subdivisions...I would expect that our officers would investigate younger black males riding bicycles.”

The police in Saginaw, like the police in Eastpointe, have stated that they conduct their operations in high crime areas. However, as the Sixth Circuit held in *Bennett*, “[w]hile officers can surely and appropriately take into account the fact that an area is a high crime area that alone does not justify effecting a seizure.” *Id.* at 830.

In an apparent attempt to avoid relying solely on an area’s crime rate as the basis for their actions, and to provide themselves with cover, in Saginaw (as was the case in Eastpointe) police are apparently stopping only persons who have committed a legal violation of some sort, regardless of how minor it might be. Yet, police may mask actual discrimination with stops that are purportedly prompted by minor violations. In *High v. Fuchs*, 74 Fed. Appx. 499, 2003 WL 22017534 (6<sup>th</sup> Cir. 2003), police officers were summoned to investigate a suspicious parked vehicle, which was later determined to be owned by the plaintiff. The plaintiff asserted that the vehicle broke down. The registration stickers had expired, but the plaintiff contended he provided officers with proof of insurance. In the course of receiving citations for improper vehicle registration and insurance violations the plaintiff was cursed at and harassed. When he attempted to cross the street to speak to a friend, one of the officers said: “Hey boy, get your f—ing ass over here.” The Sixth Circuit held:

The district court characterized High’s claim in equal protection-type language: ‘High claims that Moran and Fuchs treated him differently because of his race, stopping to investigate, issuing citations, and using racially abusive language.’ Although High’s complaint is close to the line, we agree with the district court and find that it suffices to raise an Equal Protection claim. High’s allegation of racial profiling, when combined with all of the facts contained in the complaint is just enough to raise a violation of a constitutional right under the Fourteenth Amendment.

*Id.* at 501.

Whether individuals have committed minor violations is of little if any consequence if police are treating such persons differently because of their race. We urge an investigation of whether law enforcement officials operating in Saginaw are engaging in racial discrimination in violation of the equal protection clause.

## 2. Title VI

The police may also be engaging in racial discrimination that is prohibited by Title VI of the Civil Rights Act of 1964, which provides:

[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Discrimination by law enforcement agencies can be established by proving either disparate treatment along racial lines, or that the police department's practices have had a disparate impact on particular racial groups. The U.S. Department of Justice Civil Rights Division's "Title VI Legal Manual" notes that disparate treatment involves intentional discrimination:

An intent claim alleges that similarly situated persons are treated differently because of their race, color, or national origin. To prove intentional discrimination, one must show that "a challenged action was motivated by an intent to discriminate." *Elston*, 997 F.2d at 1406 [*Elston v. Talladega County Board of Education*, 997 F.2d 1394 (11<sup>th</sup> Cir) reh'g denied 7 F.3d 242 (11<sup>th</sup> Cir. 1993)]. This requires a showing that the decisionmaker was not only aware of the complainant's race, color, or national origin, but that the recipient acted, at least in part, because of the complainant's race, color, or national origin. However, the record need not contain evidence of "bad faith, ill will or any evil motive on the part of the [recipient]." *Elston*, 997 F.2d at 1406 (quoting *Williams v. City of Dothan*, 745 F.2d 1406, 1414 (11<sup>th</sup> Cir. 1984)). Evidence of discriminatory intent may be direct or circumstantial and may be found in various sources, including **statements by decisionmakers**. (Emphasis added.)

As one example, statements made by an officer to Kevin Jones at the time of his arrest for a noise ordinance violation reflect the type of racial motive that is indicative of intentional discrimination. The officer specified two different approaches to noise ordinance enforcement that were tied to the racial composition of particular communities. His purported race disclaimer was in fact a stark admission of his contemplation of race. Thus, it matters little whether he was acting in bad faith, or whether he was instead taking a well-intended but misguided approach to ordinance enforcement.

In the absence of evidence of intentional discrimination it is possible to demonstrate a violation of Title VI by establishing disparate impact. The Title VI Legal Manual states:

Under the disparate impact theory, a recipient, in violation of agency regulations, uses a neutral procedure or practice that has a disparate impact on protected individuals, and such practice lacks a substantial legitimate justification. The elements of a Title VI disparate impact claim derive from the analysis of cases decided under Title VII disparate impact law.

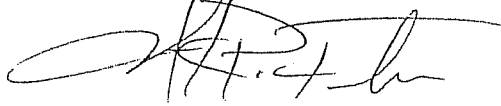
Given the apparent racial imbalance reflected by the small sample of noise ordinance incident reports produced in response to a FOIA request, and the fact that jump-out operations have targeted neighborhoods of color it is quite possible that a more comprehensive body of data and a corresponding analysis will reveal discriminatory patterns that, for purposes of Title VI constitute disparate impact.

## Request for an Expanded Investigation

As outlined above, the ACLU of Michigan is concerned about racially discriminatory conduct by law enforcement officers in Saginaw. Hopefully, the information we have provided in this letter will help provide a racial context to the Milton Hall shooting. We further hope that if appropriate, the Department of Justice will initiate separate investigations of the incidents we have reported; or will begin a comprehensive review of race and biased policing in Saginaw. Finally, we would welcome the opportunity to participate in any discussions about lawful police conduct with the Saginaw Police Department that the Department of Justice might choose to initiate and mediate.

Thank you for your attention to these matters. Do not hesitate to contact us if you need additional information.

Respectfully submitted,



Mark P. Fancher, Racial Justice Project Staff Attorney  
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cc: City Manager Darnell Earley  
Police Chief Brian Lipe



## Saginaw undercover: Attorney, ACLU member doubts longterm effectiveness of Major Crimes Unit 'jump outs,' predicts racial profiling complaints



By [Andy Hoag | ahoag@mlive.com](#)

on October 28, 2012 at 10:00 AM, updated January 31, 2013 at 4:45 PM

*EDITOR'S NOTE: This is the fourth and final part of a series. Parts 1-3 are [here](#).*

**SAGINAW, MI** — Some of the tactics used by the Saginaw County Major Crimes Unit in recent undercover detail operations could be “counterproductive in the long run in building community trust,” says an American Civil Liberties Union member and local attorney.

William T. Street, who has an office in Saginaw and says he is a “cooperating attorney” with the civil liberties union, stopped short Friday of saying the Major Crimes Unit's recent “jump out” operations were a problem or illegal, but cast his doubts on their overall effectiveness.

Street, who stressed that he was not “speaking for the organization” and only offering his opinions, responded to questions regarding the Unit's operations observed by and reported on by MLive.

During weekly operations that sometimes included up to 30 officers from at least five different agencies, the officers would take to the streets in Saginaw that had experienced some of the city's recent homicides. As the officers drove the streets, they would stop, or “jump out,” on anybody doing anything from breaking state law to violating a city ordinance.

After “jumping out,” the officers would search the individuals and ask them for identification to determine whether they are named on any warrants. As that happened, other officers — at most “jump outs,” upwards of six vehicles would show up on scene — would speak to the individuals and anybody else in the vicinity about the city's crime problems and ask if they had any information that could aid their efforts.

Street first explained the ACLU's fight in recent years against a program instituted by former New York City Mayor Rudy Giuliani in which police would “focus on minor quality of life crimes,” such as littering and spitting on sidewalks, and then search the offender, all with the goal of seizing illegally possessed guns. The ACLU's statistics showed that 88 percent of those “stopped and frisked” had “absolutely nothing criminal” connected to them and 84 percent of those stopped were “non-white.”

Street noted, however, that the Major Crimes Unit's operations had a different objective — obtaining information about homicides and other violent crimes happening in the specific areas the officers were patrolling.

"The overtones to this program are very similar to the one in New York," Street said. "The motive sounds to me to be creative, but I kind of suspect that it's going to be counterproductive in the long run in building community trust, that it will bring systematic complaints of racial profiling."

The areas of focus, Street pointed out, have "very high African American or Hispanic populations."

"These people are going to perceive this exactly the same way a lot of African Americans and Hispanics did in New York City," Street said. "It's a perfectly rational thing if the goal is to find people who live in a neighborhood where there's unsolved crimes who may have friends or relatives who may have heard something or gossiped. That can generate leads for busy police detectives."

"But the bottom line on it is that it is very likely to be perceived pretty soon as racial profiling. ... It can indeed produce a lot of counterproductive attitudes toward police."

Saginaw Police Detective Joseph Dutoi, who participated in the operations, said his and the officers' experiences "found this to be completely to the contrary" from Street's concerns.

While there were individuals during the Major Crimes Unit's operations who expressed their displeasure in being the subject of a "jump out," they soon relented their anger when, as Street pointed out, the officers clarified to those who weren't illegally possessing a gun or narcotics that they weren't going to jail for their minor ordinance violations.

"The community has actually welcomed us out there, they've asked us out there, they want this to happen," Dutoi said. "There has not been one complaint generate that I know of. We often find that the only people who do complain are engaging in illegal activity and use that complaint as an avenue to get themselves out of trouble."

With the city on pace for its highest homicide total in 20 years, Dutoi said, "We've come to a point in Saginaw where the violent is so prevalent in those neighborhoods that not only does the community need to step up, the police officers need to step up their enforcement."

Each operation, Dutoi said, led to "multiple arrests for multiple felonies. And we've taken at least eight to 10 illegal guns off the street. In my book or anyone's book, that's a winning combination."

The sergeant added that the officers are not engaging in racial profiling and instead are focusing on anybody in the target areas who can offer assistance.



"How can anybody," Dutoi asked, "be against stopping the violence? The violence is in the streets, and that's where we have to go."

*Follow Andy Hoag on Twitter [@SNAndyHoag](#)*

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## Saginaw undercover: Another day on the streets with the Saginaw County Major Crimes Unit



By [Andy Hoag | \[ahoag@mlive.com\]\(mailto:Andy.Hoag@mlive.com\)](mailto:Andy.Hoag@mlive.com)

on October 24, 2012 at 10:15 AM, updated January 31, 2013 at 4:48 PM

*EDITOR'S NOTE: This is the second part of a series this week. Part 1 is [here](#).*

**SAGINAW, MI** — One of the places in Saginaw that used to be prominent for narcotics purchases was the area near the Farwell Market on the city's North Side.

During a recent Saginaw County Major Crimes Unit operation, officers “jump out” on three men as they walk in the street, a civil infraction that gave the officers an opportunity to jump out of their vehicles, search the men and ask if they might have information about recent homicides.

A quick search of the men reveals a small baggie of crack cocaine, and the man who had it is placed in the back of a state police cruiser.

He claims the crack wasn't his, and in a way, he's right — an FBI-funded detective tests it, and it isn't actually crack.

To confirm the test results, the detective throws the other small rocks on the ground and wipes his shoe along the pavement, with the rocks underneath. The result is a chalk-like line on the street that a real crack rock would not have caused.

But the testing process, as well as the interaction between the officers and the would-be suspect, allows Saginaw Police Detective Sgt. Joseph Dutoi and other officers the time to speak with the other two men. They question why they were stopped but soon warm up to the officers as the officers explain their effort to solve a recent spate of homicides. The men realize that aside from breaking a city ordinance by walking in the street, they aren't actually in trouble.

The men have no beneficial information for the officers, and the operation soon moves elsewhere.

Elsewhere ends up being the numbered streets, where a detective sends out a message over the radio that he believes he saw a suspect in the June shooting of 4-year-old [Miyona Alexander](#). The car containing the possible suspect turns onto Perkins from East Genesee and is followed by a state police cruiser and an

unmarked SUV. After Dutoi, riding in the SUV, sees the driver turn onto South Ninth without using his turn signal, he makes the decision to stop the vehicle.

The car turns into the driveway of a residence on Walnut just east of South 10th — a home where police have conducted numerous search warrants, on the same block where three homicides have occurred in recent years.

Dutoi and a detective funded by the federal Drug Enforcement Agency, driving the SUV, pull in behind the car and order the three occupants out. The driver at first refuses, and Dutoi orders him out again. The driver denies that he didn't use his turn signal. As officers search him, they find a .44-caliber revolver in his waistband.

By this point, about 10 police cars have flooded Walnut, and all three occupants of the car are placed in handcuffs and taken away separately. The driver remains hostile toward the officers, but the other two occupants maintain they did not know the man had a gun. After officers determine that the two men don't have warrants for their arrests, they are released.

The officers also use the traffic stop as an opportunity to search the rest of the vehicle — front, back, trunk, under the seats, and everything in between — but do not find any other guns or other items.

While the traffic stop doesn't result in police finding the shooting suspect, they seize a gun — a victory any day of the week, Dutoi said, noting that a bullet fired from the seized rifle “has the ability to travel up to a mile.”

“They're not expert marksmen,” Dutoi said. “They're 16, and they act from emotions. They don't have the ability to make rational decisions. Those weapons had the potential to be used in further violent crime that would harm people or other innocent people or injure officers.”

The remainder of the operation, which runs until about 5 p.m. on this day, is uneventful.

A man walking along a southwest Saginaw street is stopped after two detectives see him possibly throw something when he sees the officers. A recent parolee is caught driving without a valid driver's license on Mackinaw. After Walt Wysopal and fellow state Department of Corrections parole officers search his vehicle and joke about the high quality of the man's shoes, they decide against taking him into custody — unless he's not living at his mother's townhouse on Vestry, as he tells them he is.

The parole officers, as well as most of the remainder of the officers still involved in the operation as 5 p.m. approaches, head to the Vestry location. The strong showing of police brings nearby residents out of their townhouses to observe as the parole officers search the parolee's home.

The hot summer day — the sweat often glistened off the officers' heads as soon as a "jump out" began — leaves a child on his bicycle savoring his lime frozen ice bar. Dutoi kneels down and asks for a piece of the cold treat, but no dice — the kid smiles and rejects him.

The parolee's story checks out, as information from his mother and a search by Wysopal and the other agents confirms his residency. As the agents take the handcuffs off the parolee, the Major Crimes Unit members walk back to their respective unmarked vehicles — another operation complete.

*Follow Andy Hoag on Twitter [@SNAndyHoag](#)*

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# Saginaw Police Department

Brian J. Lipe  
Acting Chief of Police

612 Federal Avenue  
Saginaw, Michigan 48607-1558  
(989) 759-1288  
FAX (989) 759-1538

Exhibit C

June 14, 2013

Mark P. Fancher  
Staff Attorney/Racial Justice Project  
2966 Woodward Avenue  
Detroit, MI 48201

## Re: Freedom of Information Act Request – Jump Outs

Dear Mr. Fancher:

The Saginaw City Police Department is in receipt of your Freedom of Information Request. After a thorough review of your request, it is herein denied.

You requested all records of any kind that concern stops of motorists and pedestrians by officer participating in operations sometimes called "jump-outs" by the Saginaw County Major Crimes Unit. The dates specified in your request were any time between June 1, 2012 and October 31, 2012 as well as April 1, 2013 and May 31, 2013 regardless of whether arrests were made.

After a thorough review of your request, it has been determined that it is overly broad. MCL 15.233(1) states the requestor must provide the public body's FOIA Coordinator with a written request that sufficiently enables the public body to locate the document.


"Due to the denial of your request, the City is providing you with a copy of Section 10 of the Freedom of Information Act. You have the right to appeal this denial to the City Council in writing. Such writing must specifically state the word "APPEAL" and indicate the reason or reasons for reversal of the denial or seek judicial review in the Circuit Court within 180 days of the final determination to deny a request. If the court determines a public record is not exempt from disclosure, it shall order its release or production. The burden of proof in court is on the public body. If the court determines that the public body has been arbitrary and capricious in not disclosing a public record, it may award in addition to actual and compensatory damages, punitive damages not exceeding \$500.00.

To Be Sure of Excellence

An answer must be forwarded to you within 10 business days. However, under unusual circumstances the City Council can issue a notice extending the time period for a response for ten (10) additional business days. If you file suit in Circuit Court and you prevail in such action, the court must award you reasonable attorney fees, costs and disbursements. If you or the City partially prevails, the court, in its discretion, may award all or an appropriate portion of reasonable attorney fees, costs and disbursements.

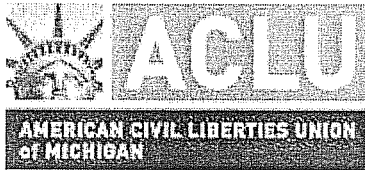
The award shall be assessed against the City under MCL 15.240(7). If the Circuit Court determines the City arbitrarily and capriciously violated the Freedom of Information Act, the court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00."

Sincerely,

A handwritten signature in cursive script that reads "Cathy Starling". The signature is fluid and written in dark ink.

Cathy Starling  
Foia Designee  
Support Services Administrator

TAB  
B



## MEMORANDUM

March 12, 2014

To: Barbara L. McQuade  
U.S. Attorney  
211 W. Fort Street  
Detroit, MI 48226

From: Mark P. Fancher  
Staff Attorney  
Racial Justice Project  
ACLU of Michigan  
2966 Woodward Ave.  
Detroit, MI 48201  
(313) 578-6822  
[mfancher@aclumich.org](mailto:mfancher@aclumich.org)

**Re: The Killing of Milton Hall**

### Introduction

On February 25, 2014, the Justice Department announced that federal criminal civil rights charges will not be filed against Saginaw Police Department (SPD) officers who, on July 1, 2012 shot and killed Milton Hall, a 49-year-old, mentally ill African American homeless man. The killing was video recorded, and footage shows that Hall was unarmed except for a three inch knife. The six officers involved in the killing were far from Hall's physical reach. Reports say the officers' firearms discharged 47 bullets. Video footage shows that all shots were fired within a matter of seconds, and that Hall collapsed before the firing ended.

The Justice Department's decision was preceded by a decision by the Saginaw County Prosecutor and the Michigan Attorney General not to prosecute under state laws. In a statement, the Justice Department said: "...[T]his tragic event does not present sufficient evidence of willful misconduct to give rise to a federal criminal prosecution of the officers involved."

The decision not to prosecute these officers in the face of graphic video evidence is highly controversial and by some accounts has triggered anger and unrest in the Saginaw community. The ACLU of Michigan respectfully requests the Justice Department to review this matter once again and reconsider the decision not to prosecute.



## Section 242 and Willful Conduct

At issue in this matter is whether the six police officers involved in the incident violated 18 U.S.C. Sec. 242. It 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.

In its statement, the Justice Department commented: “To pursue prosecution under Section 242 in the U.S. Code, the applicable criminal civil rights statute, the government would have to prove beyond a reasonable doubt that the SPD officers deprived Hall of his constitutional right to be free from an unreasonable use of force. The government would also have to establish beyond a reasonable doubt that the officers acted willfully, that is, for the specific purpose of violating the law. Law enforcement actions based on fear, panic, misperception or even poor judgment do not constitute willful conduct prosecutable under the statute.”

The statement further states: “Even if the officers were mistaken in their assessment of the threat posed by Hall, this would not establish that the officers acted willfully, or with an unlawful intent, when using deadly force against Hall.” The ACLU of Michigan respectfully suggests the facts as presented in the Justice Department’s statement provide ample reason to believe a jury could fairly and reasonably conclude the officers used unconstitutional excessive force and willfully deprived Milton Hall of a constitutional right.

In *Screws v. United States*, 325 U.S. 91 (1945) the U.S. Supreme Court provided guidance for the interpretation and application of Section 242’s “willfulness” requirement. The court interpreted it to mean that a defendant must have specific intent, which it defined as: “an intent to deprive a person of a right

which has been made specific either by the express terms of the Constitution or laws of the United States or by decisions interpreting them.” *Id.* at 104.

The court explained the underlying policy reasons for this construction by saying punishment can be authorized: “only for an act knowingly done with the purpose of doing that which the statute prohibits.” This is to ensure that: “the accused cannot be said to suffer from lack of warning or knowledge that the act that he does is a violation of law.” *Id.* at 102.

Notwithstanding the court’s emphasis on the importance of a defendant having specific intent to deprive someone of a constitutional right, the *Screws* opinion points out that: “[t]he fact that the defendants may not have been thinking in constitutional terms is not material” to whether they satisfy the willfulness requirement. *Id.* at 106. In other words, it is not essential that an officer specifically articulate either verbally or in his thoughts: “I intend to deprive this suspect of his 4<sup>th</sup> Amendment rights.” Guided by the *Screws* opinion, the Sixth Circuit Court of Appeals noted that a jury “need not, in order to convict, determine that [the accused] actually knew that it was a Constitutional right that they were violating...” *U.S. v. Odell, et al.*, 462 F.2d 224, 233 n. 10 (6<sup>th</sup> Cir. 1972).

If then, specific knowledge of the violated constitutional right is not required, how might an offender’s intent be gauged when he or she is not thinking explicitly in constitutional terms? The Supreme Court explains: “[to] act willfully in the sense in which we use the word [is to] act in open defiance *or reckless disregard* of a constitutional requirement that has been made specific and definite.” *U.S. v. Screws*, 325 U.S. at 105 (emphasis added). Likewise, the Third Circuit commented: “[I]t is enough to trigger [Section] 242 liability if it can be proved – by circumstantial evidence or otherwise – that a defendant exhibited reckless disregard for a constitutional or federal right. Reckless disregard has different meanings in different contexts.” *U.S. v. Johnstone*, 107 F.3d 200, 208 (3d Cir. 1997).

Consequently, when considering whether officers willfully deprived Milton Hall of a constitutional right, the Justice Department was not limited to a determination of whether the officers had a particular purpose. “... ‘[W]illful’ in Sec. 242 means either particular purpose *or* reckless disregard.” *Id.* (emphasis added)

A two-part inquiry is therefore required. First, it must be determined whether Milton Hall’s Fourth Amendment right not to be subjected to excessive force was violated. (See: *Graham v. Connor*, 490 U.S. 386 (1989)) Second, if we assume the officers were not thinking in constitutional terms, it must be determined whether the officers recklessly disregarded Hall’s Fourth Amendment right to be free from excessive force.

## The Fourth Amendment Violation – Excessive Force

The Justice Department's statement makes much of the officers' assertions that they shot Hall "because they believed Hall posed an imminent threat to the officers' safety." But when it comes to deciding whether Mr. Hall's Fourth Amendment rights were violated, an officer's intentions are not dispositive. "An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional." *Id.* at 397.

*Graham v. Connor* lists a series of factors that can be considered in the determination of whether the officers' actions violated the Fourth Amendment.( *Id.* at 396):

1. Severity of the Crime – From the information available, it appears that Milton Hall was engaged in an argument with a gas station clerk. He also brandished a small knife. He ultimately refused to be taken into custody. Such offenses are fairly characterized as minor when considered alongside serious felonies like murder, aggravated assault, rape, etc.
2. Whether the suspect poses an immediate threat to the safety of officers or others – The officers on the scene and members of the public were all a considerable distance away from Mr. Hall. In addition, the officers were not only armed, but at least one of them held the leash of a K-9. Mr. Hall posed no immediate threat to any of the officers.
3. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight – Mr. Hall could be technically described as resisting arrest, but not in the sense that he was in close contact with arresting officers and engaged in grappling struggles or hand-to-hand combat. While in those situations there is a high risk of injury to the officers, in Mr. Hall's case he lacked the capacity to inflict harm on the arresting officers because of the physical distance between them. He refused to comply with police orders, but he was not physically engaged with any of them.

The court explained that after considering the above and other factors, the "'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight." *Id.* Given that Mr. Hall was mentally impaired, physically isolated from all other persons, armed only with a three inch knife, and surrounded by armed police officers, a reasonable police officer on the scene would use any of numerous alternatives to firing 47 fatal gunshots. Such possibilities might include (among others): pepper spray, batons, a negotiator; or simply standing down and giving Mr. Hall an opportunity to calm down on his own. A killing that resembled in many ways execution by firing squad was not objectively reasonable, and the officers' actions violated Mr. Hall's Fourth Amendment right to not be subjected to excessive force.

## The Officers' Reckless Disregard of the Fourth Amendment amounts to Willful Conduct

In *Screws*, the Supreme Court provides guidance for determining whether an officer recklessly disregarded a constitutional right, and the Ninth Circuit provides a useful analysis of the *Screws* opinion in *U.S. v. Reese*, 2 F.3d 870 (9<sup>th</sup> Cir. 1993):

The meaning of 'reckless disregard,' meanwhile, can be gleaned from the following passage: '[I]t is plain that basic to the concept of due process of law in a criminal case is a trial – a trial in a court of law, not a 'trial by ordeal'...Those who decide to take the law into their own hands and act as prosecutor, jury, judge and executioner plainly act to deprive a prisoner of the trial which due process of law guarantees him. And such a purpose need not be expressed; it may at times be reasonably inferred from all the circumstances attendant on the act.' *Screws v. U.S.*, at 106. Here, the Court says that the purpose to deprive another of his right to trial by jury is 'plain' from the wrongful conduct that in fact causes such a deprivation. Such intentionally wrongful conduct, because it contravenes a right definitely established in law, evidences a reckless disregard for that right; such reckless disregard, in turn, is the legal equivalent of willfulness.

*Id.* at 881.

In Milton Hall's case, the officers' purpose to use excessive force in violation of Mr. Hall's Fourth Amendment rights is "plain" from the fact that they fired at him when none of the officers were in immediate danger, and they continued to shoot numerous rounds into Mr. Hall's collapsed and probably dead body after any conceivable imagined danger had passed. Such conduct is at minimum a reckless disregard for a right definitely established in law, and it should be regarded as willful and sufficient to satisfy the requirements of Section 242.

## Conclusion

In consideration of graphic video evidence, a killing that cannot be justified under any standard, and a community that has been devastated by an inexplicable act of violence, the actions of the officers involved in the killing of Milton Hall must be tested in a criminal court. It is possible the investigation conducted by the Justice Department was in every way professional, conscientious, sincere and thorough, but there is nevertheless a need for the facts to be reviewed yet again in the context of governing legal standards. For these reasons and others, it is respectfully requested that the decision not to bring federal criminal civil rights charges be reconsidered.



# Department of Justice

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## **JUSTICE DEPARTMENT ANNOUNCES RESULTS OF INVESTIGATION INTO THE DEATH OF MILTON HALL**

WASHINGTON – The Civil Rights Division of the U.S. Department of Justice, the U.S. Attorney's Office for the Eastern District of Michigan and the FBI announced today that they will not be pursuing federal criminal civil rights charges against the Saginaw Police Department (SPD) officers who shot and killed Milton Hall on July 1, 2012. After a thorough investigation, federal authorities have determined that this tragic event does not present sufficient evidence of willful misconduct to lead to a federal criminal prosecution of the police officers involved.

The Civil Rights Division, the U.S. Attorney's Office, and the FBI conducted an independent investigation that carefully considered all of the evidence. During the investigation, prosecutors thoroughly reviewed the criminal investigation previously conducted by the Michigan State Police in conjunction with the Saginaw County Prosecutor's Office and the Michigan Attorney General's Office. State authorities collected the physical evidence at the scene; photographed the scene; interviewed the two non-shooting SPD officers and dozens of eyewitnesses; acquired the patrol car dashcam and civilian videos of the incident; gathered the dispatch logs, 911 calls and other investigative materials related to the incident; obtained the involved officers' police reports; and conducted a ballistics and autopsy examination. At the conclusion of the state investigation, the Saginaw County Prosecutor and the Michigan Attorney General declined to prosecute any of the SPD officers involved in the incident.

In addition to reviewing the evidence previously collected, FBI agents interviewed a number of witnesses who had not been interviewed during the state investigation, including individuals whose names were provided to prosecutors by Hall's family.

To pursue prosecution under Section 242 in the U.S. Code, the applicable criminal civil rights statute, the government would have to prove beyond a reasonable doubt that the SPD officers deprived Hall of his constitutional right to be free from an unreasonable use of force. The government would also have to establish beyond a reasonable doubt that the officers acted willfully, that is, for the specific purpose of violating the law. Law enforcement actions based on fear, panic, misperception or even poor judgment do not constitute willful conduct prosecutable under the statute.

The evidence in this case shows that on July 1, 2012, SPD officers responded to the Riverview Plaza in Saginaw, Mich., after receiving a 911 call about a confrontation between a man, later identified as Hall, and a clerk at a Mobil gas station. An SPD sergeant was the first

officer to arrive at the scene, where she located Hall in the plaza's parking lot and saw that he was carrying a knife with an approximately three-inch blade. After encountering Hall and seeing that he was armed with a knife, the sergeant requested backup. When the second officer arrived, Hall approached that officer's patrol car and jabbed the hood of the vehicle with a knife. The six remaining SPD officers on duty that day, including a K-9 officer and his dog, reported to the plaza, approached Hall and repeatedly ordered him to drop his knife. Hall did not comply with the officers' commands, and verbally responded that he would not put the knife down. While the SPD officers came together on the scene, the K-9 officer and his dog approached and retreated from Hall several times. During this time, Hall was intermittently shifting his feet and getting into and out of a crouching stance. When Hall, with the knife still in his hand, moved toward the K-9 officer and his dog, six SPD officers fired at him and fatally wounded him.

Two SPD patrol car dashcams captured a video recording, with no audio, of much of the encounter between Hall and the SPD officers. The dashcams on the other SPD patrol cars were either not operational or not activated during this incident. Several civilians witnessed the incident and recorded portions of it on their cellular phones.

After the shooting, all of the SPD officers at the scene wrote reports. In these reports, the officers who discharged their weapons explained that they did so because they believed Hall posed an imminent threat to the officers' safety.

After a careful review of all of the evidence, experienced prosecutors from the Criminal Section of the Civil Rights Division and the United States Attorney's Office for the Eastern District of Michigan have determined that the evidence in this case is insufficient to prove, beyond a reasonable doubt, that the SPD officers willfully shot Hall for an unlawful purpose, rather than for their stated purpose of preventing Hall from harming SPD staff. Even if the officers were mistaken in their assessment of the threat posed by Hall, this would not establish that the officers acted willfully, or with an unlawful intent, when using deadly force against Hall. Accordingly, this tragic event does not present sufficient evidence of willful misconduct to give rise to a federal criminal prosecution of the police officers involved.

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