



Law Offices of
Ruben V. Chavez, P.A.

August 8, 2013

Senator Marco Rubio
8669 NW 36th Street
Suite 110
Doral, FL 33166

Senator Ted Cruz
10440 N Central Expwy, Suite #1160
Dallas, TX 75231

Dear Distinguished Gentlemen:

As you may be aware, the United States Department of Justice Civil Rights Division recently investigated the City of Miami Police Department to determine whether said department engaged in a pattern or practice of excessive use of deadly force by firearms. This investigation arose out of various police-involved shootings between the years 2008 and 2011. The conclusions reached by Assistant Attorney General, Thomas E. Perez, on behalf of the Civil Rights Division of the U.S. Department of Justice were adverse to the department and are also the focus of the enclosed response by Former Chief of Police for the City of Miami Police Department, Miguel Exposito.

Accordingly, enclosed please find a comprehensive report prepared by Former Chief of Police, Miguel Exposito, detailing all of the deficiencies contained in the Department of Justice's conclusions. For this reason, Former Chief Exposito brings these matters to your attention so that the appropriate Senate panel can initiate proper action associated therewith, including but not limited to, an independent investigation of its own.

Thank you again for your time and consideration and Chief Exposito will remain at your disposal to discuss any and all questions with you personally.

Very truly yours,



RUBEN V. CHAVEZ

RVC/lp
Enclosure

cc: Attached list

Mayor Tomás Regalado
3500 Pan American Drive
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Commissioner Wifredo (Willy) Gort
District 1
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Commissioner Marc D. Sarnoff
Chairman District 2
3500 Pan American Drive
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Commissioner Frank Carollo
District 3
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Commissioner Francis Suarez
District 4
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**DEFICIENCIES OF 2013 INVESTIGATION OF THE CITY OF MIAMI
POLICE DEPT OFFERED BY ASSISTANT ATTORNEY GENERAL
THOMAS E. PEREZ**

A handwritten signature in black ink, appearing to read 'Miguel Exposito', written over a horizontal line.

**BY: _____
CHIEF MIGUEL EXPOSITO**

Rebuttal to the US Justice Department- The Miami Police Department Investigation
Pattern and Practices of Excessive Force with Respect to Firearms Discharges

I have had an opportunity to read the letter of findings relating to the “patterns and practices” investigation of the Miami Police Department (MPD), recently prepared by the Civil Rights Division of the Department of Justice (DOJ). It is my understanding based upon information gleaned from the aforementioned report that the investigation, which was initiated in November of 2011 and concluded in July of 2013, focused on events that took place during a four-year time span between 2008 and 2011; this would include two years in which the Miami Police Department was under the direction of Chief John Timoney (2008-2009), and two years when I was the department's director (2010-2011).

It is also my understanding that this investigation was a joint effort of the Special Litigation Section of the Civil Rights Division of the Department of Justice and the United States Attorney's Office for the Southern District of Florida, and it was conducted with the use of a police practices use of force expert who had assisted in a prior investigation of the Miami Police Department. According to DOJ, the inquiry included interviews of relevant witnesses, reviews of over 17,000 documents, including investigative files and reviews of policies and practices related to internal investigations.

In February 2012, I learned from news media reports of the existence of this probe. Consequently, a letter was crafted and sent via registered mail to US Attorney Wifredo Ferrer, officially notifying the US Justice Department of my desire to cooperate fully in the investigation. The letter also indicated that I possessed valuable information that could be critical to the final outcome of the probe. Although there was confirmation through the postal service that the letter was received by the US Attorney's Office, there was never a formal response in the form of correspondence, a phone call or e-mail as is customary and conforms to proper office etiquette. Additionally, I was also never contacted or interviewed.

In reading the DOJ's letter of findings, I note that the report, although all encompassing in scope, is itself very vague. I find that the report is riddled with inaccuracies, omissions and baseless conclusions. Many of the findings are nothing more than opinions and innuendos on the part of the investigators, containing insufficient facts and providing few examples of events that relate to problems that were cited in the report or referencing them by date, location, individual officer, case number or other identifying feature. It is inconceivable that this is the final work product generated from an in-depth comprehensive investigation that took almost two years to complete. Although I understand that this is a civil investigation, and not criminal in nature, the guidelines that govern the investigative process in both types of cases still apply, but were ignored. The most glaring failure noted in this case was the intentional and/or negligent disregard for input or information from the two most critical sources, Chief Timoney and I, the top department executives during the time frame being scrutinized or examined. In addition, the assistant chiefs of the the Field Operations Division, the assistant chiefs of the Investigations Division and the Internal Affairs Section majors under both Chief Timoney and I were also never interviewed, although the Justice Department report claims that all 'relevant' witnesses were interviewed. The Justice Department investigators violated the most basic principle governing the investigative process: to seek all available sources of information and obtain as many facts or as much data as possible from them.

I. Background

DOJ Contention:

The Justice Department Report of Findings proclaims that this is the second time that DOJ investigates the Miami Police Department in a decade. The first investigation, initiated in May 2002, was predicated on allegations that officers used excessive force. In the year prior to commencing that investigation, thirteen MPD officers were indicted for lying and planting physical evidence, including guns, in an effort to undermine the investigations of four officer-involved shootings. The indictments implicated officers at various levels of the chain of command, including supervisory staff, resulting in six convictions. According to DOJ, serious deficiencies were noted in the investigative practices and investigators routinely failed to pursue inconsistencies in officer and witness accounts. They also left glaring omissions unexplored. In some cases, investigators failed to question apparent breeches of the chain of custody of key evidence, such as a subject's gun. DOJ concluded that MPD's failure to thoroughly investigate shootings led to dubious internal conclusions about the appropriateness of force. In this first investigation however, DOJ did not find a pattern or practice of excessive force.

According to DOJ, the current investigation commenced on November 16, 2011, after MPD officers fatally shot seven young African-American men during an eight-month period spanning 2010 and 2011. According to DOJ, widespread community concern about MPD's use of deadly force led to multiple requests for a Department of Justice investigation. In the report, however, DOJ does not reveal the source of the multiple requests it claims were made or how they originated. DOJ alleges they found reasonable cause to believe that MPD engaged in a pattern or practice of excessive use of deadly force in this follow-up investigation.

Rebuttal from Former Chief Exposito:

I am very familiar with the first DOJ investigation. The initial catalyst for that federal probe was the shooting of an unarmed homeless man in the Coconut Grove section of Miami in 1997 by MPD officers and the planting of evidence. That investigation, which I spearheaded as the commanding officer of the Criminal Investigations Section, led to the arrest of several rogue officers by Miami Police Homicide detectives and was prosecuted in state court. Extraordinary effort was put forth on the part of the police department's Criminal Investigation Section in developing that case and moving it forward to a successful conclusion. The key piece of evidence in the case was a fingerprint barely visible on a subject weapon, which officers had supposedly not touched. When the firearm was submitted to the Miami-Dade Crime Lab for processing, lab technicians were not certain they could lift the print without possibly destroying it in the process. An in-house decision was made by the investigative team that rather than risk losing critical evidence on the case, a Homicide investigator would instead hand-carry the firearm to the FBI Laboratory in Washington. This was subsequently done, and the FBI lab was successful in lifting the fingerprint from the weapon and matching it to one of the officers on the shooting scene, thus proving that the firearm was planted by that officer. In addition to the arrest of that officer for planting the weapon, other officers were arrested for covering up the crime and for lying in the arrest report in an effort to undermine the investigation. The follow-up investigation also uncovered the fact that the gun had been stolen from a drug dealer by police during a raid at his apartment.

I had transferred to the Criminal Investigations Section shortly after several other officer-involved shootings had been investigated, but in reviewing the aspects of those cases, I suspected that they could

possibly involve the planting of guns at the scenes, as well. During the ongoing investigation of the Coconut Grove incident, I recommended that the department reopen those prior cases. I also suggested that the FBI be brought in to assist in that task, primarily because the Bureau possessed certain resources that the department lacked at the time. Although I was very persistent in expressing my views about the previous cases, I was overruled, transferred out of the Criminal Investigations Section, and was subsequently demoted.

Consequently, I met with federal prosecutors and Miami-Dade Police Public Corruption investigators assigned to the US Attorney's office, and I provided them with information that I believed could assist in the furtherance of an investigation they had recently reopened regarding the previous MPD shooting cases. Although it took several years to develop a prosecutable case, in 2001, thirteen Miami officers were federally indicted for planting weapons at previous shooting scenes, and six of them were subsequently convicted. I filed suit against the police department as a whistleblower, and by way of the legal system was made whole by the police department and eventually regained my major's rank.

It is inconceivable how the Justice Department arrived at their conclusions on these two separate investigations. In the first case, the Justice Department found **no pattern or practice of excessive use of force** in the officer-involved shootings on the part of the police department in the investigation although it had already been previously established that guns had been planted, officers had perjured themselves, and thirteen officers had been federally indicted for those crimes. There was also evidence in that case that implicated officers at all levels of the chain of command, including supervisory staff. Yet, in stark contrast, DOJ claims it found **overwhelming evidence of a pattern and practice of excessive use of force** in the officer-involved shootings in the present inquiry, wherein the State Attorney's Office had made determinations on most of the shooting cases, and it had not deemed any single case to be unjustified or questionable.

It is difficult for a reasonable person to grasp how DOJ could come up with these two enigmatic and highly-contrasting determinations, when the facts of the two investigations do not support either of the findings by DOJ. The Justice Department must explain in detail how it reached its conclusions.

II. Applicable Legal Standard

DOJ Contention:

Section 14141 authorizes the United States to file a legal action when it has reasonable cause to believe that a law enforcement agency engages in a pattern or practice of violations of the Constitution or laws of the United States. According to DOJ, for a court to find a pattern or practice, it does not need to find a set number of incidents or acts.

(Numerous court cases are cited to determine the objective reasonableness standard for an officer to use force, deadly or otherwise.)

According to DOJ, the deadly force analysis requires a balancing of the nature and quality of the intrusion on the individuals' Fourth Amendment interests against the interests of the government, which include protecting the safety of the involved police officers as well as the public at large. Courts consider the reasonableness of an officer's use of force through a fact-dependent inquiry that is based on the totality of the circumstances. The question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying

intent or motivation.

Rebuttal from Former Chief Exposito:

I recognize the authority of the United States government to file legal action against law enforcement agencies that engage in a pattern and practice of violations of the Constitution or the laws of the United States. Although I embrace the concept, I have a differing opinion from DOJ concerning its conclusion that MPD has engaged in a pattern or practice of excessive use of force through officer-involved shootings between 2008 and 2011.

I also understand the concept of reasonable force.

III. Findings Regarding Use of Deadly Force

DOJ Contention:

DOJ opines that as a result of this current review, MPD engages in pattern and practice of excessive force with respect to firearms discharges, in violation of the Fourth Amendment. According to DOJ, they closed their first investigation in 2006, confident that MPD had adopted and implemented reforms necessary to ensure constitutional policing and a system of accountability to ensure reforms would endure. The Justice Department alleges that many of the systemic problems they believed were fixed have reoccurred, evidenced by a steady rise in officer-involved shootings.

DOJ claims that MPD itself recently found three of the shootings unjustified, and the Justice Department found a number of additional shootings were questionable at best. The number of police-involved shootings that DOJ claims occurred and are reflected in DOJ's report is one in 2006, seven in 2007, eight in 2008, eight in 2009, nine in 2010, nine in 2011 and four in 2012.

Rebuttal from Former Chief Exposito:

In reviewing the figures provided by DOJ, it reflects that there was a spike in the number of officer-involved shootings from 2006 to 2007, after that, the numbers remained steady from year to year until 2012. In any case, I am baffled by the quote on the part of DOJ relating to what it believes is evidence of a systemic problem in the department. By its own assertion in one section of this report (page 2), the Justice Department maintains that the number of shootings by departmental personnel alone does not establish a pattern or practice of unreasonable force, yet, on page 5, it contradicts itself and condemns the police department, claiming that there is a systemic problem as evidenced by a rise in the number of shootings. This appears to be doublespeak on their part, that I sense is intended to deceive.

There are other factors that DOJ never took into consideration in passing judgment, but should have done so. The two most essential considerations were 1) the increased level of violence toward law enforcement officers in the city of Miami that was prevalent during the time period analyzed by DOJ, and 2) the number of officer-involved shootings by law enforcement officers from agencies other than MPD that took place within the limits of the city of Miami during that time.

During my tenure, which stretched from the end of 2009, to three-quarters of the way in 2011, the city of Miami experienced a heightened level of violence toward law enforcement officers. In addition to the shootings by MPD officers, agents and officers from other law enforcement agencies were either

victims of violence within the jurisdictional boundaries of the city of Miami, or they were involved in shooting incidents themselves. These officers do not patrol these areas on a daily basis as MPD officers do, and they entered into the limits of the city of Miami for a specific purpose or reason when these incidents occurred (The only exception is the murder of December 13, 2010, involving a State Corrections officer).

- **April 22, 2010-** An officer of the Robbery Intervention Detail of the Miami-Dade Police Department entered the city of Miami, and spotted a suspect whom the officer knew had open warrants for Grand Theft and Armed Burglary. When the officer attempted to pull the subject over in a traffic stop, the suspect jumped out of the vehicle and fled on foot. He subsequently made his way around the officer and up to a landing situated over an area where the officer was standing. From the landing, the subject proceeded to drop a 30 pound cinder block on the officer's head from above. After the stunned officer fell to the ground, the subject jumped down from the landing and continued to beat and kick him. As the officer lay on the ground bleeding, the suspect took the officer's own vehicle and ran over him several times, before fleeing. The Miami-Dade County officer suffered multiple skull fractures, hemorrhaging on the brain, a lacerated liver, seven broken ribs, an injured diaphragm, spine, colon, and pancreas, and a broken arm. He remained in critical condition in the hospital for several months until he made a partial recovery. The suspect was arrested days after the brutal attack.

- **August 20, 2010-** A federal ICE agent and an MPD detective were working jointly as part of an anti-gang task force. While patrolling the area of Liberty City in the city of Miami, the law enforcement officers observed two individuals brandishing weapons, including a shotgun. Both of the officers were wearing tactical uniforms that identified them as police at the time. As the law enforcement officers approached, the subject with the shotgun leveled it at the officers. The officers, fearing for their lives, fired at the individual carrying the shotgun, who died from his wounds. Ballistics testing could not determine who fired the fatal shot. The ICE agent fired a total of nine (9) shots and the Miami officer fired one (1) shot.

The second suspect, who was armed with a handgun, fled. A perimeter was set up by MPD for the second subject, and he was arrested an hour later. The pistol that he was carrying was also recovered.

- **December 13, 2010-** A Florida Corrections Officer and her 2-year old son were slain in a hail of bullets from high-powered rifles at her home in the Liberty City area of the city. More than 70 bullet casings were recovered from the scene. Two suspects were later arrested and charged with murder.

- **January 19, 2011-** Officers from the North Miami Beach Police Department shot and wounded an armed subject at the Take One Lounge located in the Little Haiti area of the city. At the time of the shooting, the officers were in the city in the furtherance of an investigation that had begun in their jurisdiction, when the subject pulled out the weapon.

- **January 20, 2011-** Four officers of the Miami-Dade Police Department's Career Criminal Squad entered the city looking for a suspect wanted for murder. While the officers surrounded the duplex located in the Liberty City area of the city, the suspect confronted three of the officers and shot them, unfortunately killing two of them. The suspect was eventually shot and killed by one of the other Miami-Dade County officers on the scene.

- **April 15, 2011-** Officers from the Miami-Dade Police Department Robbery Intervention Detail were traveling through the city of Miami when they spotted a vehicle with a stolen tag in the Allapattah

area of the city. As they pulled the car over, the occupant exited the vehicle exhibiting a weapon. In the ensuing gun battle, the suspect was killed by the Miami-Dade County officers.

The above listed incidents highlight events that occurred during two of the four-year time frame analyzed by the DOJ. I am reasonably certain that similar incidents occurred during the other two years that I excluded from the narrative due to my inaccessibility to the required information. These incidents underscore the violence toward law enforcement officers that was prevalent at the time in the confines of the city of Miami.

On March 22nd, 2011, eight months before DOJ began its probe of MPD, Attorney General Eric Holder convened a meeting in his offices concerning the recent and alarming increase of officers killed, wounded, and assaulted by firearms in the United States. Attendees included Chiefs of Police, Sheriffs, representatives of the rank and file and Attorney General Staff.

The Attorney General opened the meeting noting his personal concern about the recent increase of officers assaulted with firearms. Some of the bothersome issues voiced by the Attorney General and others in attendance, were related to the topics of the availability of guns, mental health concerns, and the issue of repeat offenders.

Many in attendance were of the opinion that while there are generally strict laws concerning the unauthorized possession of firearms or their concealed carrying, persons arrested for these crimes seldom receive much jail time, so it becomes more advantageous for a criminal to be caught by police with a firearm than by his fellow criminal without one. Another cause for concern was the easy availability of guns, which at times are stolen from law-abiding citizens or are often traded for drugs.

On the issue of mental health, some believed that budget reductions have closed or truncated many mental health facilities and their staff. A concern was also voiced about the fact that there is not an adequate data base, which allows officers or investigators to identify persons who have been treated for mental illness, and whose behavior might impact public safety. The point was raised that this would be a complex issue to resolve due to existing medical privacy laws such as HIPAA, which may raise the issue of civil rights of the patient.

One of the topics that drew the most attention at the meeting was the subject of repeat offenders. The issue was raised, that in most areas, those arrested for killing or attempting to kill law enforcement officers have lengthy records of violent crimes, and yet they are still loose in our communities. It was suggested that prosecutors have tools at their disposal to lock these offenders up for substantial lengths of time, but their workload causes them to accept a plea bargain down to a lesser included offense, and as a result, that offender receives little time in jail for gun-related crimes short of murder. It was mentioned that in Washington, DC, the Top Fifty offenders average 15 prior arrests.

The seven individuals killed by Miami Police officers in the 2010 and 2011 shootings, and which are a focus of the DOJ investigation, had extensive criminal records. At an average age of 24 at their deaths, the seven men had cumulatively amassed one hundred and twenty-four individual arrests (124) on two hundred and nine (209) separate charges. A significant number of those arrests involved violent crimes such as Armed Robbery, Aggravated Assault, Resisting Arrest with Violence, Aggravated Battery on a Pregnant Person, Battery on a Law Enforcement Officer, and even Homicide. While this in no way, in and of itself, justifies the killing of these persons, it does offer an insight of the violence associated with the individuals whom our officers confronted.

According to statistics obtained from the Law Enforcement Officers Memorial Fund, a national organization that tracks violence against police officers, there was a 70% increase in the number of firearms-related officer fatalities from 2008 to 2011, ironically during the time frame that is the focus

of DOJ's probe of MPD. The state with the highest number of officer fatality in 2011 was Florida, whose numbers include the "cluster-killing" of two St. Petersburg Police officers in one incident and the slaying of two Miami-Dade County officers in another incident. In analyzing these numbers and coupling that with the increased level of violence towards law enforcement officers in Miami that I observed first-hand, I share in the concerns expressed by the Attorney General with regard to the violence against police officers that was prevalent at the time.

In response to the claim by the Justice Department that three shootings were found to be unjustified by the police department itself, it should be noted that none of those three officer-shooting cases were found to be unjustified by the State Attorney's Office during their review. The State Attorney's Office is the entity that has the authority to reach a legal finding on a shooting case, and the police department cannot override that office's findings. What the police department can do and has traditionally done, is that in cases wherein an officer has violated MPD's more restrictive internal administrative policies or procedures related to the deadly use of force, the department has taken corrective action to prevent a recurrence of the violation. This does not change the findings of the shooting from justified to unjustified.

In considering that there was an increased level of violence on a nationwide basis from 2008 to 2011 towards police, realizing that this level of violence was so troubling to the Attorney General that he convened a special meeting to address it, and in identifying the number of incidents in which officers from outside agencies were either victims of violent crimes or they were forced to fire their weapons within the city of Miami, it makes one wonder why DOJ would exclude these considerably essential facts from their report. A person is left in a quandary, asking oneself, was it poor investigative work on their part (something they accuse MPD in their report of doing) or did DOJ purposely omit these facts from the report to deceive? This question must be addressed by the Justice Department.

A. The City of Miami Police Department Has Engaged in a Pattern or Practice of Excessive Force in Officer-Involved Shootings at Persons

1. MPD Itself Found that Officers' Use of Force Was Unjustified in Three Cases

DOJ Contention:

According to DOJ, the Miami Police Department has found at least three officer-involved shootings unjustified (The particulars of the three cases are listed and addressed individually below).

Rebuttal from Former Chief Exposito:

It is disingenuous for DOJ to list these cases as unjustified. Their assertions are misleading and highly inappropriate, thereby giving an impression that the officers violated the law by their actions. There was never a finding of unjustified use of force by the State Attorney's Office in the cases mentioned. In addition, it has been the policy of the police department to accept the ruling of the State Attorney's Office, whether the case has been found to be justified or not. In the event that a case has been found to be justified by the State Attorney's office, the department has taken corrective action if it determines that an officer has violated the department's administrative policies, which are more restrictive than the law allows. If, as DOJ claims, MPD has found the first case referenced below as administratively unjustified, this is the first time in the department's history that the police department has ignored the legal ruling of the State Attorney's office, and has come up with its own independent determination in the administrative case, in terms of justifiability. In legal terms, the chief of police does not have the

authority to overrule the State Attorney's findings in the criminal case, therefore for all intents and purposes, this is a justified shooting.

DOJ's criterion for determining if a shooting is unjustified should be the judicial ruling by a court or another legal entity, such as the State Attorney's Office, not the administrative findings of a law enforcement agency. In this investigation, it is troubling that DOJ has ignored the ruling by the State Attorney's Office, and has instead relied on violations of the department's more restrictive administrative policies relating to the officer's use of a firearm, to reach its illogical conclusion. The posture taken by DOJ is distorted and distinctly unfair to departments such as MPD, who have adopted more restrictive and stringent policies to accomplish what should be DOJ's desired effect, to reduce the number of shootings by police. By citing violations of these departmental administrative restrictions in their argument, intent on finding fault with the department, DOJ is actually advocating for police departments to resist any attempt to enact stringent or restrictive measures, because violation of these administrative rules by officers could be grounds for DOJ to punish the department, as it attempts to do here.

DOJ Contention:

The first shooting case cited by the Justice Department involved a traffic stop and the shooting of an unarmed motorist and a passenger in the vehicle. According to DOJ, MPD rejected the shooting officer's statement, claiming that he saw a dark object in the driver's hand that appeared to be a weapon. MPD also appeared to credit a witness' account that the passenger complied with the officer's demands to show his hands. In addition, DOJ points out that notably, the shooting officer was involved in a non-shooting role in a 2008 shooting, and perhaps retraining or other corrective action may have been taken at that time, which could have influenced whether the 2011 shooting had to occur.

Rebuttal from Former Chief Exposito:

The above account of the incident by the Justice Department offers a very simplistic view of the occurrence, omitting essential details that would normally provide the reader with a true sense of the events that led to the shooting.

A task force comprised of federal agents and a Miami officer were alerted to a vehicle driving in an erratic manner shortly before midnight. The occupants of the subject vehicle were coming from a local lounge, where they had been drinking all night, and from which they had been ejected for inappropriately touching dancers at the club. The Miami officer was riding with federal agents as a passenger in the front seat of the pursuit vehicle. During the stop, the police vehicle overtook the subject vehicle and was positioned by the federal agent contrary to accepted police practice and training. As a result of this miscue, the Miami officer, now in a position of danger and seated right next to the other vehicle, quickly exited the vehicle with his weapon drawn. The officer ordered the driver to put his hands where he could see them, but instead the driver reached under the seat in an apparent attempt to grab what later turned out to be a black-colored cellphone that he had dropped. As he was rising, the officer, fearing that the subject was armed with a weapon, fired several shots, killing the driver and accidentally wounding the passenger. Federal agents stated that they heard the officer repeatedly state, "show me your hands" and "don't do it", prior to the shots being fired. Utilizing crime scene investigative techniques, investigators were able to determine that the driver was, in fact, either reaching under the seat or coming up from that position when he was shot. As DOJ affirms in their narrative of the incident, it is true that the passenger in the vehicle raised his hands when ordered, but the problem with DOJ's contention is that the person who was the potential threat to the officer was the

driver, not the passenger. The driver did not abide by the officer's commands and this led to his own demise. In closing out the case, the Miami-Dade State Attorney's office determined that the officer had a "reasonable fear" that the driver was reaching for a weapon, because federal agents said he ignored commands from the officer to show his hands, prompting the State Attorney's office to conclude that the shooting was justifiable. The fact that the chief of police or any other member of MPD chose to reject the officer's account of the incident and ignored the findings of the State Attorney's office is of little consequence. The State Attorney's office is the entity tasked with the legal responsibility for making that determination, not the chief of police. The officer is currently appealing his termination.

For reasons unknown, DOJ makes no mention in their report that the failure on the part of the federal agent to correctly perform a felony traffic stop when the vehicle was pulled over, placed the MPD shooting officer in a position of danger. This may have forced him to approach the driver of the suspect vehicle sooner than he would have preferred, and it possibly may have been a contributing factor to the shooting.

The mention by DOJ of the previous shooting case that this MPD officer witnessed and in which he played a *non-shooting* role in, is mind-boggling. For DOJ to recommend that a witness officer receive remedial training or corrective discipline is senseless. It is even more absurd for DOJ to conclude that had the officer received that previous remedial training or corrective discipline, this shooting may have been averted. (Incidentally, the previous shooting case witnessed by this officer has yet to be ruled unjustified by the State Attorney's Office).

DOJ Contention:

The second case presented by DOJ is the case of an officer who, according to DOJ, fired at a motorist for reaching into his back pocket to retrieve his wallet after the officer requested identification. The motorist was not hit by the projectile. According to DOJ, the shooting was found to be an unjustified use of a firearm by the officer.

Rebuttal from Former Chief Exposito:

As DOJ did in the previously-cited case, it appears that there are intricate details in this one that have been omitted from DOJ's narrative. It would appear that an officer who shoots at a citizen under the circumstances as presented by DOJ is opening himself or herself up to criminal charges, unless there is a legitimate and acceptable explanation on the part of the officer to justify his or her actions. In this case, the explanation on the part of the officer must have been compelling enough for the State Attorney's Office to conclude that the officer was legally justified in his actions. Upon receiving the State Attorney's Office determination, the department apparently took disciplinary action against the officer for violating internal administrative policies. This case is currently in the disciplinary appeals stage, and there is a possibility that the internal findings of the department could change. In any case, contrary to DOJ's contention, this is a justifiable shooting as legally determined by the State Attorney's Office.

DOJ Contention:

In the third case that DOJ cites, an officer witnessed a subject repeatedly shoot another man in front of a building, before the subject turned the gun towards the officer. The officer fired his weapon at the suspect, as he entered a vehicle and fled. According to DOJ, the MPD's Firearms Review Board found

that the officer was not justified in delivering the last of several shots, since he was fleeing and was no longer a threat to the officer.

Rebuttal from Former Chief Exposito:

The actions of this officer in this case were ruled to be justified and lawful by the State Attorney's Office. In addition, I point to pages 4 & 5 of DOJ's own report, which lists conditions in which an officer is justified in using deadly force under the law. In reviewing that subsection, I find that the particulars of this case fit the specific criteria for justified use of force. It reads as follow: "In the case of fleeing suspects, a law enforcement officer may use deadly force if he or she (1) 'has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others' or 'that he has committed a crime involving the infliction or threatened infliction of serious physical harm'; (2) reasonably believes that the use of force was necessary to prevent the escape; and (3) has given some warning about the possible use of deadly force, if feasible."

This is another example of DOJ's flawed and disingenuous investigative and reporting practices. Had DOJ conducted a fair and thorough evaluation of all available data, it would have realized that this officers' actions were consistent with Constitutional law. DOJ would have also uncovered the fact that even the police department ultimately ruled this case to be justifiable. Initially, MPD believed that the officer had violated internal administrative policies, but during the police department's employee appeals process, the Department Disciplinary Review Board voted by a margin of 5-0 that the shooting did not violate said policies. In addition, the chief of police agreed with the board's decision, and the case was reclassified as justifiable, not as DOJ claims.

Is this an example of a slipshod investigation or did DOJ purposely misrepresent the facts in order to deceit? DOJ must explain why certain facts were misrepresented or omitted from their report.

DOJ Contention:

*According to DOJ, MPD's own finding of a 13% unjustified shooting rate (3 of 24 of the completed investigations) is one factor underlying their determination of a pattern or practice of unconstitutionally excessive deadly force. Throughout the entire period of the review, 2008 through 2011, DOJ claims other shootings were identified that **appear unjustified and may have resulted from tactical and training deficiencies**.*

Rebuttal from Former Chief Exposito:

As I explained in the above section, all three cases cited by the Justice Department as unjustified are, in fact, justified shooting cases. These cases were reviewed by the Miami-Dade State Attorney's Office, the entity with the legal authority to make that determination, and they were found to be justifiable under the law. This being the case, the percentage of unjustified shootings is 0% , (0 out of 24). As I demonstrated in one of the examples cited by DOJ, in some instances MPD may initially rule a shooting case to be in violation of internal administrative policies, but the department could reverse itself and ultimately reclassify it, once it passes through the employee appeals process.

The Justice Department continues to allege that it has uncovered other **possible** cases that it **believes appear to be unjustified and may have resulted** from tactical and training deficiencies. These assumptions and innuendos on the part of DOJ are highly inappropriate in the final report of a fact-finding probe. If DOJ has evidence that those cases are cause for concern, they have an obligation to

identify them by name, date, location or case number, and to further explain why it believes these accusations to be true. For DOJ to haphazardly sling baseless accusations about a police agency or its actions, in the absence of any concrete facts to support their contention, is ill-suited and highly irresponsible.

2. MPD Officers Routinely Employ Poor Tactic

DOJ Contention:

According to DOJ, many of the investigations that were reviewed, including those that did not involve officers from specialized units, revealed poor tactical decisions by officers. DOJ further states that MPD's own review recognized deficiencies such as poor marksmanship, shooting from too great a distance, failure to follow perimeter protocol and firing at a moving vehicle.

DOJ cites one case in which it sets forth that an officer conducted a felony stop in a busy intersection when he had reason to believe that the subject was armed. Numerous civilians were in the vicinity as the officer and the subject exchanged gunfire, exposing civilians to grave potential harm. DOJ surmises that the officer should have waited for a backup and attempted to conduct the traffic stop in an area with less civilian activity.

*DOJ describes other instances where it believes MPD officers were deficient in their actions: an officer who **apparently** entered a dark building alone in search of an unknown and unarmed man who was shot by the officer, some cases where officers' marksmanship was questionable, and where officers fired their weapons without sufficient regard for potential risks to the community. Another unspecified example involved **officers** who entered a residence of a possibly armed subject without backup, and in yet another case, a man known to MPD to have mental problems was shot after he lunged at officers with a broken bottle.*

Rebuttal from Former Chief Exposito:

In the scenarios presented above, DOJ presents unflattering and generalized claims about the actions or the behavior of officers, yet it fails to identify the specific incident to which they refer by date, time, location or case number. It is difficult to respond or address these allegations without the benefit of knowing the circumstances that precipitated the shooting or variables that were present at the time that the shooting occurred.

It is factual though, as DOJ alleges, that MPD routinely conducts after-incident critiques of events, and in a limited number of them has identified issues of concern. In those instances, MPD has taken corrective action in the form of additional training or discipline to ensure there is no recurrence of these noted deficiencies. Corrective discipline and retraining are steps that conscientious and responsible law enforcement agencies take on a daily basis to correct inefficiencies noted in their day-to-day operation.

Surmising from the limited facts provided by DOJ, it appears that the first case it describes, is an incident that took place at NW 2nd Ave. and 62nd St. in 2010. The details, as presented by DOJ on this case, are erroneous, misleading and lack critical details, giving a false or skewed impression of the event to a reader.

The incident in question occurred as follows: Officers were summoned to a domestic situation, in which a subject had threatened several people at the residence with a firearm. The subject fled in his

vehicle prior to the arrival of responding police units. The police arrived and subsequently broadcast a description of the suspect and the vehicle via the police radio. At the above listed intersection, a veteran motor officer working a funeral escort, had the intersection blocked in order to facilitate a funeral procession, not realizing at the time that the suspect was driving in his direction. A second officer in a K-9 vehicle spotted the suspect vehicle heading toward the motor officer. Fearing that the suspect might shoot or run over the officer directing traffic, the K-9 officer blocked the suspect vehicle's path before it could reach the intersection. At that point, the subject got out of the passenger side of the vehicle, produced a firearm and began to shoot at the two officers. The officers fired several shots at the subject, but stopped for fear of striking innocent bystanders. Using vehicles as cover, the suspect fled while continuing to shoot at the officers. A SWAT team was summoned to the scene to conduct an area search. At one point, a gun battle ensued between SWAT officers and the suspect, leading to his demise. DOJ criticizes MPD for what it considers a mishandling of the events, and makes recommendations in the report of the steps it believes the officer (singular) should have followed to minimize danger to citizens in the area. These recommendations consist, from waiting for a backup unit to arrive prior to initiating the traffic stop to attempting the traffic stop in an area with less civilian activity. In this case, there were two officers on the scene, so a back-up was already there. Although the recommendations made by DOJ are appropriate in classic felony stops, it is obvious that the circumstances surrounding this particular incident did not allow officers (plural) an opportunity to conduct the stop in an area of less civilian activity. It is uncertain what intentions the suspect may have had as he roared toward the motor officer directing traffic at the intersection, but by impeding the suspect's vehicle route toward the intersection, the K-9 officer may have saved the life of the motor officer. It is obvious by the actions of the suspect after he exited his vehicle, that he had total disregard for his life or the life of others.

The other cases mentioned cannot be readily identified, again due to the limited information offered by DOJ. It is not even known if these incidents actually occurred during the time period DOJ examined in its investigation (2008-2011). There also seems to be some disconnect between the particulars of some cited cases, and the recommendations emitted by DOJ in its contention that the armed confrontation that resulted, could have been avoided. In one case, DOJ recommends that officers should have waited for a backup officer when entering a residence in an incident where there may have been an armed subject. When responding to domestic incidents or similar cases, officers routinely ask the complaining parties if there are weapons in the house before entering to speak to anyone else. In most cases, the complainant will answer in the affirmative, saying there are knives, baseball bats, guns or any other object that can be used as a weapon. When there are multiple officers, they will enter the premises.

With the presence of two officers on the scene, why would there be a need to wait for backup officer? And how many backup officers does DOJ believe are enough to handle a situation?

In another scenario, a man that DOJ claims was known by MPD to have mental illness, was shot after he lunged at officers with a broken bottle.

Does DOJ know, if in fact, any of the officers at the scene had knowledge of this person's past mental history? In a department the size of MPD, which has close to 1,100 officers, would we expect all officers in the department to be aware of this information?

In the report, DOJ's investigation questions the marksmanship of some of the officers involved in the officer-involved shootings. Frankly, I have to admit that this is the first time that anyone has complained about the officers' inability to strike their target. Based upon the number of deaths incurred in the officer-involved shootings reviewed by DOJ, I question the authenticity of that statement. In addition, as I describe in another part of my rebuttal, MPD personnel participate in significantly more

Officer Survival and Firearms Training and Qualification exercises than is required of law enforcement officers by the state of Florida. The fact that no officer was killed or was severely injured in any of the armed confrontations that occurred during my tenure attests to the quality of the training received and the skill of the officers to assimilate the training.

3. Improper Actions by Specialized Units

DOJ Contention:

According to DOJ, several shootings that occurred between 2008 and 2011 involved MPD's Specialized units, including the Tactical Robbery, Crime Suppression, Special Operations, K-9 and Gang Units. According to DOJ, in 2008 and 2009, 3 out of 16 shootings involved officers from a specialized unit, whereas 9 out of 17 shootings that occurred in 2010 and 2011 involved these officers.

Rebuttal from Former Chief Exposito:

When I took over the Miami Police Department at the end of 2009, I met with community leaders, who complained of the increased level of violence they perceived had been rampant for years in their neighborhoods. I also conducted an assessment of the department to get a clearer picture of the way things were running. During that assessment, I determined that the Crime Suppression Unit and the Problem Solving Teams, officers directly responsible for suppressing violent crime in the city, had schedules that required them to work predominantly Monday through Friday, from 10 am to 8 pm. After thirty-five years working in law enforcement, I was conscious of the fact that the level of violent crime and street-level drug dealing usually increases in the evening hours, and it does not subside on the weekends. I also noted that the officers assigned to these units were not being deployed into areas where violent crimes were occurring with frequency. My findings caused considerable concern, particularly with the elevated number of armed robberies that were taking place. As a result of my evaluation, I created the new Tactical Robbery Unit, and I beefed up the staffing levels of the existing Crime Suppression Unit and Problem Solving Teams. These specialized units are comprised of officers who generally do not get dispatched on routine calls for service, and whose primary responsibility is to target areas where violent crime is existent. The work schedules of officers in the tactical units were also adjusted to ensure that officers in those units were scheduled to work 24 hours a day, 7 days a week, with a heavy emphasis during hours when crime was occurring and in areas where the department's computerized crime-tracking system indicated it was taking place. Removing firearms from the hands of criminals and those who possessed them unlawfully became a priority. I instructed the Special Investigations Section and the Gang Unit to initiate long-term protracted investigations, targeting those who illegally obtained, sold or traded firearms. Particular attention was placed on high-powered weapons, which were increasingly being used in drive-by shootings. I tasked the tactical units with the responsibility for confiscating firearms at street level. That first year, we confiscated almost 400 more firearms than the previous year. This was an 80% increase in the number of firearms confiscated in 2010 from those seized in 2009. Tactical units, also referred to as Specialized Units by DOJ, were effective in confiscating the bulk of the weapons seized, and the numbers remained constant throughout my tenure. For obvious reasons, the substantial increase in the number of firearms seized by the department was cause for armed confrontations and is something which bears mentioning. As Chief of Police, when faced with a choice of either allowing our citizens to fall prey to brutal and armed criminals, or the possibility of an armed confrontation taking place between our well-trained officers and armed criminals, I will always choose the latter. For reasons unknown, the DOJ report fails to mention the significant increase in the number of weapons seized by the department in 2010 and the

early part of 2011, which accurately depicts the proliferation of guns in the hands of criminals at the time and the dangers faced by officers who had to disarm them.

As a result of our new initiatives, the incidence of violent crimes decreased; robberies and rapes, in particular, dropped to levels not seen in the city of Miami since the mid 60's, and burglaries and auto thefts were near their lowest levels in decades. Although there was an increase in the number of armed confrontations between officers and criminals, that was to be expected since officers were now patrolling crime-ridden areas and were now able to take enforcement action against these armed and dangerous individuals.

Unlike patrol officers, who in a typical day respond to calls for service from citizens, handle accidents, direct traffic and write reports, the tactical and SWAT units deal with high-risk situations on a routine basis. As mentioned previously, the primary responsibility of tactical units is to seek out crime and take enforcement action. The deployment of tactical officers is based on real-time statistical information that signal where violent crimes are being committed. It is the responsibility of officers assigned to those units to flood those areas and address the crime situation. Due to the nature of their duties, the expectation is that there would be a higher probability for an officer in these units to become involved in an armed confrontation than in the case of a patrol officer.

As for SWAT, the officers assigned to this unit, not only perform their regularly assigned duties in the department, but as SWAT members, they are also entrusted with the added responsibility of responding to and addressing only volatile situations, such as barricaded subjects, hostage situations, area searches and other situations involving armed individuals. Here again, the nature of their assignments invariably presents a higher probability for an armed confrontation than patrol officers. DOJ claims that a police practices use of force expert assisted in their inquiry. As such, I am perplexed by the fact that DOJ was unable to determine that the assignment of these officers to units that routinely face high-risk situations would increase the likelihood for an elevated number of shooting encounters.

In 2011, Chief Manuel Orosa dismantled or substantially reduced the number of officers assigned to the tactical units that I had created and others that were in existence when I became Chief. Chief Orosa publicly stated that he took this measure with the objective of avoiding or limiting violent confrontations between police and armed criminals, thereby reducing pressure that had been applied by a limited but vocal group of activists. This is important to note, because at year's end, the Part I crime rate in the city of Miami had risen by 6% in contrast to 2010, when there was a full complement of officers in the tactical units. This was an increase of almost 2,000 more Part I crimes. Part I crimes are serious felony crimes, categorized as Murder, Rape, Robbery, Aggravated Assault, Burglary, Larceny and Motor Vehicle Thefts. The most significant increase realized that year was in the number of rapes. In 2011, there was a 108% rise in the number of reported rapes, 50 more than the previous year. To make matters worst, this increase in crime occurred in Miami, at the same time that Florida Department of Law Enforcement (FDLE) Commissioner Gerald Bailey was celebrating the fact that Florida's crime rate had dropped to a 41-year low. When one analyzes these numbers, it leaves little doubt of the effectiveness of tactical units in controlling crime. The level of criminality in the city of Miami did not fair much better by the end of 2012, as Part I crimes were 4% higher than they were in 2010, before the tactical units were downsized (1,030 more reported Part I crimes in 2012 vs. 2010).

The last paragraph of Section II of DOJ's report, claims that the deadly force analysis requires a balancing of the nature and quality of the intrusion on the individuals' Fourth Amendment interests of the government, which include protecting the safety of the involved police officers as well as the public at large. In this investigation, it appears that DOJ went to great lengths to protect the rights of the decedents in the officer-involved shooting cases, but the evidence shows that DOJ never really

considered the safety or well-being of the officers or citizens. Had this not been the case, DOJ would have, at the very least mentioned in their report that there had been a noticeable increase of 6% in the level of serious crime, once Chief Orosa decimated the tactical units.

DOJ Contention:

DOJ claims that it found examples of specialized units not strictly adhering to operational plans. In one particular case, a team of officers in a specialized unit improperly deviated from requirements of a tactical plan. Using unmarked vehicles, the officers diverted from the plan in which they were to provide particularized assistance when requested and, instead followed a young man walking on the street. The officers ultimately shot the man, who had been carrying a gun. DOJ opines that officers relied upon questionable grounds to initially approach the man, as they had no basis to believe that the subject was armed. DOJ also claims that it is questionable that officers identified themselves or if they issued verbal warning before the shooting.

Rebuttal from Former Chief Exposito:

DOJ provides limited details in their description of the event. Below I describe and address the only possible incident that may fit the narrative provided by DOJ and which took place in 2010, during the period analyzed by DOJ. On the date of the incident, a citizen flagged down a police officer in another area of town and advised him that he had just witnessed a subject walking in the area of NW 46 St. and 14 Ave. brandishing an AK-47 rifle. The information was relayed by the officer over the police radio, and a description of the subject was broadcast. Tactical units, who were assigned to other duties at the time, but were in close proximity, advised the police radio dispatcher that they would be responding to the call. The officers were in unmarked vehicles, but they were wearing tactical uniforms that readily identified them as police. As the officers reached the location, they observed a subject fitting the description given, walking down the street. As officers exited their vehicles and approached, the subject who had initially concealed the rifle from the officers, turned and pointed it in their direction. Fearing for their safety, the officers fired at the suspect, who eventually expired on the way to the hospital.

As is evident, DOJ clearly misrepresented the narrative of this incident. Contrary to DOJ's claim, the officers did not simply abandon their assignment to follow a young man down the street. The officers had every reason to respond to the scene of what had been reported as someone brandishing a high-powered AK-47 rifle on the street. Converse to their contention that the officers had questionable grounds to approach the subject and that they had no basis to believe he was armed, the officers had probable cause to believe that this was the subject in question and that he was armed, for two basic reasons: The subject fit the description given, and he was walking in the immediate area reported by the complainant. As it turned out, the officers were correct.

The actions of the Justice Department investigators, in misrepresenting the facts in this case, bring their credibility and morals into question. It is unconscionable, and downright repulsive that representatives of DOJ would act so unethically, that they would concoct such a misleading account of this officer-involved shooting, for the mere purpose of attempting to cunningly characterize the officers in an unfavorable light.

DOJ Contention:

DOJ makes generalized allegations, citing weak tactical planning, failures in after-incident analysis of tactical operations, and inadequate supervision of officers in the specialized or tactical units, something that DOJ believes have a potential for danger.

Rebuttal from Former Chief Exposito:

Just as they have done throughout this investigation, the Justice Department continues to make broad and blanket allegations, lacking in specificity and substance. In 2008, the Miami Police Department was accredited by CALEA (Commission on Accreditation for Law Enforcement Agencies), a nationally renowned and recognized authority responsible for accreditation of law enforcement agencies. In order to qualify as a CALEA-accredited agency, the policies and practices of MPD must meet stringent CALEA standards. Only those law enforcement agencies that meet the highest standards of professionalism and embrace the concept of best practices are accredited by this organization. In 2011, there were only 582 law enforcement agencies in the nation out of over 18,000 existing departments, that met CALEA's rigorous standards. Every three years, all accredited agencies must undergo demanding re-inspections. These re-evaluations, not only include an inspection of the agency's facilities and equipment and a review of its policies and procedures, but it also includes a review of documents for the previous three-year period to ensure that the law enforcement agency is actually practicing and following the guidelines contained in its administrative policies and procedures. In 2011, MPD received re-accreditation by CALEA. That year, CALEA inspectors with vast law enforcement knowledge and experience conducted their examination and evaluation of the Miami Police Department. A portion of their analysis involved conducting random inspections of documents such as, operational plans, after-incident reports, and review of attendance schedules to ensure that the department had maintained proper supervision. At the end of the inspection process, CALEA inspectors determined that MPD met or exceeded its specifications and requirements for continued membership.

In addition to that, in January 2011, retired FBI Special Agent in Charge Paul Philip was hired by the city's administration to conduct an analysis of the Miami Police Department. The hiring of Mr. Philip was an obvious political move orchestrated by Miami Mayor Tomas Regalado, who was confident that Mr. Philip would unearth damaging information that would provide him with the evidence he needed to fire me. Timing played a significant role in the contracting of the federal agent. Mr. Philip was hired weeks after I had sent a scathing letter to the mayor, with copies to the US Attorneys Office, the Miami-Dade State Attorneys Office and the FBI. The subject letter was critical of Mayor Regalado's attempted obstruction of an anti-gambling operation that had been lawfully conducted by MPD. The letter further put the mayor on notice that he was to cease and desist in his efforts to hinder, disrupt or otherwise interfere with these legal law enforcement initiatives (It should be noted that the FBI was contacted on October 25, 2010, immediately after Mayor Regalado had ordered the raids halted). Mayor Regalado, who in his 2009 mayoral campaign had received thousands of dollars from owners and operators involved in the illegal gambling machine trade admittedly conceded to the news media that he had, in fact, directed the city manager to order me to discontinue the anti-gambling operations. At one point, he also admitted that he had invited the owners of the illicit machines and representatives of the illegal gambling industry to participate in meetings at city hall to help formulate an ordinance that would, at least in his mind, allow the machines to legally flourish in the city by taxing them. Mr. Philip may have come to the realization that there was a political undertone for his hiring. In an interview with the news media shortly after coming on board, Mr. Philip stated that his role would be to strictly investigate and to accurately report his findings, and that one condition in accepting the job was that he was not there for the purpose of making a case to fire me. Mr. Philip's final report indicates that he did not identify any deficiencies in the department's operation, policies or practices. In an interview with the CBS affiliate in Miami, Mr. Philip stated that he did not consider the fatal shootings, which were the ones that took place while I was the Police Chief and are part of this Justice Department probe, to be a drastic increase from previous years.

DOJ Contention:

DOJ alleges that behaviors exhibited by some members of specialized or tactical units suggest a lax recruitment process that insufficiently vets officer suitability for assignment to the units.

Rebuttal from Former Chief Exposito:

I have no way of knowing specifically what exhibited behaviors to which DOJ refers by its statement. DOJ does not reference any specific incident, and it does not even identify what behavior to which it refers. If the behavior DOJ refers to by that statement is their opinion that officers utilized excessive force in the officer-involved shootings, we have addressed that in my previous rebuttal, and I reiterate the fact that the State Attorney's Office has yet to rule any of those shootings as unjustified.

In reference to recruitment and vetting candidates for the specialized or tactical units, MPD utilizes procedures implemented by the City of Miami Department of Human Resources (HR) in all of its interviews. It is a process that the city's administration, the employee union, CALEA and HR have approved. MPD did not deviate from this practice during my tenure.

B. MPD's Investigations of Officer-Involved Shootings are Inadequate**1. Outcome Of Shooting Investigations Are Unreasonably Delayed****DOJ Contention:**

DOJ alleges that there are often egregiously long delays in concluding administrative investigations of officer-involved shootings. To their knowledge, MPD has not completed 24 internal investigations for 33 officer-involved shootings that are the subject of their probe. In some cases the shootings have remained open for more than three years.

DOJ gives an example of an officer-involved shooting case that has been pending for some time because the State Attorney's office has been unable to evaluate the officers' criminal culpability, or in other words, made a determination if the shooting was justified. According to DOJ, without the State Attorney's Office official decision to decline prosecution, MPD has decided not to compel the officer to provide statements in order to resolve its internal administrative investigation.

Rebuttal from Former Chief Exposito:

MPD allows the shooting officer an opportunity to give a voluntarily statement, if the officer is amenable to it. Officers, just as all other citizens of the United States, are protected by the Fifth Amendment of the Constitution against self-incrimination. As such, under the advice of their attorneys, officers rarely, if ever, offer to give a voluntary statement in shooting cases, on the grounds that the statement they give could be self-incriminating. To complete the administrative case relating to a police-involved shooting, requires MPD to take a statement from the shooting officer. If compelled, which is what DOJ is advocating, the statement would then fall under Garrity, which is a court ruling that stems from the Fifth Amendment to the US Constitution, and which declares that the government cannot compel an employee to be a witness against him/herself. As a matter of practicality, MPD does not take Garrity Statements from the shooting officers in administrative cases until the State Attorney's office has made a determination whether the shooting is justified or not. This policy, beyond being considered a best practice, conforms to agreements that have long existed between MPD and the State Attorney's Office. As DOJ should be aware, if a criminal case is still open at the State Attorney's Office and a shooting officer is compelled by MPD detectives to give a statement, the Garrity rule kicks in. Any self-incriminating statements or the fruits of those statements cannot be used against the officer in

a criminal case, in essence, granting him or her immunity. This could damage a case beyond criminal prosecution, should the State Attorney's Office later determine that there is criminal culpability on the part of the shooting officer.

It is incredulous that DOJ would be making such a senseless and impractical recommendation by advocating that MPD take a Garrity statement from the shooting officer, prior to judgment being passed by the State Attorney's Office on the justification of the shooting. No completion of an internal administrative case is worth losing a potentially criminal case.

Regardless of the time required, until the State Attorney's Office makes a final determination on the issue of justification, those administrative cases should remain open.

DOJ Contention:

DOJ contends that in almost all law enforcement agencies around the country, immediately following a shooting, an officer is removed from the street and placed on administrative duty. At times, the officers are returned to street duties before any determination on the propriety of the shooting.

Rebuttal from Former Chief Exposito

As with most police agencies, MPD removes a shooting officer from the street and he or she is reassigned to administrative duty. MPD then does something that not all agencies do, within 5 days, it refers the officer to a psychiatrist for evaluation. The officer must be cleared by the psychiatrist, who notifies MPD of the viability of the officer's return to administrative or street duties. Because it may take years for the State Attorney's Office to officially rule on the propriety of the shooting, in some instances, the department will evaluate the totality of the shooting incident, taking into account, among many factors, the statements of witnesses, the officer's departmental history, input from the Assistant State Attorney handling the case and the officer's chain of command before reassigning the officer back to the street. In other cases, the officer remains on administrative duties until a final determination of the shooting is made by the State Attorney's Office.

DOJ Contention:

DOJ alleges that MPD policies do not include specific time-lines for completing shooting investigations.

Rebuttal from Former Chief Exposito:

MPD does have policies in place that include time-lines for completing shooting investigations. The time-lines that the department has incorporated into its policies and procedures are time-lines that are realistic, and those in which the department has some controls. As an example, soon after I became chief, MPD implemented a policy that requires the Homicide Unit to complete and deliver a finished officer-involved shootings case to the State Attorney's Office within 90 days of the incident. The department met that time-line on all of the officer-involved shooting investigations that occurred during my tenure, with the exception of one case that was completed within 120 days, as a result of factors out of the department's control.

Florida law requires that internal investigations be completed and the officer be notified of disciplinary action within 180-days of the department receiving the external complaint. MPD follows the dictate of the state of Florida. There are however, exclusions to the 180-day rule contained in the state's law, as DOJ mentions in their report. The state realizes that criminal cases at times can take more than 180 days to complete. For this reason, the state has excluded criminal and potentially criminal cases from their 180-day mandate as prescribed under Florida State Statute 112.532 (6) (a) 2). Officer-involved shooting cases and in-custody death investigations fall into the category of criminal investigations, therefore they are exempt from the requirements of the state's 180-day mandate. The state is also

cognizant of the fact that it can take years for the State Attorney's Office to evaluate the officers' criminal culpability in those cases.

With the exception of a thirty-day delay on one of our cases, a delay that was caused by factors out of MPD's control, the department has not experienced any undue delays in the investigation of officer-involved shootings during the time period examined by DOJ. As explained in greater detail previously, the legitimate reason for delays in MPD concluding their administrative cases has been a result of waiting for the State Attorney's Office to finalize their reviews and determine if the cases meet the threshold of justifiability.

DOJ's Contention:

DOJ contends that confusion about how investigative units, Homicide and Internal Affairs, work together on shooting investigations may also contribute to extensive delays it observed, as well as compromise investigative outcomes.

Rebuttal from Former Chief Exposito:

When I replaced my predecessor, Chief John Timoney at the end of 2009, I conducted the assessment of the department that I alluded to earlier. During that assessment, I was reminded at the time of the fact that the Internal Affairs Section was the component of the police department with the primary responsibility for investigating officer-involved shootings and in-custody deaths. Having had extensive experience as a former Internal Affairs investigator and Commanding Officer of the Internal Affairs Section, I differed in opinion from Chief Timoney, in that I did not believe Internal Affairs investigators had the experience or continual exposure to death and deadly force investigations to be the lead or primary detectives handling these critical and controversial cases. I also recognized another issue that could present itself with Internal Affairs investigators taking statements from shooting officers, the officers could claim or argue that they are entitled to implied immunity by virtue of giving a compelled statement. For these reasons, I reassigned the primary task to teams in the Homicide Unit, who were better equipped, trained and more experienced to handle these types of cases. Beginning with the first police-involved shooting that occurred after I became chief, and continuing with all the cases that followed, we assigned a team of Homicide detectives as primary investigators on the shooting cases, with the close oversight of Internal Affairs investigators. The Internal Affairs investigators responded to the shooting scene and they shadowed Homicide detectives on the case. Besides being held accountable for ensuring that the Homicide detectives were conducting their investigations appropriately, effectively and efficiently, the assigned Internal Affairs investigators were responsible for completing the administrative cases on the shootings.

As for confusion about how the two investigative units work together on shooting investigations, investigators in both units understand their roles and responsibilities. There was never any confusion about their roles.

DOJ Contention:

DOJ alleges that in one disturbing case, Internal Affairs investigators were prohibited by Homicide from being present when any statements were taken from the shooting officer or any witnessing officers, despite the fact that Internal Affairs was generally supposed to lead shooting cases.

Rebuttal from Former Chief Exposito:

With regard to this allegation, it appears that DOJ is referring to a case that occurred under the previous administration and prior to my appointment as chief, when Internal Affairs was the primary investigative body on officer-involved shooting cases. As I mentioned in the above rebuttal, Homicide detectives became and have remained the primary investigators on officer-involved shooting cases after

I amended the policy at the beginning of 2010. If the aforementioned issues had ever existed as DOJ claims, they were corrected with the policy change I implemented.

2. Shooting Investigations Fail to Adequately Analyze and Explore Facts to Determine Whether a Shooting is Justified

DOJ Contention:

DOJ alleges that, just as it did in the 2002 investigation of the department, it found that there were lapses and omissions in the investigations they reviewed. DOJ claims that there was little administrative or operational analysis in the completed investigations, investigators did not sufficiently probe the officers' statement of events to determine if force used was necessary, and despite of physical evidence at the scene that partly corroborated the civilians' allegations, investigators did not mention the physical evidence in written reports.

DOJ recommends that MPD revises its policy and practice to give the Chief the opportunity to compel statements, if doing so will not interfere with any pending criminal investigation.

Rebuttal from Former Chief Exposito:

There were never any concerns voiced by the State Attorney's Office that would indicate that the shooting cases analyzed by DOJ were inadequate, incomplete or discreditable. These investigations were conducted in an effective and thorough manner, utilizing time-tested and acceptable practices that meet the stringent requirements set forth by CALEA, the renown law enforcement accreditation institution. FBI agents I invited to attend post-shooting meetings also did not express any concerns in the manner the investigations were being handled.

Just as it has done throughout their report, DOJ describes a handful of failures they believe befall the investigative process employed by MPD, but they fail to identify one specific case in which these breakdowns occurred. One of DOJ's more poignant allegations, is that it found instances, where detectives investigating the shootings did not mention in their written reports physical evidence at the scene that partly corroborated the civilians' allegations. It is ironic that DOJ would accuse MPD investigators of this vile behavior, when DOJ, as I have clearly pointed out, has been guilty of this same behavior.

As it concerns DOJ's urging that statements be compelled by the Chief from shooting officers on open officer-involved cases if it does not jeopardize the case, the risk involved is precisely why it is never done. The taking of a compelled Garrity Statement, will give the shooting officer protection from self-incrimination, and the benefit derived by taking these statements could jeopardize a potentially criminal case. Doing so, also violates the terms of a long-standing agreement between MPD and the State Attorney's Office.

3. DOJ Conclusion:

DOJ initiated this probe on November 16, 2011, months after Chief Manuel Orosa assumed command of the Miami Police Department. The investigation was finalized in July 2013. In its closing, DOJ commends Chief Manuel Orosa for, as it claims, recognizing some of the problems DOJ found and pursuing initiatives to address them. Those initiatives are laid out in the July 2012 written response from Chief Orosa (12-Point Plan). DOJ states that it is encouraged by the fact that, since opening their investigation and conducting their on-site briefing, MPD has implemented or intends to implement

certain changes to address problems with the officer-involved shootings. Although DOJ compliments Chief Orosa for his efforts, it accentuates the fact that their investigation suffered undue delays, in part by MPD's inability to produce reports in a timely fashion. As an example that DOJ presents, DOJ claims that despite repeated requests from MPD's current administration beginning with its first document request of December 9, 2011, and following requests dated July 20, 2012, September 20, 2012, and November 1, 2012, it still has not received the complete files from MPD for all the shootings requested.

DOJ also claims that it has noted what appears to be more thorough review and proposed remedial actions to address errant conduct present in shootings that have since occurred after the period of their analysis. According to DOJ, since this is the second investigation of MPD within the last twelve years. It believes many of the deficiencies that it uncovered in the first investigation now appear deeply rooted, and therefore it is concerned about sustainability of these changes. DOJ says, that it is reminded of the fact that, in 2006, it commended MPD for implementing some of the policy reforms that it suggested in 2003. DOJ is hopeful that in the immediate future, it can craft and implement with MPD, court-enforceable, sustainable remedies to correct deficiencies it has identified.

Conclusion from Former Chief Exposito

Below, I list some of the programs initiated by MPD to try to reduce the level of street violence, as well as some well-documented accomplishments of the department in the last five years. The intent of sharing this information is to illustrate that MPD is a professional, responsive and caring law enforcement organization, and not the dysfunctional department that DOJ has intimated with its critical, but unsubstantiated allegations.

In the aftermath of the police shootings, I attended several community meetings held by local leaders and politicians at various local churches and community centers. At those meetings I assured the community that we would conduct thorough and complete investigations to determine if the shootings were justified or necessary. I also responded to questions posed related to the shootings, which did not compromise the cases.

I also did something that police chiefs rarely do because of fear of future litigation. I reached out to the families of the deceased, and agreed to meet with them privately and in person. I understood that there was an inherent risk in holding these meetings since there was the potential that comments I uttered could be used against the city or me in future litigation. Because these were open investigations, I could not discuss the particulars of the case with them, but I felt that it was important for the family members to understand the investigative process, the time frames involved in the investigation, the role of the State Attorney's Office, and the responsibility of those involved in the case. It was important that I share this information with them, because they had voiced concerns at the public community meetings that no one had taken the time to share this type of information on their particular case with them. Several family members took me up on the offer, and we met. Most of the family members with whom I met were receptive and appreciative of my taking the time to explain the process, and it went a long way to reinforce our commitment in doing things correctly.

Violence in the community continued. In solidarity with the citizenry, members of my Staff and some community and religious leaders joined me in walking the neighborhoods where much of the street violence was taking place. We also met with relatives of those who had perished as a result of the increased street violence. Working in partnership with church and community leaders, we also initiated

anti-violence programs at local churches, geared towards neighborhood youths in areas most affected by the violence and soliciting their involvement. The meetings were productive, but not very well-attended. We also continued to put out the same message through MPD's other youth-oriented programs, our 'Police Athletic League', the Drug Awareness Resistance Program (DARE), the Police Explorer program and 'Do the Right Thing', an initiative that began in the Miami Police Department in 1992, that rewards youth who make a difference in their communities, through community service and school projects. This program has spread to other police agencies across the country and has been implemented in Great Britain as well.

Our involvement in the anti-violence community efforts and the initiatives we established prompted the vast and valuable support of MPD by Georgia Jones-Ayers, a reputable community advocate, widely considered the matriarch of community activism in Liberty City and Little Haiti.

On the heels of initiating the anti-violence programs, several dozen members of the clergy and respected community leaders, including Pastor Carl Johnson of the 93rd Street Community Baptist Church and Brian Dennis of "Brothers of the Same Mind", were invited to the department's training center, so that they could observe and participate in classes offered to entry-level officers. The purpose of the training session was two-fold; the department wanted them to observe on a first-hand basis that our officers were not trained to be violent, and secondly, we wanted them to participate in some of the training, including 'Shoot, Don't Shoot' scenarios, so they could go back and share their experiences with other members of the community. At the end of every class, a critique session was held, so that from the feedback we received we could gauge how well we were doing. Without exception, during the after-session critiques, the attendees expressed their appreciation to the department for the invitation, and they commented on their renewed appreciation for the job of a police officer and the pressures that police face on a daily basis.

In 2011, City Manager Tony Crapp hired retired Special Agent in Charge Paul Philip, a former high-ranking FBI official with 25 years' experience in the Bureau and with an extensive background in organizational development and training. Mr. Philip was contracted to examine and evaluate the department's policies and procedures, and to assess the manner in which the department was operating. After four months of exhaustive research and interviews with members of the community, politicians, retired employees and current employees, the only negative information that Mr. Philip could find was in the form of negative feedback that he received from a limited number of individuals, whose comments Mr. Philip described in his final report as being largely anecdotal. Mr. Philip was not able to uncover any evidence to confirm the validity of the issues raised by those individuals. Further, Mr. Philip was also not able to identify or document any unfavorable first-hand information concerning the operation of the department or its policies. The results of Mr. Philip's assessment were not surprising, the Miami Police Department is accredited by CALEA (Commission on Accreditation for Law Enforcement Agencies), a nationally renowned and recognized authority on the accreditation of law enforcement agencies. The policies and practices of all departments accredited through CALEA must meet its stringent standards, and only those law enforcement agencies that meet the highest standards of professionalism and embrace the concept of best practices are accredited by this organization. At the time of Mr. Philip's probe, only 582 law enforcement agencies nationwide out of over 18,000 existing departments met CALEA's rigid standards. Every three years, MPD must undergo a rigorous re-inspection process conducted by law enforcement professionals with vast law enforcement knowledge and experience that ensures that the department continues to meet the strict standards set by CALEA. In 2011, MPD received re-accreditation.

In conducting research to respond to the concerns voiced by some individuals interviewed by Mr. Philip, several notable facts were discerned: the most conspicuous, that there had been a 22.4% reduction in overall citizen complaints against departmental officers when compared to the year prior to my appointment. The most significant drop in citizen complaints took place in the predominantly black neighborhoods of Liberty City, Overtown and Little Haiti, a decrease of 46%, 39% and 39% respectively. These figures would coincide with Mr. Philip's assessment that the concerns relayed to him by some of those interviewed were "mostly anecdotal" in nature. As a matter of fact, there was also a 22.4% reduction in the number of Response to Resistance Reports (commonly referred to as Use of Force Reports) written during that time period, a mechanism used to track the number of times officers utilize force in response to aggression. None of the above listed facts were ever disclosed by DOJ in their report.

I realized the importance of having a highly trained police force in order to successfully provide effective and efficient service. Upon my appointment as chief, one of the first orders of business that I undertook was the hiring of Major Ian Moffett to oversee the department's training program and the newly opened Miami Police International Policing Institute.

The Miami Police International Policing Institute is perhaps the only international training academy operated by a municipal police department in America. Headquartered in a newly-built state-of-the-art 111,264 square foot facility annexed to the Miami Police Headquarters building in Downtown Miami, the institute provides participants with the most modern policing principles and techniques. The training offered, which includes a course that serves to improve the administration of justice and to raise law enforcement standards and knowledge, is tailored to the specific needs of the country or agency sponsoring the participant. Instructions are provided in English, Spanish or Creole, depending on the needs of the student. The facility has in-house accommodations, featuring comfortable dormitories, private bathroom facilities, a laundry room, and fully-equipped lounge, kitchenette and cafeteria. In the past four years, law enforcement professionals from as far as Germany, Israel, Japan, Spain, Brazil, South Korea and Egypt have undergone extensive training at the facility. As a state-recognized and certified police academy, MPD also provides a myriad of training courses for local law enforcement agencies and to others located throughout the state of Florida.

Major Moffett is a nationally-recognized authority in the area of law enforcement training. The hiring of Major Moffett to run our training programs was so well-grounded that soon after coming to the Miami Police Department, he was appointed as the Chairman of the Florida Criminal Justice Training Directors Association by the other 41 police training center directors in Florida, in part because of his reputation as an authority in the field of police training. During my administration, Major Moffett played a vital role in establishing the training curriculum, not only for the Miami Police Department, but for the Miami Police International Policing Institute and the other training centers in the state of Florida, further accentuating the Miami Police Department's pivotal position as a leader in law enforcement training in the state. Major Moffett was recently appointed the chief of police of the Miami-Dade County School Police.

Although the training curriculum under the previous department's administration met all state-mandated training requirements, with Major Moffett in place, the administration set new benchmarks that well-exceeded the requirements set forth by the Florida Department of Law Enforcement (FDLE). The state had a mandate at the time, for all officers in the state to attend Survival Training, which included the 'shoot, don't shoot exercise' once every four years. In contrast, the department called for its officers to attend Survival Training every two years. Additionally, officers assigned to tactical or specialized units were required to participate in the 'shoot, don't shoot scenarios' on a quarterly basis,

this was in addition to specialized training they received relating to their assignment. Included in their quarterly training was the participation of federal agents and officers from other agencies with whom tactical units partnered. With regard to specific firearms training and qualifications, FDLE required officers in the state to undergo this training every other year, the Miami Police Department exceeded the requirement and adhered to the more rigid standards as set by CALEA (the Commission on Accreditation for Law Enforcement Agencies), which required our officers to attend firearms training once a year.

During my tenure, the Miami Police Department received much acclaim for its accomplishments, not only locally, but on a national and international level. In October 2010, the Miami Police Department received a special recognition award from the respected International Association of Chiefs of Police (IACP), for its community policing practices. This is the first and only notable distinction that has been bestowed on the MPD in its 100-plus year history by the IACP. Considering that the department was singled out for this award out of 18,000-plus police agencies in the United States, makes this award noteworthy, particularly in light of the international reputation that the IACP enjoys as the oldest and largest organization of police executives in the world, with more than 20,000 members in 140 countries.

In 2011, the Miami Police Department captured the two top awards among all law enforcement agencies in Miami-Dade County from Law Enforcement Officers Foundation (LEO). The awards were in the categories of uniformed patrol and investigations, a distinction that the department had never attained since the inception of the foundation's award program a decade prior.

In 2010, Coconut Grove was recognized as the safest neighborhood in South Florida and among the 29 safest communities in the country by Neighborhood Scout, an organization with ties to real estate investment on a national level. This consortium conducts research of FBI data from 17,000 local departments to reach its conclusion. The prestigious ranking was attained by MPD as a result of initiatives that were instituted during 2010, which resulted in a significant drop in crime.

The above cited facts hardly reflect a law enforcement agency that is ineffective, deficient or otherwise dysfunctional, as DOJ has portrayed MPD to be. Instead, it is indicative of a department that is progressive, productive and accomplished. DOJ excluded the above facts from their report. By withholding information that projects a positive image of MPD from their report, one senses that DOJ started their 'patterns and practices' investigation with a premise of culpability on the part of MPD; under that basis, DOJ then proceeded to cite only information it believed would support their contention, and purposely excluded any other data that would conflict with their final determination. This DOJ examination lacked impartiality, honesty or objectivity.

The crux of this investigation centers around the DOJ's determination in 2013 that the Miami Police Department (MPD) engages in a pattern or practice of excessive use of deadly force by firearms. DOJ claims that it initially started to probe the department after MPD officers fatally shot seven African-Americans during an eight-month period spanning 2010 and 2011. According to DOJ, the shootings gave rise to widespread community concern about MPD's use of deadly force, and it led to multiple requests for a DOJ investigation, although DOJ never identifies the source or sources for the requests. Since finalizing its investigation, we now know that there were two sources who made solicitations for DOJ to open an investigation. One is Congresswoman Frederica Wilson, who represents the families of those killed in the shootings, and who made her formal request in February 2011. The other solicitation came from Miami Mayor Tomas Regalado, who had hidden motives for making the request. I have outlined the mayor's cunning and unprincipled motives previously in my rebuttal. The Mayor made his

formal request for DOJ intervention on August 2nd, 2011, one month before having the City Manager relieve me of my duties as Chief for alleged insubordination. In utilizing the term 'widespread community concern', I presume that DOJ refers to the handful of marches and demonstrations that were organized by or at the request of family members of the deceased, and whose numbers never surpassed 75 participants, even with the presence at those events of the Reverends Jesse Jackson and Al Sharpton.

I am certain that on a routine basis, DOJ receives a bevy of requests from a number of sources around the country, who complain about perceived injustices in violation of individuals' civil rights, yet DOJ does not initiate an investigation on all those requests or on the basis of the solicitation alone.

Before it initiated the investigation, DOJ had to identify some tangible indicators that suggested that MPD engages in pattern and practice of excessive use of deadly force by firearms in its most recent shooting cases. DOJ had previously conducted an investigation of MPD in 2002. The focus of the 2002 investigation was predicated on allegations that officers used excessive deadly force and non-deadly force, and there was substantial evidence to support that premise. The year prior to the commencement of the 2002 investigation, it had already been established that officers had planted guns at the scene of four shootings that were the focus of the probe. In addition, officers had perjured themselves, and thirteen officers had already been indicted for those crimes. The indictment also implicated officers at all levels of the chain of command, including supervisory staff. In that probe, DOJ ultimately did not find a pattern or practice of excessive force in officer-involved shootings.

In contrast, with regard to this investigation, DOJ claims that between 2008 and 2011, MPD officers intentionally shot at individuals 33 times. DOJ also states that while the number of shootings alone does not establish a pattern or practice of unreasonable force, it stands in stark contrast to a 20-month period in 2002-2004, in which there were no MPD officer-involved shootings. If the number of shootings alone are not indicative of a pattern or practice, why compare the 2008- 2011 shootings with those that took place in the 20-month period of 2002-2004? In the interest of accuracy, I am compelled to correct DOJ's facts, the time-frame where officers did not shoot their weapons at a person was actually 13 months, not 20 months as DOJ claims. The time period actually stretched from November 9, 2002, when an officer wounded a subject that tried to run him down with a vehicle to December 30, 2003, when an officer shot and wounded a subject who was wrestling with another officer for control of a firearm. In any case, if DOJ carefully examines the Police Master Shooting List, which runs from 1990, when MPD began to keep statistical records on police-involved shootings to the present, it will realize that even a 13-month period in which officers do not intentionally fire at a suspect is an anomaly. The 13-month time-period is the exception as reflected in the Police Master Shootings List, not the rule.

It is unclear from reading the DOJ report, the reasons why it initiated this most recent patterns or practices of excessive use of force investigation of the Miami Police Department. In reviewing the figures provided by DOJ pertaining to the officer-involved shootings that took place in the last few years, it reveals that a spike in the number of officer-involved shootings actually occurred from 2006 to 2007. After that, the number of shootings remain steady from year to year until 2012, when the numbers dropped. Why did DOJ not include 2007 in their analysis? DOJ must explain this obvious omission.

By its own assertion, on page 2 of the report, DOJ maintains that the number of shootings by MPD personnel alone does not establish a pattern or practice of unreasonable force. This being the case, one can safely assume that the number of officer-involved shootings is not a reason for DOJ initiating their probe in the first place. However, in stark contradiction to this statement it makes on page 2, on page 5 of the same report under the heading, 'Findings Regarding Use of Deadly Force', DOJ condemns MPD

for what it perceives to be a steady rise in the number of officer-involved shootings, and claiming that this is evidence of a systemic problem. Which statement by DOJ are we to believe?

If one accepts their first statement in which DOJ emphasizes that the shootings alone are not indicative of a pattern or practice, then DOJ really has not established a basis for commencing their investigation, short of admitting that it opened the probe for reasons it claims it does not do, political pressure.

At the time the Justice Department commenced its probe of the department, five of the seven cases involving the fatal shootings of young black African-American men, which were focus of this examination, had been ruled as justified by the Miami-Dade State Attorney's Office. In the two remaining cases, which involve armed subjects, the State Attorney's Office has yet to make final determinations. Of all the shooting incidents that occurred during the period analyzed by DOJ, the State Attorney's Office has failed to rule a single one of those shootings to be unjustified or questionable. As such, DOJ must clarify its position by providing concrete reasons for initiating its inquiry.

As mentioned previously, in August 2011, Mayor Tomas Regalado made a written plea to Attorney General Eric Holder, requesting that the US Justice Department initiate an investigation into the policies, practices and procedures of the Miami Police Department with regard to its use of force, focusing on the police-involved shootings in particular. This request was made one month prior to my eventual suspension by City Manager Johnny Martinez for alleged insubordination. It is ironic that the mayor was so troubled at that point by the facts surrounding the officer-involved shootings, when many of those cases had already been cleared by the Miami-Dade State Attorney's Office. This move by the Mayor was also highly hypocritical. At some shooting scenes, Mayor Regalado had gone on record with the news media, expressing his belief that the officers had acted properly and that the actions they had taken were in legitimate defense of their lives. These untimely statements were made by the Mayor while the investigations were still in the infant stage and there was no way to know at that particular moment if the shootings were justified or not. However, these comments paled in comparison to some of the other quotes attributed to the mayor. At one scene, Mayor Regalado made the ill-advised comment to the Hispanic news media, "we need to fight violence with more violence". This ill-suited and inflammatory comment prompted me to caution the mayor to refrain from making those type of remarks, because they were inappropriate and they could cause problems for officers on the street.

Does this sound like the tone or language of an elected official who requests a DOJ probe because he is legitimately concerned about the policies of the department or the actions of the officers?

The timing of Mayor Regalado's voiced concerns about the department's policies, practices and procedures, and his DOJ request to look into them is important to note. They did not surface until I opposed the mayor on the issue of illegal gambling machines. The mayor had accepted significant campaign contributions in his bid for office in 2009 from illegal gambling machine operators. In October 2010, the department initiated raids targeting the illegal gambling industry and confiscated hundreds of illegal gambling machines. As I explained in a previous rebuttal, during those raids, Mayor Regalado directed then-City Manager Carlos Migoya to order me to stop the enforcement action that MPD had undertaken. I refused to do so, and the FBI was contacted and briefed regarding the mayor's attempted obstruction of the lawful operation that had been initiated. The mayor's mandate was confirmed by Mr. Migoya in interviews subsequent to the raids with the Miami Herald and other media outlets. My refusal to stop the raids created a riff between the mayor and I. As a matter of fact, Mayor Regalado's continued interference became so egregious that on December 29, 2010, I was compelled to send a strongly-worded letter to the mayor memorializing what I believed to be the mayor's unlawful and highly inappropriate actions with regard to the raids, and putting him on notice that he was to cease

and desist in his efforts to hinder, disrupt or otherwise interfere with these legal law enforcement initiatives. After the raids, the Mayor suddenly and publicly began to bring the department's leadership into question. The letter was served on the Mayor through a courier and copies of the letter were also sent by registered mail to US Attorney Wifredo Ferrer in Miami, the Special Agent in Charge of the Miami FBI office and the Miami-Dade State Attorney, all with a return receipt. The October raids had initiated the rift between the the Mayor and I, but the letter I had sent further pushed the mayor to turn up his criticisms of the police shootings and the department's administration. It also did not help that the mayor was trying at the time to get an ordinance approved that would, at least in his mind, allow the illegal gambling machines to legally flourish in the city by taxing them. He went as far as having owners and operators of the illegal machines and those representing the illicit gambling industry assist him in the creation of the ordinance.

On January 12, 2013, the mayor instructed his new City manager and the City's Chief Financial Officer to meet with me, and offer me money to abandon my post as Chief. We were to meet at a private attorney's office. I speculated that the particulars to be discussed could constitute unlawful behavior on the part of the city's representatives, so I reported the proposed meeting to the FBI prior to the meeting taking place. I was offered \$200,000 up front and a check was issued for that amount, with a promise that I would receive a second check for \$200,000 once I retired. The issued check originated from an account strictly used to pay out settlements in lawsuits against the city, and it was produced without the approval of the city commission, a clear violation of city codes. When I advised the city's representatives that I was not interested in retiring, they cautioned me that I would probably be fired the next day at a scheduled City Commission meeting if I did not acquiesce, obviously a veiled threat.

The following day, the mayor urged Commissioner Richard Dunn, (who at one time had also been very vocal of his support for the officers at the scenes of officer-involved shootings, but just as the mayor had done, suddenly began criticizing the officers' actions), to try to have me fired. At the City commission meeting held on January 13, 2011, Commissioner Richard Dunn attempted unsuccessfully to have the entire commission vote to fire me. When he could not garner any support from the other City Commissioners, Commissioner Dunn withdrew his motion.

The following week, Paul Philip, the retired FBI Special Agent in Charge whom I mentioned earlier, was brought in at the Mayor's behest in hopes of having him uncover damaging information that would provide the Mayor with the evidence he needed to fire me. He could not find any issues in the operation of the department or its policies.

The request for DOJ intervention in this matter was just one more attempt by the mayor to rid himself of what he considered a stumbling block.

In the report, DOJ claims that incidents must be looked at in their totality. I find this to be true in any investigation. In DOJ's probe of MPD, it omitted critical information from their report that fails to give the reader an accurate picture of reality or circumstances. A most glaring omission was DOJ's failure to inform the public that DOJ had been involved right from the onset in somehow investigating these shootings.

At the time of my appointment, I publicly informed the community that a major component of my mission would be the issue of transparency. In keeping with this philosophy, I invited the FBI, a component of US Justice Department, to sit in on the post-shooting meetings that were held at my behest and that took place several days after every officer-involved shooting. I also agreed to provide the federal agents with any type of investigative documents or reports, if requested. Although I was under no obligation to do so, this invitation for the FBI's Public Corruption and Civil Rights investigators to be present at these post-shooting meetings was extended to them because of my strong conviction that it was an appropriate step to take. It was intended to minimize the possibility of any

type of cover-up taking place, and it went a long way to promote community confidence in our police department. Each specific shooting case was discussed in great length and in its entirety at these meetings. Among those present at the meetings were the lead investigators, the crime scene technicians, the medical examiner, the Internal Affairs detectives, the prosecutors assigned to the case and the Staff members in the investigators' chain of command. This straightforward act on my part to invite federal investigators to partake in the investigation is rarely, if ever taken by the police chief of any major city, who would rather handle their cases internally with the absence of outside interference. At no time during or after the aforementioned meetings, did federal agents express concern about any of the shooting cases. For reasons unknown to me, the Justice Department omits this essential piece of information from its report.

The Justice Department's report acknowledges the fact that current Police Chief Manuel Orosa has been working closely with the US Justice Department since the probe began in 2011. I would not expect anything different from a law enforcement executive. In its report, DOJ alleges that there were delays in DOJ finalizing its investigation caused by the fact that the current MPD administration failed to turn over files that they requested on four separate occasions over an 11-month period, extending from December 2011 to November 2012. DOJ further claims that at the time their report was prepared, the complete files of the shooting cases they had requested from MPD had not yet been received.

I have grave concerns if these statements by DOJ are factual. They also leave several lingering questions:

How did DOJ complete its investigation into 'patterns and practices of excessive use of deadly force by firearms' when it failed to review the complete investigative files for the shooting cases?

How did DOJ arrive at a definite and informed determination in its inquiry of MPD's alleged excessive use of deadly force in the absence of all the facts?

Was the political pressure so intense on DOJ to finalize this inquiry that it decided to hastily complete its investigation without the benefit of the information contained in the complete shooting files they had requested?

These are questions that must be answered by the Justice Department.

The DOJ report also accentuates a 12-point Plan 'developed' by Chief Orosa in response to the Justice Department inquiry relating to the department's policies, practices and procedures, a plan which supposedly initiates some reforms. After reviewing the 12-point Plan as outlined by the Chief, I can confidently say that these so-called reforms are nothing more than window dressing. Chief Orosa has taken policies, procedures and programs that have been in effect in the Miami Police Department for decades; he has repackaged them, renamed them and has taken ownership. It is not known if this disingenuous and misleading act on the Chief's part was done with the intent to appease DOJ. Below, I address the most glaring and obvious misrepresentations contained in Chief Orosa's 12-point Plan.

One of the elements in Chief Orosa's plan encompasses assigning the responsibility for investigating police shootings to a group of Homicide detectives.

This policy is not new to the Miami Police Department. This policy was put into effect when I assumed command of the department in 2009. My predecessor, Chief Timoney assigned the responsibility for investigating police shootings to the Internal Affairs Section, rather than the Homicide Unit. Having

had extensive experience as a former Internal Affairs investigator and Commanding Officer of the Internal Affairs Section, I had a differing opinion than Chief Timoney, in that I did not believe that Internal Affairs investigators had the experience or continual exposure to death and deadly force investigations to be the primary detectives handling these critical and controversial cases. Instead, it should be the responsibility of teams of Homicide detectives who handle death and shooting investigations on a daily basis. I also realized that having Internal Affairs investigators obtaining statements from the subject officer could create a problem of implied immunity. Beginning with the first officer-involved shooting that occurred after I became chief, and continuing on to all the cases that followed, we assigned a team of Homicide detectives as primary investigators on the shooting cases, with the close oversight of Internal Affairs investigators. The Internal Affairs investigators responded to the shooting scene and they shadowed Homicide in the investigation of the case. Besides being held accountable for ensuring that the Homicide detectives were conducting their investigations appropriately, effectively and efficiently, the assigned Internal Affairs investigators were responsible for completing the administrative cases on the shootings.

Another aspect of Chief Orosa's 12-point Plan is the creation of a three-member board to review police shootings.

This practice has been in place for decades in the Miami Police Department, possibly as far back as 1974 when I entered the department. This panel is referred to as the Firearms Review Board or FRB; an advisory group, consisting of all three division chiefs, whose responsibility entails the review of evidence, statements and documentation to determine if officers' actions in a police-involved shooting violate departmental policies and procedures. The findings of the board are then forwarded to the Chief of Police for final approval. This board is not new and it was not created by Chief Orosa.

One aspect of Chief Orosa's 12-point Plan involves increasing the size of the Internal Affairs Section, and to assign the additional personnel to analyze potential patterns of complaints.

In 2010, shortly after I became chief, I added another squad, the Public Corruption Unit, to the Internal Affairs Section. It was created as a component of the Internal Affairs Section, with a mission to investigate corruption in other city departments, assist the Anti-Corruption Unit with cases involving corruption within the ranks of the police department, and to assist with any other need within the Section, which includes assisting in the oversight of police-involved shooting investigations. At the present time, there is no need for Chief Orosa to increase the size of the Internal Affairs Section any further. The primary reason for this is the fact that the police department has lost over 40 officers in the last few years. This means that there should be a marked decrease in the number of complaints against department personnel, which translates to a lighter caseload for internal affairs investigators. A second reason is that in 2010, a new policy was implemented wherein all minor complaints such as discourtesy allegations, which make up the bulk of the complaints, received by the department, are no longer handled by Internal Affairs, and instead are rerouted to the officer's division for further investigation. This policy change also significantly lightens the caseload for Internal Affairs investigators.

As it pertains to analyzing potential patterns of complaints against officers, there has been a system in place for the last three decades in the Internal Affairs Section, titled the Incident Tracking System (previously known as the Early Warning System) that tracks and identifies patterns that could be developing in officers' behaviors. It is not necessary to remove sworn personnel from normal police duties and reassign them to administrative desk jobs, when there is a system already in place that carries out the same function.

Another element of Chief Orosa's 12-point Plan is a policy forbidding an officer to return to duty after a police-involved shooting without the approval of the Chief of Police.

This policy was not instituted by Chief Orosa. This policy was in place prior to my appointment as Chief of Police, and it remained in place throughout my tenure. The critical nature of incidents in which an officer resorts to the use of deadly force requires adherence to this policy without deviation.

A thorough investigation on the part of DOJ, which includes interviews with Chief Timoney and I would have exposed the fact that the 12-point Plan is nothing but a ruse.

In July 2013, a letter was mailed to DOJ by a concerned employee of the Miami Police Department. The letter, which was sent anonymously, contained allegations of a serious nature with regard to violations of the department's recruitment, hiring and training policies committed by Chief Orosa's administration. The letter explicitly detailed how MPD is currently retaining marginal police officers who fail to meet the minimum standards, in violation of departmental policy, because of political pressure from city hall to increase the number of officers in the department. What separates this letter from other anonymous letters is the fact that it cites specific documents, by dates, subject or file number that are housed within the files of the police department and support the allegations contained in the letter. If these allegations are true, this confirms my affirmation of DOJ's investigative ineptitude in conducting a thorough and balanced inquiry.

In closing, I maintain that the shooting investigations were conducted correctly. I was present at all the shooting scenes, with the exception of the first shooting, which occurred while I was on vacation. I am confident, based upon my experience as a former Internal Affairs investigator and my observations at the scenes of the shootings, that proper investigatory procedures were followed. The Justice Department had knowledge of the officer-involved shootings practically from the onset, by virtue of my opening the doors of the department to them, coupled with their sequential presence at many of the post-shooting meetings where the physical evidence, witness statements and all other particulars of the cases were discussed at length. The federal agents never voiced any concern about any of the shooting cases, either while at the meeting or anytime thereafter. Regardless of the fact that DOJ never disclosed it in their report, there is no doubt that MPD was forthcoming in sharing and disseminating facts of the case at that time with DOJ, something that MPD was not required to do. This, coupled with the presence of state prosecutors at all shooting scenes and their continued involvement in the investigative effort, goes against the illogical conclusion reached by DOJ that the department did not follow proper protocol in its investigations.

The most glaring failure noted in DOJ's probe is the intentional or negligent disregard for input or information from the two most critical sources, Chief Timoney and I, the top department executives during the time frame being scrutinized or examined. To add insult to injury, I was excluded from providing testimony, even after having notified DOJ that I was willing to assist and that I believed I had information critical to the probe's outcome. DOJ also failed to interview the assistant chiefs of the Field Operations Division, the assistant chiefs of the Investigations Division and the Internal Affairs Section majors under both Chief Timoney and I, and instead chose to interview those who DOJ claims are 'relevant', the individuals now occupying those positions. The Justice Department investigators violated the most basic principle governing the investigative process, which is, that an investigator must exhaust every means possible to obtain pertinent information and data from all available sources prior to passing judgment. This monumental blunder alone, completely annuls this investigation and renders it worthless. In addition, the continual generalized allegations and baseless conclusions by DOJ detracts from the seriousness that a case of this magnitude merits.

It is interesting that this report of findings by the US Justice Department was finalized and made public two weeks after Congresswoman Frederica Wilson had taken to the airwaves to voice her criticism of the Justice Department for not having concluded this investigation within a reasonable length of time. Whether the reason for not interviewing Chief Timoney and I was the result of the Justice Department hastily throwing this report together for political expediency, or if it was because it simply was not interested in obtaining all available facts prior to coming to a hasty conclusion, the manner in which this investigation was conducted and reported is disgraceful, insulting and repulsive.

It is inconceivable how the Justice Department found **no pattern or practice of excessive use of force** on the part of the police department in the investigation initiated in May 2002, where it was previously established that guns were planted, officers perjured themselves, and thirteen officers were federally indicted for those crimes. Officers at all levels of the chain of command, including supervisors were implicated in the indictment, yet in stark contrast, DOJ concludes that there **is overwhelming evidence of a pattern and practice of excessive use of force** in the present case, wherein the State Attorney's Office has made a determination on most of those shooting cases, and it has not deemed any single case to be unjustified or questionable.

It is difficult for a reasonable person to grasp how DOJ could arrive at these two enigmatic and highly-contrasting determinations, when the facts of the two investigations do not support their findings.

This investigation was spearheaded by Thomas E. Perez of the Civil Rights Division of the Department of Justice and Wifredo A. Ferrer of the United States Attorney's Office for the Southern District of Florida. It is shameful that these individuals, being high-ranking officials of the US Justice Department, would assemble such a flawed case. This inferior work product, coupled with the deplorable behavior exhibited by DOJ investigators is worthy of an investigation of its own.

It appears that others share in my view, at least as it concerns investigations conducted by Mr. Perez. On July 18, 2013, Texas Senator Ted Cruz released a statement following a vote to confirm Thomas E. Perez as Secretary of Labor. In his statement, Senator Cruz expressed his disappointment in the Senate's vote to confirm Mr. Perez for the post. According to Sen. Cruz, "Mr. Perez's record indicates a lack of respect for the rule of law in his efforts to reach a misguided definition of 'justice'." The Senator further states, "From his uncooperative and questionably ethical handling of cases involving housing discrimination in St. Paul, Mn. to recent whistleblower reports accusing him of substantial misconduct at his previous role at the Department of Justice, Mr. Perez has not proved himself capable of carrying out the duties of this position." Senator Cruz went on to state that he could not support Mr. Perez, and therefore he voted against his confirmation.

I consider the Department of Justice Patterns and Practices reviews to be of the utmost importance in ensuring that law enforcement agencies do not violate the rights of an individual or individuals as provided by the Fourth Amendment of the Constitution. I also believe it is just as important that we ensure that those DOJ Patterns and Practices investigations are thorough, unbiased, and conducted with the highest level of professionalism. In this latest probe of the Miami Police Department, by employing a partisan, distorted and myopic approach, coupled with unprofessional and unorthodox investigative practices, the Justice Department has done a great disservice to the law-abiding people of Miami, the men and women in law enforcement, and even the families of the decedents, who I trust were anticipating that DOJ would provide objective conclusions based on honest assessments and factual data. For reasons I have delineated in this document, I do not believe DOJ fulfilled those obligations. To ensure that those ideals that we as a people hold to be of paramount importance are preserved, I am requesting that the US Senate initiate a thorough inquiry into the questionable conduct of DOJ investigators in their handling of this case, determine why the probe was handled in the manner it was

conducted, and to determine how DOJ arrived at its conclusion. In addition, I am requesting that the Senate declare this investigation null and void until such time as an unbiased, skilled and experienced investigative body can conduct an independent evaluation of the matters reviewed by the Justice Department in their probe and documents its findings.