

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Denver City & County Building 1437 Bannock Street, Room 256 Denver, CO 80202</p>	<p>▲ COURT USE ONLY ▲</p>
<p>ESTATE OF MARVIN L. BOOKER, REVEREND B.R. BOOKER, SR., and ROXEY A. WALTON, as Co-Personal Representatives,</p> <p>Plaintiffs,</p> <p>v.</p> <p>CITY AND COUNTY OF DENVER; Deputy FAUN GOMEZ, individually and in her official capacity; Deputy JAMES GRIMES, individually and in his official capacity; Deputy KYLE SHARP, individually and in his official capacity; Deputy KENNETH ROBINETTE, individually and in his official capacity; and Sergeant CARRIE RODRIGUEZ individually and in her official capacity,</p> <p>Defendants.</p>	<p>Case No:</p>
<p>ATTORNEYS FOR PLAINTIFFS:</p> <p>Darold W. Killmer, #16056 Mari Newman, #30192 David Lane, #16422 Lauren L. Fontana, #40234 KILLMER, LANE & NEWMAN, LLP 1543 Champa Street Suite 400 Denver, CO 80202 Phone: (303) 571-1000 Fax No.: (303) 571-1001 dkillmer@kln-law.com mnewman@kln-law.com dlane@kln-law.com lfontana@kln-law.com</p>	<p>Div:</p>
<p>COMPLAINT AND JURY DEMAND</p>	

Plaintiffs, by and through their attorneys, Darold W. Killmer, Mari Newman, David A. Lane, and Lauren L. Fontana of KILLMER, LANE & NEWMAN, LLP respectfully allege for their Complaint as follows:

I. INTRODUCTION

1. This is an action for damages and injunctive relief against Defendants City and County of Denver (“Denver”), Deputy Faun Gomez, Deputy James Grimes, Deputy Kyle Sharp, Deputy Kenneth Robinette, and Sergeant Carrie Rodriguez.

2. In one of many instances of law enforcement misconduct sanctioned by Denver, the individual Defendants, through the use of excessive force, caused the death of Marvin Booker in the Van Cise-Simonet Detention Center (“the Jail”) on July 9, 2010.

3. Denver then engaged in an extensive cover-up of the events of July 9, 2010, as is the custom, practice, and policy after instances involving the use of excessive force by Denver Department of Safety law enforcement officers.

II. JURISDICTION AND VENUE

4. The Court has jurisdiction over the claims asserted herein pursuant to COLO. REV. STAT. § 13-1-124, Title 42 U.S.C. Sections 1983 and 1985, and other applicable law.

5. Venue is proper in this Court pursuant to COLO. R. CIV. P. 98(c), in that all of the events alleged herein occurred within the City and County of Denver.

III. PARTIES

6. At all times relevant to the subject matter of this litigation, the decedent, Marvin Booker, was a citizen of the United States of America and a resident of the State of Colorado.

7. At all times relevant to the subject matter of this litigation, Plaintiffs Reverend B.R. Booker and Roxey A. Walton, co-personal representatives of the estate of Marvin Booker, were the father and mother of Marvin Booker and have been citizens of the United States and residents of the State of Tennessee.

8. Defendant Denver is a Colorado municipal corporation. Denver’s Department of Safety is responsible for the oversight, supervision, and training of both the Denver Police Department and the Denver Sheriff’s Department.

9. At all times relevant to the subject matter of this litigation, Defendant Faun Gomez was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Deputy at the Jail.

10. At all times relevant to the subject matter of this litigation, Defendant James Grimes was a citizen of the United States and a resident of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed as a Deputy at the Jail.

11. At all times relevant to the subject matter of this litigation, Defendant Kyle Sharp was a citizen of the United States and a resident of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed as a Deputy at the Jail.

12. At all times relevant to the subject matter of this litigation, Defendant Kenneth Robinette was a citizen of the United States and a resident of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed as a Deputy at the Jail.

13. At all times relevant to the subject matter of this litigation, Defendant Carrie Rodriguez was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Sergeant at the Jail.

IV. FACTUAL ALLEGATIONS

A. MARVIN BOOKER'S LIFE

14. Marvin Louis Booker was born in Memphis, Tennessee, on February 4, 1954. He was the son of Plaintiffs Reverend B.R. Booker, Sr., and Roxey A. Walton.



Marvin Booker (sitting on his father's knee) is pictured with his family.



Marvin Booker (middle child on the left, wearing striped tie) with his family in Memphis, TN.

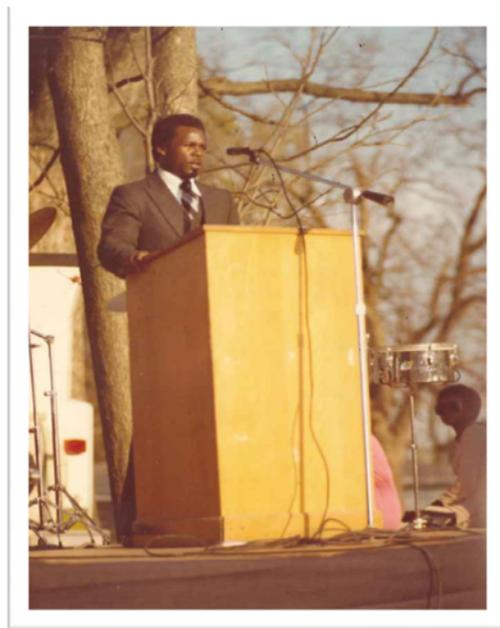
15. Marvin Booker joined the United States Army in 1971 at age 17.



16. Marvin Booker was a respected member of his community, and was often invited to speak publically.



Marvin Booker speaking at an Energy Conference in Denver, Colorado in the late 1970s.



Marvin Booker speaking at Shaw University Heritage Gospel Show, Raleigh, NC, April 11, 1980.

17. Mr. Booker came from a long line of pastors. His father, Benjamin Booker, Sr., is a prominent Memphis pastor, and his brother, C.L. Booker, is the pastor at Cathedral of Faith Community Church in Memphis. His other brother, Spencer Booker, is currently a pastor at the Bethel AME Church in Kansas City, Missouri. His brother, David Booker, is a Bishop with the Shelter in the Storm Ministries in Nashville, TN. Likewise, several of Marvin Booker's nephews and nieces are ordained ministers. Like his father, brothers, and other relatives, Marvin Booker served the communities where he lived as a pastor.



Marvin Booker (pictured in the front row, on the left side, wearing a silver robe) waiting to speak at the Lorraine Motel in Memphis, TN 1991, the same location where Dr. Martin Luther King was assassinated in 1968. Marvin was the principle speaker at this gathering.

18. Marvin followed in the footsteps of his father and siblings, devoting his life to serving the poor by reaching out to the homeless community as a street preacher.

19. Mr. Booker made it his life's work to communicate the message of hope and equality championed by Dr. Martin Luther King, Jr. During the 1980s, he helped to establish the Martin Luther King Museum.

20. Mr. Booker famously memorized Dr. King's speeches and recited them at community events and on the streets. Homeless people whom he helped in Memphis and elsewhere often referred to him as "Martin" because of his ability to recite Dr. King's speeches.

21. Mr. Booker's skill at impersonating Dr. King can be viewed in a video taken by a citizen who encountered Mr. Booker in Memphis in 2006 and posted the video on YouTube: <http://www.youtube.com/watch?v=8slzROAs5qM&playnext=1&list=PL8111287C3DDF6CEE>.

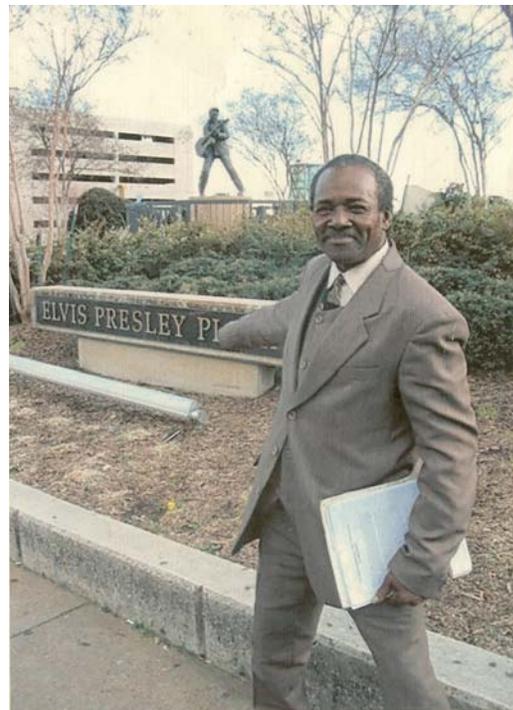
22. Marvin Booker even wrote a book about Dr. King, which he distributed on the streets of Memphis, mostly to tourists who heard him recite Dr. King’s “I Have a Dream” speech.



Marvin Booker, while living as a street preacher to the homeless.

23. Marvin Booker’s work spreading the message of Dr. King is noted in the blog, “The Hicks Place” (written by a complete stranger to Marvin Booker), which included the photograph below:

“Near Sacajawea, a man was standing on the sidewalk with some papers in one hand. He had a broad smile and seemed very likable. He smoothly got me into a conversation and seemed genuinely interested in why I was visiting Memphis. He went on to talk about civil rights, even recited in a rather formal voice some excerpts from Martin Luther King speeches and reminded me that Robert Kennedy had given a speech in Indianapolis the night that King was assassinated, which I already knew. I was taken by him even before he gave me his pamphlets and I learned he was a homeless man, so when he gave me directions to the motel where King was shot I gave him \$10. You would not suspect from his appearance that Marvin Louis Booker was homeless. (see his photo in the Jeep 2007 album at right).”



http://thehicksplace.typepad.com/the_hicks_place/2007/03/index.html.

http://thehicksplace.typepad.com/photos/jeep_07/0170.html

24. Mr. Booker touched the lives of individuals all over the country, as evidenced by author Paul Fisetete's description of him in the book *What? Is! The Meaning of Life.*: "Marvin Louis Booker is preaching to the oppressed as well as to those who can make the most difference to fight against the status quo. His message should be globally distributed. It is a message that touches the heart and the soul."¹

25. During the period from approximately 2000-2008, Marvin Booker served as a Trustee at Cathedral of Faith, was a member of Second Chance Ministry, and worked in shelters for the homeless.

26. Marvin Booker attended the funeral of Dr. King's widow, Coretta Scott King, in 2006.



*Marvin Booker (second from the left), pictured at Coretta Scott King's funeral, Atlanta Georgia, 2006.*²

B. MARVIN BOOKER'S HOMICIDE

27. Mr. Booker was taken to the Jail and placed in the open-seating general processing area, where he eventually removed his shoes.

¹ PAUL FISETTE, *WHAT? IS! THE MEANING OF LIFE*. 187 (Paul Fisetete 2008).

² Mr. Booker's shoes are off, as they were in the Denver Jail when he was killed after going back to retrieve them.

28. Mr. Booker quietly remained in the processing area for several hours, falling asleep in a chair. Since he had been sitting and waiting for so long, he had slipped off his shoes for comfort.

29. When his name was finally called for processing, Mr. Booker began walking toward the booking desk, but had forgotten to put his shoes back on. Mr. Booker informed the Deputy calling his name that he needed to retrieve his shoes from underneath the chair upon which he had been sitting before being processed.

30. The Deputy refused to allow Mr. Booker to retrieve his shoes and told him that if he did not immediately turn around and come back to her, he would be put in isolation.

31. Mr. Booker kept walking back toward the shoes underneath his chair, informing the Deputy again that he needed to get his shoes. His shoes were only a few feet away.

32. The Deputy pursued Mr. Booker and grabbed his arm in an attempt to restrain him from retrieving his shoes.

33. Mr. Booker shrugged off the Deputy and repeated that he just wanted to get his shoes.

34. In what may fairly be described as a massive over-reaction, four other deputies then rushed in, violently restraining each of Mr. Booker's limbs and wrestling him first to a chair, then face down on the ground.

35. One of the deputies put Mr. Booker into a carotid "sleeper" hold, which caused him to gasp for air and to beg the deputies to stop so he could breathe.

36. While Mr. Booker was on the ground in a "sleeper" hold with his hands cuffed behind his back, one of the deputies used nunchucks to repeatedly strike him on the legs.

37. In total, five (5) sheriff's officers were applying substantial force on Mr. Booker's body.

38. As Mr. Booker lay still on the ground, hands cuffed behind his back, his neck still in a carotid "sleeper" hold, and his legs being struck by nunchucks, another deputy administered a Taser to Mr. Booker's lower back for approximately eight consecutive seconds.

39. Mr. Booker was 5'5" tall and weighed only 135 pounds. He was 56 years old.

40. The deputies then carried Mr. Booker's limp, lifeless, handcuffed body into a holding cell, where they put him down on the floor, face down, summoning no medical attention.

41. Mr. Booker's handcuffs were removed while an officer kneeled on him with his weight in the middle of his back. The officers then abandoned Mr. Booker's body in the holding cell. He was not moving.

42. According to the Denver Medical Examiner, shortly after the cuffs were removed, “an officer observed through the cell door that [Mr. Booker] did not appear to be breathing. A nurse was called. She found him unresponsive, started cardiopulmonary resuscitation, and activated emergency medical services. The fire department arrived first, and assisted ventilation with a bag valve respirator. Denver Health Emergency Medical Technicians arrived, intubated him, and administered epinephrine, atropine, and Narcan. A detectable rhythm (ventricular tachycardia) was briefly reestablished, and he was shocked, but he returned to pulseless electrical activity. He was declared dead shortly after arrival at Denver Health.”

43. The Medical Examiner examined Mr. Booker’s body and concluded that the “manner of death” was homicide, which means “the killing of a human being by another or other human beings.”

44. Describing the “restraints” used on Mr. Booker, the Medical Examiner noted that “[t]he restraints consisted of weight applied to the decedent’s body while held prone on the floor, application of a carotid ‘sleeper’ hold to the decedent’s neck, application of a Taser to a lower extremity in ‘stun drive’ mode for 8 seconds, restriction of arm movement by cuffing his hands behind his back, and restriction of leg movement by use of an ‘OPN’ (nunchuck).”

45. After viewing a videotape of Mr. Booker’s death, the Medical Examiner stated that “[t]he decedent was face down on the floor, with the weight of others on his chest and abdomen, for approximately 4 minutes. The carotid ‘sleeper’ hold had been applied for a total of approximately 2-1/2 minutes.”

46. The Medical Examiner also noted that as the handcuffs were removed, “an officer kneeled on [Mr. Booker’s] back (for an estimated 1-1/2 to 2 minutes).”

C. THE COVER-UP

47. Since Mr. Booker’s death, Denver has engaged in an extensive and relentless cover-up of the facts and circumstances surrounding his death.

48. Within two days of learning of the death of their family member, the family of Marvin Booker began requesting access to information, documents, and video of the events pertaining to his death.

49. The entire interaction between Mr. Booker and the five deputies whose use of excessive force resulted in his death lasted only several minutes and was entirely captured on videotape, apparently from multiple camera sources and angles.

50. On September 28, 2010, after reviewing the events that culminated in Marvin Booker’s death, Denver District Attorney Mitchell R. Morrissey issued a so-called “Decision Statement” in which he announced that he would not file criminal charges against any of the Denver law enforcement officials involved in the killing of Marvin Booker.

51. Mr. Morrissey’s Decision Statement specifically referred to “videos of the incident from four separate cameras.”

52. The Coroner's Report also makes specific reference to "[v]ideotapes (without sound) of the events described above taken by cameras located in the booking area of the Van Cise-Simonet Detention Center providing three vantage points: 1) from the ceiling looking down into the 'holding tank' (and towards the decedent); 2) from behind the booking officers [sic] desks and out into the 'holding tank'; 3) and from the ceiling looking down the isolation cell hallway."

53. Mr. Booker's family has been trying for over seven months to obtain the video footage of the incident, as well as documents, reports, and other evidence. All of their requests have been ignored or denied.

54. Beginning within two days of having been notified of Mr. Booker's death, the Bookers have repeatedly requested this necessary information and evidence bearing upon Mr. Booker's death from at least the following: Denver's City Attorney, David Fine; Denver's Director of Corrections, Gary Wilson; Denver's then-Manager of Safety, Ron Perea; the "Victim's Advocate" of the City of Denver; the Denver District Attorney's Office; The Denver Office Of Independent Monitor, Richard Rosenthal; and then-Denver Mayor John Hickenlooper.

55. Prior to the District Attorney's decision not to file any charges against anyone involved in Mr. Booker's homicide, Denver officials told the Booker family and its agents that the reason the Booker family could not view the video surveillance tapes that captured Mr. Booker's death was that the District Attorney's investigation was ongoing. The Denver officials further represented that, upon conclusion of that D.A. investigation, the family could obtain the video. At the conclusion of the District Attorney's investigation, however, the family was informed that it would not be able to obtain the videotape, at least until the conclusion of the ongoing Internal Affairs investigations.

56. To date, the Booker family has been denied all access to voluminous evidence in the hands of many Denver officials regarding the circumstances surrounding the death of Marvin Booker.

D. DENVER LAW ENFORCEMENT'S CUSTOM, PRACTICE, AND POLICY OF EXCESSIVE FORCE

57. Marvin Booker's death at the hands of Denver law enforcement officers is a tragic example of the overwhelmingly common use of excessive force by law enforcement officers throughout Denver.

58. The City of Denver has created, fostered, and tolerated an environment and culture of law enforcement brutality and deliberate indifference to the constitutional rights of citizens and residents.

59. The Denver Department of Safety consists of both the Denver Police Department and the Denver Sheriff's Office. Law enforcement officials from both branches of the Department of Safety have repeatedly and unlawfully used excessive force against citizens.

60. Denver law enforcement officers have engaged in a persistent practice of law enforcement misconduct, and the officials responsible for assuring that such misconduct does not

occur have consistently failed to properly train, supervise, and discipline individual officers who have engaged in such misconduct.

61. This culture and environment of brutality and the lack of training, supervision, and discipline of law enforcement officers is evidenced by, among other things, the sheer volume of lawsuits filed against and/or legal settlements with Denver law enforcement alleging excessive force, the involvement of dozens of different law enforcement officials in those lawsuits, and the repeated involvement of the same officers in multiple lawsuits.

62. For example, Denver City Attorney David Fine reported to the Denver City Council in September of 2010 that the city of Denver has spent nearly \$6.2 million since 2004 to settle lawsuits involving police officers, and nearly all of the payouts were for allegations of excessive force. Council members had asked Fine to research litigation patterns after controversy erupted the previous month over a video that showed an officer beating a 23-year-old man who was talking on a cell phone.³

63. These statistics do not even include lawsuits against the City and County of Denver arising out of Sheriff's Department conduct.

64. Between January and June of 2010, seventeen Denver police officers were associated with excessive force complaints, a higher ratio per law enforcement officer than any other U.S. City.⁴

65. Since 2004, the average settlement in Denver for an excessive-force claim against the police was about \$97,000. The city paid nearly \$3 million to settle three lawsuits, pushing the average up. In all, the city paid out \$5 million in settlements for excessive force since 2004.⁵

66. In 2008, the City of Denver and Denver Health paid a combined \$7 million to the family of Emily Rae Rice, who had died while in custody of the Denver Sheriff's Department. Ms. Rice had alleged that the City's treatment of her after she was detained violated her constitutional rights leading directly to her death. It was alleged that the City had destroyed or otherwise tampered with video and other evidence, and had engaged in a cover-up of the wrongdoing. After initially denying any liability on any of the claims, the Defendants paid \$7 million and agreed to many policy changes. Defendant Faun Gomez was a Defendant in both the present case and the case brought on behalf of Emily Rice. Upon information and belief, Defendant Gomez received no disciplinary action for her role in either the death of Emily Rice or the death of Marvin Booker.

³ Christopher N. Osher, *Denver has spent nearly \$6.2 million since 2004 to settle suits against police*, DENVER POST, Sept. 15, 2010, available at http://www.denverpost.com/news/ci_16076344.

⁴ Joel Warner, *Police Misconduct: Denver ranks number one in terms of excessive force complaints*, Westword, Sept. 10, 2010, available at http://blogs.westword.com/latestword/2010/09/police_misconduct_denver_ranks_number_one_in_terms_of_excessive_force_complaints.php.

⁵ Christopher N. Osher, *Denver has spent nearly \$6.2 million since 2004 to settle suits against police*, DENVER POST, Sept. 15, 2010, available at http://www.denverpost.com/news/ci_16076344.

67. Also in 2008, Denver paid \$150,000 to Timothy Thomason, who was deprived of medical care while in the city jail.⁶ Mr. Thomason was arrested on charges of cultivating marijuana. While being transported to jail, he informed the officers that he was suffering from terminal Stage IV non-Hodgkin lymphoma, and that he was taking massive amounts of pain killers and anxiety medications. The officers assured him that they would bring his medications to the jail. Once he arrived at the Pre-Arrestment Detention Facility, however, his repeated pleas for medication were ignored. A judge ordered his release, but he was forced to spend several more hours in jail, without his medication, until he suffered a seizure, banging his head on the cement floor of his cell. Mr. Thomason alleged that his treatment by the Denver Sheriff's Department violated his constitutional rights.⁷

68. In 2004, Denver paid the family of Paul Child \$1.32 million to settle a lawsuit brought after Mr. Childs, a developmentally disabled 15 year-old boy, was fatally shot by Denver Police Officer James Turney.⁸ Officer Turney responded to a 911 call from Mr. Childs' sister, and when he arrived at the house, Mr. Childs was holding a knife. When Mr. Childs refused to drop the knife, Officer Turney shot and killed him. Two other officers were in the house with non-lethal tasers, which were not used. Mr. Childs' mother informed officers that he was a "special needs" child, but they nonetheless shot him from the front door while he was standing in the hallway.⁹

69. In 2004, Denver paid Terrill Johnson \$75,000 to settle a lawsuit against the City, Denver Police Chief Gerald Whitman, and Denver Police Officers Troy Ortega, Louis A. Estrada, Perry Speelman, Richard Eberharter, Randy Yoder, and Danny Perez. Mr. Johnson alleged that as he was driving home from his job at Denver International Airport, he noticed he was being followed closely by a Denver Police patrol car. The officers in the car followed him to his residence. He went into his home, and when he went back outside to take out the garbage, the officers, still in their patrol car, were shining a spotlight into his car, which he had parked in front of the house. As the officers reversed the patrol car, they slammed into Mr. Johnson's wife's car. Mr. Johnson approached his wife's car to inspect the damage, and the officers exited the patrol car with their weapons drawn. They instructed Mr. Johnson, who was not armed, to throw down his weapon. Additional officers arrived at the scene, continuing to instruct Mr. Johnson to drop his weapon. He removed his shirt and raised his hands into the air to show the officers that he was not armed. The officers then rushed toward Mr. Johnson, slammed him onto a patrol car, punched him, forcibly subdued him while handcuffing him, and threw him into the

⁶ Michael Roberts, *The City Council pays out to Timothy Thomason*, WESTWORD, Aug. 19, 2008, available at http://blogs.westword.com/latestword/2008/08/the_city_council_pays_out_to_t.php.

⁷ Alan Prendergast, *Pain Management: Cancer patient Tim Thomason didn't think he could feel any worse. His Denver jailers showed him that he could.*, WESTWORD, July 31, 2008, available at <http://www.westword.com/2008-07-31/news/pain-management/>.

⁸ Christopher N. Osher, *Denver has spent nearly \$6.2 million since 2004 to settle suits against police*, DENVER POST, Sept. 15, 2010, available at http://www.denverpost.com/news/ci_16076344.

⁹ John C. Ensslin & Hector Gutierrez, *Slain teen 'loved' cops*, ROCKY MOUNTAIN NEWS, July 8, 2003, <http://m.rockymountainnews.com/news/2003/Jul/08/slain-teen-loved-cops/>.

patrol car, using racial slurs the entire time. Mr. Johnson was charged with two minor traffic offenses and interference; all charges against him were dropped.

70. On February 25, 2004, Regina Keith filed a lawsuit on behalf of the estate of Gregory Lee Smith, Jr. against the City and County of Denver, Denver Police Chief Gerald Whitman, Denver Police Officers Robert Silvas and Jim Turney, and unknown John Doe Officers. Ms. Keith, Mr. Smith's mother, alleged that the officers arrived at her home after she called 911 for assistance with a domestic dispute. When they arrived, Mr. Smith was in his bedroom. Mr. Smith then exited his bedroom with a three-inch utility knife. The officers ordered him to drop the knife, and when he didn't, they fatally shot him. Upon information and belief, the individual officers settled the case for an unknown amount.

71. On December 6, 2004, Richard Rra-Shada filed a lawsuit against the City and County of Denver, Denver Police Officers Dennis Bedenbender and Shanna Michael, and Robert A. Kaser. Mr. Rra-Shada alleged that Officer Bedenbender struck him with his police vehicle. When Mr. Rra-Shada responded with a profanity, Officer Bedenbender got out of his police vehicle, approached Mr. Rra-Shada, and clipped his legs from underneath him, causing him to fall head-first onto the pavement. Officer Michael then hit Mr. Rra-Shada with her nightstick and kicked him repeatedly in his torso. At the same time, Officer Bedenbender was punching Mr. Rra-Shada in the head with closed fists. Mr. Rra-Shada's injuries included head and brain trauma, as well as injuries to his shoulder, wrist, back, ribcage, and abdomen. He also began suffering seizures after the incident. Upon information and belief, the case was settled for an unknown amount.

72. On July 1, 2005, Jeffrey R. Mayton filed a lawsuit against the City and County of Denver and Denver Police Officers Josh E. Valerio, Gerard Alarcon, and Robert J. Wycoff. Mr. Mayton alleged that he was wrongfully arrested, and that during his arrest, the officers ignored his complaints that he was ill. When Mr. Mayton began to struggle due to physical discomfort from his illness, the officers used excessive force against him, resulting in a dislocated shoulder, abrasions, and bruising. Because the officers ignored Mr. Mayton's complaints about his illness, he defecated in his clothing and was forced to remain sitting and lying on the ground in pain until transport arrived. Upon information and belief, the case was settled for an unknown amount.

73. On August 5, 2005, Quincy Michael Shannon filed a lawsuit against the City and County of Denver, Denver Mayor John Hickenlooper, and Denver Police Officers Thomas McKibben and Chan Thanong. Mr. Shannon alleged that, while he and three friends were waiting in their car in a parking lot, they were approached by an officer who told them they could wait five more minutes for their friends to come out of a nightclub, and then they would have to move their car. Another officer then approached the car and told them to move. The driver attempted to move the car, but the parking lot was full of cars. A third officer then approached the car and sprayed mace or pepper spray into the driver's face. The driver tried again to move the car, but was unable to. Another officer then approached and sprayed the other occupants of the car with mace or pepper spray. All of the passengers then exited the car, which was filling up with fumes from the spray. Mr. Shannon asked Officer McKibben how they were supposed to move the vehicle when the parking lot was full, and in response Officer McKibben sprayed him in the face again. Mr. Shannon then walked away and dialed 911 to report the incident. Officer McKibben overheard Mr. Shannon describing him on the phone and sprayed

him again. When Mr. Shannon turned away, Officer McKibben grabbed Mr. Shannon's arm and bent it behind him. Officer McKibben then kicked Mr. Shannon's feet out from under him and shoved his face into the pavement. Officer McKibben then grabbed both of Mr. Shannon's arms and one leg, handcuffing his hands behind his back over his ankle. Officers McKibben and Officer Thanong then picked Mr. Shannon up and sprayed him in the face again. Mr. Shannon suffered cuts and scrapes to his face, resulting in a permanent scar. Upon information and belief, the case was settled for an unknown amount.

74. On March 31, 2002, Mary Milham was at a Denver bar called Sing Sing, located in the LoDo section of downtown Denver. As Ms. Milham was leaving she made a remark about a particularly obnoxious bouncer to her brother. While talking to her brother, she was confronted with off-duty Denver Police Officers in police uniforms, one being Defendant Danny Perez, #95032. Ms. Milham was not being violent or threatening in any way when one of the officers grabbed Ms. Milham's wrist and applied a "low profile twist lock" on her and snapped her humerus like a twig while propelling her into a brick wall. This brutal assault caused extensive injuries to Ms. Milham as well as significant physical and psychological trauma. These officers then proceeded to file false charges against her knowing that she had committed no offense. All charges against Ms. Milham were dismissed in Denver County Court on August 14, 2002. A jury in federal court found Perez to be liable to Milham for violating her constitutional rights and using excessive force and damages were awarded. Despite this finding, Denver took no disciplinary action against Perez.

75. On November 21, 2005, David Nettles filed a lawsuit against the City and County of Denver, Denver Police Chief Gerald Whitman, and Denver Police Officers Carlette Havard, Michael Nuanes, Jr., Damian Naranjo, and Zachary Phillips. Mr. Nettles alleged that the officers, while responding to a domestic violence call across the street from Mr. Nettles's house, decided to apprehend Mr. Nettles. In effectuating the unlawful arrest of Mr. Nettles, one of the officers began punching him in the ribs, while another used nunchucks on Mr. Nettles's ankle, causing him to fall to the ground. While Mr. Nettles was on the ground, another officer kicked him in the head at least three times. One or more officers jumped onto Mr. Nettles's back, yelling, "when we give you an order, you obey it!" Another officer began punching Mr. Nettles in the back of the head, yelling, "you did it to your own damn self!" While the officers were attempting to handcuff Mr. Nettles's hands behind his back, he heard his shoulder snap. After he was handcuffed, the officers continued hitting him in the head and kicking him in the back. Mr. Nettles's injuries included a severe shoulder injury and bruising to his ribs, arms, left elbow, and knees. Upon information and belief, the case was settled for an unknown amount.

76. On January 6, 2006, Francisco Juan Lobato, Anthony Lobato, Barbara Lobato, and Ramona Lobato filed a lawsuit on behalf of the estate of Frank Lobato against the City and County of Denver, Denver Police Chief Gerald Whitman, and Denver Police Officers Ranjan Ford, Jr., Joshua Herrick, Gene Sharla, Robert Shiller, Charles Kyle, Steven Addison, and unidentified John and Jane Doe Officers. The Lobatos alleged that the Defendant Officers entered the Lobato home without a warrant looking for a suspect. Frank Lobato was sleeping in his bed at the time the officers entered the home. When the officers were unable to locate the

suspect, they entered Mr. Lobato's bedroom and shot and killed him. Denver paid \$900,000 in 2007 to settle the lawsuit.¹⁰

77. On April 3, 2006, Hirut Berhanmeskel filed a lawsuit against the City and County of Denver and Denver Police Officer Gilberto Romero. Ms. Berhanmeskel alleged that, while she was attempting to resolve a parking ticket dispute at the Denver Parking Ticket Referee's office, she was approached by Officer Romero. Officer Romero, apparently upset that Ms. Berhanmeskel was crying about her inability to resolve her parking ticket issue, grabbed Ms. Berhanmeskel's arm violently and roughly twisted it behind her back. He slammed her against the wall and handcuffed her without even warning her that he was placing her under arrest. Ms. Berhanmeskel suffered a broken wrist as a result of the excessive force used by Officer Romero. Upon information and belief, the case was settled for an unknown amount.

78. On August 11, 2006, Chandler Lyles filed a lawsuit against the City and County of Denver and Denver Police Officer Ryan Burke. Mr. Lyles alleged that Officer Burke came to his home to investigate a claim that Mr. Lyles's mother was suicidal. Officer Burke ordered Mr. Lyles to sit on a sofa in the living room, and Mr. Lyles complied. Then, without provocation or warning, Officer Burke tackled Mr. Lyles, forcing him to the ground and handcuffing him. As a result of the excessive force used by Officer Burke, Mr. Lyles suffered injuries that included a broken right clavicle. Upon information and belief, the case was settled for an unknown amount.

79. In 2007, Amy Shroff sued the City of Denver and Officer Frank Spellman for violating her rights protected by the Fourth and Fourteenth Amendments to the Constitution. Officer Spellman illegally arrested Ms. Shroff after she had complained to the police about her former husband's presence at a bar immediately before he was to have visitation rights with their young child under a custody arrangement that provided for her to drop the child off at the Denver Police station for pick-up by the former husband. Officer Spellman arrested Ms. Shroff allegedly for violating a restraining order, even though the order clearly restrained the *husband* from coming near her, not the other way around. The district court rejected Spellman's effort to have the case dismissed on summary judgment, and the 10th Circuit Court of Appeals agreed that Spellman's conduct, as alleged, would violate the clearly established rights of Ms. Shroff to be free from unreasonable searches and seizures. The Defendants settled the case before trial in 2010 for a payment of \$175,000 to Ms. Shroff.

80. On June 12, 2007, Ross Edward Smith filed a lawsuit against the City and County of Denver and Denver Police Officers Jarrod Tinnin and Mark Sutton. Mr. Smith alleged that while he was walking down the 16th Street Mall as part of a protest against the Iraq war, he was approached by Officer Tinnin. Officer Tinnin had dismounted his motorcycle, and walked up to Mr. Smith and punched him in the face with a closed fist, throwing him to the pavement. Officer Sutton then joined Officer Tinnin in tackling and beating Mr. Smith. Officer Tinnin pushed Mr. Smith's face into the pavement while Officer Sutton kneeled on Mr. Smith. Mr. Smith was charged with interference, but all charges against him were dropped. As a result of the excessive force used against him, Mr. Smith suffered injuries and abrasions to his face, arms, hands, neck,

¹⁰ Christopher N. Osher, *Denver has spent nearly \$6.2 million since 2004 to settle suits against police*, DENVER POST, Sept. 15, 2010, available at http://www.denverpost.com/news/ci_16076344.

and back, and aggravation of his Parkinson's Disease, causing severe and uncontrollable tremors. Upon information and belief, the case was settled for an unknown amount.

81. On June 27, 2007, Grace Arlene Mosley filed a lawsuit against the City and County of Denver and Denver Police Officers Martin Martinez, Jose Hurtado, and unknown John Doe Officers. Ms. Mosley alleged that she was unlawfully arrested and forcefully pulled out of her home by the officers. As a result of the excessive force against her, she suffered physical pain and emotional trauma. Upon information and belief, the case was settled for an unknown amount.

82. In 2008, Denver paid \$885,000 to settle a lawsuit brought in response to an incident in which Denver Police Officers Charles Porter, Luis Rivera, and Cameron Moerman used excessive force against Juan Vasquez, a 16 year-old boy. Mr. Vasquez was severely injured with a lacerated liver and broken ribs after one of the officers used a fence as leverage to jump up and down on the boy's back while he lay prone on the pavement.¹¹

83. On November 13, 2008, Michael P. Marotta filed a complaint against the City and County of Denver, the Denver Police Department, and Denver Police Officers Cortez, Black, and Rocco-McKeel. Mr. Marotta's complaint arose out of two separate incidents with Denver Police Officers. In March 2007, Officer Cortez issued Mr. Marotta a summons for Disturbing the Peace for using the stairwells in his condominium building for exercise. When Officer Cortez was unable to serve Mr. Marotta, he obtained an arrest warrant. Officer Cortez then entered Mr. Marotta's condominium, pulling Mr. Marotta out and placing him under arrest. Mr. Marotta was locked out of his home without his hearing aid or glasses while his condominium was searched. In November 2007, Officer Rocco-McKeel came to Mr. Marotta's home, grabbing him and throwing him against a wall to effect an arrest. Mr. Marotta was handcuffed so tightly that he has a permanent scar on his wrist, and the officer shoved Mr. Marotta against an elevator wall without provocation while removing him from his building. The case is currently awaiting trial in federal court.

84. In January 2009, Denver paid \$100,000 to Trudy Trout to settle a lawsuit that arose out of Denver Police Officer Nicholas Rocco-McKee's use of excessive force. Officer Rocco-McKee shoved Ms. Trout to the ground, causing her to break her wrist. Despite the fact that the encounter was caught on video, Officer Rocco-McKee lied on his report, stating that Ms. Trout tripped over her own high heeled shoes, which she was not wearing. Upon information and belief, Officer Rocco-McKee was not disciplined for the use of force or for lying on his report.¹²

85. On February 25, 2009, Nick Lynch filed a lawsuit against Denver Police Officers Adam Barrot, Abigail Dorn, J. Kennedy, and unknown John Doe Officers. Mr. Lynch alleged that, as he was approaching the officers with his hands raised, the officers struck him and threw

¹¹ David Packman, *Is There a Police Brutality Problem in Denver?*, INJUSTICE EVERYWHERE: THE NATIONAL POLICE MISCONDUCT STATISTICS AND REPORTING PROJECT, Sept. 6, 2010, <http://www.injusticeeverywhere.com/?p=3028>.

¹²*Id.*

him to the ground, face down. The officers then hit him repeatedly with a nightstick or a flashlight, causing permanent injuries. The case is currently awaiting trial in federal court.

86. On April 30, 2009, John Stephen Heaney filed a lawsuit against the City and County of Denver and Denver Police Officers James Costigan, Michael Cordova, Noel Ikeda, Luke Palmitere, and Daniel Steele. Mr. Heaney alleged that, while he was riding his bicycle near Coors Field on opening day of the baseball season, he was attacked by undercover police officers, who did not identify themselves as law enforcement agents. He was placed into a chokehold and forcibly brought to the ground, where he was punched in the head repeatedly. One of the officers grabbed him by the hair and slammed his face into the pavement, breaking two of his teeth. As a result of the excessive force used against him, Mr. Heaney also suffered severe bruising on his hands, knees, arms, and legs, as well as other injuries requiring surgery. The case is currently awaiting trial in federal court.

87. On May 4, 2009, Jason Anthony Graber filed a lawsuit against the City and County of Denver and Denver Police Officers Miller, Davis, and two other unknown John Doe Officers. Mr. Graber alleged that, as he was crossing the 16th Street Mall at Market Street, a police officer in a marked car yelled out his window, “dumbass!” The police car then pulled up next to Mr. Graber, his brother, and his wife, and asked if they needed assistance. Mr. Graber responded that they did not need assistance, but that he did not appreciate being called a dumbass. The officers then exited their vehicle and one of them tackled Mr. Graber from behind. He was grabbed by the neck, and his legs were kicked out from under him. He fell down, slamming his knee and elbow onto the concrete. Mr. Graber was arrested for public intoxication, but a breathalyzer test showed a blood alcohol content of 0.036, well below the legal limit, and he was released. X-rays to Mr. Graber’s leg showed lipohearthrosis and a possible hairline fracture. Mr. Graber remained in a leg brace for many months after the incident. The case is currently awaiting trial in federal court.

88. On May 15, 2009, Altigracia Medina Valencia filed a lawsuit on behalf of her deceased husband against the City and County of Denver, Denver Police Chief Gerry Whitman, and eight unknown John Doe Denver Police Officers. Ms. Valencia alleged that, while her husband, Odiceo Valencia-Lopez, was attending his daughter’s communion, he suffered a self-inflicted knife wound to the wrist. When his family called for an ambulance, the call was routed to Denver Police. Eight officers arrived on the scene. Mr. Valencia-Lopez was standing by his vehicle with the knife in his hand when he was surrounded by six to eight officers with their weapons drawn. The officers ordered Mr. Valencia-Lopez to drop the knife, but due to his lack of understanding of English, blood loss, and intoxication, he did not understand their commands. An officer then tased Mr. Valencia-Lopez, causing him to drop the knife. After Mr. Valencia-Lopez was tased and dropped the knife, the other officers began shooting him. He was shot approximately seven times, in front of his entire family. He died at the scene. Upon information and belief, the case was settled for an unknown amount.

89. On October 16, 2009, Wayne C. Rose filed a lawsuit against the City and County of Denver, Denver Police Chief Gerald R. Whitman, Detective Mark S. Woodward, and unidentified John Doe Police Officers. Mr. Rose alleged that, while fleeing police unarmed, he was knocked to the ground by an officer on foot and then run over by an officer on a police motorcycle. The impact of the motorcycle knocked Mr. Rose unconscious, and Detective

Woodward then handcuffed Mr. Rose's hands behind his back. Detective Woodward then picked Mr. Rose up by his arms and dropped him onto the pavement two or three times, causing his face and body to strike the pavement several times. Officer Woodward and the unidentified John Doe Officers then beat and kicked Mr. Rose repeatedly. Mr. Rose's injuries resulting from the officers' use of excessive force included a broken arm that required multiple surgeries. Upon information and belief, the case was settled for an unknown amount.

90. On June 30, 2009, James R. Watkins filed a lawsuit against the City and County of Denver and Denver Police Officers John Ruddy and Randy Penn. Mr. Watkins alleged when he noticed he was being followed by the officers, he reached for his cell phone while asking them if they were going to beat him up. The officers responded by lunging toward Mr. Watkins and hitting him in the face with their closed fists and elbows. They continued beating him after he was on the ground and under police control. Mr. Watkins had to be taken by ambulance to Denver Health Medical Center because he was bleeding profusely as a result of the officers' use of excessive force. He was initially charged with Assault in the Second Degree, but all charges against him were dropped. Denver paid Mr. Watkins \$20,000 to settle the lawsuit.¹³

91. On June 30, 2009, Michael DeHerrera filed a lawsuit against the City and County of Denver and Denver Police Officers Devin Sparks, A. Jaramillo, and R. Murr. Mr. DeHerrera alleged that, while he was using his cell phone to inform his father, a Pueblo police officer, that the Denver Police Officers were assaulting his friend, the officers assaulted him. Officer Sparks used an arm bar takedown to force Mr. DeHerrera face first onto the sidewalk. Once Mr. DeHerrera was on the ground, Officer Sparks used a sap impact weapon repeatedly on Mr. DeHerrera's body, and other officers struck him in the face multiple times. Mr. DeHerrera had to be taken to the hospital by ambulance, and his injuries included head trauma and facial contusions. This incident was captured on video. Despite the aggravated circumstances, the officers were only very lightly disciplined. Since the case has received considerable publicity and public protest, the Denver Police Department has reopened an internal affairs investigation into the incident, which resulted in a \$17,500 settlement.¹⁴

92. On June 30, 2009, Shawn Kyeone Johnson filed a lawsuit against the City and County of Denver and Denver Police Officers Devin Sparks, A. Jaramillo, and R. Murr. Mr. Johnson was involved in the altercation with Denver Police that resulted in Mr. DeHerrera's lawsuit. Mr. Johnson alleged that, as he was being assaulted by a club bouncer, three Denver Police Officers joined in the assault, striking him in the face with elbows and closed fists even after he was under police control. Mr. Johnson suffered severe injuries, including head trauma

¹³ David Packman, *Is There a Police Brutality Problem in Denver?*, INJUSTICE EVERYWHERE: THE NATIONAL POLICE MISCONDUCT STATISTICS AND REPORTING PROJECT, Sept. 6, 2010, <http://www.injusticeeverywhere.com/?p=3028>.

¹⁴ Christopher N. Osher, *Denver has spent nearly \$6.2 million since 2004 to settle suits against police*, DENVER POST, Sept. 15, 2010, available at http://www.denverpost.com/news/ci_16076344.

and facial contusions, and was taken by ambulance to the hospital. In August 2010, Denver settled the case for \$15,500.¹⁵

93. On August 7, 2009, James B. Bouchard filed a lawsuit against the City and County of Denver and Denver Police Officers M. Whetstone and K. Jiminez. Mr. Bouchard alleged that the officers arrived at his house in response to a call by Mr. Bouchard's former girlfriend, who wanted to retrieve her personal belongings from his house. When Mr. Bouchard refused to allow the officers to enter his home without a warrant, the officers forced their way in and used a nightstick to restrain Mr. Bouchard in his own home. He was then shoved into a wall and handcuffed. Mr. Bouchard's resulting injuries included a torn rotator cuff and bruises, contusions, and other injuries to his upper torso, face, and head. The case is currently awaiting trial in federal court.

94. On August 10, 2009, Danvis Smith filed a lawsuit against the City and County of Denver, Denver Police Chief Gerald Whitman, Denver Manager of Safety Alvin LaCabe, and Denver Police Officer Joseph P. Flynn. Mr. Smith alleged that he was involved in an altercation with Officer Flynn, who was working on foot in the Denver International Airport parking garage. Officer Flynn reached through the driver's side window and struck Mr. Smith in the mouth with his elbow. Officer Flynn then pulled Mr. Smith out of the car by his right arm and handcuffed Mr. Smith in an awkward position, with his arms lifted high in the air beyond the normal range of motion. Mr. Smith was charged with assault, but all charges against him were subsequently dropped. Mr. Smith's injuries included a torn rotator cuff, a torn biceps tendon, and chronic back pain. Upon information and belief, the case was settled for an unknown amount.

95. In September 2009, Denver settled a wrongful death lawsuit for \$225,000 to the family of Alberto Romero, who died after being repeatedly tasered and beaten with impact weapons by police when he was arrested wearing only boxer shorts. Before he died, Mr. Romero suffered eight broken ribs and had his tongue split open from the use of excessive force.

96. On December 29, 2009, Vicki Lynn Trujillo filed a lawsuit on behalf of the Estate of Jason Gomez against the City and County of Denver, Denver Police Chief Gerald Whitman, and Denver Police Officer Timothy Campbell. Ms. Trujillo alleged that Officer Campbell began pursuing Mr. Gomez without reasonable suspicion or probable cause. When Officer Campbell confronted Mr. Gomez, he ordered Mr. Gomez to kneel on the ground and pointed his gun at him. Officer Campbell repeatedly shouted that he was going to kill Mr. Gomez. When Mr. Gomez, who was unarmed, stood up and began running from Officer Campbell, Officer Campbell shot him in the back. The bullet perforated Mr. Gomez's spinal column. Officer Campbell then fired a second round of shots, hitting Mr. Gomez twice in the chest, once in the abdomen, once in the right thigh, and once in the left knee. Mr. Gomez died from multiple gunshot wounds. The case is currently awaiting trial in federal court.

97. On March 19, 2010, James D. Moore filed a lawsuit against the City and County of Denver and Denver Police Officers Shawn Miller and John Robledo. Mr. Moore alleged that

¹⁵ David Packman, *Is There a Police Brutality Problem in Denver?*, INJUSTICE EVERYWHERE: THE NATIONAL POLICE MISCONDUCT STATISTICS AND REPORTING PROJECT, Sept. 6, 2010, <http://www.injusticeeverywhere.com/?p=3028>.

Officers Miller and Robledo arrived at his apartment complex in response to a 9-1-1 call from his neighbor reporting a noise coming from Mr. Moore's apartment. When the officers arrived, Mr. Moore and his girlfriend were standing outside of his apartment. After instructing Mr. Moore, whose hands were not in his pockets, to remove his hands from his pockets, the officers tackled Mr. Moore from behind and struck him on the head without provocation or warning. While he was on the ground, Mr. Moore was beaten so brutally that he lost consciousness and his heart stopped. CPR had to be administered to save his life. The beating continued even after Mr. Moore was restrained, despite his repeated insistence that the officers had "the wrong guy." Mr. Moore suffered debilitating injuries as a result of his assault. He had to undergo back surgery and months of physical rehabilitation, and he now walks with a cane and cannot stand up for more than ten minutes without having to sit or lie down due to pain. The case is currently awaiting trial in federal court.

98. In May 2010, Denver settled a lawsuit filed by Eric Winfield for \$40,000. Mr. Winfield alleged that he was severely beaten by Denver Police Officers Antonio Milow, Thomas Johnston, and Glen Martin while he was making his way through LoDo crowds after a 2007 World Series game. Mr. Winfield's injuries included chipped teeth, permanent scars, and nerve damage in his hands.¹⁶

99. On July 1, 2010, Robert Duran filed a lawsuit against the City and County of Denver and Denver Sheriff's Deputy Steven Koehler. Mr. Duran alleged that, while he was waiting unescorted next to an elevator in the Denver County Jail as directed, Deputy Koehler approached him. Without warning or provocation, Deputy Koehler slammed Mr. Duran into the elevator wall. Deputy Koehler then dragged Mr. Duran approximately ten feet down the hallway. While Mr. Duran was handcuffed, Deputy Koehler kicked him all over his body and face. Mr. Duran was taken to the hospital by ambulance. Mr. Duran's injuries included scalp lacerations, bruised ribs, chest contusions, and closed head injury. The case is currently awaiting trial in federal court.

100. In August 2010, Denver paid Chad Forte \$22,500 to settle a lawsuit resulting from Denver Police Officer Kenneth Johnson's use of excessive force. After Mr. Forte allegedly jaywalked, Officer Johnson followed him into his apartment building and jumped him from behind, leaving him with facial injuries.¹⁷

101. On September 20, 2010, Rohit Mukherjee filed a lawsuit against Denver Police Officer Abbeyle Dorn and two unknown John Doe Denver Police Officers. Mr. Mukherjee alleged that Denver Police Officers knocked on his door while he was hosting a party in his apartment. One of the officers asked Mr. Mukherjee to step outside. When he refused, one of the officers pushed his way into the apartment and Officer Dorn pinned Mr. Mukherjee against the door and choked him. When Mr. Mukherjee informed the officers that he could not breathe,

¹⁶Alan Prendergast, *Eric Winfield: Artist beaten by Denver cops gets cash, no apology*, WESTWORD, May 4, 2010, http://blogs.westword.com/latestword/2010/05/eric_winfield_artist_beaten_by.php.

¹⁷David Packman, *Is There a Police Brutality Problem in Denver?*, INJUSTICE EVERYWHERE: THE NATIONAL POLICE MISCONDUCT STATISTICS AND REPORTING PROJECT, Sept. 6, 2010, <http://www.injusticeeverywhere.com/?p=3028>.

one of them threw him to the ground, face first. One of the officers stood on Mr. Mukherjee's ankle and rocked back and forth. Once Mr. Mukherjee was restrained, the officers pushed him face first on the carpeted floor, causing contusions to his face. Mr. Mukherjee's guests then began recording the use of excessive force with their cell phones, at which point Officer Dorn took the cell phones without permission and placed them in a bowl of water in the kitchen in order to destroy the photographic and video evidence of the police behavior. While Mr. Mukherjee was still restrained, the other officers stepped on and kneed Mr. Mukherjee's face and bent his fingers backwards as far as they could without breaking them. While escorting Mr. Mukherjee out of his apartment, the officers slammed his head into the hallways walls and the elevator wall. Mr. Mukherjee's injuries included jaw injuries, bruises, hand and knee pain, lacerations, knee contusion, hand sprain, and nerve damage. The case is currently awaiting trial in federal court.

102. On November 23, 2010, Jared Lunn filed a lawsuit against the City and County of Denver, Denver Police Officer Eric Sellers, and unknown Denver Police Officer John Doe. Mr. Lunn alleged that after he attempted to report an assault to Officer Sellers, which Officer Sellers ignored, Officer Sellers assaulted him. Mr. Lunn was attempting to get into his friend's vehicle when he muttered, "way to protect and serve," in response to Officer Sellers' refusal to take his assault report seriously. Officer Sellers then wrapped his arm around Mr. Lunn's neck to pull him out of the car. Officer Sellers placed Mr. Lunn in a carotid compression hold. After Mr. Lunn went limp, Officer Sellers kicked his legs out from under him and threw him to the ground. After handcuffing Mr. Lunn, Officer Sellers got within inches of Mr. Lunn's face and yelled homophobic epithets at him. Officers Sellers then released Mr. Lunn without citing him for violation of any law and allowed him to go home. The case is currently awaiting trial in federal court.

103. On January 12, 2011, Daniel Martinez, Jr., Nathan Martinez, Daniel Martinez III, and Jonathan Martinez (collectively, "the Martinez Family") filed a lawsuit against the City and County of Denver, Denver Police Chief Gerald Whitman, and Denver Police Officers Jason Valdez, Robert Martinez, Robert Motyka, and Bryce Jackson. The Martinez Family alleged that the officers began pounding on their door shortly after 11:00 pm, demanding that they open the door. When Daniel Martinez, Jr. opened the door slightly, the officers rushed into the house without consent or a warrant. Officer Valdez slammed Jonathan Martinez's head through a window and then pulled him outside of the house and slammed him onto the concrete to apply handcuffs. Officer Martinez pushed Daniel Martinez into the living room, pinned him against the sofa, and applied handcuffs. Officer Motyka punched Nathan Martinez in the face without any provocation. Officer Jackson forcefully dragged Daniel Martinez III from the house and slammed him into the concrete before applying handcuffs. All of the Martinez Family members were criminally charged. A jury acquitted Nathan Martinez and Daniel Martinez III on all charges. All of the charges against Daniel Martinez, Jr. and Jonathan Martinez were dropped. The case is currently awaiting trial in federal court.

104. On January 11, 2011, Alexander Landau filed a lawsuit against the City and County of Denver, Denver Police Chief Gerald Whitman, and Denver Police Officers Randy Murr, Ricky Nixon, and Tiffany Middleton. Mr. Landau alleged that he was assaulted during a traffic stop. Mr. Landau was driving with Addison Hunold when he was pulled over. Mr. Landau did not have his wallet, so he could not provide any identifying information to the

officers. He exited the car as instructed. Mr. Hunold informed the officers that he had a small amount of marijuana and he was placed in handcuffs. The officers began searching Mr. Landau's car. When they tried to open the trunk, Mr. Landau asked if they had a warrant authorizing a search of the trunk. Two of the officers then grabbed each of Mr. Landau's arms, and a third officer punched him in the face with no provocation. One of the officers then yelled that Mr. Landau was going for a gun, even though he was not, and the officers continued to beat him in the face and head with their fists, a radio, and a flashlight. Racist epithets were spewed at Mr. Landau, who is African American. More officers arrived on the scene and joined the assault. Officer Murr pointed his gun at Mr. Landau's head and threatened to shoot him. Paramedics arriving on the scene documented that Mr. Landau was found lying prone on the curbside, handcuffed behind his back, bleeding from the head, with lacerations and in acute distress. Mr. Landau was transported by ambulance to the hospital, where he was treated for a broken nose, lacerations, and serious closed head injuries, including a large hematoma, a concussion, and a hemorrhage in his right eye. The case is currently awaiting trial in federal court.

105. These cases provide only representative examples of the rampant use of excessive force by Denver law enforcement officers and the lack of any training or supervision on the part of the City and County of Denver to prevent this dangerous and unconstitutional conduct.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(42 U.S.C. § 1983 – 4th Amendment Violation – Excessive Force) (Against All Defendants)

106. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if set for the herein.

107. All individual Defendants to this claim, at all relevant times hereto, were acting under the color of state law in their capacities as Denver law enforcement officers.

108. At the time of Mr. Booker's death, Mr. Booker had a clearly established constitutional right under the Fourth Amendment to the United States Constitution to be secure in his person from unreasonable seizure through excessive force.

109. Any reasonable law enforcement officer knew or should have known of this clearly establish right at the time of Mr. Booker's death.

110. Defendants Gomez, Grimes, Sharp, Robinette, and Rodriguez engaged in the use of force that was objectively unreasonable in light of the facts and circumstances confronting them, violating Mr. Booker's Fourth Amendment rights.

111. Defendants Gomez, Grimes, Sharp, Robinette, and Rodriguez unreasonably used deadly force against Mr. Booker, resulting in his death.

112. None of the Defendant law enforcement officers took reasonable steps to protect Mr. Booker from the objectively unreasonable use of force of the other Defendant officers,

despite being in a position to do so. Each is therefore liable for the damages resulting from the objectively unreasonable force used by the others.

113. The acts or omissions of the individual Defendants were the moving force behind and proximate cause of Mr. Booker's death.

114. The acts and omissions of Defendants were engaged in pursuant to the custom, policy, and practice of the City and County of Denver and the Department of Safety, which encourages, condones, tolerates, and ratifies the use of excessive force by law enforcement officers in the City.

115. The acts or omissions of Defendant City and County of Denver caused Mr. Booker damages in that he suffered extreme physical and mental pain during the assault that resulted in his death.

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 1983 – 14th Amendment Violation – Deprivation of Life Without Due Process) (Against All Defendants)

116. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

117. All individual Defendants to this claim, at all relevant times hereto, were acting under the color of state law in their capacities as Denver law enforcement officers.

118. At the time of Mr. Booker's death, Mr. Booker had a clearly established constitutional right under the Fourteenth Amendment to the United States Constitution to not be deprived of his life without due process of law.

119. Defendants Gomez, Grimes, Sharp, Robinette, and Rodriguez acted willfully, maliciously, in bad faith, and with reckless disregard of Mr. Booker's constitutionally protected federal rights.

120. The acts or omissions of the individual Defendants were moving force behind and proximate cause of Mr. Booker's death

121. The acts or omissions of Defendant City and County of Denver caused Mr. Booker damages in that he suffered extreme physical and mental pain during the assault that resulted in his death.

122. The acts and omissions of Defendants were engaged in pursuant to the custom, policy, and practice of the City and County of Denver and the Department of Safety, which encourages, condones, tolerates, and ratifies the use of excessive force by law enforcement officers in the City.

THIRD CLAIM FOR RELIEF

(42 U.S.C. § 1983 – Failure to Train or Supervise) (Against Defendant Denver and Defendant Rodriquez)

123. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

124. Defendant City and County of Denver and Defendant Rodriquez failed to properly train and supervise its or her employees to avoid the use of excessive force.

125. Defendant City and County of Denver and Defendant Rodriquez knew, or should have known, that its or her employees would fail to use reasonable force, violating detainees' constitutional rights.

126. Defendant City and County of Denver and Defendant Rodriquez were deliberately indifferent to the constitutional rights of jail detainees, knowing that dangerous and potentially fatal consequences could be suffered by such individuals (including Mr. Booker) by failing to properly train and supervise its or her employees. Defendant City and County of Denver and Defendant Rodriquez could have and should have pursued reasonable methods for the training and supervising of such employees, but failed to do so.

127. Defendant City and County of Denver's policies, customs, or practices in failing to properly train and supervise its employees were the moving force and proximate cause of the violation to Mr. Booker's constitutional rights.

128. The custom, policy, and practice of the City and County of Denver and the Department of Safety of encouraging, condoning, tolerating, and ratifying the use of excessive force by law enforcement officers in The City, as described herein, were the moving force behind and proximate cause of the violation to Mr. Booker's constitutional rights.

129. The acts or omissions of Defendant City and County of Denver and Defendant Rodriquez caused Mr. Booker damages in that he suffered extreme physical and mental pain during the assault that resulted in his death.

130. The actions of Defendant City and County of Denver and Defendant Rodriquez as described herein deprived Mr. Booker of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, and caused him other damages.

FOURTH CLAIM FOR RELIEF

(42 U.S.C. § 1985 – Conspiracy to Interfere with Civil Rights) (Against All Defendants)

131. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

132. Defendant City and County of Denver and the individual Defendants herein, and others, conspired, combined, and agreed with other individuals and institutions for the purpose of impeding, hindering, obstructing, or defeating the due course of justice, with intent to deny Marvin Booker and Plaintiffs the equal protection of the laws and/or equal privileges and immunities under laws.

133. Defendant City and County of Denver and the individual Defendants herein conspired, combined, and agreed with other individuals and institutions, including but not limited to Denver's Mayor, Director of Public Safety, City Council, Office of Independent Monitor, the "Victim's Advocate" of the City of Denver, and the Denver District Attorney's Office, as well as with other law enforcement officers, and possibly others, to specifically deprive Plaintiffs of their right to equal protection under the law and/or equal privileges and immunities under laws, and in furtherance of that combination or agreement, Defendant City and Council of Denver and its agents acted with a specific intent to deprive Plaintiffs of such rights.

134. The City and the individual Defendants herein, and other law enforcement officers in the Denver Department of Safety, have an understanding and implicit agreement that the City will not aggressively enforce policies which purport to prohibit the use of excessive force and other violations of constitutional rights of people with whom they interact. This agreement between the City and its individual law enforcement officers to allow such unconstitutional behavior on the part of its law enforcement officers despite explicit policies, regulations, and laws prohibiting such conduct is supported and furthered by Denver's Mayor, Director of Public Safety, City Council, Office of Independent Monitor, the "Victim's Advocate" of the City of Denver, and the Denver District Attorney's Office, as well as by other law enforcement officers.

135. Defendants' actions in depriving Marvin Booker of his rights, as described herein, and in conspiring to interfere with Plaintiffs' civil rights in enforcing the laws, were motivated in whole or in part by racial animus.

136. The actions of Defendant City and County of Denver as described herein deprived Plaintiffs of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, and caused them other damages.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against each of the Defendants, and award them all relief allowed by law, including but not limited to the following:

- (a) Appropriate relief at law and equity;
- (b) Declaratory relief and other appropriate equitable relief;
- (c) Economic losses on all claims as allowed by law;
- (d) Compensatory and consequential damages, including damages for emotional distress, humiliation, loss of enjoyment of life, loss of companionship and association with family members, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;

- (e) Punitive damages on all claims allowed by law and in an amount to be determined at trial;
- (f) Attorneys fees and the costs associated with this action, including expert witness fees, on all claims allowed by law;
- (g) Pre- and post-judgment interest at the appropriate lawful rate;
- (h) Any further relief that this court deems just and proper, and any other relief as allowed by law.

PLAINTIFFS HEREBY DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE.

DATED this 24th day of February, 2011.

KILLMER, LANE & NEWMAN, LLP

/s/ Darold W. Killmer

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