

# American Civil Liberties Union of Nevada Comments on Coroner's Inquest

*ACAJ Meeting, June 6, 2012*

## I. Background

Clark County has had a Coroner's Inquest dating back to 1969, borne out of racial tensions that followed from the fatal shooting of a black teenager by a white police officer. The Coroner's Inquest is a fact-finding investigation commenced by the county coroner that attempts to discover the circumstances behind someone's death occasioned by unnatural means. CCO 2.12.010(c).

However, up until recent reforms of the Coroner's Inquest, only the district attorney's office was allowed to meaningfully participate in the process, effectively shutting out a victim's family members and other interested parties. Because of a high number of police-involved shootings from 2001 until the present, however, public scorn of the one-sided nature of the Coroner's Inquest led to reforms in 2006 and 2007 and again in 2010.

The current reforms, which the American Civil Liberties Union ("ACLU") of Nevada was integral in achieving, allow for a victim's family members to have an ombudsperson (who does not represent the family's interests as an attorney) at the Inquest proceedings in order to help with the fact-finding investigation as to the victim's death--such a decision lies at the discretion of the presiding officer of the Inquest, who is usually a justice of the peace. Moreover, for officer-related deaths, a number of mandatory steps must be taken that differ from non-officer-related deaths, such as calling for a mandatory inquest by the county coroner, an initial pre-inquest conference determining the scope of the investigation and the evidence used, a live broadcast of the proceedings, etc. Officers are also allowed to have an attorney, participate directly in the process in the same fashion as the ombudsperson. The Inquest is not meant to

establish guilt as is done in a criminal trial, nor is it meant to act as an adversarial proceeding.

The facts are also not intended to be used as part of a future criminal trial.

Nevertheless, the new reforms have been attacked as being unconstitutional on both the federal and Nevada State level. The aim is to prevent the new reforms from taking effect, and to reduce transparency related to officer-related deaths of civilians, which have a high incidence in Las Vegas and Clark County generally. Below are brief descriptions of the constitutional challenges facing the reforms at the courts, and the ACLU of Nevada's position on each issue.

## **II. Due Process Challenges**

### **A. Procedural Due Process Challenge**

Challengers to the new inquest process argue that the reforms make the Coroner's Inquest very similar to an actual criminal trial. Using this analogy, they argue that it does not provide the necessary procedural due process protections that criminal defendants are typically afforded, such as a right to present evidence, the privilege against self-incrimination, and the right to an attorney under both the United States Due Process Clause and Nevada's Due Process Clause. The United States District Court, District of Nevada, has ruled that the Inquest does not violate procedural due process. The case is currently pending appeal before the Ninth Circuit Court of Appeals.

The ACLU of Nevada agrees with the ruling of the District Court. The Coroner's Inquest statute states numerous times that it is not an adversarial or adjudicatory proceeding, but merely a fact-finding investigation that establishes no fault or guilt as a criminal trial would. Moreover, compared to prior versions of the Coroner's Inquest, the new reforms afford police officers many procedural protections that they did not previously have. These protections are not required, since no legal rights are implicated by an inquest proceeding. Those protections include having

an attorney present at the inquest, the ability to present evidence, and the ability to exercise the privilege against self-incrimination.

### **B. Void For Vagueness Challenge**

Opponents also argue that, because the reforms are so vague, they would promote arbitrary and discriminatory enforcement. They claim the new Coroner's Inquest statute violates due process for being too unpredictable to comply with, i.e. the statute is unconstitutionally vague under the United States Due Process Clause. The United States District Court, District of Nevada, has ruled that the Inquest is not void for vagueness. The case is currently pending appeal before the Ninth Circuit Court of Appeals.

The ACLU of Nevada agrees with the ruling of the District Court. Though a presiding officer has some discretion in exercising his or her duties in determining the scope of the proceedings, what evidence may be admissible, and who the ombudsperson acting on behalf of the victim's family members is, such discretion is routine and exercised by judges without such discretion being challenged as unconstitutionally vague. Moreover, the plain text of the Coroner's Inquest statute is clear, and is not susceptible to arbitrary or discriminatory enforcement.

### **III. Equal Protection Challenge**

Opponents further argue that, because the new reforms have more stringent procedures between officer-related death inquests and non-officer-related death inquests, officers are being discriminated against unfairly, and such provisions would violate the Equal Protection Clause of the United States and Nevada Constitutions. The United States District Court, District of Nevada, has ruled that the Inquest does not violate equal protection. The case is pending appeal before the Ninth Circuit Court of Appeals.

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The ACLU of Nevada agrees with the ruling of the District Court. Police officers have much greater responsibilities given the nature of their positions as public law enforcement officers that ordinary civilians simply do not have. Thus officers are not similarly situated with civilians in order for the Equal Protection Clause to apply. Moreover, even if officers were similarly situated, the Coroner's Inquest statute satisfies both potential constitutional tests that justify its differential enforcement between officer-related deaths and non-officer-related deaths. Officers are neither a suspect class, nor are their "fundamental rights" being infringed.

#### **IV. Separation of Powers Challenge**

Finally, opponents argue that, because the presiding officer of every inquest comes from Nevada's Judiciary Branch, while the inquests themselves are a function of the Nevada's Executive Branch (involving prosecutors, district attorneys, and so on), the Coroner's Inquest violates Nevada's Separation of Powers Clause. This claim was originally heard by the United States District Court, District of Nevada, but was remanded to Nevada's Eighth Judicial District Court. The Eighth Judicial District Court has held that, absent one small provision in the statute, the Coroner's Inquest does not violate Nevada's separation of powers doctrine. The case is currently pending appeal before the Nevada Supreme Court.

The ACLU of Nevada agrees with the Eighth Judicial District Court's ruling that the Coroner's Inquest does not violate the separation of powers. In a number of other contexts judges and officers of the executive branch interact on a constant basis in order to enforce many laws-- for instance, when police officers submit to a magistrate information to receive a warrant to search a dwelling, when judges preside over grand jury proceedings which the prosecutor is heavily involved in, and so on. The Eighth Judicial District Court held that one provision in the statute, which allows for presiding officers to investigate the facts at an inquest further, violates the separation of powers doctrine. The ACLU of Nevada agrees with the Eighth Judicial District

Court that, even if this provision were to be severed from the Coroner's Inquest statute, the remainder of the statute is still not in violation of Nevada's separation of powers doctrine.

## **V. Conclusion**

The ACLU of Nevada has been the staunchest supporter of the revised Coroner's Inquest process. The ACLU of Nevada believes the Coroner's Inquest to be constitutional under both the United States and Nevada Constitutions, and that it survives all the due process, equal protection, and separation of powers challenges brought before it at the courts.

### Case References

*Amer. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40 (1999); *Paul v. Davis*, 424 U.S. 693 (1976); *Hannah v. Larche*, 363 U.S. 420 (1960); *Jenkins v. McKeithen*, 395 U.S. 411 (1969); *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432 (1985). *Foley v. Connelie*, 435 U.S. 291 (1978); *Lissner v. U.S. Customs Serv.*, 241 F.3d 1220 (9th Cir. 2001); *Frontiero v. Richardson*, 411 U.S. 677 (1973); *U.S. v. Carolene Products*, 304 U.S. 144 (1938); *Baggett v. Bullitt*, 377 U.S. 360 (1964); *Village of Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489 (1982); *Grayned v. City of Rockford*, 408 U.S. 104 (1972); *Galloway v. Truesdell*, 83 Nev. 13 (1967); *Red Arrow Co. v. Carson City*, 47 Nev. 473 (1924); *Paul v. Armstrong*, 1 Nev. 92 (1965).