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August 20, 2012

Sheriff Douglas C. Gillespie
Las Vegas Metropolitan Police Department
400 Martin Luther King Boulevard
Las Vegas, NV 89106

Re: Officer-Involved Death of Marc Hull which occurred on September 9, 2011, at the Wal-Mart store at 3615 South Rainbow Blvd, Las Vegas, Clark County, Nevada, involving Officers Michael Ramirez - #9057; Officer John Abel - #9835; Officer Corey Staheli - #9705; and Officer Beaumont Hopson - #8906

LVMPD Event 110909-0637

Dear Sheriff Douglas C. Gillespie:

The District Attorney's Office has completed its review of the September 9, 2011, death of Marc Hull (hereinafter "Decedent"). It was determined that the actions of the officers were not criminal in nature. This review was based on all the evidence currently available, but without the benefit of an inquest proceeding.

This letter explains why criminal charges will not be forthcoming against the officers involved. It is not intended to recount every detail, answer every question or resolve every factual conflict regarding this police encounter. This letter is intended solely for the purpose of explaining why, based upon the facts, the conduct of the officers was not criminal.

FACTUAL SUMMARY

It should be noted at the outset that the vast majority of the critical events leading up to the shooting, and the actual shooting itself, was captured on rather high quality video surveillance at this particular Wal-Mart store. The facts of this case can be best explained by review of the store video surveillance footage. See Exhibit 1.

On September 9, 2011, at approximately 4:24 hours, LVMPD dispatch received a 311 call from Martin Gellagos, who was a Loss Prevention Officer for the Wal-Mart store at 3615 South Rainbow Boulevard. Gellagos reported a suspicious male and female, who were in the process of putting approximately \$4,000 worth of "high end" electronic equipment into two shopping carts. Gellagos believed the male and female, later identified as Decedent and C.R., would either attempt to steal the items or pay for the items with a fraudulent credit card. Several patrol units responded to the scene under LVMPD Event 110909-0637.

At approximately 0433 hours, Patrol Officers Staheli and Williams arrived and contacted Gellagos inside the Loss Prevention Office, which was located near the central front entrance. As Gellagos briefed Officers Staheli and Williams, Officers Abel and Ramirez arrived on the scene and entered the Loss Prevention Office. The officers watched the suspects on surveillance video as they attempted to purchase the items with a credit card transaction, which was declined. Not certain if a crime had been committed, Officers Abel and Ramirez responded to the area of the suspects to gauge their reaction to the officers' presence and to further determine whether a criminal act was being committed.

Officer Staheli remained in the Loss Prevention Office and continued to watch the incident on surveillance video. Officers Williams and Hopson positioned themselves near the east entrance of the store to prevent the suspects from fleeing.

Officers Abel and Ramirez walked near the suspects as they stood at the cash register in the Entertainment Section. Decedent looked directly at Officer Abel, but did not appear to be nervous or frightened by the officer's presence. Officers Abel and Ramirez decided to contact Decedent and C.R. Officer Ramirez broadcasted a "Code 4" over the radio, as he switched to "Channel 1" to run the suspects for their criminal history.

Hearing the "Code 4" radio traffic, Officers Williams and Hopson left the east entrance and walked west across the front of the store toward the Loss Prevention Office. Officer Hopson stopped to use the public restroom at the front of the store; Officer Williams continued toward the security office, where he planned to meet up with the other officers.

During the contact with Decedent, Officer Abel discovered the name on the credit card the Decedent was using did not match his identification. Officer Abel determined the incident required further investigation and he asked the suspects to walk with officers to the Loss Prevention Office. Decedent and C.R. agreed and began to walk with officers towards the front of the store.

Officer Ramirez walked with C.R. ahead of Decedent and Officer Abel. Officer Abel had a hold of Decedent's t-shirt from behind as they walked. Officer Abel attempted to check Decedent for weapons as the two walked. Officer Abel pulled Decedent backwards slightly by his shirt and attempted to reach in and pat down the front of Decedent's waistband area for weapons. Decedent immediately spun to his right and broke free from Officer Abel's grasp. Decedent simultaneously reached into his waistband and pulled out a semi-automatic handgun. Officer Ramirez turned around to assist Officer Abel and drew Decedent's attention. Decedent pointed his handgun directly at Officer Ramirez from close range and fired several shots, striking Officer Ramirez in the left forearm, left elbow, left bicep and the upper left chest.

Officers Ramirez and Abel drew their duty weapons and returned fire as Decedent fled north towards the front of the store. Officer Ramirez fired (6) shots and Officer Abel fired (12) shots. Decedent fell to the ground and from a lying position fired several more shots back toward Officers Ramirez and Abel, which caused them to take cover. Decedent fired a total of (8) shots at the officers.

Officer Staheli exited the Loss Prevention Office, drew his duty weapon and took cover behind a chips and soda display near the central front store entrance. Decedent ran up the aisle and pointed his weapon at Officers Staheli and Williams. Officer Staheli fired (15) shots at Decedent, who continued to run north toward Officer Staheli. Decedent then turned away from Officer Staheli and ran east down the main north aisle south of the checkout stands, toward the east front entrance.

Officer Staheli performed a speed reload and chased after Decedent, along with Officer Williams. The officers paralleled Decedent from the front main aisle, which was on the opposite side of the checkout stands.

Officer Hopson heard the gunshots and exited the men's restroom at the front of the store with his duty weapon out. Officer Hopson saw Decedent on the other side of the checkout stands, running east with a handgun in his hand, which was pointed back towards the other officers. Officer Hopson fired (8) shots at Decedent from across the checkout stands. Decedent fell to the ground and Officer Hopson last saw him crouched down near a clothing display still holding his gun.

Officer Staheli approached Decedent and fired two (2) more shots, as Decedent appeared to be getting up with his weapon. Officers Hopson and Staheli approached Decedent; Officer Staheli kicked the handgun out of Decedent's hand. Officer Staheli handcuffed Decedent, while Officers Williams and Hopson provided cover.

Officers Staheli and Hopson requested medical personnel and started first aid. Decedent was still breathing so the Officers removed Decedent's clothing and applied pressure to his wounds until medical personnel arrived.

The Wal-Mart store was searched for additional suspects and victims, then the store was evacuated and the scene was secured for detectives.

Officer Ramirez's injuries consisted of a gunshot wound to the left forearm, left elbow, and left upper arm. Several bullet fragments could be seen on X-rays in his left arm, which doctors did not remove. Officer Ramirez also sustained a bullet impact injury to his left upper chest. The bullet had been stopped by his ballistic vest. Officer Ramirez was treated for his gunshot wounds and later released.

INTERVIEWS OF CIVILIAN WITNESSES

WAL-MART CLERK – E. M.

E.M. was interviewed and told police that she was working the graveyard shift on September 9, 2011, when she was asked to help with a transaction in the electronics department. A white male and female (Decedent and C.R.) were attempting to purchase a large amount of electronic items with a credit card that had been denied. E.M. asked Decedent for his identification, which he refused.

Two police officers then approached Decedent and C.R. and asked them for their identification and escorted them towards the front of the store. C.R. and one of the officers walked ahead of Decedent and the other officer. The officer who walked with the Decedent suddenly stopped and the Decedent turned around. E.M. then heard four gunshots. After the gunshots, the other officer handcuffed C.R. and had her lay on the floor. E.M. then saw Decedent on the floor crawling towards the front of the store, when she heard someone say an officer had been shot. The other officer chased after Decedent. A short time later she heard several more gunshots.

DECEDENT'S FEMALE COMPANION – C.R.

C.R. had been dating and living with Decedent for approximately two weeks but never saw him with a gun. On September 09, 2011, C.R. and Decedent went to the Wal-Mart located at Spring Mountain and Rainbow to shop for Decedent's friend "Albert." They were inside when they were contacted by two police officers. The officers asked them to walk to the security office near the front of the store. As they walked Decedent ran from and shot at the officers. C.R. screamed and hid in a nearby aisle. C.R. admitted she and Decedent had recently ingested methamphetamine, but denied knowing about Decedent's use of a fraudulent credit card.

A number of other employees and shoppers at the Wal-Mart were interviewed by detectives. Civilian statements were limited to a rather short timeframe in the entire shooting sequence. Consistent with the video surveillance, these civilian witnesses all observed Decedent armed with a handgun and firing at police officers. Further, these witnesses heard the officers yell verbal commands for the Decedent to stop and lie down

on the floor. These commands were disregarded by the Decedent throughout the shooting incident.

WEAPONS

Officer Ramirez's duty weapon was a Glock, Model 17, 9mm, semi-automatic handgun with serial number HUZ767 and an attached Streamlight® M-3 tactical flashlight. The handgun was loaded with (12) cartridges; (1) cartridge in the chamber and (11) cartridges in the magazine. The magazine installed in Officer Ramirez's handgun had a capacity of (17) rounds. Officer Ramirez carried two additional magazines on his duty belt, each was loaded to capacity with (17) Speer 9mm Luger +P cartridges. Officer Ramirez typically carried his duty weapon loaded with (18) cartridges, (1) cartridge in the chamber and (17) cartridges in the magazine, which suggested he fired (6) shots during the incident.

Officer Abel's duty weapon was a Glock, Model 17C, 9mm, semi-automatic handgun with serial number KHL489 and an attached TLR1 Streamlight® flashlight. The handgun was loaded with (6) cartridges; (1) cartridge in the chamber and (5) cartridges in the magazine. Officer Abel carried four additional magazines on his duty belt, three of which contained (17) cartridges and one contained (16) cartridges. Officer Abel typically carried his duty weapon loaded with (18) cartridges, (1) cartridge in the chamber and (17) cartridges in the magazine, which suggested he fired (12) shots during the incident.

Officer Abel had apparent blood on his uniform and was in possession of the credit card Decedent attempted to use prior to the shooting. The credit card was not in the name of the Decedent.

Officer Hopson's duty weapon was a Glock, Model 22, .40 caliber, semi-automatic handgun with serial number HHD435 and an attached TLR1 Streamlight® flashlight. The handgun was loaded with (4) cartridges; (1) cartridge in the chamber and (3) cartridges in the magazine. Officer Hopson carried two additional magazines on his duty belt, each contained (13) cartridges. Officer Hopson typically carried his duty weapon loaded with (13) cartridges, (1) cartridge in the chamber and (12) cartridges in the magazine, which suggested he fired (9) shots during the incident.

Officer Staheli's duty weapon was a Glock, Model 19C, 9mm, semi-automatic handgun with serial number KLT848. The handgun was loaded with (13) cartridges; (1) cartridge in the chamber and (12) cartridges in the magazine. Officer Staheli typically carried two additional magazines on his duty belt. Only one additional magazine was left on his duty belt, which contained (15) cartridges. Officer Staheli typically carried his handgun loaded with (15) cartridges, (1) cartridge in the chamber and (14) cartridges in the magazine, which suggested he fired (2) shots out of the magazine in the handgun. Officer Staheli also fired an entire magazine (14 +1) and then conducted a speed reload to an additional magazine, which suggested he fired a total of (17) shots during the incident.

Officer Staheli had apparent blood on his forearm, the top of his handgun, and on his Maxam brand folding knife.

Officer Williams' duty weapon was a Springfield Armory, Model XD-45ACP, .45 caliber semi-automatic handgun with serial number US622757 and an attached TLR1 Streamlight® flashlight. The handgun was loaded with (14) cartridges; (1) cartridge in the chamber and (13) cartridges in the magazine. Officer Williams carried two additional magazines on his duty belt, each contained (13) cartridges. Officer Williams typically carried his handgun loaded with (14) cartridges, (1) cartridge in the chamber and (13) cartridges in the magazine, which suggested he did not fire his weapon during the incident.

Officer Ramirez's Glock 9mm semi-automatic handgun was examined, test fired, and found to be in normal operating condition with no noted malfunctions. The handgun and magazine had a capacity of (18) cartridges. The test fired bullets and cartridge cases from Officer Ramirez's handgun were microscopically compared to the evidence recovered at the crime scene and autopsy. Based on these comparative examinations, it was determined (6) cartridge cases recovered from the crime scene had been fired from Officer Ramirez's handgun. Fifteen (15) bullets and three (3) bullet fragments recovered at the crime scene could be associated to the Officer's Glock 9mm Luger handgun, however, these items were not microscopically examined for identification purposes. One (1) bullet recovered during the autopsy bore the same rifling characteristics as the test fired bullets from Officer Ramirez's Glock. However, there were insufficient microscopic details for a conclusive identification.

Officer Abel's Glock 9mm semi-automatic handgun was examined, test fired and found to be in normal operating condition with no noted malfunctions. The handgun and one magazine had a capacity of (18) cartridges. The test fired bullets and cartridge cases from Officer Abel's handgun were microscopically compared to the evidence recovered at the crime scene and autopsy. Based on these comparative examinations, it was determined (12) cartridge cases recovered from the scene had been fired from Officer Abel's handgun. Fifteen (15) bullets and three (3) bullet fragments recovered at the crime scene could be associated to the Officer's Glock 9mm Luger handgun, however, these items were not microscopically examined for identification purposes. One (1) bullet recovered during the autopsy bore the same rifling characteristics as the test fired bullets from Officer Abel's Glock. However, there were insufficient microscopic details for a conclusive identification.

Officer Hopson's Glock .40 caliber semi-automatic handgun was examined, test fired and found to be in normal operating condition with no noted malfunctions. The handgun and one magazine had a capacity of (16) cartridges. The test fired bullets and cartridge cases from Officer Hopson's handgun were microscopically compared to the evidence recovered at the crime scene and autopsy. Based on these comparative examinations, it was determined (8) cartridge cases recovered from the crime scene had been fired from Officer Hopson's handgun. Six (6) bullets recovered at the scene could be associated

with Officer Hopson's Glock. However, these items were not microscopically examined for identification purposes. One (1) bullet recovered during the autopsy bore the same rifling characteristics as the test fired bullets from Officer Hopson's Glock. However, there were insufficient microscopic details for a conclusive identification.

Officer Staheli's Glock 9mm semi-automatic handgun was examined, test fired and found to be in normal operating condition with no noted malfunctions. The handgun and magazine had a capacity of (16) cartridges. The test fired bullets and cartridge cases from Officer Staheli's handgun were microscopically compared to the evidence recovered at the crime scene and autopsy. Based on these comparative examinations, it was determined (17) cartridge cases recovered from the crime scene had been fired from Officer Staheli's handgun. Fifteen (15) bullets and three (3) bullet fragments recovered at the crime scene could be associated to the Officer's Glock 9mm Luger handguns. However, these items were not microscopically examined for identification purposes. One (1) bullet recovered during the autopsy was determined to have been fired by Officer Staheli's Glock.

Decedent's Smith and Wesson .45 caliber handgun was examined, test fired and found to be in normal operating condition with no noted malfunctions. The handgun and magazine had a capacity of (9) cartridges. The test fired bullets and cartridge cases from Decedent's handgun were microscopically compared to the evidence recovered at the crime scene. Based on these comparative examinations, it was determined (8) cartridge cases recovered from the scene had been fired from Decedent's handgun. Three (3) bullets and a bullet jacket recovered at the crime scene were also determined to have been fired by Decedent's handgun. One (1) bullet jacket and bullet jacket fragment bore the same class and some similar individual characteristics as Decedent's handgun. However, there were insufficient microscopic details for a conclusive identification or elimination.

The remaining bullet and metal fragments bear insufficient or no markings for caliber determination or microscopic comparisons.

EXAMINATION OF DECEDENT - INCLUDING AUTOPSY

Dr. Telgenhoff performed the autopsy of the Decedent on September 10, 2011. The Decedent sustained four gunshot wounds. One of the wounds, the shot to the Decedent's chest, was fatal. In addition to the gunshot wounds, Decedent was actively under the influence of Methamphetamine. Toxicology results indicated chronic methamphetamine use. Blood levels of methamphetamine between 200-600 ng/mL have been reported in methamphetamine abusers who exhibited violent and irrational behavior. Decedent's methamphetamine level was 880 ng/mL.

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DECEDENT'S PRIOR INTERACTION WITH LAW ENFORCEMENT

Decedent had two prior felony convictions, both which involved the use of a deadly weapon. In 2004, he was convicted of Discharging a Firearm from a Vehicle. In 2007, he was convicted of Felon in Possession of a Firearm.

ADDITIONAL RELEVANT EVIDENCE

Decedent had, in large letters across his back, a tattoo that stated "FUCK COPS." Between these words was a visual depiction of a figure holding a gun to the head of a person wearing a badge from LVMPD while holding the police officer in a head lock. Additionally, on his chest, Decedent had tattooed the words, "Won't stop until my casket drops."

LEGAL ANALYSIS

The District Attorney's Office is tasked with assessing the conduct of an officer involved in any killing which occurred during the course of their duties. That assessment includes determining whether any criminality on the part of the officer existed at the time of the killing. As this case has been deemed a homicide by the coroner, the actions of these officers will be analyzed under the State's jurisprudence pertaining to homicides.

In Nevada, there are a variety of statutes that define the various types of justifiable homicide (NRS §200.120 – Justifiable homicide defined; NRS §200.140 – Justifiable homicide by a public officer; NRS §200.160 – Additional cases of justifiable homicide). The shooting of Decedent was justifiable under two theories: (1) The killing of a human being in self defense/defense of others; and (2) justifiable homicide by a public officer. Both of these theories will be discussed below.

A. The Use of Deadly Force in Self-Defense or Defense of Another

The authority to kill another in defense of others is contained in NRS §§200.120 and 200.160. "Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of ... person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony ..." against the other person. NRS §200.120(1). Homicide is also lawful when committed:

[i]n the lawful defense of the slayer, ... or of any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished

NRS §200.160(1).

The Nevada Supreme Court has refined the analysis of self defense and, by implication, defense of others, in *Runion v. State*, 116 Nev. 1041 (2000). The relevant jury instructions as articulated in *Runion* and modified for defense of others are as follows:

The killing of [a] person in [defense of another] is justified and not unlawful when the person who does the killing actually and reasonably believes:

1. That there is imminent danger that the assailant will either kill [the other person] or cause [the other person] great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in [defense of another] force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to [the person being defended].

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in [defense of another], the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person killing must act under the influence of those fears alone and not in revenge.

....

Actual danger is not necessary to justify a killing in [defense of another]. A person has a right to defend from apparent danger to the same extent as he would from actual danger. The person killing is justified if:

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that [the other person] is about to be killed or suffer great bodily injury; and
2. He acts solely upon these appearances and his fear and actual beliefs; and
3. A reasonable person in a similar situation would believe [the other person] to be in like danger.

The killing is justified even if it develops afterward that the person killing was mistaken about the extent of the danger.

If evidence [that a killing was in defense of another exists], the State must prove beyond a reasonable doubt that the defendant did not act in [defense of another].

Id. at 1051-52.

In this case, the Decedent posed an actual and an imminent danger to the police officers as well as to the customers inside the Wal-Mart. The Decedent constituted an actual threat in that he pulled a concealed firearm from his waistband area and fired multiple shots at the officers. Specifically, the Decedent struck Officer Ramirez multiple times on his left side. Officers returned fire in an effort to protect themselves and to protect the employees and customers of Wal-Mart. Notwithstanding the fact that the police officers ordered the Decedent to stop and lie down and returned fire at him, the Decedent continued to shoot at police and attempt to escape. Additionally, the Decedent's continued shooting at police and attempt to escape constituted an imminent threat to the employees and customers of the Wal-Mart store as they were all exposed to the shots he fired as he attempted to escape and fired repeatedly at officers. Considering these facts and the actions of the Decedent, the police officers were confronted imminent and actual danger which created in their minds an honest belief and fear that they, or others, were about to be killed or suffer great bodily injury. Accordingly, the officers were justified in acting upon those facts, appearances, fears and actual beliefs.

B. Justifiable Homicide by a Public Officer

"Homicide is justifiable when committed by a public officer ... [w]hen necessary to overcome actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty." NRS §200.140(2). This statutory provision has been interpreted as limiting a police officer's use of deadly force to situations when the officer has probable cause to believe that the suspect poses a threat of serious physical harm to either the officer or another. *See* 1985 Nev. Op. Att'y Gen. 47 (1985).

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. [Citation omitted]. The Fourth Amendment is not violated by an arrest based on probable cause, even though the wrong person is arrested, [Citation omitted], nor by the mistaken execution of a

valid search warrant on the wrong premises. [Citation omitted]. With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: "not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers," [Citation omitted],

violates the Fourth Amendment. The calculus of reasonableness must embody allowances for the fact that police officers are often forced to make split second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

As in other Fourth Amendment contexts, however, the “reasonableness” inquiry in an excessive force case is an objective one: 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. [Citation omitted].

Graham v. Connor, 490 U.S. 386, 396-397, 109 S. Ct. 1865, 1872 (1989).

In this case, the officers responded to a call from Wal-Mart employees who believed the Decedent was involved in an attempt to fraudulent purchase approximately \$4,000 worth of “high end” electronic equipment. The Decedent attempted to purchase the items with a credit card that was not in his name and he refused to provide identification. As the police attempted to investigate the crime the Defendant pulled a concealed handgun and shot at police officers. As such, the police had more than probable cause to believe that Decedent posed a threat of serious physical harm either to the officers themselves or other persons. The officers knew, rather than believed, the Decedent constituted a threat of serious physical harm to them and others based on the fact that the Decedent had shot at Officers Abel and Ramirez and actual struck Officer Ramirez multiple times. The Decedent’s actions of firing at multiple police officers further underscores the “reasonableness” of the police officers’ actions under the circumstances.

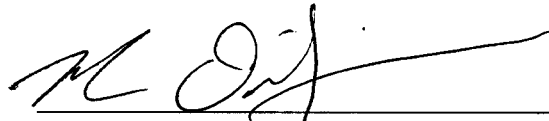
In light of all the evidence reviewed to date, the State would be unable to prove that the actions of the officers were in fact *unjustified* “in the discharge of a legal duty.”

CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, it has been determined that the use of deadly force by the officers involved was reasonable and legally justified. Decedent displayed his intent to use deadly force by drawing his .45 caliber handgun and pointing it at Officers Abel and Ramirez. The Officers could have used lethal force at that juncture. Decedent’s immediate use of deadly force by shooting at and into Officer Ramirez further exhibits the intent to kill the officers by the Decedent.

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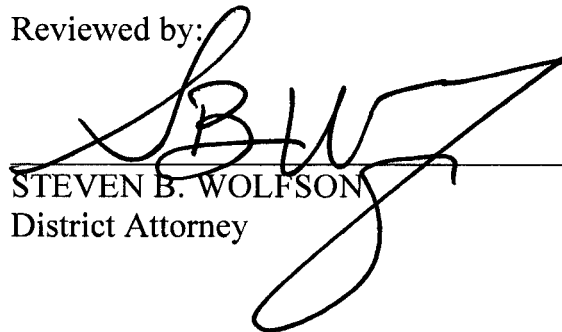
The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. (NRS §200.190). A homicide which is determined to be justifiable *shall* be “fully acquitted and discharged.” (NRS §200.190). As there is no factual or legal basis upon which to charge the officers, and unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.



Sent

DAVID L. STANTON
Chief Deputy District Attorney

Reviewed by:



STEVEN B. WOLFSON
District Attorney