

✓
-eb
3/1/01

U.S. v. City of Los Angeles



PN-CA-002-002

AN INDEPENDENT ANALYSIS OF THE LOS ANGELES POLICE DEPARTMENT'S
BOARD OF INQUIRY REPORT ON THE RAMPART SCANDAL

Prepared at the Request of the Police Protective League

by

Erwin Chemerinsky
(Sydney M. Irmas Professor of Public Interest Law, Legal Ethics
and Political Science, University of Southern California. Former
Chair, Elected Los Angeles Charter Reform Commission)

In collaboration with

Paul Hoffman
Laurie Levenson
R. Samuel Paz
Connie Rice
Carol Sobel

September 11, 2000

Acknowledgements

Five tremendously talented individuals, each with great knowledge of the Los Angeles Police Department, deserve to be listed as co-authors of this report. From the outset in my analysis of the Board of Inquiry Report, I have worked with Paul Hoffman, Laurie Levenson, R. Samuel Paz, Connie Rice, and Carol Sobel. Their ideas, and their words, are contained throughout this report. I cannot possibly thank them enough for all of the time that they spent meeting with me and working on this task. Ultimately, although I have borrowed heavily from their insights, this report is mine and each of them surely disagrees with some of what it says.

I am deeply grateful to Geoffrey Garfield who was instrumental in my agreeing to do this report and who served as an invaluable liaison at many points in the process.

I also want to thank dozens of other people who spent time talking with me and my collaborators on this report. They are not acknowledged by name because many asked for anonymity and I am uncomfortable listing some and not others. But I am very grateful for all of the time that so many people spent helping to educate me in my analysis of the Board of Inquiry Report.

Finally, I want to thank Jeff Chemerinsky for all of his excellent assistance as I completed this report.

Table of Contents

Preface: The purpose and scope of this report	p. 1
I. Introduction: Appraising the Board of Inquiry Report	p. 4
II. The Board of Inquiry report fails to identify the extent of the problem and, indeed, minimizes its scope and nature	p. 10
III. The Board of Inquiry report fails to recognize that the central problem is the culture of the Los Angeles Police Department, which gave rise to and tolerated what occurred in the Rampart Division and elsewhere	p. 18
IV. The Board of Inquiry report fails to consider the need for structural reforms in the Department, including reforming the Police Commission, strengthening the independence and powers of the Inspector General, and creating permanent oversight mechanisms for the Department	p. 59
V. The Board of Inquiry report unduly minimizes the problems in the Police Department's disciplinary system	p. 71
VI. The Board of Inquiry report fails to acknowledge serious problems with how the Department handles excessive force cases, particularly cases dealing with officer involved shootings	p. 91
VII. The Board of Inquiry report fails to recognize the problems in the criminal justice system in Los Angeles County	p. 104
Conclusion	p. 138
Appendix: List of Recommendations Contained in the Report	p. 139

Preface: The Purpose and Scope of this Report

On March 1, 2000, the Los Angeles Police Department's Board of Inquiry issued a report titled, "Rampart Area Corruption Incident." Shortly before the report was released, I was asked by Ted Hunt, President of the Los Angeles Police Protective League, to prepare an independent analysis of the Board of Inquiry's report. I insisted upon three conditions in agreeing to do this; all were immediately accepted.

First, I insisted that I be able to work with anyone I wanted in analyzing the Board of Inquiry Report and to say anything I chose in my report. This is a report to the Police Protective League, but it is no way the League's analysis; the observations and conclusions are entirely my own. I fully expect that the League will disagree with some, or even much, of what is said in this report.

Second, I emphasized that I obviously would not be able to investigate Rampart or the Police Department more generally. I knew that I would have neither the resources nor the staff for such an investigation. Although initially I hoped to receive a small foundation grant to hire some researchers, there simply was not time to obtain any funding. The League generously offered some funds, but to preserve the complete independence of this Report that offer was declined. Not a penny was received from the League or any other source. The absence of resources, of course, limits the scope of this report. From the outset, it has

been clear that my focus would be solely on analyzing the Board of Inquiry Report and its policy recommendations.

Third, I insisted that my report be a public document. We agreed that the report to the League would be immediately available to city officials, the press, and the general public. This report is thus being simultaneously transmitted to the Police Protective League, Mayor Richard Riordan, City Attorney James Hahn, the members of the Los Angeles City Council, and the members of the Police Commission. The report is also being made available to the press and the public.

My work on this report began immediately upon release of the Board of Inquiry report. I recruited five highly regarded experts to work together on this effort. These were: Paul Hoffman, Laurie Levenson, Sam Paz, Connie Rice, and Carol Sobel. All of them, like me, were volunteers; none of us has received any compensation in any way for our work on this report. None of us has had any prior connection to the Police Protective League or the Los Angeles Police Department; several have represented plaintiffs in suits against the LAPD. All of these individuals are very knowledgeable about law enforcement in general and the Los Angeles Police Department in particular.

We divided areas of responsibility among us for research and investigation. Each of us was aided by many other individuals. I, for example, have spoken to and been helped by literally dozens of people, including judges in Los Angeles and in other cities and states; prosecutors and former prosecutors in the

District Attorney's office and the United States Attorney's office; defense attorneys, both in the public defenders' office and private practice; attorneys who specialize in representing plaintiffs in police abuse litigation; civil rights attorneys; both a current and a former police chief from other cities; many police officers of different ranks; several law students; and many others. Many of these individuals spoke to me on the express promise that I not reveal their identity. This report is the product of incredibly hard work by many people over the last several months. It is based on dozens and dozens of interviews and a great deal of research. I am deeply grateful to all who volunteered their time to assist me.

At the outset, I want to be clear about the scope of this report. This report is my analysis of the Board of Inquiry report. This is not an investigation of the Los Angeles Police Department. This is not an independent inquiry into the Rampart scandal. This does not purport to provide a systematic set of proposals for reform of the Police Department. None of these ever were the goals of this effort.

Ultimately, this report presents my conclusions and recommendations. I expect that many of those who worked with me will disagree with some of what I say. The insights in this report reflect the thoughts and experiences of many people; its failings are entirely my responsibility.

I. Introduction: Appraising the Board of Inquiry Report
Rampart is the worst scandal in the history of Los Angeles.

Police officers framed innocent individuals by planting evidence and committing perjury to gain convictions. Nothing is more inimical to the rule of law than police officers, sworn to uphold the law, flouting it and using their authority to convict innocent people. Innocent men and women pleaded guilty to crimes they did not commit and were convicted by juries because of the fabricated cases against them.¹ Many individuals were subjected to excessive police force and suffered very serious injuries as a result.² As Los Angeles County Supervisor Zev Yaroslavsky noted, Rampart's danger far exceeds police abuse, it "is a dagger aimed at the heart of constitutional democracy."

Any analysis of the Rampart scandal must begin with an appreciation of the heinous nature of what the officers did. This is conduct associated with the most repressive dictators and police states. It occurred here in Los Angeles and the task must be to understand how it happened and what steps must be taken to ensure that it never occurs again.

The Board of Inquiry Report fails to convey the unconscionability of what occurred. It is titled an

¹As of this writing, approximately 100 convictions have been overturned. It is estimated that 3,000 cases need to be reviewed. Five officers, thus far, have been arrested and are facing criminal charges. Seventy officers, at this point, face disciplinary proceedings. Beth Shuster & Vincent J. Schodolski, "Poor Morale Rife in LAPD, Survey Finds," Los Angeles Times, September 8, 2000, at A22.

²For example, Javier Francisco Ovando, at age 19, was shot by police officers in the head and permanently paralyzed. The officers planted a sawed-off .22 caliber rifle on him and claimed that he had attacked them. Despite having no criminal record, Ovando was sentenced to 23 years in prison for assaulting the police officers. See Nita Lelyveld, "Police Corruption Roils Los Angeles," at <http://www.freep.com/news/nw/qlapd27.htm>.

investigation into the "Rampart Area Corruption Incident." As discussed below, it begins by stating that the problem is one of "mediocrity." I believe that the challenge for everyone dealing with the Rampart scandal in any way is to constantly think that it is our son or daughter, or brother or sister, or father or mother, who has been beaten or shot by the police without the slightest justification and then framed with the police planting evidence and lying in court to gain a conviction.

The Board of Inquiry Report is 362 pages; it contains 108 recommendations. The problem with the report is not what it says, but what it doesn't say. As indicated below, I disagree with relatively few of its recommendations. Unfortunately, though, the Report for all of its length and detail ignores the real problems in the Department and therefore fails to provide meaningful solutions. Hardly a word in the Board of Inquiry Report criticizes the management of the Police Department -- the Police Commission, the Police Chief, and the command staff. The failures are largely attributed to middle and low rank personnel in the Department. Not a single recommendation of the 108 listed calls for any structural changes in the Department or its management. The Board of Inquiry Report, as discussed below, minimizes the scope of the problem and, perhaps more importantly, minimizes the responsibility for the scandal. As a result, although most of its recommendations are desirable, individually and collectively, the 108 proposals would not bring about the needed systemic reforms of the Department.

Specifically, the Board of Inquiry report is lacking in the following ways. First, it fails to identify the extent of the problem and, indeed, minimizes its scope and nature. Second, the report fails to recognize that the central problem is the culture of the Los Angeles Police Department, which gave rise to and tolerated what occurred in the Rampart Division and elsewhere. For instance, it is telling that there is virtually no reference in the Board of Inquiry Report to the "code of silence" described by the Independent Commission on the Los Angeles Police Department (the "Christopher Commission"). Third, the Board of Inquiry report fails to consider the need for structural reforms in the Department, including reforming the Police Commission, strengthening the independence and powers of the Inspector General, and creating permanent oversight mechanisms for the Department. Fourth, the problems in the Department's disciplinary system are unduly minimized. At every step, from receipt of citizen complaints through adjudication in boards of rights, there are serious problems that need to be remedied. Fifth, the report fails to acknowledge serious problems with how the Department handles excessive force cases, particularly officer-involved shootings. Sixth, the report fails to recognize the broader problems in the criminal justice system in Los Angeles County. Prosecutors, defense attorneys, and judges must share responsibility when innocent people are convicted. Each these six major failings of the Board of Inquiry report is discussed, in turn, in the sections below.

Thus, my focus in this report is less to criticize what the Board of Inquiry report says and more to suggest the ways in which it was lacking and therefore fails to recognize the magnitude of the problem and to offer the needed solutions. Again, I emphasize that I did not conduct a thorough review of the Department and that this relatively brief report is far different in intent and scope from a study by a well-funded and well-staffed Commission to investigate the Department. I make no pretense of offering comprehensive solutions. I do hope that identifying the failings in the Board of Inquiry Report might help to stimulate further study and far more extensive proposals for reform than those that have been advanced thus far. To assist in this process, specific recommendations are made throughout this report.

I, of course, recognize that the response to some of these criticisms is that particular tasks were beyond the scope of the Board of Inquiry. Most notably, the Board of Inquiry was not charged with investigating the conduct of others, such as prosecutors, defense attorneys, and judges, in the criminal justice system. My point, however, is that an analysis of the Rampart scandal must include consideration of all of these problems and that, to this date, such consideration has not occurred. Moreover, there is an aura of comprehensiveness in a report that is 362 pages and contains 108 recommendations. It is crucial in approaching reform to identify the areas that it does not consider.

In no way do I mean to criticize the good faith and tremendous efforts of the Board of Inquiry. An enormous amount of time and hard work by many people went into preparing a long and detailed report. Ultimately, my sense of the report is that the Board of Inquiry was created by the management of the Los Angeles Police Department to study the Rampart scandal and it is the management account: it minimizes the problem and spares management of criticism. What is desperately needed is external investigations and accounts to learn the full magnitude of the problems and to propose the needed comprehensive reforms to ensure that this never happens again.

Nor do I mean for anything in this report to impugn the integrity of the vast majority of Los Angeles police officers. After several months of intensive research and talking with dozens of officers, I certainly share the statement of Chief Parks in his letter transmitting the Board of Inquiry report: "It is important to remember during this difficult time that the vast majority of our officers are hard working, honest and responsible individuals who come to work every day to serve their communities." Indeed, my respect for the police has been greatly enhanced by my contact with them in preparing this report.

However, this is in no way inconsistent with my overall conclusion: the Los Angeles Police Department is seriously diseased; the same culture that gave rise to the Rampart scandal and will lead to others unless it is cured. There is deservedly a crisis of confidence in the Department both among its officers

and among many segments of the public. Meaningful, systemic reforms of almost every aspect of the Department are essential. The Board of Inquiry report proposes relatively few such reforms; unfortunately, most of its proposals are relatively minor and none deals with the underlying problems in the culture, management, and structure of the Department.

Throughout this report, I present recommendations for further study and for reforms within the Department. Most of the reforms proposed in this report can be part of a consent decree with the Justice Department, which I strongly advocate in Part III, or imposed as part of a court judgment if the Justice Department sues the City. The primary exceptions are those that require changes in the City Charter. These would require a Charter amendment, which could be placed on the ballot by the City Council. In the absence of a consent decree or a trial judge order imposing these reforms as part of a judgment, the City could implement them through actions of the City Council or the Police Commission. Also, the reforms directed at the judiciary and the District Attorney's office, discussed in the last section of this report, obviously also would be beyond the scope of the consent decree. These would require actions by the County Board of Supervisors, as well as reforms instituted within the judiciary and the District Attorney's office.

II. THE BOARD OF INQUIRY REPORT FAILS TO IDENTIFY THE EXTENT OF THE PROBLEM AND, INDEED, MINIMIZES ITS SCOPE AND NATURE

How many officers in the Rampart Division CRASH unit

participated in illegal activities? How many officers in this unit and in the Rampart Division knew of illegal activity and were complicit by their silence? How high within the Department was there some knowledge of illegal activities by Rampart officers? Was there similar illegal activity in other CRASH units, in other specialized units, and in other divisions?

These are the crucial threshold questions in any analysis of the Rampart scandal. Unfortunately, the Board of Inquiry report provides no insight as to any of them. The report reviews the conduct of 11 officers (Board of Inquiry report, pp. 25-33), but there is no reason to believe that these were the only officers involved. The report reviews arrest records from other CRASH units and special units (Board of Inquiry report, pp. 37-42), but illegal police conduct generally would not be apparent from these documents.

The Board of Inquiry report simply did not assess the magnitude of the problem within the Los Angeles Police Department. Nothing within it offers any basis for conclusions about the extent and nature of the scandal.

Nonetheless, the Board of Inquiry report presents the problem as isolated and relatively minimal. The introduction to the Board of Inquiry Report states: "This is not to say or imply in any way that corruption is occurring throughout the Department, for we do not believe that this is the case." (p. 8, boldface and underline in the Board of Inquiry Report.) The Executive Summary of the report declares: "After careful

consideration of the information developed during the Board of Inquiry's work, it is the Board's view that the Rampart corruption incident occurred because a few individuals decided to engage in blatant misconduct and, in some cases, criminal behavior."

Yet, nothing in the Board of Inquiry report provides a factual foundation for concluding that there is not a problem in other units and divisions. Nor is there any basis for the conclusion that just a "few" individuals were involved.

The tone of the Board of Inquiry report minimizes the nature and extent of the problem. In its title, and throughout, the report refers to the "Rampart Area Corruption Incident." The choice of the word "incident" connotes a single, isolated event. The report begins, in its preface, by describing the problem as "mediocrity." (p. i).

The publicly revealed facts concerning the number of officers and the number of cases involved belies thinking of this as an "incident." This is a story of evil and malevolence, not simply corruption and mediocrity. The United States Department of Justice's assessment of the problem is in marked contrast to that of the Board of Inquiry. Assistant Attorney General Bill Lann Lee stated in a letter to City Attorney James Hahn: "As a result of our investigation, we have determined that the LAPD is engaging in a pattern or practice of excessive force, false arrests, and unreasonable searches and seizures in violation of the Fourth and Fourteenth Amendments to the Constitution."

Assistant Attorney General Lee said that the Department believes that these abuses occur "on a regular basis."

The Board of Inquiry report provides no basis for assessing the magnitude of the scandal and thus its minimizing tone is unwarranted. Steps must be taken to investigate the Department thoroughly to determine the extent to which similar lawlessness occurred in other units and divisions. In this regard, I offer the following recommendations:

Recommendation #1: An independent commission should be created by the City of Los Angeles with the mandate of thoroughly investigating the Los Angeles Police Department, including assessing the extent and nature of police corruption and lawlessness. The Commission must be given adequate funds, powers, and personnel for a thorough investigation. The Commission should be external to the Police Department and report to the Mayor, the City Council, the City Attorney, the Police Commission, and the people of Los Angeles.

There remains a need for a thorough investigation of the Los Angeles Police Department by a commission unconnected with the Department. To be sure, there are many investigations of Rampart currently underway. The United States Department of Justice has a criminal probe and has been negotiating with the City for a settlement of a possible civil suit. The District Attorney's office has indicted some officers and continues its criminal investigation. The Police Commission has created its own group

to study the problem and advise it, with a report due in October.

All of these efforts are important, but none is a thorough, systematic study of the Police Department and the criminal justice system in Los Angeles by individuals completely unconnected with the Department. The Justice Department criminal investigation is focusing on prosecuting illegal behavior by the officers; its civil action is focusing only on the Police Department, not the other components of the criminal justice system, and only on those reforms that can be accomplished without changes in the City Charter. The Police Commission's own investigative commission apparently also is not looking at the role of prosecutors, defense attorneys, and judges in the scandal, and obviously is not independent of the Commission and the Department.

Some have argued that an independent commission is unnecessary because of the existence of the Police Commission. They have called the Police Commission an "independent commission" and said that it makes another body unnecessary. This is based on a fundamental misunderstanding of the role of the Police Commission under the City Charter. The Police Commission, under section 571 of the City Charter, is the manager of the Police Department as to all matters, except for discipline which is assigned to the Chief of Police. (Section 571(b)(2)).

Some commissions under the City Charter, such as the Commission for the new Department of Neighborhood Empowerment (§902), serve an oversight and policy-making function. But other

commissions, such as those for the proprietary departments -- the Department of Airports, the Harbor Department, and the Department of Water and Power -- are "managing commissions." The Police Commission is of this latter type. It is the manager of the Department, ultimately responsible for decision-making as to all aspects of the LAPD, except for police discipline which is assigned to the Chief of Police.

The Police Commission cannot simultaneously be managers of the Department and the independent overseers of the Department. As discussed below in more detail, there has been a historic tendency, and this seems inevitable, for the Police Commission to identify with and defend the Department that it is responsible for managing.

The Police Commission has created its own study commission to investigate Rampart and report to it. It is hoped and expected that it will make many recommendations for reform. Its report should be the starting place for the work of an independent commission with a broad mandate for assessing the corruption and lawlessness in the Los Angeles Police Department and the problems in the entire criminal justice system in Los Angeles. Only a completely independent and thorough investigation will have the confidence of the public that the full extent of the problem has been uncovered.

Others have said that the Christopher Commission was such an independent commission and that it makes another such commission unnecessary. This misconceives the nature of the Christopher

Commission and its work. The Christopher Commission was created in April 1991 and issued its report on July 9, 1991. The focus of the Christopher Commission was primarily on excessive force by police officers. The Christopher Commission, by all accounts, did a superb job in a very short time and made many recommendations for reform, only some of which were subsequently implemented. But in its three months of existence, the Christopher Commission could not conduct a thorough study of the Los Angeles Police Department. Nor did it attempt to do this.

Moreover, as discussed below, the Rampart scandal occurred after the Christopher Commission reforms were implemented and indicate serious and even greater problems today, nine years after the Christopher Commission report received international attention. Indeed, I rely heavily on the Christopher Commission because the recent events confirm their observations and recommendations. But the work of the Christopher Commission must be regarded as only a beginning for a far more extensive investigation of the LAPD and a much broader effort to reform the Department than has occurred previously.

The revelations of the Rampart scandal show a problem very different, and in many ways much worse, than that which the Christopher Commission investigated. There needs to be another body, like the Christopher Commission, to do this study. The Christopher Commission did much to increase public confidence in the Los Angeles Police Department after the beating of Rodney King. Only an independent commission, with a broad mandate,

conducting a thorough study, will succeed in documenting the depth of the problem and the course for real reform, and thereby increase public trust in the police.

Recommendation #2: Officers with knowledge of wrong-doing in connection with the Rampart scandal should be encouraged to reveal what they know by granting them immunity from discipline for their failure to reveal wrong-doing previously. This, however, would not immunize any other wrong-doing by officers; the immunity would be solely for the failure to come forward and report prior wrong-doing by others. This likely should be extended to knowledge of wrong-doing in other CRASH units, and as warranted to other units and divisions.

I have personally spoken to several officers who said that they have knowledge of illegal activities, in Rampart and elsewhere in the Department, but that they will not come forward because of fear of being disciplined for their previous failure to report the wrong-doing. Undoubtedly, many officers in the Department witnessed illegal activities in Rampart and elsewhere. Even the Board of Inquiry report acknowledges this in its statement: "None of the employees interviewed recognized any particular trend toward a Code of Silence, which is certainly ironic, to say the least, given what we now know regarding events at Rampart." (Board of Inquiry report, p. 70).

The full extent of the scandal only will be learned if officers who witnessed wrong-doing testify. However, several

officers have said to me that they are afraid that if they come forward now, "they will lose their badge." The Chief of Police has refused to provide any amnesty or immunity for those who come forward with information regarding the wrong-doing they have witnessed.

Such immunity is essential to learn the nature and extent of the corruption. In New York, the Mollen Commission succeeded, in part, by granting such immunity. In Los Angeles, I have been told by high level officials in the District Attorney's office that such immunity from discipline is essential in order to expose and prove the lawlessness.

Immunity should be granted only against discipline for failing to reveal the wrong-doing of others. Nothing in this recommendation is meant to imply that officers who violated the law in any other way should be protected by such immunity. Although there are obvious costs to grants of immunity, it is warranted in these extraordinary circumstances as essential to gain further information about the scandal and its magnitude.

The first step in reforming the Department must be to learn its problems. The Board of Inquiry report failed to answer the key questions in this regard.

III. THE BOARD OF INQUIRY REPORT FAILS TO RECOGNIZE THAT THE CENTRAL PROBLEM IS THE CULTURE OF THE LOS ANGELES

POLICE DEPARTMENT, WHICH GAVE RISE TO AND TOLERATED
WHAT OCCURRED IN THE RAMPART DIVISION AND ELSEWHERE

Every police department has a culture -- the unwritten rules, mores, customs, codes, values, and outlooks -- that creates the policing environment and style. The LAPD's organizational culture drives everything that happens within the Department, including its serial scandals.

The Christopher Commission report, on its very first page, speaks of the "culture" of the Los Angeles Police Department as a key aspect of the problem. Chapter five of the Christopher Commission report is titled, "LAPD Culture, Community Relations, and 'Community Policing.'"

In sharp contrast, there is very little in the Board of Inquiry report about the culture of the Los Angeles Police Department, its manifestation in a code of silence, and in the need to shift to community policing as a key aspect of changing the orientation of the Department. There is a section of the Board of Inquiry report which discusses the "culture" within the Rampart division (Board of Inquiry report, pp. 66-70) and the subculture within its CRASH unit (p. 68). But there is no discussion whatsoever about the overall culture of the Los Angeles Police Department and the way in which it fostered, tolerated, and gave rise to the Rampart scandal. There is but a single sentence on the "code of silence," and virtually nothing in the Board of Inquiry's many recommendations about the need for implementing community policing.

After speaking with many people inside and outside of the Department, we are deeply convinced that the central problem to be solved is the culture of the Los Angeles Police Department. Lest this conclusion be dismissed as the views of uninformed outsiders, David Dotson, former Assistant Chief of the Los Angeles Police Department, wrote: "[A]t bottom, the problems at the Los Angeles Police Department's Rampart Division are cultural in nature, the result of an institutional mind-set first conceived in the 1950s. Unless this police culture is overthrown, future Rampart scandals are inevitable." (David Dotson, "Culture of War," Los Angeles Times, February 27, 2000).

The current leadership of the LAPD rejects any need to retool LAPD's policing culture. The Board of Inquiry Report is clear: no cultural overhaul is warranted; the solution is to remove a few "bad apples," stamp out "mediocrity" and excel within the LAPD tradition, especially by increasing the powers of the Police Chief. Two of the leading experts on police reform, Jerome Skolnick and James Fyfe, explained in general why this is misguided:

"[L]asting reform cannot be imposed either by the personal charisma of a single chief . . . or by simply replacing wrongdoers with fresh blood. Persistent problems like police abuse or corruption require fundamental systemic changes that, in a way, are indictments of the organizations in which chiefs have themselves labored so long. . . . [I]t is far easier for police chiefs to blame misconduct on

individual 'rotten apples' than to admit that they have to the tops of organizations that systematically turn new members into wrong doers. (Jerome H. Skolnick and James J. Fyfe, Above the Law: Politics and the Excessive Use of Force 186 (1993)).

Focusing on the culture of the LAPD poses the linchpin question of the Rampart scandal: Why does the LAPD destroy honest cops who question abuses and blow the whistle? Consider the following examples:

--A female police officer calls the police when she is physically abused by her husband, also an LAPD officer. She ultimately is subjected to reprisals within the Department, while her husband is retained and promoted.

--An officer confirms a suspect's report of being beaten. The officer is forced out of the Department. Nothing happens to the cops who did the beating. (Christopher Commission Report, at 170)

--An officer files a complaint against a fellow officer for excessive force. Her fellow officers, friends of the accused, tell her to make a choice: file the complaint and get marked as an outsider or resign. She resigns. Nothing ever happens to the officer she accused of excessive force. (Ibid).

--An African American female officer reports sexist and racist remarks. She gets punished for using profanity in response. The foul-mouthed male officer is never

investigated, never mind punished. (Ibid).

The Christopher Commission concluded that silencing whistleblowers by peers and management is routine within the LAPD. As a former LAPD whistleblower puts it, "When an officer finally gets fed up and comes forward to speak the truth, that will mark the end of his or her police career. The police profession will not tolerate it and civilian authorities will close their eyes when the retaliatory machinery comes down on the officer." Blowing the whistle, even to stop law-breaking, marks cops as traitors of a vaunted code of silence and inviolable covenant of loyalty. There are no exceptions -- not even to give compelled testimony about the LAPD. Chief of Police Daryl Gates' succinct condemnation of two LAPD Deputy Chiefs who gave key testimony to the Christopher Commission expressed this credo: "In my opinion, Brewer and Dotson sold us out." (J. Domanick, To Protect and Serve: LAPD's Century of War in the City of Dreams 434 (1994)). The Christopher Commission identified the code of silence as the foremost barrier to ending the abusive attributes of the LAPD culture. Nine years later, in the wake of the Rampart scandal, that finding is more relevant than ever, but remains unaddressed.

Affirmation that the culture of silence still pervades the LAPD is recent. On August 25, 2000, over forty current and former LAPD police officers filed a class action lawsuit charging LAPD management with enforcing the code of silence by aiding the "retaliation machinery" against cops who report misconduct.

Unfortunately, the Board of Inquiry report says virtually nothing about this code of silence and the culture which fosters it. The one sentence on the code of silence in the Rampart division is telling: "None of the employees interviewed recognized any particular trend toward a Code of Silence, which is certainly ironic, to say the least, given what we know regarding events at Rampart." (Board of Inquiry report, p. 70). This sentence acknowledges a "code of silence," but inexplicably, the Board of Inquiry report never discusses it or its significance within the Department.

Rampart lifts the curtain on something much deeper than a management problem. Rampart is not simply about failure to control a problem group of rogue officers. Nor is it a matter of "mediocrity" in an otherwise sound police culture as posited by the Board of Inquiry. Rampart is, in the words of former Assistant Police Chief David Dotson, about a "police culture of war" that reveres hotshots and punishes whistleblowers. (David D. Dotson, "Culture of War," Los Angeles Times, February 27, 2000). It is about a culture that polices as aggressively as it resists civilian oversight. It is about a police culture that rejects scrutiny and protects the LAPD's image at all costs--even if this means ignoring laws or covering-up for outlaw cops. In short, Rampart is about an LAPD culture that shields and lauds Dirty Harry and shuns Frank Serpico.

This section explores the engine behind Los Angeles' policing crises: the LAPD culture -- the organizational outlook,

mores, values, rules, codes and customs that determine LAPD behavior and produce recurrent crises. One of the Board of Inquiry report's most glaring omissions was a failure to address or discuss this. Having spoken to numerous experts on the LAPD and many within it at all ranks, we believe that it is important to detail our findings about the culture of the Police Department because there is nothing about it in the Board of Inquiry report. This description is followed by a series of recommendations aimed at reforming the culture of the LAPD.

There are many elements of the culture of the Los Angeles Police Department that are the engine behind the Rampart scandal.

Control

The prime driver of the LAPD culture is authoritarian control. Chief William Parker, the founding father of modern LAPD culture after ending its role as "handmaiden to organization crime," considered control and order the pillars of the LAPD policing philosophy:

"Its underpinning was dominion, control, The Grip. . . . Over the years, the message was drummed into your head at the Academy and on the street: you are a cop, you are in charge, you have to show everyone you are in charge. Be decisive. Have command presence. Seek out the crime. . . . you never, never backed off. You never loosened The Grip."

(Domanick, supra, at pp. 111-112).

Chief Parker ensured that this philosophy took permanent root within the LAPD. He did not merely pass it on, he inculcated it:

"Bill Parker who had taught his protege Daryl Gates the essential philosophy of policing that Gates, Ed Davis, the LAPD hierarchy - the entire department -- would follow as if sent down by Moses from the Mount: Confront and command. Control the streets at all times. Always be aggressive. . . . And never, never, admit the department had done anything wrong." Id. at 12.

By all accounts, this mentality continues to this day and control is not limited to the LAPD's mission to exert dominion over the streets. The Chief of Police and department managers want to completely control cops and all outside intruders, from the Police Commission and its Inspector General to the Justice Department, as well as courts and prosecutors. The rank and file want to control suspects and their patrol areas. It can be argued that flawed efforts to control gangs spawned the Rampart scandal. A mentality developed that gangs presented a crisis requiring extraordinary efforts at control; Rampart officers came to see Latino and African-American men between 15 and 50 who had short hair and baggy pants as gang members and felt that any efforts to remove them from the streets, including by planting evidence, were warranted. The fabrication of evidence and perjury were rationalized as needed to protect the community; the approach was that even if the suspect didn't commit this crime, he did another one for which he didn't get caught.

The Police Department's second Inspector General, Jeffrey Eglash, who continues to struggle with the Department for access

to information and power to investigate LAPD actions, observed:
"Control really is the big issue for this department. I think for them, control is not a means to an end. I think control is an end in itself."

The quest for control within the Department has meant that it, and especially its police chiefs, have at every turn resisted civilian oversight and control. The Christopher Commission bluntly dealt with this issue by noting that, "Although the City Charter assigns the Police Commission ultimate control over Department policies, its authority over the Department and Chief of Police is illusory. Real power and authority reside in the Chief." (Christopher Commission report at xxi).

Despite subsequent adjustments in the power and tenure of the Chief, imposing control remains a vigorous tenet of the LAPD culture. In 1999, the City Attorney was compelled to remind the Chief of Police, a 35 year LAPD veteran, that under law, the Police Commission actually held the power to run the department. In 2000, the City Attorney, the California Attorney General, and the Police Commission all had to instruct the Police Chief that he was obligated by law to cooperate with the District Attorney's office in its investigation of the Rampart scandal. The battle for control with "outsiders" continues. (Below, I discuss the need for strengthening the authority of the Police Commission and recommendations in this regard).

Discipline as Control; Rank and File vs. Management

The LAPD, like other police departments, has two major

cultures: management/command and patrol officers.³ In the LAPD, the two are often at war. Also, like many other police departments, the LAPD Management seeks mistake prevention and accountability from the rank and file through a highly stratified, elaborate discipline system that enforces voluminous rules and regulations, some of them very petty. Such systems attempt to keep officers in line by asserting control over every aspect of their lives and imposing a constant threat of discipline. The theory may be good on paper, but in practice, the results are questionable and the costs of such systems are high.

The first cost is pervasive alienation of the rank and file. As we have talked to dozens of individuals in the Department, we are stunned by the extent of hostility to the Chief of Police and the command staff. Whether justified or not, the alienation is a crucial issue in itself.⁴

More generally, command and control discipline systems create a grating inconsistency that alienates officers by clashing with the reality of police work, which involves great

1. "[T]here are two cultures in policing that of the workers (patrol officers), who continually search for space within its authoritarian system, and that of the managers, who seek to achieve organizational objectives through command-and-control discipline. Bayley, Police for the Future at 66, citing Elizabeth Reuss-Ianni and Francis Ianni, "Street Cops and Management: The Two Cultures of Policing."

4 It recently has been reported that a study conducted by Price Waterhouse Coopers found low morale among officers within the Police Department. See Beth Shuster and Vincent J. Schodolski, "Poor Morale Rife in LAPD, Survey Finds," Los Angeles Times, September 8, 2000, at A-1.

discretion in the field: "The command-and-control system of police management is paradoxical: It seeks to regulate in minute ways the behavior of individuals who are required by the nature of their work to make instant and complex decisions in unpredictable circumstances. The formal and informal structures of authority in policing are not congruent." (Bayley, Police for the Future at p. 64)

This problem is related to the hierarchical systems that devalue the work of patrol officers and resist acknowledging and incorporating the complexity and professional nature of their jobs. Rather than seeking to control officers through intimidation, inquisitional discipline systems, and code of silence enforcement, the LAPD discipline culture should help connect officers' mistakes to performance improvement and better crime prevention.

Instead, as discussed below, officers experience the LAPD's discipline system as an arbitrary, demeaning system of entrapments that burns whistleblowers, fails to stop the big abuses like Rampart, and yet assiduously prosecutes officers for "micro-infractions." As one analyst sums up the dysfunction of the discipline-command system: "Because police officers are almost always at risk of violating some stricture, management is perceived by police officers as oppressive and quixotic. . . . The watchword in every police force is 'cover your ass' Discipline is not considered a part of being effective. Instead, it is resented as a humiliation that the organization inflicts on

its workers." (Bayley, id., at pp. 64 and 66.)

The degree of rank and file alienation from the LAPD's system is compounded by the politicized control that command staff exert over Internal Affairs and the documented disparity between the lenient discipline applied to infractions by command staff and the relatively harsh punishment of rank and file for minor infractions.⁵ More importantly, the Christopher Commission's flat indictment of the damage inflicted by the LAPD's discipline/control culture applies today because the LAPD command has resisted recommended solutions.

The second cost generated by LAPD's command and control discipline system is strong pressure to cover-up mistakes and the inability to learn from them. As one analyst of police culture puts it: "[S]ince the discipline system is supposed to prevent mistakes, police organizations repress knowledge of mistakes rather than learning from them. Mistakes prompt a single response: Tighten discipline, punish individuals. If things go wrong, it is never the organization's fault - it is the fault of the working officer who failed to follow rules. In sum, the traditional discipline-centered management system, given the highly discretionary nature of police work, is a fig leaf that not only conceals but poisons." (Bayley, supra, at p. 65).

The Board of Inquiry Report fits this model: assignment of

5 See Los Angeles Police Department Inspector General Report's on Disparate Discipline. Problems concerning the Internal Affairs Division are discussed in more detail below in the section concerning discipline within the Department.

blame for malfeasance always is shunted downward and away from management. It generally assigns blame to the failures of divisional supervisors and individual officers.⁶ It assumes that the LAPD organizational culture and systems are appropriate and prescribes remedies like more audits, stricter compliance with the rules, improved performance in key specific areas, and greater powers for the Chief and for Internal Affairs.⁷ But nowhere does it address the corrupting dynamics within the LAPD culture, the politicized nature of Internal Affairs, the unfair command/control discipline systems or the role of the Board of Commissioners and the Chief of Police. As former Assistant Chief David D. Dotson notes, the approach of the Board of Inquiry cannot possibly solve the real and unacknowledged problem:

"[C]osmetic organizational changes won't make a dent in the culture. These and other proposals offered by Parks are commendable. They are, however, analogous to a physician treating symptoms, not the disease. Nothing less than an attitudinal change within the LAPD is essential .Among other

6 For example, in the area of "Operational Controls," the Board of Inquiry concluded, "Essentially, many of the problems found by this Board Inquiry boil down to people failing to do their jobs with a high level of consistency and integrity. Clearly, pride in one's work and a commitment to do things correctly the first time seems to have waned." (Board of Inquiry Executive Summary at 13.)

7 "If there is one aspect of the Board of Inquiry that has been more discouraging than others, it is [failure] to follow established Department procedures." Board of Inquiry Executive Summary at 19. "If we are to ensure that people follow the rules and comply with our standards, we must embark on an aggressive system of audits and inspections." Id. at 20.

things, that may mean opening the department to outside inspection and welcoming the interchange of ideas with the greater community."

In pursuing an illusion of control, the LAPD clings to a command and control discipline system that nine years ago the Christopher Commission concluded failed to achieve broader goals of crime prevention, fostered the retaliation machinery, and alienated the rank and file, as well as the public. and the rank and file from the public.

Aggression: "Looking for Trouble" Patrol Culture

The LAPD's street patrolling culture is hard to miss. It can be summed up as a "confront, command and arrest" or "proactive" paramilitary style of policing. It relies on "command presence." On the positive side, the public sees the LAPD cops as tough, mobile and action-oriented. Colleagues in other departments report viewing LAPD as efficient, clean, tech-savvy and armed to the teeth. (See Christopher Commission, p. 98) "The LAPD has a reputation as a hard working, car-based mobile strike force that is tough on criminals. . . . The LAPD pioneered the use of SWAT teams, helicopters and a motorized battering ram." (Christopher Commission, p. 23).

Within the Department, the LAPD officers prize aggressive crime suppression that projects omnipresent intimidation and total command of the streets. In the LAPD, the game is not crime solving; it is a zero tolerance attitude that requires cops to sweep through communities arresting as many people as possible.

It is crime prevention by intimidation. Several officers described to us the motto of the LAPD patrol, "we don't wait for crime, we go looking for trouble." A Former Interim Chief of Police noted, "[W]e were hunters, hunter killers. . . . [Gates] created an occupational army, the Hammer, anti-gang task forces, sweeps in which we'd arrest 1000 people. . . . Few of them were ever charged, but it was effective. By God, if you even look like a gang member, you're going to jail." (Former LAPD Interim Chief of Police Bayan Lewis quoted in the Los Angeles Times, June 11, 2000, at A28 and A30).

A former Assistant Chief attributes this hyper aggressive, "proactive" style of policing to the 1950's conversion of the LAPD culture from one of open corruption to professional paramilitarism: "We're stuck in a 1950's world view. We reward our people....for what we call hardnosed, proactive police work. We want them to go out and identify criminal activity and stop it either before it occurs, or certainly after it occurs, we want to go out and determine who the criminals were...and get them into jail." (Assistant Chief Dotson, quoted in the Christopher Commission p, 98). This is still the case.

"Hardnosed" policing may give the appearance of efficiency, or even effectiveness,⁸ but it also emphasizes confrontation and command at the expense of communication. The price is steep.

⁸ Research shows little evidence that aggressive sweeps, increased numbers of police, patrols, clearance rates, arrests have any correlation to or impact on crime rates. Bayley, Police For the Future at p. 9.

The Christopher Commission noted that the approach left citizens feeling that LAPD was "unnecessarily aggressive and confrontational." (p. xiv)

In addition to public alienation, over-aggressive policing inevitably creates its cultural corollaries: impatience, contempt and arrogance among the police. When asked recently by an Los Angeles Times reporter why LAPD officers could not wait out a man holding a knife instead of shooting him dead, a officer replied, "Waiting is not looked upon favorably." (McDermott, "Behind the Bunker Mentality," Los Angeles Times, June 11, 2000, at A29). Another officer at the scene, apparently annoyed by the question, added, "Look, we carry guns for a reason. It's not there for ballast."

In noting the department's "unnecessary aggression," the Christopher Commission concluded that "[t]he LAPD has an organizational culture that emphasizes crime control over crime prevention and that isolates the police from the communities and people they serve." (Christopher Commission, at xiv). However, the damage from over-aggressive paramilitary policing spreads far beyond isolation. It reinforces the siege mentality that transforms all outsiders into enemies and dehumanizes entire communities. (Christopher Commission, at p. 105).

Aggression has not lost its primacy in the LAPD culture, despite the Christopher Commission's recommendation that the LAPD replace aggressive paramiltarism with problem-solving and

community-based policing. Nine years after the King beating, the LAPD continues to be known for aggression and paranoia, another element of LAPD culture that the Christopher Commission suggested the LAPD lose. As one analyst noted in June, 2000, "The special culture of the LAPD is their military nature and their absolute resistance to outside scrutiny of any kind." (Samuel Walker, Los Angeles Times June 11, 2000.)

Paranoia: "Bunker Mentality"

The LAPD instinct is to shut out all outsiders and to adopt a "siege mentality," which justifies excluding those who are not a part of the Department from evaluating or criticizing it. The siege mentality is so integral to the LAPD that the Christopher Commission found LAPD Field Training Officers openly teaching it to new officers. (Christopher Commission at xvii). Reasonable degrees of internal reliance and separation from outsiders are expected in police departments. However, LAPD's peculiar insularity is coupled with hostility and considered extreme. Former Interim Chief of the Los Angeles Police Department, Bayan Lewis, observed:

"All police departments tend to be inward-looking, but LAPD is worse than anybody. It's us against the world. We see ourselves as the last bastion of good people in a world that's crumbling." (Los Angeles Times, June 11, 2000, supra, at A31).

Through LAPD eyes, the world offers two categories: "blue and everyone else." (Christopher Commission, p. 100). Under

this view, the community, politicians, the courts -- all outsiders -- get cast as "the enemy" insofar as they threaten the Department's autonomy and control over fighting crime.

(Christopher Commission, p, 105).

Rules, including constitutional limits on police behavior, are regarded with hostility. Former Assistant Chief David D. Dotson wrote: "[LAPD] Officers began to view the criminal-justice system as a hindrance to their best efforts to protect society from criminals. The net effect was to foster an institutional paranoia that became part of police culture. If the whole system was arrayed against them, cops would have to conduct their crusade against crime alone. If all outsiders were intent on undermining its effectiveness, the police department would have to close itself off from those outside influences." (Former Assistant Chief David D. Dotson, "A Culture of War," Los Angeles Times, February 27, 2000.)

The LAPD responded defiantly to the first cases restraining its aggressive searches, including the 1955 Cahan case that prohibited the LAPD's planting of secret microphones in private homes. An outraged Chief Parker condemned Cahan as "a death warrant for law enforcement" that would lead to . . . a policeless state." (Domanick at p. 114). Parker declared that Cahan stood for the dangerous proposition "that activities of the police are a greater social menace than are the activities of the criminal. This . . . is terrifying." (Id. at p. 114).

With that, Parker planted the seeds of aggressive resistance

to judicial control that spawned LAPD's tradition bordering on open defiance of courts and the law. Within the LAPD, the courts and their perceived absurd restraints became the new outsiders, the new enemy.

"Each time a state or federal court expanded citizens' rights and restricted unconstitutional police practices, the attitude and focus of the LAPD under Bill Parker and his successors would be not to find the best way to comply with the law, but the best way to work around it. The philosophy and the dynamic of The Grip all demanded a righteous fight. The law was one thing. The job, and The Grip, quite another. So each time a new restrictive ruling came down, . . . ways were found . . . to circumvent the intent of the decision." (Id.)

Thus, lawlessness became an LAPD virtue. Two leading experts on police behavior, Jerome Skolnick and James Fyfe explain the consequences of this mentality:

"Oddly enough, it may be precisely this sense of mission, this sense of being a 'thin blue line' pitted against forces of anarchy and disorder, against an unruly and dangerous underclass, that can account for the most shocking abuses of power." (Jerome H. Skolnick, James J. Fyfe, Above The Law, Police and the Excessive Use of Force at 93.)

Understanding the LAPD's hostile insularity as a response to constraints on crime fighting is a key to understanding how a law enforcement culture becomes so infused with lawlessness and

retaliation that officers have nicknames for their activities. Relatively minor infractions of shading the truth, skirting the law, bending the rules and enhancing evidence are justified, even taught, as necessary checks on judicial obstructions to crime fighting. Enhancing evidence slips easily into planting evidence; exaggeration on major points melds into lying on minor ones; extorting a confession from a clearly guilty, violent career felon who beats the rap at trial metastaticizes into planting evidence during the next arrest to prevent a second escape from justice. From there, it is a short slide into the realms of Rafael Perez and Mark Fuhrman.

The slope is smooth and seductive. This is particularly so from the viewpoint of the rank and file who learn early that much of the LAPD's formal culture is actually steeped in hidden, subjective, politically shaded dynamics that control the outcomes of key discipline and other Department decisions. This attitude flourishes when routinely Field Training Officers dismiss the manual in favor of "street justice," and supervisors and command staff condone the codes of loyalty, retaliation and silence themselves.

Missions Impossible

The public creates additional corrupting dynamics by assigning police Sisyphean missions and demanding measurable results. Asked to wage highly politicized and unwinnable wars on drugs, gangs and crime -- problems 90% of which are caused by

circumstances the police cannot control or impact,⁹ -- police face the elusive task of pretending to master these forces and have police tactics and actions masquerade as solutions. This, of course, is not meant to imply that the task of crime control is misguided; rather, it is a criticism of the way success in dealing with that task is defined. Success in the necessary war on gangs was defined in a way as to encourage overly aggressive and even illegal police actions.

Current leadership no longer openly celebrates the bunker/siege outlook. The rhetoric has changed somewhat and some public outreach efforts have taken place. Yet few police veterans believe that the internal view has evolved to anywhere near the partnership with the community that the Christopher Commission prescribed. As former Captain Smith recently reflected, "The hierarchy of the LAPD down to the patrol officer believes the people who know how to police Los Angeles are the police and no one else. If we continue to say we know better than everyone, we're never going to change." ("Behind the Bunker Mentality," Los Angeles Times, June 11, 2000). There, of course, is great expertise within the Police Department, including its command staff. But there also is great knowledge of the Department and its problems outside of it and there must be civilian control of any police department or para-military type organization. Unfortunately, the Chief of Police continues to express the

⁹See Bayley, Police for The Future, at 3-12.

philosophy that until non-cops run toward bullets, their credibility on law enforcement issues is zero. There is no openness to considering any other views. The barricades still stand.

Silence

Bolstering the barricades of the bunker mentality is another important tenet of the LAPD culture: silence. The Christopher Commission declared: "Perhaps the greatest single barrier to the effective investigation and adjudication of complaints is the officers' unwritten code of silence." (Christopher Commission at p. 168). As mentioned above, the Board of Inquiry Report almost totally ignores the code of silence and its crucial relationship to how the Rampart scandal occurred and remained undetected for so many years.

The Board of Inquiry acknowledges continued Department failure to detect misconduct. It prescribes beefing up Internal Affairs and launching "proactive measures" to ferret out corrupt conduct. (Board of Inquiry Executive Summary at p. 9).

While many of the Board of Inquiry proposals may make sense, they are unlikely to break the code of silence. None is directed to the problem. None address the internal pressure in the Department -- its culture -- that gives rise to the code of silence.

Silence offers cover to officers who abuse the public, lie and otherwise break the law. Silence cements the bond of trust between partners whose mutual dependence feels like the best

protection in a job where one wrong move can mean death. Silence seems necessary to officers who view themselves at war with crime, criminals and an anti-cop community. Silence is easier than tangling with fellow cops.

Finally, silence becomes indispensable in the conflict with command -- which devalues patrol work and professionalism, and treats them as targets of control. Silence protects the rank and file from a discipline system that is widely regarded by them as petty, arbitrary, and unfair. (This is discussed more fully below in the section concerning the disciplinary system). And silence is safer in a culture that shifts blame for catastrophes to rank and file and lower supervisors while refusing to grapple with larger organizational problems and command level inconsistencies. As one expert on police behavior noted:

"[R]elations between police officers and the organization are invariably adversarial. Rather than being caught up in a common enterprise, police officers feel beleaguered and harassed by the organization. Discipline is not associated with skilled performance it is a weapon used by "bosses". Police officers protect their own, not only against the general public but against their own organization. Attempts to uncover violations of organization rules are inevitably frustrated by the 'code of silence.'" (Bayley, pp. 66-67).

If the LAPD work environment improved sufficiently to inspire the trust of the rank and file and a dynamic of partnership replaced the hostility against the community and command, the need for

silence might well decline. Absent removal of the cultural drivers of silence, a declaration of war on corruption will fail.

The code of silence influences the behavior of many LAPD officers in a variety of ways, but it consists of one simple rule: an officer does not provide adverse information against a fellow officer. (Christopher Commission at p. 168). But the special powers of police require that their loyalty be first to the public. As the Christopher Commission declared: "That requires that the code of silence not be used as a shield to hide misconduct." (Christopher Commission pp. 170-171).

Thus, the Rampart scandal must be understood as a product of many aspects of the culture of the Los Angeles Police Department. Public and political pressure to deal with gangs and drugs, combined with a long-standing over-aggressive mentality and enormous distrust of outsiders, covered up by a code of silence, produced this scandal. Perhaps the single most important failing of the Board of Inquiry report is that it ignores all of this.

Unfortunately, reforming a Department's culture is far more difficult than changing a single or even a few policies. This must be regarded as the highest mission of reform, but also as a long-term project. Many reforms must be instituted immediately in order for this to succeed. These reforms include:

Recommendation #3: A consent decree between the City of Los Angeles and the Justice Department is essential in reforming the Los Angeles Police Department. In the absence of a consent decree, a judgment in a "pattern and practice" case

brought by the Justice Department is necessary for effective reform.

The history of the LAPD shows that significant reforms will not occur on a voluntary basis. The Justice Department has announced that it is prepared to sue the City for exactly this reason. A consent decree, of course, is a judicially enforceable settlement of the lawsuit. A consent decree could contain almost all of the recommendations contained in this report, except those that would require an amendment to the City's Charter or that pertain to problems in other parts of the criminal justice system, such as the judiciary and the District Attorney's office.

If the City does not promptly agree to a consent decree, the United States Department of Justice should initiate suit against the City and seek a judgment under federal law that the LAPD has a "pattern and practice" of violating the Constitution and federal law. The Board of Inquiry report, by itself, contains sufficient information to prove a pattern and practice of violations of civil rights sufficient to establish the City's culpability. Moreover, other evidence of police abuses by Rampart officers that has been publicly revealed surely means that the City would have no chance of winning against a Justice Department lawsuit. The City should settle the suit and agree to a consent decree to reform the Department. If it refuses to do so quickly, the Justice Department should file suit.

A consent decree or a judgment, of course, are judicially

enforceable. Alternatives, such as a memorandum of understanding, assume good faith compliance by the City without the possibility of on-going enforcement. A voluntary approach, through a memorandum of understanding, is insufficient. It is highly unlikely that the most important reforms will occur unless the City is compelled to comply. Recent experience with the delays and failures in implementing the Christopher Commission recommendations demonstrate the need for compelled compliance. Anything other than a consent decree or a judgment is simply inadequate to provide the needed reforms of the Department.

A word needs to be said about the City's choice to have the negotiations for the consent decree conducted entirely in secret. Although settlement negotiations during litigation generally are done in private, in this instance the secrecy is unnecessary and undesirable. A consent decree, if one is entered into, will determine the policies and practices of the Los Angeles Police Department. Members of the City Council, the voice of the client in these negotiations, and the public, the ultimate client, should know what the City's negotiators are saying and have a chance to express their views.

I have learned, for example, that until very recently the members of the City Council had neither knowledge of the content of the Justice Department's 103 page proposal to the City nor of the City negotiators' counter offer.¹⁰ The result is that any

¹⁰ Members of the City Council received details about the proposed settlement and unresolved issues on September 8, 2000, almost four months after negotiations began, Tina Daunt,

proposal for a consent decree will be presented as an overall package with City Council members and the public having no chance to express their views on the various tradeoffs inherent to a reform proposal.

The extreme secrecy has made it much easier for City officials to oppose reforms. City officials, in private, can defend the Police Department and deny problems much more easily than in public statements. Key reforms can be opposed in secret that likely would be supported in public.

In particular, it is simply wrong that the Police Chief has had a representative present and, by all accounts, participating at every negotiating session with the Justice Department, while the public, the City Council, and the Protective League have been shut out. The Department is represented at the negotiations by the President of the Police Commission and the City Attorney. It is inexplicable why the Chief has a representative present, but the public and the Protective League do not.

With regard to the duration of the consent decree, we recommend:

Recommendation #3(a): The consent decree shall remain in effect for at least five years and then can be lifted only after the City demonstrates substantial compliance for a period of two years. The consent decree should provide for the federal judge to order continued monitoring and

"Council Will Try to End Stalemate on LAPD Decree," Los Angeles Times, September 9, 2000, at A-1.

compliance if deemed necessary after this period.

Reforming the Police Department cannot be regarded as a single event; it is a process. Some changes can happen relatively quickly, but many will take a good deal of time. Therefore, the consent decree should remain in effect for five years and its terms should provide that it will be lifted only after the City demonstrates substantial compliance for a period of two years. This is in accord with the terms of consent decrees imposed in other cities.

Recommendation #3(b): There should be semi-annual review of the terms of the consent decree and the degree of compliance with it. An outside monitor should be required to submit semi-annual reports simultaneously to the court, the City, and the public on compliance with the consent decree.

There is an inherent danger of inflexibility with a consent decree. Circumstances and needs may change. Unanticipated problems may emerge. Therefore, semi-annual review and appropriate modifications are essential.

Recommendation #4: An outside monitor or auditor with enforcement authority is necessary to oversee the implementation of the consent decree.

Ensuring compliance with a consent decree will require on-going monitoring of the Department's activities. An outside monitor, with full investigatory authority over the Department, is needed. The outside monitor should be required to report on a regular basis simultaneously to the court, to City officials, and

to the public. Such outside monitors have been successfully implemented in other cities, such as Pittsburgh, where there have been consent decrees.

We strongly disagree with those who label a consent decree and an outside monitor a "federal takeover" of the LAPD. Responsibility for managing the Department still would rest with the Police Commission and, for disciplinary matters, with the Police Chief. But they would be required to do so in accordance with mandates for change. The history of the LAPD shows that without judicial compulsion and oversight meaningful reform simply will not occur.

Recommendation #5. The management of LAPD must accept and implement the Christopher Commission's mandate to move from the over-aggressive, paramilitary policing culture to one of openness, problem solving, and community engagement. An expert group should be formed, including officers from every rank and also civilians, to forge a culture transformation blueprint to achieve that change.

The culture of any institution is the product of countless factors. A mandate simply to reform "culture" is impossible. Yet, every expert that we spoke to made it clear that reform of the LAPD will not occur until its culture changes. Therefore, the issue of culture, described in detail by the Christopher Commission and discussed in this report, must be tackled directly. This should be done by convening an expert group to develop a plan for dealing with the culture in specific, concrete

ways. The group must include officers from every rank; every level from command staff downward must be involved. The group must not exclude outsiders, but instead must include experts external to the LAPD.

Recommendation #6. Community policing must be implemented.

The Christopher Commission expressly linked community policing to reforming the culture of the Los Angeles Police Department. The Christopher Commission explained:

"The Commission heard from several experts in police administration who urged adoption of the community policing model as a means of combatting excessive use of force and improving relations between the LAPD and the people it serves. . . . Community policing emphasizes a department-wide philosophy oriented toward problem solving rather than arrest statistics. The concept also relies heavily on the articulation of policing values that incorporate community involvement in matters that directly affect the safety and quality of neighborhood life." (Christopher Commission at pp. 100-101).

The Christopher Commission recommended increased emphasis in the Department on community policing. This has not occurred. Unfortunately, the Board of Inquiry report says almost nothing about this and its recommendations are not directed to implementing community policing.

Specifically, community policing should be implemented by requiring actions such as:

Recommendation #6(a): Restoration of the Senior Lead Officers program.

This has been regarded as a key aspect of community policing and its elimination is widely regarded as reflecting the LAPD's resistance to the concept of community-based policing.

Recommendation #6(b): Evaluation and promotion criteria should include community-based policing activities.

In other words, officers should be rewarded for their community and crime prevention activities, not only for their arrests and citations.

Recommendation #6(c): Officers should receive training on community policing activities.

Implementation of community policing requires a change in the instruction that officers receive from their first days in the Academy and throughout their time on the force.

Recommendation #6(d): Require that higher-level supervisors spend time in the field.

This, too, was a recommendation of the Christopher Commission that has not been implemented. Had supervisors been in the field with Rampart CRASH unit members they likely would have deterred and detected the wrong-doing.

Recommendation #6(e): Meetings with communities should be required at least once each quarter of a calendar year.

An important aspect of community policing, according to all experts about it, is greater communication with the community being served.

Recommendation #7: Improvements in training.

A change in the culture of the Los Angeles Police Department must begin with the training that officers receive. The Christopher Commission devoted a chapter of its report to identifying problems with the LAPD's training. (Christopher Commission, pp. 119-136). Additionally, the Board of Inquiry Report found there are significant deficiencies in the training of officers within the LAPD. Its recommendations call for implementation of an "ethics and integrity training program" (Recommendations 82-88 of the Board of Inquiry Report) and of greater "job-specific training." (Recommendations 89-101). We agree with all of these recommendations. We would add the following:

Recommendation #7(a): Identify areas in which training of LAPD officers is deficient in comparison to national and California standards and require improvements in these areas.

Recommendation #7(b): Mandate training as to supervisor responsibilities and duties.

This is in accord with Recommendation #90 of the Board of Inquiry calling for greater training of new sergeants, detectives II and non-sworn personnel and Recommendation #92 which calls for revamping Watch Commander school.

Recommendation #7(c) Mandate training of civilian personnel, such as civilian members of Boards of Rights. There is no discussion in the Board of Inquiry report of the need

for training of civilian personnel. This, too, is essential because of the key roles that they often play in the Department, such as supervising Department personnel in some divisions, and, for some civilians, by serving as members of Boards of Rights.

Recommendation #7(d): Require training of all officers as to ethics and civil rights, including with use of outside experts.

We strongly agree with the recommendations of the Board of Inquiry for an "ethics and integrity training program."

(Recommendations 82-88). We would add two aspects to these recommendations. First, it should be broadened to include training with regard to civil rights. We have heard too many officers speak of civil rights laws disparagingly as interfering with effective policing. Civil rights training must be emphasized and made a part of policing rather than being treated as a limit upon it. Second, outside experts of all types should be used in this training. The Board of Inquiry recommends using members of the United States Attorney's Office (Recommendation #84). This is desirable, but the pool of experts should be expanded beyond this and should include people outside of law enforcement.

Recommendation #8. Require greater protections for "whistleblowers" within the LAPD who expose wrong-doing by other officers.

The culture of silence in the Los Angeles Police Department must be dealt with directly. Officers who know of wrong-doing by

other officers must be encouraged to come forward and must be protected, and indeed rewarded, when they do. In this regard, some reforms to be implemented include:

Recommendation #8(a): Establish a policy protecting officers who expose wrong-doing from retaliation.

We have heard from many officers within the Department and many outside the Department that a key to reform is establishing a clearer and stricter policy protecting officers who expose wrong-doing from retaliation. We spoke with several officers who related instances of officers who revealed wrong-doing being subjected to reprisals from supervisors and the Department. They told us that such officers were branded "disloyal." As punishment, they were transferred to less desirable assignments, often at less convenient locations. Several times, we heard the phrase "freeway therapy," which refers to administratively transferring an officer to a division far from his or her home as a reprisal. There must be a strict and clear policy to protect whistleblowers.

Recommendation #8(b): Develop a system where officers may report wrong-doing by other officers to the Inspector General, with an assurance of confidentiality, and with protection from reprisals.

One of the most important reforms of the Christopher Commission was creating the office of the Inspector General. As discussed below in the next section, the office has not functioned as intended. One key aspect of reforming that office

and also of ending the code of silence is developing a system where officers can speak to the Inspector General confidentially and with protection from reprisals.

Recommendation #8(c): Develop a procedure and standards for investigating and punishing supervisors who retaliate against whistleblowers.

Protecting whistleblowers requires stopping supervisors from retaliating against them. A procedure should be developed for investigating supervisors who allegedly have retaliated against those who expose wrong-doing. Strict punishments should be imposed if it is determined that retaliation occurred.

Recommendation #9: Reform recruitment to include more careful screening and also to provide more aggressive efforts to increase the number of women and minority officers.

The culture of the LAPD obviously is a product of those who serve within it. Therefore, as the Board of Inquiry recognizes, there must be improved screening of those admitted to the Police Academy. The Board of Inquiry discovered that "preemployment information" on some of the officers involved in the Rampart scandal "raises serious issues regarding their employment with the Department." (Board of Inquiry report, Executive Summary, at p. 4.) Specifically, the Board of Inquiry found: "Criminal records, inability to manage personal finances, histories of violent behavior and narcotics involvement are all factors that should have precluded their employment as police officers.

However, these officers were hired in spite of these factors being discovered during their pre-employment screening." (Id. at 4). The Board of Inquiry explains that standards were relaxed during the accelerated hiring of the late 1980s and early 1990s.

Recommendation #9(a): Institute improved screening of candidates for the Police Department to determine, in every respect, fitness for being an officer.

The Board of Inquiry report contains many excellent recommendations for improved screening of potential officers. (Recommendations 1-6).¹¹ The recommendations appropriately include psychological testing of candidates. In this regard, recommendation #4 is particularly important: "The California State Commission on Peace Officer Standards and Training (POST) should be asked to convene a statewide task force to examine psychological testing of police officer candidates."

Recommendation #9(b): Aggressive efforts must be made to increase the number of women officers in the Department and to ensure that there is no discrimination in recruitment or employment against women, racial minorities, and gays and lesbians.

A key aspect of changing the culture of the Los Angeles Police Department is changing its gender balance.¹² Women are

11 My only concern with the recommendations is allowing the Department to have access to sealed court records. A judicial sealing order cannot be overridden by a Police Department regulation.

12 In this section of the report, we are borrowing heavily from a letter by Katherine Spillar, Penny Harrington, and Abby J.

greatly underrepresented, in part, because of a history of discrimination within the Department. Greater effort must be taken to increase the number of women officers. Unfortunately, this is ignored by the Board of Inquiry Report.

Many studies have documented that women police officers are much less likely to use excessive force than their male counterparts. The Christopher Commission found:

"Virtually every indicator examined by the Commission establishes that female LAPD officers are involved in excessive use of force at rates substantially below those of male officers. There were no female officers among the 120 officers with the most use of force reports. . . . A study also was conducted by the Commission of the top 10% of the LAPD officers ranked by the combined use of force reports, personnel complaints and officer-involved shootings. There were no female officers among the top 132 officers. . . . The statistics indicate that female officers are not reluctant to use force, but they are not nearly as likely to be involved in use of excessive force. The statistics are borne out by the weight of academic and anecdotal evidence gathered by the Commission." (Christopher Commission at pp. 83-84).

The vast majority of the officers known to have committed misconduct in the Rampart CRASH unit were male.

Leibman to the Members of the Los Angeles City Council, Los Angeles Police Commission, City Attorney James Hahn, and Mayor Richard Riordan, dated May 18, 2000.

The Christopher Commission found that women were underrepresented in the Department, in substantial part, because of hostile and discriminatory treatment within the Department. It stated: "[T]he continued existence of discrimination against female officers can deprive the Department of specific skills, and thereby contribute to the problem of excessive force." (Christopher Commission, p. 83). Katherine Spillar, Penny Harrington, and Abby J. Leibman expressed this well in their letter of May 18, 2000, to City officials:

"The comparative lack of women in the LAPD reinforces and exaggerates a workplace culture that condones authoritarian personalities, where men with common backgrounds and values participate in misconduct with no fear of scrutiny by their like-minded peers or detection by supervisors. Rafael Perez summed it up when he told investigators that female officers could not be trusted to be 'in the loop,' meaning that female officers could not be trusted to abide by the 'code of silence' if they had knowledge of misconduct or corruption. Adding significant numbers of women to the LAPD will break up this 'squad room mentality.'"

Following the Christopher Commission's report, the Los Angeles City Council unanimously adopted a series of motions to address the gender imbalance in the police force. One of the motions required that the LAPD increase outreach and recruitment so as to achieve gender balance in each new Academy class. Statistics reveal that these objectives have not been met.

The response that "women do not want to be police officers" and that "there are not qualified women" is belied by prior experiences. During the 1970s, when women were less than five percent of the force a lawsuit was brought charging gender (and race) discrimination. The consent decree (often referred to as the "Blake Decree") required that the LAPD hire 20% women. The City objected that there were not sufficient qualified women to meet this decree. Nonetheless, it was implemented and the number of women officers increased from just a few percent pre-Blake to nearly 20 percent within little more than a decade.

Aggressive outreach and recruitment can increase the number of women. But in light of the history of gender discrimination within the LAPD and the failure of efforts in the last decade to implement the Christopher Commission recommendations in this area, more must be done. Gender-balance hiring requirements should be considered by the Police Commission and the Los Angeles City Council.¹³

The LAPD has a history of discrimination against racial minorities and against gays and lesbians as well. Federal court orders have been necessary to deal with this problem. There must be continued aggressive efforts to recruit people of color from all parts of our diverse City, as well as gays and lesbians, to be police officers. There must be aggressive enforcement of

13 The history of discrimination against women in the LAPD would justify gender-based remedies in order to comply with federal law, notwithstanding general limits on such remedies imposed by Proposition 209, an amendment to the California Constitution.

anti-discrimination laws to protect them within the Department.

Recommendation #10: Require greater controls on specialized units within the LAPD.

The Board of Inquiry report recognizes that a special culture developed in the Rampart CRASH unit and more generally in specialized units. Therefore, it recommends a "standardized selection process for Area specialized units" (Recommendation #16) and advanced paygrades for supervisors and officers assigned to specialized units (Recommendation #17). These are desirable reforms supported by everyone we with whom we spoke.

The Rampart CRASH unit obviously functioned largely autonomously and often outside the law. The Chief of Police upon receiving the Board of Inquiry report disbanded the CRASH units. Thus, all recognize that a serious problem existed with these units.

Yet, of course, specialized units of many kinds are essential in the Police Department. The key is to ensure that they not operate autonomously and develop their own culture and operating procedures. To further the recommendations of the Board of Inquiry, the following changes also should be implemented:

Recommendation #10(a): Selection criteria for specialized units should be developed.

Recommendation #10(b): A standardized system for selecting officers for specialized units, with a screening system similar to that used for vice, should be implemented.

Recommendation #10(c): There should be regular audits of specialized units to ensure compliance with the rules and standards of the LAPD.

None of these recommendations are inconsistent with the proposals of the Board of Inquiry. All are necessary as part of reforming the culture of the LAPD and ensuring control of the activities of the special units.

Recommendation #11: Officers must have counseling resources available, without fear that seeking and receiving counseling will be used against them.

There is no doubt that policing is one of the most stressful occupations. It obviously is important to detect stress that has reached inappropriate levels and to enable police officers to cope with this pressure. In the past, the LAPD effectively has prevented its officers from coping with stress by monitoring intrusively officers attempts to obtain counseling. This has led to both reluctance and inability of officers to manage stress. In turn, officers suffering from job-related stress are unable to perform their policing duties properly. Police officers must be provided unfettered access to confidential psychological; there must be explicit assurances that this will not be used against them in any way.

Recommendation #12: The Los Angeles Police Protective League must play a key role in bringing about a change in the culture of the Los Angeles Police Department and in reforming the Department.

Change will happen only with the support of the rank-and-file members in LAPD. The Protective League has a crucial role to play in being a powerful positive force for reform of the Department and in advocating and implementing progressive changes. The League, however, has not traditionally played this role. For instance, the League opposed Proposition F, which implemented many of the Christopher Commission's recommendations.

We have been tremendously encouraged in many discussions with the leadership of the League as to their commitment to reform. This is imperative if meaningful changes are to occur.

IV. THE BOARD OF INQUIRY REPORT FAILS TO CONSIDER THE NEED FOR STRUCTURAL REFORMS IN THE DEPARTMENT, INCLUDING REFORMING THE POLICE COMMISSION, STRENGTHENING THE INDEPENDENCE AND POWERS OF THE INSPECTOR GENERAL, AND CREATING PERMANENT OVERSIGHT MECHANISMS OF THE DEPARTMENT.

It is striking that the Board of Inquiry report identifies no problems with the structure of the Police Department and apparently does not see this as in any way responsible for the Rampart scandal. Not a single one of its recommendations is addressed to structural change in the governance of the Los Angeles Police Department. This is in sharp contrast to the Christopher Commission report. The Christopher Commission devoted an entire chapter to structural issues. (Chapter 10 of the Christopher Commission report was titled, "Structural Issues -- the Police Commission and the Chief of Police.")

For example, the Christopher Commission identified serious

deficiencies in the powers of the Police Commission (pp. 184-185), particularly in its inability to review or discipline the Chief of Police. The Charter was amended, via Proposition F, to increase the authority of the Police Commission, limit the term of the Police Chief, create an Executive Director of the Board of Police Commissioners, and establish an Inspector General. All of these were important and needed reforms.

During the recent Charter reform process, there was little consideration of these issues, except for the role of the Inspector General. Although the Elected Charter Reform Commission spent a great deal of time examining police issues, it did not reconsider the basic structural reforms adopted as a result of the Christopher Commission. In fact, a conscious decision was made to not reexamine these recently-adopted Charter provisions. Many factors explain this choice. The Charter revisions adopted after the Christopher Commission were relatively new, having been adopted only several years before. Also, the Christopher Commission deservedly is highly regarded and revising its work product had political risks. Besides, the Charter Commission had an overwhelming number of issues to deal with; no one was advocating reconsideration of the structural reforms recommended by the Christopher Commission.

There is no doubt that if Charter reform had occurred in the spring of 2000, rather than in 1998 and 1999, police reform would have been the dominant issue. There would have been serious consideration of the governance of the Police Department. Such

consideration is essential now.

Recommendation #13: Amend the Los Angeles City Charter to increase the responsibilities of the Police Commission, including by making it a full-time position, changing its manner of selection, and requiring City Council approval for the removal of a Commissioner. Adequate resources must be provided to the Police Commission to manage the Department effectively.

Section 571 of the Los Angeles City Charter creates the Board of Police Commissioners and defines its duties. Under the Charter, Police Commissioners serve five year terms and may serve a maximum of two terms. Police Commissioners, like all City Commissioners, are appointed by the Mayor and confirmed by the City Council. Being a Police Commissioner is an unpaid position. Although Police Commissioners undoubtedly spend a great deal of time at the task, it is a part-time position because Commissioners almost always have other full-time jobs.

We have spoken with several former Police Commissioners and all express concerns with the ability of a part-time Commission to manage the Department effectively. As described earlier, the Charter assigns the Police Commission the responsibility for managing all aspects of the Department, except for police discipline. A part-time Police Commission cannot realistically perform this task.

Moreover, there is an inherent danger that the Police Commission will come to identify with the Department that it is

supposed to be managing. One former Police Commissioner speaks powerfully about how easy it is for Commissioners to be co-opted by the Department and how that undermines the Commission serving as an effective manager. He describes how Police Commissioners are treated as the commanders of a para-military organization. He describes how Commissioners come to identify with the Department they are regulating and inevitably react defensively to criticism about it. He, and others, speak about the inability to exercise effective control over such a large and complex Department while working at it only part-time. There is much more likelihood of the Police Commission acting independently if its members have sufficient time to oversee the Department.

The effect of a part-time Commission is that the Police Commission often serves as manager of the Department in name only; a reality described by the Christopher Commission. The Chief of Police generally functions as the real manager of the Department. Civilian control is compromised.

Having spoken to many people and having considered the experience in Los Angeles and elsewhere, it is clear that the solution must include making serving on the Police Commission a paid, full-time position. Only in this way will there be sufficient time for the Commission to perform its essential role under the Charter as the civilian managers of the LAPD.

Additionally, the manner of selecting the Police Commission should be revised. Currently, the Mayor selects all five members of the Board of Police Commissioners. The problem is that

Commissioners then are much more likely to reflect one philosophy and, at times, refrain from expressing a difference of opinion because of the risk of being removed by the Mayor or not reappointed. If the Mayor is strongly aligned with the Police Chief, and the Commissioners are seen as aligned with the Mayor, then there is an inherent erosion of public confidence in the Police Commission. That, of course, is exactly the situation today. Mayor Richard Riordan has been outspoken in his support of Police Chief Bernard Parks and Parks' policies (and almost totally silent in voicing any criticisms of the Department or as to the needed reforms). All five members of the Police Commission were appointed by Mayor Riordan. The public justifiably questions whether such a Police Commission can be trusted to reform the Department.

There are many alternative approaches to selecting the Police Commission. Election of its members is one possibility, but that risks undue politicization of the position and we heard virtually no support for this. A preferable alternative would be to diversify the appointing authority. We suggest that the Charter be amended to provide that the Mayor will appoint two members of the Commission and one each will be appointed by the City Attorney, the City Controller, and the President of the City Council. Each of these officials is elected by the voters; the City Attorney and the City Controller, like the Mayor, in city-wide elections. Such a selection system will lessen the likelihood of a Commission dominated by a powerful Mayor's views

and increase the chance for the Commission to be independent of the Mayor and the Police Chief.

Additionally, there must be protection for Commissioners from removal. The Charter should be amended to provide that members of the Police Commission can be removed by the Mayor only with the approval of a majority of the City Council.¹⁴ This was the requirement under the previous City Charter. This protection will help to provide Commissioners the independence necessary to govern the Police Department effectively.

Also, the Police Commission must be provided adequate resources to manage the Police Department. We have heard from many sources that the resources allocated to the Commission are woefully inadequate to oversee and manage a department the size of LAPD. Unlike the other reforms proposed for the Police Commission which will require Charter amendments, an increase in resources can be implemented by the City Council immediately.

Recommendation #14: The powers and especially the independence of the Inspector General should be strengthened.

One of the most important reforms proposed by the Christopher Commission was the creation of the position of the Inspector General. The Inspector General has the responsibility

14 Indeed, if appointing authority is diversified, as suggested above, then removal of a Commissioner should be only by the official who made the appointment. In other words, the Mayor should not be able to remove the City Council President's nominee. All removals, though, should require approval of a majority of the City Council.

to "audit, investigate, and oversee the Police Department's handling of complaints of misconduct by police officers and civilian employees." (Los Angeles City Charter, §573(a)). The Inspector General position was created as part of Proposition F, which was adopted to implement many of the Christopher Commission's recommendations.

Unfortunately, the Inspector General did not function as intended by the Christopher Commission. The first Inspector General was Katherine Mader, an Assistant District Attorney prior to accepting the position and soon to be a Los Angeles Superior Court Judge. Mader's authority was undermined by the Police Department and the Police Commission and the authority of Inspector General was essentially gutted. Mader was told, for example, that she could not report directly to the Police Commission, but instead could speak only to the Executive Director of the Police Commission. Also, Mader was instructed that she was not allowed to examine individual cases, but rather could look just at aggregate data about the handling of disciplinary matters. Ultimately, after these and other limits on her power, Mader resigned. In part, Mader's resignation was prompted when she was instructed that she was not allowed to speak to the Charter Reform Commissions about possible reforms concerning the Inspector General's office and the Police Department.

The Elected Charter Reform Commission considered a proposal to greatly strengthen the independence of the Inspector General's

position. For example, it was proposed that the Inspector General be appointed for a five year term and that removal would require approval of a majority of the City Council. The Charter Commission and its members were aggressively lobbied by the Police Chief and especially by members of the Police Commission to withdraw or defeat this proposal. As the initiator of the proposal, I received many telephone calls, including by members of the Police Commission who remain in their positions today. In fact, several members of the Police Commission, including its then chair, Edith Perez, and its current chair, Gerald Chaleff, appeared before the Elected Commission to urge the defeat of the proposal to strengthen the independence of the Inspector General.

Ultimately, a compromise was adopted. The Inspector General was given authority to speak directly to the Police Commission. (Charter §573). Additionally, the Inspector General was granted full access to all information. (Section 573 provides that the Inspector General "shall have the same access to Police Department information as the Board of Police Commissioners.") The Inspector General can investigate any matter. However, the Police Commission can "by majority vote . . . direct the Inspector General not to commence or continue an investigation or audit." (Charter §573(c)). Although the Charter provision concerning the Inspector General does not mention this, under other provisions of the Charter, the City Council could overturn such a decision by a two-thirds vote. (Charter §245).

The reforms instituted in the new City Charter are a

significant increase in the authority of the Inspector General. They do address many of the ways in which Katherine Mader's authority was undermined. Indeed, the experiences of the first Inspector General are themselves a telling revelation concerning the culture of the LAPD and its resistance to oversight.

The reforms in the new Charter do not go far enough in ensuring the independence of the Inspector General. Most importantly, the Inspector General is subject to removal by the Police Commission. The only protection is that pursuant to Charter §245, the City Council, by two-thirds vote, could overturn that removal. (Charter §245 exempts the Council from reviewing individual personnel decisions of boards and commissions except for those of the Board of Police Commissioners. Section §245(d)(7).) Additionally, the Inspector General can be ordered to cease an investigation by the Police Commission. In other words, as part of the compromise during the Charter reform process, the Inspector General was left an employee of the Police Commission and subject to control and removal by that body.

There is a great danger that the performance of the Inspector General might be compromised, in direct and subtle ways, by the Police Commission. As described above, there is a natural tendency for the Police Commission to identify with the department that it is managing. An Inspector General may be reluctant, in some instances, to pursue matters that could draw the ire of the Commission. The current Inspector General,

Jeffrey Eglash, has remarked that he never knows for sure that he will have his job the next day. This is not to imply that Eglash in any way ever would compromise his work, but it does raise the specter that this awareness could, at times, affect the performance of an Inspector General. There is the danger that a Police Commission would choose to halt an investigation to spare itself and its Department from scrutiny and a risk that a Police Commission might decide that some potentially embarrassing matters not be examined.

The Charter should be amended to provide even greater independence for the Inspector General. One approach would be to place the Inspector General position under the authority of the City Controller. The Controller, an elected official, has responsibility for conducting financial and performance audits of all City departments. In many ways, the Inspector General is an auditor in the specific area of police discipline. This would provide the Inspector General independence from the Police Commission. However, this would leave the Inspector General subject to control by an individual likely without any expertise in police matters and who may have an agenda of his or her own unrelated to effective oversight of the Department.

The preferable approach would be to provide the Inspector General with protection from removal.

Recommendation #14(a): The City Charter should be amended to provide that the Inspector General is appointed by the Mayor, subject to confirmation by the City Council. The

Inspector General shall be appointed for a five year term, not to run concurrently with the five year term of the Police Chief. The Inspector General may be removed during the term only if removal is approved by a majority vote of the City Council.

This approach provides the Inspector General the job security needed for independence.

Moreover, there should be greater assurance that the Inspector General can investigate any matter.

Recommendation #14(b): The City Charter should be amended to provide that the Inspector General may investigate any matter and that an investigation cannot be prevented or discontinued by the Police Commission.

The Inspector General must have the authority to investigate any matter concerning police misconduct and discipline. Under the City Charter, the Controller has the power to conduct financial and performance audits of any department. No one has the power to stop such an investigation. The Inspector General should have the same power to audit the Police Department. The Controller is essentially immune from removal; only a recall by the voters can remove a Controller from office before the end of his or her term. An Inspector General who is acting improperly can be removed by the City Council under the proposal described above.

Recommendation #15: A permanent special prosecutor, ideally located in the California Attorney General's office, should be appointed to investigate criminal wrong-doing by officers

within the Los Angeles Police Department.

The Rampart scandal, and the legacy of all the events of the last decade and earlier, show a need for institutionalized external oversight of the Police Department. As described in the last section of this report, the District Attorney's office has a constant on-going relationship with the police and an inherent need to rely on their cooperation. Moreover, the District Attorney's office is likely to be reactive rather than proactive in investigating scandals in the Police Department, acting only after they are revealed.

A permanent special prosecutor to investigate criminal misconduct is needed. Locating this position in the Attorney General's office provides independence. The existence of such external oversight is important to enhancing public confidence in the Police Department. This position would not duplicate the work of the Inspector General. The special prosecutor would exist to conduct on-going criminal investigations and prosecutions of illegal activities by officers. The Inspector General exists to deal with all aspects of police discipline, only a relatively small percentage of which involve criminal activity by officers.

V. THE BOARD OF INQUIRY REPORT UNDULY MINIMIZES THE
PROBLEMS IN THE POLICE DEPARTMENT'S DISCIPLINARY SYSTEM

The Christopher Commission devoted a chapter of its report to the problems in the disciplinary system in the Los Angeles Police Department. (Christopher Commission, pp. 151-180). The Commission's words here are powerful:

"[T]he Commission concludes that the current system of discipline does not work. There are failures in every stage of the disciplinary system from complaint intake to punishment. Minor tinkering or adjustment will not solve these problems; a major system overhaul is required."

(Christopher Commission, at p. 171).

As we have spoken to dozens of people, we have learned that this perception continues and that virtually everyone, except the Chief of Police and the Board of Inquiry, is dissatisfied with the current disciplinary system. Many have expressed the view that it is too difficult to file complaints against police officers. Many in the public believe that the system does not adequately discipline wrong-doers. Many officers have expressed

a complete loss of faith in the fairness of the system. Many see the Chief of Police as exercising undue control over the process and using it arbitrarily to protect some (especially command staff) from discipline and persecuting others. We cannot emphasize enough the deep distrust we heard voiced by many officers in the police disciplinary system. Indeed, the Board of Inquiry itself stated: "Time and again, it was brought to the Board's attention that there is a strong perception of a dual disciplinary standard, one for captains and above and the other for lieutenants and below." (Board of Inquiry Recommendation #32).

These perceptions are crucial and must be addressed. There must be a disciplinary system that has the confidence of both the public and officers in the Department. The absence of such confidence leads to a public inherently distrustful of the police. Moreover, the perceptions of officers that the system is unfair undermines morale in the Department and reinforces the code of silence as officers are unwilling to use a disciplinary system that they regard as capricious and unfair.

The Board of Inquiry report ignores this problem entirely. It offers important suggestions with regard to improving the system of risk management. Particularly significant is its recommendation for implementing a system for tracking the disciplinary records of officers. (Board of Inquiry Recommendation #29). This was a key recommendation of the Christopher Commission and it is long overdue.

But the Board of Inquiry offers no criticisms of the disciplinary system and no proposals for significant reforms. Quite the contrary, the approach of the Board of Inquiry is to reaffirm the authority of the Chief of Police over discipline and to recommend ways in which this power be enhanced. The Executive Summary of the Board of Inquiry report concludes by saying that disciplinary authority must rest solely in the Chief of Police and that proposed reforms, such as binding arbitration, are "foolish." (Executive Summary, Board of Inquiry Report, p. 27). This approach, however, ignores the serious problem of great officer distrust in the system. Reaffirming and enhancing the authority of the Chief of Police only will exacerbate the problem and the alienation of the rank and file.

We would be remiss if we did not note here that for decades, hostile supervisors and officers routinely used the LAPD's discipline system to harm the careers of unwanted minority and female officers.¹⁵ They and other officers deemed "outsiders," received no help from Department leadership or the Police Protective League when they complained about disciplinary abuse that ostracized them and damaged their careers. Indeed, we wish this ugly dynamic was a thing of the past, but many female,

15 See, e.g., Chief of Police Willie Williams, July 16, 1996 memo, finding that sergeants who refused the command of an African-American Lieutenant had repeatedly filed complaints against her in an effort to "submarine" her career. Chief Williams concluded that "[t]hese types of actions are an abuse of the Department's complaint and disciplinary system." The Lieutenant could get no help from supervisors or the Police Protective League.

minority and gay officers still face discriminatory use of the disciplinary system aimed at sinking their careers or driving them out of the Department.

There must be reforms that institute a strict disciplinary system that has the confidence of both the public and the officers. The current crisis of confidence must not continue to be ignored. Thus, after conversations and consultation with many experts, we are convinced that significant reforms in every aspect of the disciplinary system within the Los Angeles Police Department are essential and they must include:

A. Receiving complaints

Recommendation #16: Improve the system for receiving complaints against officers, including simplifying the process for receiving complaints and creating an Office of Citizen Complaints modeled after the San Francisco system. The Christopher Commission documented problems with the system for receiving complaints. The Commission wrote:

"The Commission has found that the complaint system is skewed against complainants. People who wish to file complaints face significant hurdles. Some intake officers actually discourage filing by being uncooperative or requiring long waits before completing a complaint form. In many heavily Latino divisions, there is often no Spanish speaking officer available to take complaints."

(Christopher Commission, p. 13).

We continue to repeatedly hear such concerns voiced about

the complaint procedure. Individuals must be able to file complaints without needing to appear in a police station. In other words, a procedure should be developed to receive citizen complaints by fax, telephone, letter, and e-mail. Complaint forms should be widely available.

San Francisco has created an Office of Citizen Complaints. We have received a good deal of information about it and heard a great deal of praise concerning it. (For a description of its activities, see 1999 Annual Report of the Office of Citizen Complaints).¹⁶ The Office of Citizen Complaints reports to the San Francisco Police Department. It is responsible for designing and implementing the system for receiving complaints. The Office of Citizen complaints was established by voters in November 1982. It is staffed by civilians who have never been police officers in San Francisco. The Office receives between 1,000 to 1,200 complaints each year by phone, mail and from complainants who visit the office; it accepts anonymous complaints.¹⁷

In light of the public perceptions of the continued inadequacy of the system, documented by the Christopher Commission almost a decade ago, such an Office should be created in Los Angeles. The San Francisco office also has responsibility for investigating complaints. Even if this responsibility is not assigned to the office in Los Angeles, there are great benefits

16 Also, its website contains significant information about its activities. See <http://www.hrw.org/hrw/reports98/police/uspol132.htm>.

17 Id.

to creating such a body here to receive complaints and to establish procedures for receiving complaints against officers.

B. Screening complaints

Recommendation #17: Improve the system for screening complaints against officers, including creating a probable cause officer to screen complaints and determine which complaints are worthy of further investigation.

The Board of Inquiry report also noted a problem in this regard. Recommendation #28 in its report stated:

"We must find ways to streamline our personnel investigation and reporting system for cases of a minor rule violation or minor public complaint such as failure to take a routine report. This is especially true when the allegation, even if sustained, does not involve a repeat offender or an officer with a similar pattern of conduct. The goal should be to adequately investigate the matter, but minimize the time field sergeants must spend away from their primary duty of directing and monitoring field activities."

The key task is to separate complaints against officers that require further investigation from those that are trivial and do not. In this regard, a probable cause officer should be created to screen complaints and determine which complaints are worthy of further investigation. Probable cause officers should receive training. There should be regular audits of the activities of probable cause officers.

C. Investigating complaints

Recommendation #18: Improve the system for investigating complaints; in particular, there must be substantial reforms of Internal Affairs, including creating civilian oversight.

Complaints against officers should not be investigated within the division where the officer serves. Internal Affairs is responsible for investigating allegations of wrong-doing by officers. We heard many officers express great distrust in Internal Affairs. There must be a thorough scrutiny and reform of Internal Affairs and its operations. Civilian oversight of Internal Affairs must be created. The recent initiation of civilian oversight of Internal Affairs by Sheriff Baca is exactly the kind of reform needed and we encourage that a similar mechanism be created within the LAPD.

The Board of Inquiry report prescribes a substantial expansion and strengthening of Internal Affairs (IA) division. The report suggests that Rampart supervisors prevented IA from assuming its investigation role and that had IA been permitted to intervene, much of the problem would have been solved. The Board of Inquiry reaches these conclusions, however, without examining whether IA's practices aggravated and contributed to the Rampart abuses. Nor does it question the conflicts and limitations of a system that has officers investigating each other for misconduct without any mandatory outside checks or balances, without proper training, and with an enormous turnover of personnel assigned to

any complaint.

In our view, current IA practices firmly establish that division as a key part of the problem and disqualify it from playing a central role in the solution until it is reformed. Without significant overhauling, it is serious error to assign Rampart remedies to Internal Affairs.

Consider the following recent example of the problematic role IA plays in perpetuating the LAPD's continued failure to stop abuses taken from a New Times report of a Rampart Division incident:

A wheelchair bound gang member named Oliva is rounded up by rampaging LAPD officers from Rampart division who strip, beat, and throw him out of his wheel chair. Oliva files a brutality complaint. He reports the brutality in person to a Rampart supervisor, Lt. Emmanuel Hernandez, who listens and declines to give Oliva a lie detector test. After the complaint makes it to IA, the LAPD Rampart officers seek to remove witnesses to Oliva's beating and the beating of others that same night. Through illegal deportation, intimidation and harassment, the cops remove several eyewitnesses. When none of those tactics or harassment of his girlfriend worked to get Oliva to withdraw his complaint, the officers finally resort to planting rock cocaine on Oliva. Oliva beats the drug charges. (See S. Goldsmith, "Rampart Rampage," Los Angeles New Times, August 24-30, 2000 at pp. 15-21.)

In the meantime, as the one year timeline for charging and punishing the officers wound down to the last weeks, IA investigators slowly got around to starting the many interviews that would be needed to investigate the "police wilding" that occurred the night Oliva was abused. IA had received Oliva's complaint seven months earlier, but did nothing. The IA investigators limited their questions to the theft of Oliva's clothes; they refused to take his testimony about the drug frame-up or the beating. Id.

IA finally assigned the investigation of the case to Lt. Emmanuel Hernandez, the same Rampart division supervisor who had interviewed Oliva at the station more than eighteen months before. Well beyond the one year deadline for imposing serious discipline, Hernandez concluded that misconduct had occurred but by unidentifiable officers. He recommended no disciplinary action. Bernard Parks, then IA supervisor, ordered further action. Accordingly, officers were identified and letters of reprimand issued, but with little effect. With one exception, an officer who was fired for an unrelated beating, every officer involved in the beating, stripping, witness intimidation and frame-ups has been promoted. One is a training officer, another a homicide detective.

Lt. Hernandez actually heads the LAPD task force charged with investigating Rafael Perez' allegations of systematic beatings, frame-ups, perjury, shootings and witness intimidation that triggered the Rampart crisis. IA referred none of these

officers for criminal prosecution.

Internal Affairs is run by officers steeped in the LAPD's codes of silence, loyalty, aggression, retaliation and image protection. It should come as no surprise that they bring those cues and mandates to their IA assignments. The problems with IA culture posed by the scenarios described above are manifest and routine.

Officers are extremely reluctant to turn in other officers for excessive force and other violations. Many officers report that as long as IA officers have to return to patrol or other non-IA jobs and face the officers they've investigated and likely retaliation for investigations that resulted in officer discipline, the job will never be done properly. As a veteran civil rights lawyer recently summed this phenomenon up, "If you go hell-for-leather in Internal Affairs, you don't go anywhere after that." (Rampart Rage, supra, at p. 21). There is a nickname for such officers; officers who work IA are called "squints."

The intentional delaying of the IA investigation seen in the Oliva complaint is another widely recognized tactic for cooling the trail that leads to officers and avoiding the time period in which serious discipline can be imposed on an officer. Police culture expert and former NYPD cop James Fyfe commented on the Oliva case:

"It's terrible [LAPD] waited all those months [to interview Oliva]. That's a strategy designed to lose the complaint. .

. . . They know the best way to beat an allegation is to wait a long time between the incident and the [witness] statement." Id.

Even when forced to find misconduct in the Oliva case, IA refused to hear testimony on the most serious charges and tried to avoid identifying the officers, even though they were known. The practice of declining to investigate is longstanding. A study found that of over 100 abuse of force civil actions from 1986 to 1990 costing over \$15,000, IA never investigated 66% of them. Worse still, of the cases where the jury awarded over \$100,000, Internal Affairs never investigated 75%. See J. Domanick, supra, at 335. A Daily News analysis of Internal Affairs documents found that

"[T]he LAPD, which investigates its own officers . . . concluded that of the 254 officers who had three or more complaints only 1.6% should be fired and 11% suspended [with] more than 50% of those suspensions . . . for 5 or fewer days."

The analysis concluded that the LAPD's investigations of its own officers very seldom conclude that any officer did anything wrong. (Domanick, supra, at p. 336).

Of the 36 cases IA did investigate, 24 of the officers involved received no punishment, and the longest suspension was for one day. In a Los Angeles Daily News study of ten excessive force cases involving 21 officers and large jury awards, including a case in which an LAPD commander likened his officers'

misconduct to a lynch mob, IA investigations cleared all 21 officers. Id. at 337.

Deputy Chief Jesse Brewer tried to call attention to lax discipline's role in fostering excessive force by showing in a secret study that, within a year of Chief Gates' decision to reduce an officer's penalty, the officer faced a new charge of excessive force. The report disappeared, never acknowledged. (Domanick, at pp. 337-338).

"The Internal Affairs Division, which had the expertise and brought most of the misconduct cases, only investigated the most major of the police-abuse cases, and not a great many of those. That was a message right there." (Domanick, at p. 338)

As then Los Angeles City Councilman Zev Yaroslavsky noted, the message was clear:

Obviously, . . . when people shoot people and make them quadriplegics or kill them, and they get no investigation at all . . . and a guy gets a thirty-three day suspension for being caught reading a magazine while on duty . . . there seems to be a greater importance placed on disciplining people who engage in bureaucratic infractions than excessive use of force. (Quoted in id. at p. 335).

More recent analysis of IA practices may show increased discipline for relatively minor infractions. However, IA's recent failure to pursue Rampart abuses in the Oliva case and the absence of any overhaul of IA culture, virtually ensure that

these past patterns of IA failure continue. The conclusion from all of this is that as presently constituted and operating Internal Affairs is not the solution to the problems within the LAPD; it is a significant part of the problem. Substantial reforms of Internal Affairs are essential.

There is an additional reason why expanding Internal Affairs, as proposed by the Board of Inquiry, will not resolve the problems highlighted by the Rampart scandal. Assignments to Internal Affairs are for limited time periods, usually no more than two or three years for most individuals, some for far shorter time periods. Internal Affairs is generally viewed as a necessary assignment for promotion to the rank of lieutenant and above, so many officers seek the assignment for a limited time with the hope of promoting from it. As a consequence, investigations of more serious and complicated complaints are often hampered by turnover in Internal Affairs personnel and by the lack of necessary training and experience to conduct a proper investigation.

Thus, reforms should include:

Recommendation #18(a): Develop a procedure for longer term assignments to Internal Affairs and for greater continuity in the investigation and processing of complaints.

Recommendation #18(b): Create civilian oversight for Internal Affairs.

Creating a civilian oversight structure for Internal Affairs would allow for consistency, continuity, and expertise in

investigation. Civilians also would be less likely to be susceptible to influence by the pressures of promotability and the need to investigate individuals for whom they might have to work in the future. These concerns were recognized by Sheriff Baca in his recent announcement that the Sheriff's Department had decided to reform Internal Affairs and to institute a professional civilian oversight. The LAPD began to move in the direction of civilianizing its internal complaint process with the creation of the Police Commission Discrimination Unit ("PCDU,") that began operating only three years ago. At the insistence of the LAPD, the PCDU does not investigate personnel complaints involving allegations of misconduct.

D. Adjudicating complaints

Recommendation #19: Improve the system of adjudicating complaints against officers, such as by creating a civilian review board to replace the current Board of Rights.

The Charter provides that disciplinary charges against police officers are adjudicated by a Board of Rights comprised of two command officers and one civilian. This composition of the Board of Rights was created as a result of a recommendation by the Christopher Commission.

During the Charter Reform process, the Elected Charter Commission heard testimony from many officers who perceived the system was unfair. They believed, and offered anecdotal evidence, that the Chief of Police often controlled the Boards of Rights. They perceived that the command officers serving on the

Board of Rights often would act as the Chief directed in adjudicating disciplinary cases. Again, we heard the phrase "freeway therapy" -- that command staff who did not behave as the Chief desired would be transferred to a less desirable or less convenient location.

The Elected Charter Reform Commission was persuaded that there was a serious problem. Whether the allegations were true or not, the perceived unfairness of the system demanded attention. The Elected Commission adopted a proposal to change the composition of the Board of Rights so that it would include one member of the command staff, one officer of the rank of Sergeant II or higher not from the command staff, and one civilian.

This proposed change was adamantly opposed by Chief Bernard Parks. As part of the compromises with the Appointed Commission, this reform was omitted from the new Charter. The new Charter prohibits ex parte communications by anyone, including the Chief of Police, with members of a Board of Rights panel concerning the subject of the proceeding. (City Charter, §1070(k)). Also, it contains an express provision assuring the independence of Board of Rights. Section 1070(w) provides:

"Members of a Board of Rights are to make decisions based solely on the evidence before them. No sworn member of a Board of Rights shall be subject to any benefit, retaliation or adverse personnel action based upon the findings or recommendations at a Board of Rights hearing. No civilian

member of a Board of Rights shall be coerced or intimidated as a result of findings or recommendations at a Board of Rights hearing."

Distrust in the disciplinary system, by both the public and officers remains. Alternatives must be considered. One possibility is the proposal adopted by the Elected Commission to replace one member of the command staff with a non-command officer who has substantial experience (such as Sergeant II or higher). Another possibility would be a system of binding arbitration, now being considered at the State level and in many jurisdictions.

Likely the most promising solution is replacing the Board of Rights with a citizen review panel. There is a good deal of literature on civilian review boards and experience in other jurisdictions. (See, e.g., A. Goodsmith, ed., Complaints Against the Police: The Trend to External Review (1992)). A civilian review panel offers an approach to discipline that could increase confidence in the system both from the general public and from officers.

The Board of Inquiry report flatly rejects any change in the disciplinary system. In light of the crisis of confidence in the existing system this is an untenable position. There must be reform and while there are many options to be explored, a citizen review board seems the most promising approach. This would require a change in the Los Angeles City Charter because the Board of Rights' composition and procedure is defined there.

E. Punishing violations

Recommendation #20: Improve the system for disciplining officers through the development of a "uniform penalty guide" for disciplining officers.

We have heard many officers complain about their perception of unequal punishments being imposed for similar conduct. Predictable, uniform punishment always is desirable. Therefore, it is important to develop a "uniform penalty guide" for discipline of officers. In other words, this would require standards be developed to determine the punishment for specific infractions and offenses.

F. Tracking violations

Recommendation #21: Implement a system of tracking complaints against police officers.

Recommendation #21(a): Establish a system for the centralized reporting of all complaints of police misconduct.

Recommendation #21(b): The system should provide the ability to track individual complaints and all of the complaints against a specific officer.

Recommendation #21(c): Standards must be developed as to when and how information in the tracking system may be accessed and used.

Recommendation #21(d): Require analysis of data over specific time periods for the Department, for divisions, and for individual officers.

Recommendation #21(e): Accountability for the volume of officer complaints and corrective action must rest with the Command staff (Lieutenants, Commanders, Bureau Chiefs, Deputy Chiefs, and the Chief of Police). This data should be used in considerations of Command staff promotions, pay raises, and assignments.

Recommendation #21(f): Institute a system for tracking all settlements and judgments against the City for the actions of LAPD officers, including a requirement that notice of such awards be given to the Police Commission, the Claims Board, the Mayor, and the City Council.

The Christopher Commission recommended the creation and implementation of a system for tracking disciplinary records of officers. This recommendation never was implemented. Indeed, the failure to enact such a basic and universally recognized reform is a reflection of the culture within the Department described earlier. Tracking and monitoring expose problems and facilitate reforms; the absence of such mechanisms is consistent with a culture of policing that denies the existence of problems and the need for reforms. The Justice Department in its letter to City officials stated:

"The LAPD also has failed to supervise officers properly by failing to identify and respond to patterns of at-risk officer behavior. Specifically, the LAPD has failed to implement a comprehensive risk management system to identify patterns of at-risk conduct by individual officers and

groups of officers, such as patterns of use of force, injury to citizens, and citizen complaints. One important component of a risk management system is an appropriate 'early warning' system. As the Police Commission acknowledged several years ago, the LAPD's current 'early warning system', the Training, Evaluation, and Management System ('TEAMS'), is inadequate. Despite this recognition, however, the LAPD has failed to make progress in developing an adequate 'early warning' system. Indeed, it has not even utilized the federal funds made available for this specific purpose."

The Board of Inquiry report recognizes this and proposes instituting such a system. (See, e.g., Board of Inquiry recommendation #29).

Such a system, recommended by the Christopher Commission, the Justice Department, and the Board of Inquiry, must be implemented. Additionally, standards must be developed as to when and how information in the tracking system may be accessed and used (something omitted from the Board of Inquiry's analysis.) Also, implementation and use of the system depends on the Command staff. Their evaluation, for promotion and salary, should depend, in part, on their performance in this regard.

Also, there should be much better tracking of judgments and settlements against the City for the actions of its officers. A key aspect of risk management must be close monitoring of monetary liabilities because of police conduct. This is a key

way to identify problem officers and methods of policing that are repeatedly causing liability. The new Charter creates a Claims Board comprised of the Mayor, the President of the City Council, and the City Attorney with authority to settle some claims and with the duty to make recommendations for settlements that require City Council approval. (Section 273 of the City Charter). This should enhance risk management as this group can better keep track of claims against the City. Additionally, there should be a requirement that all judgments and settlements based on police actions be reported to the Claims Board, the Police Commission, the Mayor, and the City Council. Careful monitoring of this information can identify problems at an earlier stage and facilitate needed reforms.

There never will be public confidence in the Police Department until there are major reforms in the disciplinary system. Officer confidence in the system is equally important. There thus must be major reforms of every aspect of the disciplinary system to provide a fair and just system of receiving, investigating, and adjudicating complaints against officers.

VI. THE BOARD OF INQUIRY REPORT FAILS TO ACKNOWLEDGE
SERIOUS PROBLEMS WITH HOW THE DEPARTMENT HANDLES EXCESSIVE
FORCE CASES, PARTICULARLY CASES DEALING WITH OFFICER
INVOLVED SHOOTINGS

The primary focus of the Christopher Commission was on the problem of excessive force within the Los Angeles Police Department. The Commission stated:

"The Commission has found, however, that there is a significant number of officers who repetitively misuse force and persistently ignore the written policies and guidelines of the Department regarding force. By their misconduct, this group of officers tarnishes the reputations of the vast majority of LAPD officers who do their increasingly difficult job of policing the City with courage, skill, and judgment." (Christopher Commission, p. 31).

The Rampart scandal, as documented by the Board of Inquiry, involved the use of excessive force by police officers. There, however, is a major difference between the Christopher Commission and the Board of Inquiry in its analysis of the problem. The Christopher Commission declared: "The problem of excessive force in the LAPD is fundamentally a problem of supervision,

management, and leadership." The Board of Inquiry report, in its words and in its tone, largely spares the management and leadership of the Department from criticism.

Many of the reforms discussed above, such as strengthening the authority of the Inspector General and improving the disciplinary system, will deal with the problem of excessive force. In addition, we want specifically to discuss two areas of police abuse: officer involved shootings and racial discrimination in the use of force and policing. The Board of Inquiry report discusses the former (pp. 221-263), but ignores the latter.

Officer involved shootings (OIS)

Obviously, the most serious use of force by police officers is when they fire their weapons. Rampart officers inappropriately used deadly force. The Board of Inquiry properly focused its attention on this problem and devotes chapter 8 of its report to the topic. The chapter examines how the Department responds to OIS incidents, the manner in which these incidents are investigated, both administratively and criminally, the response of supervisory personnel, and management oversight. The Board of Inquiry makes some recommendations to revise the Department's OIS Investigation Protocols. Recommendation #66 states: "The Department should develop a new OIS investigation protocol that allows the OIS investigators to be the first interviewers of the involved officers." This recommendation recognizes, though without meaningful discussion, that there is a

major problem in how the LAPD investigates officer involved shootings.

However, the Board of Inquiry report and its recommendations hint at, but fail to address the major glaring flaw that leads the public to conclude that the LAPD cannot investigate itself. Simply stated, the investigative process is designed to defend the City and the officers from liability. In doing so, the shooting officer is not investigated as someone who may have reason to fabricate evidence and lie during his or her tape recorded statement. Officers involved in the use of deadly force are not investigated using standard procedures, such as separating the officers and taking their tape recorded statements without the benefit of a walk through of the scene. In essence, the LAPD's OIS present policy in practice is the same it was before the 1979 changes that were supposed to correct these basic flaws. Thus, it is not surprising that almost every shooting reviewed by the Board of Inquiry report in Chapter 5, from 1994 to 1999 was found "in policy," notwithstanding that the Rampart scandal has revealed that falsification of evidence and planting guns was not only done by the officers, but also approved by supervisors.

Present OIS Protocol

Chapter 9 of the Board of Inquiry report (Corruption Investigative Protocol) describes the present OIS system of investigation in the interview with Detective William Holcomb of the Robbery Homicide Officer Involved Shooting section.

"Once the investigators arrive, their first objective is to rule out any criminal culpability. They attempt to speak with the first supervisor at scene, because that supervisor, in essence, is the Department's 'fresh witness' and has solicited a public safety statement from the involved officer(s). If the detectives do not suspect criminal culpability, then an administrative investigation is conducted. The detectives then review the crime scene and evidence, and briefly get an idea of what occurred according to the witnesses. The detectives then go to the station. On average, there can be a two to four-hour delay before the detectives can interview the officer(s). The delay is caused by Government Code Section 3301 and Memorandum of Understanding (MOU) considerations, which allow the officers to meet with their representative and/or attorney before the officer can be interviewed or walked through the scene. These considerations also prevent the detectives from interviewing the percipient officers without a Lybarger Admonishment (compelled statement).

If the detectives suspect any criminal culpability on the part of any officer, the Lybarger Admonishment is not given and the investigation is stopped immediately until the detectives notify their commanding officer. The Commanding Officer, Robbery Homicide Division, notifies the Commanding Officer, Operations Headquarters Bureau, and the Chief of Police. The Chief of Police decides whether Robbery Homicide

will complete the investigation, relinquish it to Internal Affairs Group, or assist Internal Affairs Group with the investigation. The Department then proceeds with the criminal investigation, which may involve seeking guidance from the District Attorney's Office. Once the criminal investigation has been taken as far as it can go, Internal Affairs Group conducts the administrative investigation.

The basic problem in this OIS protocol is that the first objective -- to rule out any criminal culpability -- requires the investigators to make a snap judgement that must assume without investigation "legal justification" for the use of deadly force. How can this judgement be made if the purpose of the investigation (criminal or administrative) is to determine that very question? Obviously, in practice, what occurs is that the OIS detectives assume no criminal suspicion, the administrative investigation goes forward with the officer not subjected to the most basic of accepted investigative techniques or standards.

Some of the investigative standards that should be the centerpost of any investigation designed to seek the truth and avoid the OIS complicity in helping a lying officer cover up a bad shooting are set forth in Chapter 9. These are the current protocols for the handling of complaint investigations contained in three Department publications: (1) The Department Manual; (2) Personnel Investigation: A guide for Supervisors; and, (3) Management Guide to Discipline. Section 3/837.30 "Scope of the Investigation" provides protocol for the investigation of a

criminal allegation against Department personnel: "[It] shall be the same as that for private persons detained or charged under similar circumstances." Completed complaint investigations are forwarded to Internal Affairs Group for presentation to a prosecuting agency.

The 1979 Eulia Love Changes

OIS present policy adopted in 1979 was supposed to correct the deficiencies of the pre-Eulia Love shooting investigations. Eulia Love was an elderly African American woman in South Central Los Angeles who was tragically shot while trying to prevent her utilities from being turned off. With a check for payment in one hand and a kitchen knife in the other, she stood by her house and was a substantial distance from the LAPD officer who shot and killed her.

The Board of Inquiry report, in Chapter 8, discusses at length the pre-Eulia Love investigative procedures. "The interviews of officers who were participants or witnesses to the shooting incident were not conducted separately, tape recorded or included in the final report." (Board of Inquiry report, at p 222.) So to "develop procedures that ensure complete, thorough, and impartial examination of OIS incidents" (Id. at p 223), the department developed procedures that required that "[i]nvestigations must be conducted in a manner consistent with proper and accepted methods of investigation which specifically require that interviews be conducted separately." (Id. at p 224.)

The interview with Commission President Stephen Yslas

(Chapter 8) identified the same problems in 1979 that continue to exist today:

1. Concern with the objectivity of the OIS investigators.
2. [T]he format and the way the work was done "ran the risk of being biased to formulate the situation in a way favorable to the officers' point of view."
3. The need to be sure that investigations of OIS cases were conducted with the same degree of diligence as a regular murder investigation.

As indicated by the protocol set forth in Chapter 9 of the Board of Inquiry report, the practice and approved procedure is that officers are not separated, but are allowed to remain together, return to the station, wait together, meet with the same attorney together, then go back to the scene of the shooting (with the same lawyer consulting multiple officers) and walk through, discuss the evidence and compare stories and develop a scripted smoothly choreographed version of the facts. The tape recorded statement occurs only after the officially sanctioned walk-through with the assistance of the OIS investigators is completed. The interview is typically prompted with leading questions and standard police phrases "and you drew your service revolver in fear for your life." This description is based on interviews with a retired LAPD Deputy Chief, other police expert consultants, who have reviewed hundreds of LAPD shooting incidents, and a number of civil rights attorneys.

Compare the investigative procedure for the civilian

witnesses. In many instances the civilian witnesses are arrested, handcuffed, taken to the station, separated and tape recorded without discussing the facts with other witnesses and hours of review of the evidence at the scene. Proper and accepted methods of investigation require that interviews be conducted separately. However, this procedure is ignored by LAPD in investigating the conduct of their officers.

In preparing the OIS report, the officer's version of the facts is included in the summary of the shooting, but the tape recorded statements of the witnesses are only summarized. Thus, when the report is approved by the OIS supervisors, any contradictory statements are not included. When the report is widely disseminated to the Use of Force Board, the Police Commission, the Inspector General, the Chief of Police and others, the one-sided version of the facts almost invariably lead to the conclusion that the use of force was within policy.

Overall, the present OIS procedure is designed to protect the City and LAPD officers from liability. It ensures that the investigation lacks integrity as was obvious in the pre-1979 procedures. The present procedures insure that cover ups and criminal conduct described by Rafael Perez will be repeated. The present procedure circumvents the Eulia Love reforms and is a purposeful effort to protect all officers with no effort to flush out those officers and supervisors who will fabricate evidence and cover up their and other officers' conduct to protect their jobs and avoid responsibility. To accept less than a rigorous

investigation that is consistent with proper and accepted methods of investigation risks condoning civil rights violations, increasing the risk to lives, and expanding the City's potential damage liability.

Recommendation #22: An independent investigative unit for officer involved shootings should be created.

The LAPD should develop an OIS and Internal Affairs investigative unit of experienced civil rights attorneys and law enforcement investigators hired from outside law enforcement agencies. Employment for this unit will be for a fixed period and employees will not be promoted or expect advancement to any other LAPD position. These investigators will work exclusively in OIS and IAG investigations specifically on criminal or misconduct investigations separate and apart from the RHD or other units conducting the administrative-defense of liability investigation.

Recommendation #23: A new policy for obtaining statements from officers involved in shootings should be developed.

The LAPD should develop an OIS protocol that at a minimum requires OIS to:

1. Require the first supervisor at the scene to immediately physically separate and isolate each shooting officer, and as soon as the scene is secure, other officer witnesses.
2. The first contact by investigators with the separated officers will be the Miranda warnings and taking of tape recorded statements without the benefit of walk through or access to any

evidence, just like civilian witnesses. In the event the officer refuses to give a statement to investigators, Lyberger admonitions shall be given and statements taken.

3. Officers may exercise their right to have counsel present, but tape recorded statements shall be taken before the officer or counsel can obtain information from other involved police or witnesses.

4. Tape recorded statements shall be taken without interruption of the taping and without leading questions.

5. Sanctions should be imposed for investigators, officers and supervisors who violate these procedures.

Recommendation #24: Civilian oversight, through the Inspector General, of officer involved shootings should be implemented.

This should include:

Recommendation #24(a): Require immediate notification of the shooting to the Inspector General.

Recommendation #24(b): Require the Inspector General to develop a "roll out" team with full and complete access to the shooting scene, evidence, and the investigation by OIS, including statements of involved officers and witnesses, with the right to document any aspect of the incident or investigation.

(This is the civilian oversight promised in the 1979 Eulia Love changes. Board of Inquiry report, at p 223.)

Recommendation #24(c). Require the Inspector General to

independently document and report any violation, in letter or spirit, of OIS policy.

Recommendation #25: Policies should be adopted to protect civilian witnesses in officer involved shootings.

Recommendation #25(a): Develop a protocol that requires that unless there is probable cause for arrest, no civilian witness shall be arrested, detained, handcuffed, or otherwise intimidated by OIS or any LAPD officers at the scene. The protocol should require that all relevant civilian witnesses be interviewed.

Recommendation #25(b): No statements will be required from any independent civilian witness unless it is fully and completely voluntary, which begins with an admonition that the witness is free not to give a statement, and is fully advised of their right and the procedure to make a citizens complaint regarding the shooting or the post shooting conduct of the officers or investigators.

Recommendation #26: Independent oversight of shootings should be implemented.

The Inspector General and independent monitors should randomly review OIS reports for inconsistencies and discrepancies between the statements of involved officers and physical evidence using independent forensic input.

Racial bias and racial profiling

The Christopher Commission documented a problem with racism in the LAPD, especially as it affects the use of excessive force.

In fact, chapter four of its report is titled, "Racism and Bias Affecting the Use of Excessive Force." The Christopher Commission began its discussion by noting that "[t]he issue of disparate treatment of minorities by LAPD is not new." (Christopher Commission p. 70). The Commission described many types of discriminatory behavior by LAPD officers, including unjustified stops. The Commission said that "[m]any witnesses complained of the apparent practice by the police of stopping individuals because they resemble a generalized description of a suspect because they appear not to belong in a particular neighborhood." I continue to hear constantly from my African-American male students of their being stopped for no reason other than "driving while black."

Recommendation #27: Continued and increased implementation of reforms to prevent racial bias and racial profiling.

There is a need for collection of data concerning possible racial biases in activities of police officers, including using race as a basis for investigatory stops by police officers. Unfortunately, a bill that passed the California legislature last year that called for the collection of data was vetoed by Governor Davis. Los Angeles must institute its own policy for collecting data with regard to racial stops. Also, there needs to be a clear policy prohibiting such use of race. The City Council already has called upon the Police Department to develop such a policy. This policy must be developed and implemented.

More generally, the use of race in the administration of

police force, particularly excessive force and officer involved shootings must be studied. Data must be gathered in this regard. The legacy of racism in the LAPD, documented by the McCone Commission and, more recently, the Christopher Commission cannot be ignored and must be remedied.

VII. THE BOARD OF INQUIRY REPORT FAILS TO RECOGNIZE THE
PROBLEMS IN THE CRIMINAL JUSTICE SYSTEM IN LOS ANGELES
COUNTY

The focus of the Board of Inquiry report was on failures in

the operation and oversight of officers in the Rampart division. Although the report makes some mention of broader concerns in the Los Angeles Police Department, the problems at Rampart are presented as relatively unique and, as described above, the result of mediocrity in the Department. The report assumes that the misconduct by the officers involved in those incidents, as well as others discovered thereafter, was the product of unique circumstances. Thus, the report begins by focusing on the officers' profiles and individual acts of misconduct. (Id. at pp. 4-21).

Although there were certainly failures in the screening, selection and supervision of these officers, the report may distort the overall problem by failing to identify other breakdowns in the criminal justice system that permitted a situation such as the Rampart corruption incident to occur. A further review of the Rampart corruption incident indicates clearly that the problem is not simply the Rampart division, nor CRASH units in general. Rather, there has been a general breakdown in the checks and balances of the criminal justice system.

In conducting its review of the Rampart scandal, the Board of Inquiry focused on internal matters in the LAPD. There were no particular efforts to identify broader problems with regard to the LAPD's interaction with prosecutorial agencies or the courts. This omission is significant. Comprehensive reform of the LAPD will require coordination with the District Attorney's Office,

City Attorney's Office and Los Angeles Superior Court system. Therefore, it is important to consider the role of each of these entities in monitoring and interacting with the LAPD.

There are several areas of the Board of Inquiry report where one would expect reference to outside controls on the LAPD, but such references are glaringly absent. For example, in discussing the prior acts of misconduct and excessive force by identified problem officers, there is no mention as to when, if at all, such problems were brought to the attention of prosecutors assigned to handle cases with these officers. There is also no discussion of whether judges had found these officers to lack credibility during their testimony at trial or in suppression hearings. Instead, the Report treats the officers' preparation of search and arrest warrants as a matter of "risk-management" issues. (See, e.g., Board of Inquiry report, at p. 140). While it is certainly important to have internal controls on the quality and accuracy of warrant applications, outside reviews are also critical.

The area of the Report that touches most on outside involvement in the LAPD misconduct is the Report's discussion of officer involved shootings. Specifically, the report discusses the termination of the Roll-Out program in 1995 (Board of Inquiry report, at pp. 224, 227-241), constraints of the Lybarger restrictions on internal investigations (id., at p. 224), and details of how prosecutorial agencies handle OIS incidents (id. at pp. 244-248, 251-252). Within the discussion of officer

involved shootings, there is a troubling dispute over whether OIS reports are routinely forwarded to the District Attorney's office and if not, why not. (Id. at 245). Unquestionably, this dispute must be resolved by full cooperation with the District Attorney's office and increased vigilance by prosecutors in following up in OIS cases.

Chapter Nine of the Board of Inquiry report addresses the Corruption Investigative Protocol. As noted in that chapter, the LAPD, for statutory reasons or otherwise, has not focused on criminal investigation of police corruption. Instead, such investigations have been kept internal, with an eye toward internal discipline. There is a very disturbing reference in this section of the report to conscious decisions not to prepare internal reports of police misconduct because they "will have to be made available upon discovery." (Board of Inquiry report, at p. 281) The Report states, "Experience has shown that under certain circumstances, even confidential administrative reports will be allowed in criminal or civil proceedings, and certainly any documentation that points to initial flaws in the investigation could be used to the advantage of the defense." (Board of Inquiry report, at p. 281). As noted by Senior Assistant City Attorney Cheryl Ward, such concerns should not impede internal reviews. "The Department has an obligation to the public to ensure the most professional investigation possible has been conducted in fairness to all involved, including the defendant."

Although the Report discusses other types of corruption cases, it recommends keeping the investigation of these cases "in-house with the Special Operations Section, IAG, with periodic consultation with the District Attorney and City Attorney Office. (Board of Inquiry report, at p. 285). The Report does not detail further how outside agencies can and should play a role in responding to and preventing police corruption.

In Chapter Ten, the Report discusses "Police Integrity Systems." Once again, the focus of the report is on internal LAPD procedures, including in-house training. The report mentions the need for "an aggressive anticorruption program" (*id.* at p. 327), but does not mention how current tools in the criminal justice system could be used to advance this goal.

Finally, the lengthy list of conclusions and recommendations by the Board of Inquiry barely touches on the need to coordinate more with other branches of the criminal justice system to ensure the fairness of all of our court proceedings. Recommendation #26 advocates changing state law and the Los Angeles City Charter to allow administrative actions to be held in abeyance while criminal cases are pursued. Recommendation #69 calls for re-implementation of the District Attorney's Roll-Out Program. There are no recommendations regarding the disclosure to prosecutorial agencies of more internal reports that would assist prosecutors, defense counsel and the court in ensuring that defendants receive fair trials and problem officers are prevented from tainting the reputation of all police in the criminal

justice system.

Expanding the Focus

A true commitment to remedying police misconduct requires that the focus be expanded to include efforts that prosecutors, judges, defense counsel and police officers can make to ensure defendants receive fair trials. In that regard, we considered concerns regarding the District Attorney's Office, the City Attorney's Office, and Los Angeles Superior Courts in their dealings with the LAPD. These reviews indicate the need for external controls on the LAPD in police corruption matters.

The Rampart scandal reveals serious problems with all aspects of the criminal justice system in Los Angeles. Thus, in turn, we discuss areas for further study and for reform of the Los Angeles Superior Courts, the District Attorney's office, the City Attorney's office, and the Public Defender's office.

A. Role of Judges in Monitoring the LAPD

Under the current system, members of the judiciary have not played a role in monitoring police misconduct until efforts are made to set aside defendants' convictions. Indeed, when interviewed, judges worry that it would be improper for them to take a more aggressive role in preventing police misconduct. Given that it is the role of judges to remain impartial arbiters, asking judges to "police the police" could artificially create an adversarial position between police and judges.

However, both judges and police officers acknowledge that it is the role of judges to prevent perjured testimony and

improperly obtained evidence from tainting the criminal justice system. Failure to do so undermines the testimony of all officers. Not only does it lead jurors to become more skeptical of police officers' testimony, but it also creates a cloud of suspicion over all officers presenting evidence in court.

Both officers and judges can make changes to ensure that perjured testimony does not infect the criminal justice system.

Recommendation #28: Police rules and procedures must require that officers present to prosecutors all reports concerning an incident.

First, officers must present to prosecutors all reports prepared regarding an incident, including those that they were ordered to rewrite by their superiors. Individual officers should not be put in the position of hiding from defense counsel evidence that could be used to impeach the officer or the prosecution's case.

Recommendation #29: Training of police officers to be witnesses must be reoriented to stress accuracy in all respects.

Second, there must be a change in how officers are "trained" how to testify. According to interviewed officers, they currently undergo two types of training. The first occurs at the police academy. This training is fairly unremarkable, except for the emphasis on how not to be embarrassed on the witness stand. A second type of training occurs in their assignments. There, more senior officers impart the "tricks of the trade," such as

how to avoid uncomfortable moments on the witness stand. While there is nothing wrong with providing an officer support and guidance in how to testify, officers should not feel pressured to alter their testimony on the witness stand.

Third, some officers feel as if certain judges do not approach the officers' testimony objectively and that the officers are therefore automatically on the defensive when a hearing begins. Officers need a mechanism by which to report their concerns regarding the objectivity of members of the bench.

Fourth, officers feel pressure from both prosecutors and their superiors to "save a search" from technical rulings that may suppress evidence. Given the complexity of the laws of search and seizure, it is very possible that an officer has acted according to his training and evidence will nonetheless be suppressed. There should be no pressure on officers to alter their testimony to save the prosecution. Testimony must be direct and honest.

Finally, it is unclear to what extent an officer's behavior in the courtroom impacts his or her advancement in the LAPD. The mere fact that the Board of Inquiry report does not even address this issue is an indication that the issue has not been given serious consideration. There must be appropriate supervision of police officer's conduct in the courtroom and monitoring of findings by judges that officer testimony is not credible.

As for the role of judges, there are changes that can be made without compromising the judge's role as an impartial

arbiter.

Recommendation #30: Require, by statute or amendment to the Code of Judicial Ethics, that judges inform prosecutors and the Police Department if they have made findings that a police officer made false statements or committed perjury.

The California Code of Judicial Ethics Canon 2A states generally that "[a] judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." (Cal. Code of Judicial Ethics, Canon 2A (West 2000)). More specifically, judges have a duty to report the misconduct of fellow judges and attorneys. Canon 3D(1) provides: "Whenever a judge has reliable information that another judge has violated any provision of the Code of Judicial Ethics, the judge shall take or initiate appropriate corrective action, which may include reporting the violation to the appropriate authority." A judge also has responsibility to report misconduct by attorneys appearing before them and to take appropriate corrective action.

Under the current approach, judges have no similar responsibility to report police perjury or misconduct in the courtroom. For some judges, their practice is simply to refer the matter to the prosecutor to address. Other judges simply issue their ruling, hoping that suppression of evidence will send the "appropriate message" to law enforcement. In light of recent revelations in the Rampart Corruption Incident, it appears that this approach has not worked. Judges may need to undertake a

more active role in responding to police perjury.

There are two possibilities for expanding judges' responsibilities in a way that is consistent with their role as impartial decision makers. First, the Judicial Ethics Code could be expanded to require that judges report findings of police misconduct or perjury to an entity responsible for monitoring the police, such as the Inspector General of the Police Commission. In order to be effective, this reporting requirement would have to be mandatory. Given that they must run for office in retention elections, few judges would be willing to alienate police officers or their representative union by voluntarily reporting police misconduct. However, interviewed judges have indicated that they would obey a mandatory reporting requirement, akin to that which currently exists for reporting attorney misconduct. Because the reporting would be mandatory, the judges believe they would be protected from political retaliation.

Recent Consent Decrees between the United States Department of Justice and cities and states marred by police misconduct scandals support a proposal to institute mandatory reporting requirements for judges. The focus of all of these decrees has been on the establishment of more on-going oversight of law enforcement agencies. (See United States v. Pittsburgh Consent Decree; United States v. City of Steubenville Consent Decree; United States v. State of New Jersey Consent Decree). For example, the Consent Decree in United States v. Steubenville specifically requires that the city use "criminal case orders

suppressing evidence because of constitutional violations or for other reasons, or for other judicial findings or comments about SPD misconduct made in the course of a criminal proceeding" to alert management of potential misconduct.

In essence, requiring judges to report findings of police perjury or misconduct will enable the Police Commission to create an effective tracking system of what police misconduct is occurring in court and how it affects the criminal justice system. The judge's role would not change. It still would be up to each individual judge, in each case, to resolve issues of credibility and determine the legal effect of perjury or misconduct on an individual case. However, there would now be a mechanism by which the Police Commission could track misconduct by officers in the courtroom or in reports that affect courtroom proceedings. Moreover, the Commission could investigate the extent, if any, to which officers felt pressured to alter their testimony because of comments or actions by their superiors.

Some judges have privately expressed their reservation over "policing the police." Yet, even these individuals, acknowledge that it is their responsibility to ensure that trials are impartial and that perjured testimony is not used in any courtroom proceeding. Especially in suppression hearings, it is the responsibility of judges to make credibility findings, including about the testimony of police officers. (Judith C. Chirlin, Trial by Jury: Judges Must Respect Juror's Role as

Ultimate Fact Finder, L.A. Daily Journal 6 (Aug. 3, 2000)). This proposal does not require judges be biased in their rulings. Rather, it only would require that a judge report to an outside agency findings that are already public. Moreover, judges already are required to report wrong-doing by attorneys; expanding this to include police officers would not alter the judge's role.

Also, many judges privately support the proposal because there is a growing sense of frustration over the lack of avenues to address police perjury and misconduct. At least one federal appellate judge has publicly stated, "It is an open secret long shared by prosecutors, defense lawyers and judges that perjury is widespread among law enforcement officers." (Stuart Taylor, Jr., For the Record, Am. Law., Oct. 1995, at 72 (quoting Judge Alex Kozinski, United State Court of Appeals for the Ninth Circuit)). Disturbingly, a 1992 study of judges in another jurisdiction indicated that 92% of judges, prosecutors and defense counsel who responded to the study believed that police lied "some of the time" to avoid suppression of evidence. (Myron W. Orfield, Deterrence, Perjury, and the Heater Factor: An Exclusionary Rule in the Chicago Criminal Courts, 63 U. Colo. L. Rev. 75, 107 (1992)).

Instituting a reporting requirement may give judges more confidence that the officers who actually appear before them are less likely to lie because they are being monitored. Judge Larry Fidler, Supervising Judge of the Criminal Courts of Los

Angeles County, recently remarked that it is problematic "that clearly guilty people in totally unrelated future cases are going to walk free because jurors no longer feel they can trust the word of police officers. (Cox, Larry Fidler, LA's Rampart Judge, is Strictly Business, The Recorder (March 7, 2000) at 5.

Instituting an ethical obligation on judges to report police perjury could help restore confidence in the judicial system and prevent the "clearly guilty" from walking free in the future.¹⁸

There is a second alternative for judges to take in addressing police perjury and misconduct. Under California law, perjury or false statements under oath which tend to obstruct the administration of justice may be punished as a contempt of court. (See People v. Truer, 168 Cal.App.3d 437, 443 (1985). Judges are reluctant to make findings of contempt because of the procedural difficulties in issuing such citations. Nonetheless, recent events involving the LAPD could lead the increased issuance of contempt citations against officers who have been found to have lied to the court or otherwise tampered with evidence relevant to the court's proceedings.

¹⁸ Public editorials have also endorsed imposing greater responsibility on judges to evaluate police testimony. For example, the past president of the Riverside County Bar Association wrote, "We as a community demand that (judges) remain vigilant to any possible dishonesty occurring in their courtrooms even on the part of law enforcement officers. That they will be as intolerant to police officers who do not tell the truth as they are to other citizens who do not tell the truth." Steven L. Harm, "All in Justice System Have Role to Play to Avoid a Rampart Scandal," The Press-Enterprise, May 5, 2000, at A9.

Although the Board of Inquiry report focused only on internal controls to eliminate police misconduct, it would be irresponsible for the public to ignore the availability of outside controls to assist in this effort. One outside control is the availability and responsibility of judges to ensure that judicial proceedings are untainted. Accordingly, we recommend that due consideration be given to creating a duty by judges to report findings of perjury or misconduct.

Another reform concerning judges is necessary: protection of judges from control by prosecutors through the threat of exclusion. Under California law, both the prosecutor and the defendant have the ability to exclude one judge from a case. We have heard, including from defense attorneys and judges, the concern that the District Attorney's office could use this power to strike a judge who is regarded as "unfriendly" from every criminal case. The concern is that this creates a chilling effect on judges in their oversight of police officers.

Recommendation #31: Limit the ability of the District Attorney's office to use its ability to exclude a judge, at least in terms of limiting the number of times that the District Attorney's office may exclude any single judge from criminal cases.

The ability of prosecutors to use its power to exclude a judge should be limited. A simple reform would be to limit the number of times that the District Attorney's office may "strike" any single judge from criminal cases.

Also, the Rampart scandal reveals an area in which judges must be more vigilant: ensuring that there is a true, factual basis for guilty pleas. In our discussions with prosecutors, defense attorneys, and judges, it became clear that judges often ignore obvious problems with police reports and police credibility if the defendant wants to plead guilty. Some of those framed by the Rampart police officers plead guilty even though they were innocent.

Recommendation #32: Judges must take seriously their responsibility for ensuring that there is a true, factual basis for a guilty plea.

Under the Constitution, judges have a duty to do more than simply accept a defendant's guilty plea. Judges must inquire to ensure that there is a true factual basis for the plea. Obviously, it is easiest for judges to accept a plea; the prosecutor and the defense attorney are in agreement and efficiency, if nothing else, makes it expedient for the judge to simply go along. But Rampart shows that there is enormous pressure on innocent individuals to plead guilty when the police plant evidence and lie. This can create a strong case against the defendant and the safest course often is to plead guilty to reduced charges rather than risk a conviction that will lead to a much greater sentence.

Judges, of course, are limited in their ability to discover police misconduct when determining whether to accept a guilty plea. There should not be unrealistic expectations placed on

judges in this regard. However, judges must do more than just rubber stamp guilty pleas; they must fulfill their constitutional duty to ensure that there is a true, factual basis for a guilty plea, including detecting obvious problems with police credibility and police reports.

Finally, with regard to judges, one other concern must be addressed: the high percentage of judges who are former district attorneys. There has been a tendency, especially over the past 20 years, to appoint former district attorneys as judges. There, of course, is absolutely nothing wrong with former district attorneys becoming judges. However, it is important that the bench reflect the diversity of experience, and all aspects of diversity, that exist in the legal community. Thus, we recommend:

Recommendation #33: Encourage diversity and balance in the selection of judges and promote increased sensitivity by judges to the issue of police perjury and misconduct.

A major concern that has emerged from the Rampart scandal is the tendency of many judges to accept automatically the testimony of police officers as the truth. There is a prevailing perception that judges, especially former prosecutors, are less likely to critically evaluate the testimony of police officers. To address this concern, appointment authorities should be encouraged to appoint judges of diverse backgrounds, including those who have served as defense counsel or in practices that have challenged police conduct. Moreover, all judges should be

encouraged to be more sensitive to the problems of police bias, perjury and misconduct. Judges must critically assess the credibility of police officers, just as they do the credibility of lay witnesses who appear before them.

B. Role of Prosecutors in Monitoring Police Misconduct

The Board of Inquiry Report conducted limited inquiries of prosecutorial agencies in formulating its recommendations. (Board of Inquiry report, pp. 280-282). A more comprehensive study needs to be done. There is a wide range of opinions by prosecutors regarding the Rampart corruption probe. Likewise, there is a range of opinions by police officers regarding the responsibility of prosecutors for many of the problems that have been created. Although the District Attorney's office is conducting its own probe of the matter, an outside review, such as that being conducted of the LAPD, appears to be justified.¹⁹

Recommendation #34: Create an independent commission to investigate the District Attorney's office's handling of Rampart cases to determine what it might have done to better prevent, expose, and deal with the Rampart scandal and, more generally, issues of police perjury and misconduct.

In informal interviews, the following problems have been

¹⁹ Fairly or unfairly, there is a perception that the Los Angeles District Attorney's Office cannot objectively evaluate its own prosecutors' conduct given its stake in the outcome of the investigation. Accordingly, several public officials have called for independent reviews of the office's conduct contributing to the Rampart corruption incident.

identified in how the District Attorney's Office evaluates cases and handles incidents of police perjury and misconduct:

--Prosecutors fail to press officers to determine the accuracy of their testimony;

-- Police officers feel pressured to testify in a manner that will support the prosecution's case;

--The District Attorneys Office has failed to adopt an explicit policy defining prosecutors Brady obligations (the duty of prosecutors to provide material to the defendant which would be favorable to the defense), thereby causing prosecutors to fail in their duty to ask for, identify and disclose relevant Brady²⁰ information;

--Police officers are instructed by superiors not to create or provide Brady material to prosecutors without express requests;

--Prosecutors have no effective mechanism to report police perjury and misconduct;

--Prosecutors have failed to institute an effective mechanism for tracking and monitoring police perjury and misconduct;

²⁰ In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), the United States Supreme Court held that prosecutors have a duty to disclose "substantial material evidence favorable to the accused." See also *People v. Ruthford*, 14 Cal.3d 399, 405-406 [121 Cal.Rptr. 261, 534 P.2d 1341]. In *Giglio v. United States*, 405 U.S. 150 (1972), the prosecutions obligations were extended to require disclosure of information and materials that could be used to impeach prosecution witnesses. During their interviews, prosecutors and police revealed a wide range of views on the scope of Brady obligations. Thus, a key issue to be examined is whether there needs to be better training on and better policies regarding the disclosure of exculpatory and impeachment materials.

--Prosecutors feel torn in political struggles between officers and their supervisors regarding the handling of individual cases;

--Given the volume of cases, prosecutors are limited to being reactive, not proactive, in preventing police perjury and misconduct;

--Prosecutors feel that some officers have the attitude that the prosecutors are not aggressive enough in securing convictions and too readily abandon the interests of the police;

---Police officers feel like they must direct prosecutors, not vice-versa, in the handling of criminal matters.

We repeat these allegations because all are serious and all are deserving of investigation. An independent commission to examine the District Attorney's office handling of police perjury and misconduct, and to probe these allegations, is needed. Based on these concerns, and all that we have learned, we also make the following recommendations:

Recommendation #35: Develop policies within the District Attorney's office to better identify and prevent police misconduct during trials.

Recommendation #35(a): Require the District Attorney's Office to adopt an office policy defining and enforcing prosecutors' Brady responsibilities.

Recommendation #35(b): Adopt procedures for Deputy District Attorneys to report and track lying by police officers in criminal proceedings.

Recommendation #35(c): Adopt procedures for Deputy District

Attorneys to report and track cases declined or dismissed because of problems with officer credibility.

Key problems must be addressed regarding the relationship between the LAPD and the District Attorney and City Attorney's Offices. First, prosecutors and police feed on each other's desire to "win" the case.²¹ Given these attitudes, there is no check on whether the LAPD and prosecutors are fulfilling their Brady obligations. To have meaningful reform, the culture in each office must change. Several prosecutors, as well as others, remarked to us that there were occasions in which prosecutors likely suspected police wrong-doing, but creating such a confrontation would be unpleasant and, besides, the police were handing them all the evidence needed to get a guilty plea or conviction.

Adherence to constitutional and statutory standards for searches and seizures should not be viewed as technical legal rules that somehow impede the search for justice. Although the overwhelming number of prosecutors and police officers would strongly object to the knowing use of perjured testimony or false information in a court proceeding, most feel pressure to "package" their testimony in a way most favorable to the

²¹ As H. Richard Uviller, a former prosecutor writes, "[E]ven the best of the prosecutors young, idealistic, energetic, dedicated to the interest of justice are easily caught in the hunt mentality of an aggressive office. I know that the earnest effort to do justice is easily corrupted by the institutional ethic of combat." H. Richard Uviller, Symposium: The Neutral Prosecutor: The Obligation of Dispassion in a Passionate Pursuit, 68 Fordham L. Rev. 1695, 1702 (2000).

prosecution. Additional training and investigation appears to be needed to identify and eliminate pressures, internal or otherwise, on officers to slant, even in the slightest manner, their testimony in favor of the prosecution.

There also appears to be tension over whether it is part of the prosecutors' role to evaluate witness credibility, including that of police officers.²² While ultimately the judge or jury will act as the fact-finder in a case, prosecutors do have a legitimate responsibility to question and evaluate a police officer's credibility. This responsibility is particularly acute given that the overwhelming number of cases are resolved without a trial. In fact, the Legal Policy Manual of the Los Angeles District Attorney's Office specifically requires its deputies to evaluate whether a witness will make a mistake in recalling an event, has a motive to fabricate or has bad recollection.

(District Attorney's Legal Policies Manual, § I(B)(2)(a) & (b)). No distinction is made in the manual between evaluating the credibility of police witnesses and that of civilian witnesses.

Given the relatively low evidentiary standard of probable cause for the filing of criminal charges, greater efforts must be made by prosecutors and police supervisors to evaluate the

22 See generally Lisa C. Harris, Note: Perjury Defeats Justice, 42 Wayne L. Rev. 1755, 1772 n. 69 (1996) (finding that when interviewed, the most common response of prosecutors to the question of why they do not pursue more perjury cases was that it was the duty of the jury to handle fact-finding and evaluation of witness credibility).

strength and credibility of a case before it is filed. Indeed, following Proposition 115 which allows one officer to present hearsay testimony to support a charge with probable cause, there is an even greater need to aggressively investigate and evaluate the credibility of evidence before it is presented to the court.²³

One of the specific practices leading to problems in the credibility of evidence is the use of boilerplate language in police reports. Police supervisors, prosecutors, and even the judges are often lulled into a false complacency by the repetitive nature of reports that are filed.²⁴ Although consistency is important in the manner in which reports are written, simple "boilerplate" language should not be used if it inadequately describes the specific circumstances of an arrest or observed criminal activity.

Additionally, extra efforts must be taken to ensure that prosecutors and police officers understand and take seriously the scope of their ethical obligations, both in and out of court. While most prosecutors and officers will admit that they were given some training and materials on their ethical obligations, these responsibilities are not stressed as they continue their training in the field. One indication of this failure is that many prosecutors are not familiar with the content of their ethics manual or are troubled by the various interpretations of Brady obligations to disclose information to defendants given by various supervisors in their office.

Indeed, a key to preventing a recurrence of the Rampart incident is a recognition of the failure of the District Attorney's Office to request internal reports indicating police officers involved in their

²³ There may also be a need to review the Intake Procedures of the District Attorney's and City Attorney's Office. As currently structured, intake prosecutors do not do follow-up on cases that are charged. At least one prosecutor suggested that random follow-ups be made, especially in cases involving injured suspects, so that the charging deputies have a better sense of what to look for when evaluating cases for charging.

²⁴ See Gabriel J. Chin & Scott C. Wells, "The Blue Wall of Silence" as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury," 59 U. Pitt. L. Rev. at 248-249 (suggesting that courts hear the same "dropsy" testimony hundreds of times in one year).

cases may have lied or mishandled their investigations. For years, there appears to have been a "don't ask, don't tell" policy. Although it may not be an easy matter to define exactly what qualifies as Brady material,²⁵ in order for there to be meaningful change, prosecutors and police officials must work together to come to a common understanding of their ethical obligations. If necessary, the Inspector General of the Police Commission should coordinate and support these efforts, with input from the defense and Public Defender's Bar. A starting point may be the words of wisdom of Justice John Paul Stevens in his comments regarding a prosecutor's duty to ensure a fair trial. As he stated, "because we are dealing with an inevitably imprecise standard the prudent prosecutor will resolve doubtful questions in favor of disclosure." (Agurs v. United States, 427 U.S. 68, 108 (1976)).

One needed reform is developing a mechanism within the District Attorney's office for tracking problems with police officers. The District Attorney's office is obviously large and an unethical police officer can be inadvertently shielded by the fact that he or she is dealing with so many different prosecutors. Therefore, the office should institute a system for tracking police officers who have lied, including cases that have been dismissed because of problems with an officer's credibility.

Recommendation #36: Develop specific policies within the District Attorney's office requiring that the Inspector General and the Police Chief be informed whenever the District Attorney's office has probable cause that a police officer committed misconduct, such as by perjury or failing to disclose Brady material.

Both prosecutors and police officers appear to be frustrated over the lack of direction in how they are handled situations when they know or suspect an officer is lying. Indeed, both report to complacency, or worse, by superiors when such allegations are reported.²⁶

There must be clear direction on how perjury or misconduct is reported. The District Attorney's

²⁵ Not only is there an enormous library of case law interpreting Brady obligations, but there are practical concerns, as well. These concerns were identified as follows: (1) Police supervisors may be reluctant to ask for rewriting of reports if such rewrites are viewed as the creation of Brady materials; (2) Police officers feel undue scrutiny if any mistake, in any case, is viewed as discoverable Brady material; (3) There can be a tension between prosecutors' interpretation of Brady responsibilities and the limitations placed on the disclosure of police personnel files under Pitchess v. Superior Court, 11 Cal.3d 531, 113 Cal. Rptr. 897, 522 P.2d 305 (1974), and California Evidence Code § 1043; (4) Police personnel records are routinely purged pursuant to Government Code § 34090, thus leaving the prosecution and defense without access to possibly relevant information.

²⁶ For example, Officer Rafael Perez has testified that his supervisor not only knew of his activities, but specifically instructed him to lie on police reports in order to have a more successful prosecution. Scott Glover & Tina Daunt, Tip on Perez Went to Allegedly Corrupt Officer, L.A. Times, March 23, 2000 at A1.

office should institute a tracking system for identifying officers who have been suspected of lying in other cases. As it stands now, such information is generally available by "word of mouth," but there are no safeguards to ensure that claims of perjury or misconduct are thoroughly investigated and remedied.

There are particular pressures on less senior prosecutors when confronted with incidents of suspected police perjury. First, there is a lack of confidence in challenging the word of a seasoned law enforcement official. Second, there is often inadequate time for the line deputy to investigate their suspicions and they are reluctant to report their suspicions until some preliminary investigation is completed. Third, new prosecutors often have not developed the instincts to appreciate when the officers' testimony is suspect. Fourth, even when misconduct is reported, there is no formal mechanism for the line attorney to receive feedback on how the problem was resolved. Finally, prosecutors are afraid of being blackballed or labeled by officers and superiors who challenge their assessments.

Internal changes in the District Attorney and City Attorney Offices need to be made to address these concerns.²⁷ These changes range from instituting formalized chains of reporting misconduct to tracking officers who have lied as witnesses. Other changes should also be considered. For example, previous studies of the District Attorney's Office identified a deficiency in the criteria used to promote prosecutors.

Recommendation #37: Reconsider criteria for promotion within the District Attorney's office and the City Attorney's office to include recognition of a prosecutor's efforts to identify and act on officer perjury and misconduct.

Promotions within the District Attorney's office often include consideration of conviction rates.²⁸ Such a promotion and award structure maximizes the incentive for prosecutors to disregard problems with police credibility that may undercut the strength of the prosecutor's case. The basis for promotion and recognition should be broadened to include recognition of a prosecutor's efforts to ferret out perjury and misconduct.

Both prosecutors and officers have noted that prosecutorial priorities, set on the basis of political promises, have contributed to the current problem with police perjury and misconduct. Aggressive efforts to counter gang activity, either by civil injunctions or criminal prosecutions (including through the "three-strikes initiative"), have been misperceived as a green light to be overly aggressive in the handling of cases against suspected gang members.

While none of those interviewed wished to be less zealous in the prosecution of gang cases, there was an honest recognition that political rhetoric could influence how these cases are handled. Mainstreaming gang

²⁷ The California Prosecutors manual notes that it may "be desirable to develop a means of communication sufficient to apprise appropriate personnel of all information gathered or used in connection with a particular case." California Dist. Attorneys Assoc., Ethics and Responsibility for California Prosecutors 92-93 (1992). In light of the Rampart Corruption Incident, formalized systems for both reporting misconduct and notifying prosecutors of the result of investigations and disciplinary actions regarding those reports must be instituted.

²⁸ Report of the Los Angeles County Bar Association, Advisory Committee for the Office of the District Attorney 76 (1994)

cases may help to remedy the problem of creating in some officers and prosecutors' minds the perception that different rules apply when handling these cases.

Recommendation #38: Revise the system for receiving and investigating citizen complaints about office behavior, including requiring that all complaints about officer misconduct be forwarded to the Inspector General.

Under the current system, civilian complaints about police misconduct that are submitted to prosecutorial agencies are evaluated for possible criminal prosecution. Not surprisingly, these complaints often lack the detail or evidentiary support for such filings. However, they may be the basis for further investigation. Reforms in the manner in which civilian complaints to the District Attorney and City Attorney's offices are handled may create a better early warning system for police misconduct.

One obvious requirement should be that all complaints filed with any government agencies regarding a police officer be forwarded to the Inspector General of the Los Angeles Police Commission. The onus should not be on the civilian to file a separate complaint with the police department. Shuffling a civilian to another government office inevitably sends the message that their complaint will be buried in red tape.

Recommendation #39: Create an effective mechanism for deputies in the Special Investigations Division (SID) of the District Attorney's Office to notify prosecutors outside of SID of problems with specific officers.

Presently, the policy of the District Attorney's Office is to make Brady referrals only if an officer has been filed against or has been the subject of an administrative disciplinary finding. There are numerous cases, however, in which there is credible evidence that an officer has lied, but because of witness, evidentiary or statute of limitations problems with the case, there is no formal filing or administrative finding against the officer. As a result, information that could create serious concerns about an officer's credibility is not provided to defense counsel. The District Attorney's office must reevaluate its Brady practices to ensure that all relevant evidence regarding an officer's credibility be disclosed to defense counsel.

Recommendation #40: Prosecutors in the Special Investigation Division should be given greater leeway to interview officers involved in Officer-Involved Shootings.

Although the Board of Inquiry report calls for return of the Roll-Out program in which prosecutors responded to the scene of officer-involved shootings, it does not address the underlying problems with the Roll-Out program. Under the prior Roll-Out program, there was enormous frustration by prosecutors in being called to the scene and then being limited as to whom they could interview or what part of the crime scene they could examine. Prosecutors were told that they "serve at the pleasure" of the investigating police.

Since the Board of Inquiry report was released, a new roll-out protocol was instituted. In order to provide an effective, independent review of officer-involved shootings, prosecutors must be given the latitude to examine a crime scene and question those officers they wish to question. Although the officers may invoke their right not to provide statements, no artificial limitations should be placed on the SID prosecutors by law enforcement at the scene. We have heard that the Police Protective League has been an obstacle to these reforms and encourage it to change its position to ensure full cooperation in the roll-out program.

Recommendation #41: Lies by police officers to other court-related officials, including probation and parole officers, must be investigated and disclosed to defense counsel.

The testimony of police officers affects many different branches of the criminal justice system. For example, police officers may provide information to probation officers in trying to influence their

sentencing recommendations to the court. Lies by officers in these reports must be treated as Brady material and disclosed to the defense. Likewise, it must be thoroughly investigated by the District Attorney's office, as well as by Internal Affairs. Moreover, as officers of the court, it is the responsibility of probation and parole officers to report such misconduct to the District Attorney's office, even if the probation or parole officer does not use such information in his or her report.

C. The City Attorney's office

The City Attorney's office plays a unique role in the justice system: it handles both criminal and civil cases. The City Attorney is responsible for prosecuting misdemeanor cases. (City Charter, §271(c)). Additionally, the City Attorney represents the City in all civil litigation and, absent a conflict of interest, frequently represents individual police officers as well. The City Attorney's office, through all of these roles, can and must play a key role in preventing and uncovering misconduct by police officers.

Recommendation #42: Create an independent commission to investigate the City Attorney's office to determine what it might have done to better prevent, expose, and deal with the Rampart scandal and, more generally, issues of police perjury and misconduct.

There must be a careful evaluation of the City Attorney's office in this regard. A recent case illustrates this need. The case involved Officer Edward Ruiz.²⁹ Ruiz worked the 77th Division. He lied about a young African-American man having a gun when Ruiz and his probation partner stopped the youth, purportedly after they saw a broken window. The charges were dismissed after the City Attorney informed the judge that an independent investigation revealed that the officers were lying. The City Attorney's office, however, did not report this to Internal Affairs. The City Attorney's office later explained that the decision was left to the Deputy City Attorney who had tried the case. Ultimately, Ruiz was given a 22-day suspension by a Board of Rights. He was indicted by a federal Grand Jury in April, plead guilty to civil rights violations, and resigned from the LAPD.

A recent newspaper article stated:

"City Attorney James K. Hahn acknowledged yesterday that his office should have reported information it obtained in 1995 concerning alleged false testimony by two police officers indicted by a federal grand jury last week. Hahn called the failure to report the allegations to the Police Department's Internal Affairs Division 'a breakdown . . . in what should happen.' He said prosecutors have a duty to report to the district attorney or to the Police Department 'if we believe that a crime has been committed.'"³⁰

This example is used to illustrate the need for a thorough examination of how the City Attorney's office can better deal with problems in the Police Department. This includes the City Attorney's responsibilities in civil cases as well. Because the City Attorney represents the City in police abuse cases brought against it, the City Attorney's office has a crucial role to play in risk management. The office is an important position to identify officers and police practices that are often the basis for lawsuits and liability for the City. There should be a careful evaluation of how the City Attorney has performed these tasks and what improvements might be implemented.

Some may criticize the number of study commissions proposed in this report -- one each for the

²⁹Scott C. Smith, "Hahn Calls Failure to Report Alleged Misconduct a 'Breakdown,'" Metropolitan News, April 12, 2000.

³⁰ Id.

Police Department, the District Attorney, and the City Attorney. But the reality is that each of these institutions plays a crucial role in the criminal justice system and each needs to be studied carefully to see how its functioning can improve to prevent and deal with police abuses.

Also, all of the recommendations for improved handling of criminal cases in the District Attorney's office apply to criminal prosecutions handled in the City Attorney's office. For instance, the City Attorney's office, too, needs clearer policies for dealing with Brady material.

Recommendation #43: Attorneys in the City Attorney's office must fulfill their obligations both as counsel to the City and as officers of the court.

One key problem the City Attorney's Office must resolve is its asserted conflict in defending police officers charged with misconduct and ensuring that the City is not plagued by rogue police officers. We have heard voiced by many individuals a strong perception that the City Attorney's office too often protects bad officers and does not do enough to remedy problems in the LAPD.

In conversations with high level officials in the City Attorney's office, we have heard awareness and sensitivity to the problems of conflicts of interest. Yet, further consideration of this problem is essential. The City Attorney's client, of course, is the City of Los Angeles. The City Attorney also may represent individual officers if there is not a conflict of interest. But problems can develop in representing officers. For instance, if the City Attorney's office learns of wrong-doing in the course of representing an officer it is unable to turn this information over Internal Affairs or use it in risk management. There is an obvious conflict there between the City Attorney's duty to its two clients in that instance: the City and the officer.

There are several possible approaches to such problems, including: (1) increased hiring of outside counsel in cases where the City Attorney's Office has a conflict; (2) proactive efforts by the City Attorney's Office to discover and remedy police misconduct; including the tracking of officers involved in incidents leading to lawsuits against the Department and City; (3) regular reports to the public of police misconduct cases and their costs; and (4) increased involvement of the City Attorney's Office in "risk management" by the LAPD, including the training of officers and members of Board of Rights panels. All of these are worthy of further consideration as part of an overall evaluation of the City Attorney's handling of matters concerning the Police Department.

D. Public Defender's Office

The Public Defender's office is another crucial institution in the criminal justice system. It represented a very high percentage of the defendants in Rampart division cases. We understand that it recently completed an investigation of the Rampart scandal.

Recommendation #44: The Public Defender's office should release a report detailing the findings of its investigation of the Rampart Corruption Scandal, including any findings regarding the responsibility of defense counsel for the improper convictions of their clients.

Clearly, there has been a major breakdown in the checks and balances of the criminal justice system. Many of the defendants convicted during the Rampart corruption incident pled guilty, with the consent of their counsel, to charges they did not commit. To what extent were defense counsel aware of their clients' innocence and nonetheless agree to their clients' pleas? What additional investigation could and should have been done to protect their clients? Why weren't defense counsel more aggressive in attacking the police and prosecution's cases? What additional resources, discovery and training is necessary to prevent recurrence of false convictions? All of these questions are yet to be answered, but are vital to true reform.

CONCLUSION

As discussed at the outset of this report, it is not meant to be a comprehensive review of the criminal justice system in Los Angeles, of the Los Angeles Police Department, or the Rampart scandal. Instead, it is a report based on several months of work by a group of volunteers with the task of analyzing the Board of Inquiry report. Our overall conclusion is that the Board of Inquiry report makes many important points and a number of laudable recommendations, but it ignores the real problems that gave rise to Rampart and plague the Police Department.

Most of all, the Board of Inquiry fails to recognize or discuss the culture of the Los Angeles Police Department and how it gave rise to the Rampart scandal. The Board of Inquiry is a management account of the problem in that it largely spares management from criticism. Yet, it is clear, that management is responsible for the culture that exists within the Department and that Rampart is a result of the failure of the Department's leadership.

The ultimate goal must be to determine the scope of the problem and to understand its causes so as to take remedial steps that this never happens again. The hope is that this crisis provides a unique opportunity for reform. This opportunity must not be squandered. This report is written with the strong belief that reform is possible and that future Ramparts can and must be prevented.

Appendix

List of Recommendations Contained in the Report

Recommendation #1: An independent commission should be

created by the City of Los Angeles with the mandate of thoroughly investigating the Los Angeles Police Department, including assessing the extent and nature of police corruption and lawlessness.

The Commission must be given adequate funds, powers, and personnel for a thorough investigation.

The Commission should be external to the Police Department and report to the Mayor, the City Council, the City Attorney, the Police Commission, and the people of Los Angeles.

Recommendation #2: Officers with knowledge of wrong-doing

in connection with the Rampart scandal should be encouraged to reveal what they know by granting them immunity from discipline for their failure to reveal wrong-doing previously. This, however, would not immunize any other wrong-doing by officers; the immunity would be solely for the failure to come forward and report prior wrong-doing by others. This likely should be extended to knowledge of wrong-doing in other CRASH units, and as warranted to other units and divisions.

Recommendation #3: A consent decree between the City of Los

Angeles and the Justice Department is essential in reforming the Los Angeles Police Department. In the absence of a consent decree, a judgment in a "pattern and practice" case brought by the Justice Department is necessary for effective reform.

Recommendation #3(a): The consent decree shall remain in effect for at least five years and then can be lifted only after the City demonstrates substantial compliance for a period of two years. The consent decree should provide for the federal judge to order continued monitoring and compliance if deemed necessary after this period.

Recommendation #3(b): There should be semi-annual review of the terms of the consent decree and the degree of compliance with it. An outside monitor should be required to submit semi-annual reports simultaneously to the court, the City, and the public on compliance with the consent decree.

Recommendation #4: An outside monitor or auditor with enforcement authority is necessary to oversee the implementation of the consent decree.

Recommendation #5. The management of LAPD must accept and implement the Christopher Commission's mandate to move from the over-aggressive, paramilitary policing culture to one of openness, problem solving, and community engagement. An expert group should be formed, including officers from every rank and also civilians, to forge a culture transformation blueprint to achieve that change.

Recommendation #6. Community policing must be implemented.

Recommendation #6(a): Restoration of the Senior Lead Officers program.

Recommendation #6(b): Evaluation and promotion criteria should include community-based policing activities.

Recommendation #6(c): Officers should receive training on community policing activities.

Recommendation #6(d): Require that higher-level supervisors spend time in the field.

Recommendation #6(e): Meetings with communities should be required at least once each quarter of a calendar year.

Recommendation #7: Improvements in training.

Recommendation #7(a): Identify areas in which training of LAPD officers is deficient in comparison to national and California standards and require improvements in these areas.

Recommendation #7(b): Mandate training as to supervisor responsibilities and duties.

Recommendation #7(c) Mandate training of civilian personnel, such as civilian members of Boards of Rights.

Recommendation #7(d): Require training of all officers as to ethics and civil rights, including with use of outside experts.

Recommendation #8. Require greater protections for "whistleblowers" within the LAPD who expose wrong-doing by other officers.

Recommendation #8(a): Establish a policy protecting officers who expose wrong-doing from retaliation.

Recommendation #8(b): Develop a system where officers may report wrong-doing by other officers to the Inspector General, with an assurance of confidentiality, and with protection from reprisals.

Recommendation #8(c): Develop a procedure and standards for investigating and punishing supervisors who retaliate against whistleblowers.

Recommendation #9: Reform recruitment to include more

careful screening and also to provide more aggressive efforts to increase the number of women and minority officers.

Recommendation #9(a): Institute improved screening of candidates for the Police Department to determine, in every respect, fitness for being an officer.

Recommendation #9(b): Aggressive efforts must be made to increase the number of women officers in the Department and to ensure that there is no discrimination in recruitment or employment against women, racial minorities, and gays and lesbians.

Recommendation #10: Require greater controls on specialized units within the LAPD.

Recommendation #10(a): Selection criteria for specialized units should be developed.

Recommendation #10(b): A standardized system for selecting officers for specialized units, with a screening system similar to that used for vice, should be implemented.

Recommendation #10(c): There should be regular audits of specialized units to ensure compliance with the rules and standards of the LAPD.

Recommendation #11: Officers must have counseling resources available, without fear that seeking and receiving counseling will be used against them.

Recommendation #12: The Los Angeles Police Protective League must play a key role in bringing about a change in the culture of the Los Angeles Police Department and in reforming the Department.

Recommendation #13: Amend the Los Angeles City Charter to increase the responsibilities of the Police Commission, including by making it a full-time position, changing its manner of selection, and requiring City Council approval for the removal of a Commissioner. Adequate resources must be provided to the Police Commission to manage the Department effectively.

Recommendation #14: The powers and especially the independence of the Inspector General should be strengthened.

Recommendation #14(a): The City Charter should be amended to provide that the Inspector General is appointed by the Mayor, subject to confirmation by the City Council. The Inspector General shall be appointed for a five year term, not to run concurrently with the five year term of the Police Chief. The Inspector General may be removed during the term only if removal is approved by a majority vote of the City Council.

Recommendation #14(b): The City Charter should be amended to provide that the Inspector General may investigate any matter and that an investigation cannot be prevented or discontinued by the Police Commission.

Recommendation #15: A permanent special prosecutor, ideally located in the California Attorney General's office, should be appointed to investigate criminal wrong-doing by officers within the Los Angeles Police Department.

Recommendation #16: Improve the system for receiving complaints against officers, including simplifying the process for receiving complaints and creating an Office of Citizen Complaints modeled after the San Francisco system.

Recommendation #17: Improve the system for screening complaints against officers, including creating a probable cause officer to screen complaints and determine which complaints are worthy of further investigation.

Recommendation #18: Improve the system for investigating complaints; in particular, there must be

substantial reforms of Internal Affairs, including creating civilian oversight.

Recommendation #18(a): Develop a procedure for longer term assignments to Internal Affairs and for greater continuity in the investigation and processing of complaints.

Recommendation #18(b): Create civilian oversight for Internal Affairs.

Recommendation #19: Improve the system of adjudicating complaints against officers, such as by creating a civilian review board to replace the current Board of Rights. Recommendation #20: Improve the system for disciplining officers through the development of a "uniform penalty guide" for disciplining officers.

Recommendation #21: Implement a system of tracking complaints against police officers.

Recommendation #21(a): Establish a system for the centralized reporting of all complaints of police misconduct.

Recommendation #21(b): The system should provide the ability to track individual complaints and all of the complaints against a specific officer.

Recommendation #21(c): Standards must be developed as to when and how information in the tracking system may be accessed and used.

Recommendation #21(d): Require analysis of data over specific time periods for the Department, for divisions, and for individual officers.

Recommendation #21(e): Accountability for the volume of officer complaints and corrective action must rest with the Command staff (Lieutenants, Commanders, Bureau Chiefs, Deputy Chiefs, and the Chief of Police). This data should be used in considerations of Command staff promotions, pay raises, and assignments.

Recommendation #21(f): Institute a system for tracking all settlements and judgments against the City for the actions of LAPD officers, including a requirement that notice of such awards be given to the Police Commission, the Claims Board, the Mayor, and the City Council.

Recommendation #22: An independent investigative unit for officer involved shootings should be created.

Recommendation #23: A new policy for obtaining statements from officers involved in shootings should be developed.

Recommendation #24: Civilian oversight, through the Inspector General, of officer involved shootings should be implemented.

Recommendation #24(a): Require immediate notification of the shooting to the Inspector General.

Recommendation #24(b): Require the Inspector General to develop a "roll out" team with full and complete access to the shooting scene, evidence, and the investigation by OIS, including statements of involved officers and witnesses, with the right to document any aspect of the incident or investigation.

Recommendation #24(c): Require the Inspector General to independently document and report any violation, in letter or spirit, of OIS policy.

Recommendation #25: Policies should be adopted to protect civilian witnesses in officer involved shootings.

Recommendation #25(a): Develop a protocol that requires

that unless there is probable cause for arrest, no civilian witness shall be arrested, detained, handcuffed, or otherwise intimidated by OIS or any LAPD officers at the scene. The protocol should require that all relevant civilian witnesses be interviewed.

Recommendation #25(b): No statements will be required from

any independent civilian witness unless it is fully and completely voluntary, which begins with an admonition that the witness is free not to give a statement, and is fully advised of their right and the procedure to make a citizens complaint regarding the shooting or the post shooting conduct of the officers or investigators.

Recommendation #26: Independent oversight of shootings should be implemented.

Recommendation #27: Continued and increased implementation of reforms to prevent racial bias and racial profiling.

Recommendation #28: Police rules and procedures must require that officers present to prosecutors all reports concerning an incident.

Recommendation #29: Training of police officers to be witnesses must be reoriented to stress accuracy in all respects.

Recommendation #30: Require, by statute or amendment to the Code of Judicial Ethics, that judges inform prosecutors and the Police Department if they have made findings that a police officer made false statements or committed perjury.

Recommendation #31: Limit the ability of the District Attorney's office to use its ability to exclude a judge, at least in terms of limiting the number of times that the District Attorney's office may exclude any single judge from criminal cases.

Recommendation #32: Judges must take seriously their responsibility for ensuring that there is a true, factual basis for a guilty plea.

Recommendation #33: Encourage diversity and balance in the selection of judges and promote increased sensitivity by judges to the issue of police perjury and misconduct.

Recommendation #34: Create an independent commission to investigate the District Attorney's office's handling of Rampart cases to determine what it might have done to better prevent, expose, and deal with the Rampart scandal and, more generally, issues of police perjury and misconduct.

Recommendation #35: Develop policies within the District Attorney's office to better identify and prevent police misconduct during trials.

Recommendation #35(a): Require the District Attorney's Office to adopt an office policy defining and enforcing prosecutors' Brady responsibilities.

Recommendation #35(b): Adopt procedures for Deputy District Attorneys to report and track lying by police officers in criminal proceedings.

Recommendation #35(c): Adopt procedures for Deputy District Attorneys to report and track cases declined or dismissed because of problems with officer credibility.

Recommendation #36: Develop specific policies within the District Attorney's office requiring that the Inspector General and the Police Chief be informed whenever the District Attorney's office has probable cause that a police officer committed misconduct, such as by perjury or failing to disclose Brady material.

Recommendation #37: Reconsider criteria for promotion within the District Attorney's office and the City Attorney's office to include recognition of a prosecutor's efforts to identify and act on

officer perjury and misconduct.

Recommendation #38: Revise the system for receiving and investigating citizen complaints about office behavior, including requiring that all complaints about officer misconduct be forwarded to the Inspector General.

Recommendation #49: Create an effective mechanism for deputies in the Special Investigations Division (SID) of the District Attorney's Office to notify prosecutors outside of SID of problems with specific officers.

Recommendation #40: Prosecutors in the Special Investigation Division should be given greater leeway to interview officers involved in Officer-Involved Shootings.

Recommendation #41: Lies by police officers to other court-related officials, including probation and parole officers, must be investigated and disclosed to defense counsel.

Recommendation #42: Create an independent commission to investigate the City Attorney's office to determine what it might have done to better prevent, expose, and deal with the Rampart scandal and, more generally, issues of police perjury and misconduct.

Recommendation #43: Attorneys in the City Attorney's office must fulfill their obligations both as counsel to the City and as officers of the court.

Recommendation #44: The Public Defender's office should release a report detailing the findings of its investigation of the Rampart Corruption Scandal, including any findings regarding the responsibility of defense counsel for the improper convictions of their clients.