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Final Report of the Subcommittee on Peace Officer Conduct

Senate Judiciary Subcommittee on Peace Officer Conduct

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FINAL REPORT OF THE
SUBCOMMITTEE ON PEACE OFFICER CONDUCT

SENATOR ART TORRES
CHAIRMAN



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FINAL REPORT OF THE
SUBCOMMITTEE ON PEACE OFFICER CONDUCT

Senator Art Torres
Chairman

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INTRODUCTION

The videotaped beating of Rodney King on March 3, 1991 by uniformed members of the Los Angeles Police Department vividly returned to the public agenda a political issue largely absent since the tumultuous days of the early 1970's. Lost in the ever escalating "war on drugs" has been a meaningful discussion of the proper role of law enforcement in our communities.

To facilitate a public debate on law enforcement activities in California, the State Senate in September established the Judiciary Subcommittee on Peace Officer Conduct. The Subcommittee consisted of former Los Angeles Police Chief Ed Davis (R-Los Angeles), former Undersheriff of Riverside County Robert Presley (D-Riverside), Senator Diane Watson (D-South Central Los Angeles), Senator David Roberti (D-Los Angeles/Hollywood), and the Chair, Senator Art Torres (D-East Los Angeles).

This committee's charge included examining cases of alleged abuse within California law enforcement agencies, the question of civilian oversight of law enforcement, and the ethnic and demographic composition of various police agencies. The committee also sought to establish a clear definition of the role

law enforcement agencies should play in our increasingly complex, multiethnic and democratic state.

To answer these questions and engage in a meaningful dialogue, the committee had five public meetings, each revolving around a specific theme. Testimony was solicited from representatives of civil rights and civil liberties organizations, gay and lesbian groups, feminist organizations, law enforcement personnel, academicians, religious organizations, Native American representatives, and members of the public at large.

The hearings took place in a gymnasium at the Ramona Gardens Housing project in East Los Angeles to investigate the shooting death of Arturo Jimenez, as well as complaints of a continuing pattern of abuse against Mexican Americans throughout California; in South Central Los Angeles, as a result of the shooting death of Keith Hamilton, a 34 year old African American; in West Hollywood, to investigate allegations of abuse and failure to provide services for the city's gay community; in Arcata and Redding, to review complaints of abuse against Native Americans; in San Jose, to review general complaints and issues revolving around Northern California law enforcement; and finally in San Jose for a general overview. In addition, the chairman of the committee met with concerned citizens from the San Diego area, who brought to his attention similar patterns of police activity as those found in other cities.

This report, and the accompanying legislation, is the product of these hearings and the many hours of discussion with concerned individuals throughout the state. The legislation, Senate Bill 1335, is attached. What follows below is a general overview of the five hearings sponsored by the committee along with recommendations generated from the compiled testimony.

HEARING I, EAST LOS ANGELES

On August 3, 1991, Arturo "Smokey" Jimenez was shot three times by a deputy of the Los Angeles County Sheriffs Department outside an apartment building in the Ramona Gardens housing project in East Los Angeles. Following the shooting a public disturbance ensued. While the Sheriffs have maintained the shooting was justified because Jimenez was a known gang member threatening a deputy, the community and numerous eye-witnesses dispute this account and claim, rather, that the shooting was unjustified and a continuation of a pattern of attacks by deputies against citizens of East Los Angeles and its environs.

The shooting, by Deputy Jason Mann, an alleged member of the "Vikings", recently transferred from the Lynwood station for questionable behavior there, prompted a fact finding investigation into the relationship between peace officers and the Latino community.

Many questions still surround the death of Jimenez, who was unarmed but an acknowledged member of the "Hazard" gang, active for many years in the project. More than 30 members of the community testified during the September 13 meeting. Academic, law enforcement, social service, church, legal, and police oversight organizations sent representatives. Many of the witnesses cited problems associated with the inability of law enforcement agencies to separate law abiding citizens of the community from its criminal elements. Many panelists attributed deaths similar to Jimenez's to condoned and institutionalized racism within the police ranks.

Suggested remedies emerging from this hearing included the formation of a statewide citizen review panel, with its own independent prosecutor, increased recruitment of law enforcement officers in minority communities combined with increased cultural awareness and sensitivity training.

HEARING II, SOUTH CENTRAL LOS ANGELES

Since the riots in Watts a generation ago, relations between residents of primarily black South Central, Los Angeles, and the law enforcement community have been strained at best. Residents view the police with open suspicion. The police, in attempting to protect and serve the community, often behave as a paramilitary organization conducting neighborhood sweeps and home by home searches looking for drugs and weapons.

Residents complain of homes being ransacked, people being forced outside in their underwear, parents separated from children, people struck in the head with flashlights, and people shot without legal justification.

A lawsuit filed against the Lynwood substation alleges that within that station a gang of white supremacists exists. One of these purported "Vikings" shot Arturo Jimenez after his transfer. A Federal judge was so outraged by the behavior of the Sheriff's Department he took the unprecedented step of issuing an order enjoining the Department from violating it's own policies and procedures. In addition it was found necessary to order the deputies to refrain from using racist speech. While the Department fought this as a violation of their first amendment rights the Federal Court nonetheless included this prohibition in the restraining order.

Further testimony showed a proclivity by officers to use chokeholds and tazers disproportionately against minorities. Dog bite victims were 90% black and Latino. As in East Los Angeles residents felt they were unable to voice complaints against officers because filing of complaints led to intimidation and possible harassment with no action ever taken against offending officers. The conflict between the District Attorney's prosecutorial responsibilities and the need to continually work with law enforcement in other settings was cited

as an institutional disincentive to actively prosecute rogue officers.

Statistics back this up. In the last 15 years there have been 477 shootings by sheriff's deputies, of which 174 proved fatal. During that time only one officer was ever charged by the District Attorney.

The years spent in the county jail immediately upon graduation from the Police Academy were believed by several witnesses to be a large problem. The skills learned dealing with criminals in jail did not translate well to interactions with the public at large.

Finally, testimony by members of the Highway Patrol and LAPD indicated that training on cultural sensitivity and conflict resolution was minimal. It was also stated that promotional opportunities for minority officers were extremely limited. This was cited as problematic if law enforcement were to improve service to different communities.

In summary, this hearing mirrored many of the Christopher Commission findings. "Because of the concentration and visibility of gangs and street drug activities, the higher rates of violent and property crime in Los Angeles' minority communities, the Department's aggressive style, the self described 'war on crime,' in some cases seems to become an attack on those communities at

large. The communities and all within them become brushed with the brush of latent criminality." What is true for LAPD is certainly true for the L.A. Sheriffs and many other police organizations throughout the state.

HEARING III, WEST HOLLYWOOD

On November 9, 1991, the Peace Officer Conduct Subcommittee met in West Hollywood, a city in Los Angeles with a significant homosexual population, to hear testimony on the impact of law enforcement agencies on women and the gay and lesbian community. Present at the hearing were local officials, victims of alleged police misconduct, gay and lesbian rights groups, and several members of police advisory bodies in the West Los Angeles area.

Testimony highlighted multifaceted gender and sexual orientation discrimination aimed at civilians, as well as female and gay officers within the law enforcement community. Witnesses alleged these prejudices helped create an atmosphere condoning acts of unprovoked violence against members of the homosexual community.

The need for more gay, lesbian, and women police officers was continually expressed throughout the hearing. The Fund for a Feminist Majority presented statistical evidence differentiating male and female officers by incidence of excess force complaints.

The studies showed unequivocally that female officers were much less likely to resort to force to settle disputes. In addition, female officers responded very differently to certain types of complaints, placing a higher priority on domestic violence and rape charges than did their male counterparts. Once again, a civilian review board was suggested as a way to improve police accountability. It was stated that the availability of officer identification cards might also encourage more accountability to the public.

HEARING IV, ARCATA/REDDING

The bifurcated hearing in Arcata and Redding focused on conflicts between California's Native American Community and deputy sheriffs in various rural counties. Testimony before the Subcommittee painted a disturbing picture. Cases involving Indian victims received minimal resources and little attention. In contrast, in cases where Native Americans stand as the accused, vigorous investigations and prosecutions followed by lengthy disproportionate sentences can be expected.

It is acknowledged that there is a serious alcohol problem on the reservations. However, this does not obviate the overly severe sentences meted out for so-called "drunk in public" offenses, when white defendants receive less time for activities of a more serious nature.

Tribal members allege continuing harassment, constant monitoring of their comings and goings as well as regular physical beatings. Legal counsel for the ACLU, as well as Rural Legal Assistance substantiated these charges.

Recommendations for improving conditions included requests for outside prosecutors independent of local District Attorneys, as well as increased training to explain to prospective officers basic facts about Indian laws and culture. Also receiving attention were repeated calls for a complaint procedure outside police jurisdiction.

HEARING V, SAN JOSE

The fifth and final hearing of the Subcommittee on Peace Officer Conduct took place in San Jose. Whereas the previous four hearings focused on specific problems facing particular communities, the San Jose hearing hosted a panel of professionals whose wealth of expertise in police conduct, review, and training contributed to very substantive recommendations and discussion on possible reform measures.

Represented at the hearing were management-level peace officers, members of existing police review commissions, academia, officer trainers, and civil rights organizations. Evidence and recommendations from this distinguished panel suggest that the complexity of peace officer responsibilities

warrants a multifaceted response. In order to foster a police force that is more accountable to the public, serious changes are required.

The notion of civilian review was met with mixed reactions. On the one hand, civilian review does respond to the sense of alienation some communities feel, but evidence in different communities does not prove this to be a universal solution. The results are mixed at best. State wide review was also problematic in that a large bureaucracy would be required.

One way to ensure proper accountability is through the use of non-threatening methods for citizens to file misconduct complaints against peace officers. Suggested remedies include the use of civilian ombudsmen in a neutral environment to receive complaints.

The nature of recruitment, promotions, and training directly affect the quality of police officers in management and the rank-and-file. According to the experts who appeared, any solution to police misconduct must take into consideration recruitment practices, promotional standards, and proper training of personnel. It should be noted that the Chief of Police of San Jose has since stated a desire to recruit officers from within the gay and lesbian communities, a practice rejected by most departments as divisive, particularly by Chief Gates.

SUMMATION

Law enforcement agencies in California and throughout the nation are under a state of siege. The recession and general declining standard of living in many communities have made many people desperate. Crack cocaine seemingly offers a means to easy money to some, and a means of escape from the numbing realities of life to others. The social safety net has been ripped asunder. Into this breach we have sent undermanned, underarmed, undertrained, and undereducated law enforcement officers fighting the symptoms of the disease--drug abuse, rather than the disease itself--poverty and unemployment.

This "war" is taking it's toll. Because the real victory requires a complex attack on the societal problems leading to the explosion of drugs in our inner cities, politically expedient and easy remedies are sought. More arrests and longer sentences are sold to the public as "quick fixes" leading to safer streets and more secure homes. Police forces translate these imperatives in the only way possible given their limited resources. They declare war on the communities they are hired to protect. Stereotypes based on skin color and national origin serve as indicators of criminal intent. Lacking sufficient resources, law enforcement responds by treating the entire community as suspect, acting as a paramilitary invading force as a means to regain control.

The policy and the solution are an abject failure. California incarcerates a higher percentage of it's citizens than any state in the United States, in fact more than any industrialized nation with the exception of South Africa. Despite this fact and the \$24,000 per year, per inmate it costs, our streets are less safe than when this "war" began. The price of this failed policy is exorbitant. To bring the special anti-drug and anti-gang tactical units to bear on high crime neighborhoods, other more positive policing methods such as team or community policing have been sacrificed. Analysis suggests this community-based policy is initially only 4-5% more expensive but saves vast amounts of money and human resources in the long run.

Along with a change in the philosophy behind selected police response we clearly need to emphasize professionalization of law enforcement. This will require recruiting and retaining better educated officers. Different psychological profiles are necessary to find less authoritarian recruits. Emphasis should be placed on hiring more female officers as well as instituting recruiting programs in minority communities where they currently are lacking. POST must modernize training procedures increasing cultural sensitivity training and dispute resolution courses. Promotional opportunities for women and minority officers are minimal and require continual monitoring. There is currently a glass ceiling maintaining a white male elite in virtually all critical positions. Finally, pay must be increased. Better

educated police professionals require livable wages to attract and retain the type of people we wish to serve us.

It is clear that even were all these changes to occur there will still be situations where individual officers acting under cover of their office will use unnecessary and unwarranted deadly force. For these currently existing situations remedies are clearly inadequate. District attorneys, working with the police every day, are faced with an obvious conflict of interest. Prosecuting police for misconduct risks the good will of those most necessary to successfully investigate and prosecute the vast majority of their cases. Moreover, victory in the criminal case serves as prima facie evidence in the civil suit sure to follow. This serves as an even greater impetus for not aggressively pursuing offending officers. In many counties, particularly in more rural areas of the state, the district attorneys, city attorneys, and police departments share adjacent facilities and office space. Finally, in municipalities like Los Angeles, where a popular sheriff is involved, elected District Attorneys face serious political repercussions if they are viewed as acting too aggressively in prosecuting offending officers. According to documents obtained via subpoena from Los Angeles County, since 1985, only two deputies have been given written reprimands and six were dismissed for excess use of force violations. Either no abuses exist, or the system of discipline and accountability is seriously flawed. Our investigations point directly at the latter. For all of these reasons a method must be found for

investigating abuse of force complaints that involve the public and directly increases accountability.

LEGISLATIVE PROPOSAL

The problems identified require a complex and integrated legislative response. The detailed proposal to follow must result in renewed confidence by the public in their law enforcement agencies.

SB 1075 (Roberti) of 1991, mandating The Commission on Peace Officer Standards and Training adopt training guidelines was vetoed by the Governor in September for fiscal not policy concerns. SB 1075 also requires each department to develop strict written "use of force" guidelines and report these to the Department of Justice. This bill, supported by all interested groups, will be incorporated into SB 1335.

We propose to standardize complaint forms throughout the state and have all substantiated complaints reported to the Department of Justice, who will be required to compile the data in an index and cross reference these complaints by the officer's name as well as the complainant's. These standardized complaints will be available at different locations throughout cities and counties not associated with law enforcement agencies, including city halls, libraries, and county offices.

The complaints must be signed to be filed. The bill creates an Office of Citizen Complaint, headed by an Ombudsperson, appointed by the County Bar Association to receive the complaints. The Ombudsperson will determine only whether the facts alleged, if proven true, would constitute a felony. If so, these complaints will be referred immediately to the Department of Justice for disposition. Non-felony complaints shall be sent back to the law enforcement agency for disposition. The agency shall report to the complainant within 90 days of receipt of the complaint detailing the results of the investigation, the disposition of the complaint, and any discipline meted out to the offending officer. Failure to respond to the complainant within 90 days shall result in a \$1000.00 fine against the Department, absent good cause, collectible by the citizen in small claims court. Only one fine shall accrue per incident.

Finally, the bill proposes to eliminate District Attorney review of cases where the Ombudsperson finds probable cause to believe a felony has been committed by a law enforcement officer. It is believed that the statewide focus of the Department of Justice will remove many of the parochial concerns facing locally elected District Attorneys in reviewing police abuse cases. The Attorney General will be required to complete an investigation within 180 days and determine whether to file a criminal indictment. If no indictment is filed, the Attorney General will be required to issue a written finding explaining the decision not to prosecute. These findings will be public record

transmitted to the complainant within seven days of the
Department's decision.

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