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SYMPOSIUM

THE RAMPART SCANDAL: POLICING THE CRIMINAL JUSTICE SYSTEM

INTRODUCTION

David W. Burcham and Catherine L. Fisk***

The Rampart scandal has raised profound questions about the integrity of the Police Department and the entire criminal justice system in Los Angeles. Evidence shows that officers in the “anti-gang” unit of the LAPD’s Rampart Division framed innocent people for crimes they did not commit. Police officers planted evidence. They committed perjury to obtain convictions. They shot innocent suspects. They planted weapons on their shooting victims and claimed that the suspects attacked them. For example, the police shot nineteen-year-old Javier Ovando and planted a gun on him. Ovando, who was paralyzed by the gunshot wounds, had no prior criminal convictions. Nonetheless, he was sentenced to twenty-three years in prison for assaulting police officers. His case is not unique. As of this writing, more than a hundred convictions have already been overturned in connection with the scandal. Thousands more cases had to be reviewed.

Problems in the Rampart Division first came to light when an officer, David Mack, was convicted of bank robbery. Subsequently, Mack’s former partner, Rafael Perez, was caught stealing cocaine from the police evidence room. In September 1999, Perez made a

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** Professor of Law & William Rains Fellow, Loyola Law School. Professor Fisk, as faculty advisor to the *Loyola of Los Angeles Law Review*, was one of the organizers of this Symposium. The live Symposium was introduced by Dean Burcham, and, of course, was made possible through his generous support.

deal with the prosecutors. In exchange for lenience, Perez described widespread illegality and corruption in the LAPD.

In the months since Perez's revelations, the Rampart scandal has dominated the headlines in Los Angeles. On March 1, 2000, the Police Department's own Board of Inquiry released a report on the Rampart scandal. In May, the United States Department of Justice announced that it was prepared to sue the City of Los Angeles for having a pattern and practice of police abuses. In September 2000, the Justice Department and the City's negotiators announced a proposal for a consent decree to reform the LAPD, which the City Council subsequently approved. Meanwhile, both the District Attorney's office and the Justice Department are conducting criminal investigations of officers. In October, the District Attorney's office began the prosecution of four officers alleged to have engaged in illegal activities as part of the Rampart scandal; the jury found three of the four guilty. Although the judge overturned the convictions, the judge's decision is on appeal. As of this writing (November 2000), it is expected that the Police Commission, the civilian management commission of the LAPD, will release its own detailed report on the Rampart scandal. All this is only some of what has occurred over the year since the scandal became public knowledge.

Much of the debate in the months after Perez's revelations became public understandably focused on corruption in the LAPD. Indeed, the sole focus of the Board of Inquiry, the Justice Department, and the District Attorney has been problems within the LAPD. But to focus solely on the police would be to overlook the fact that prosecutors sought hundreds of convictions based on false evidence, defense lawyers failed to realize or to convince judges or juries that the evidence was false, and judges tried and sentenced a staggering number of people for crimes they did not commit. How could so many participants in the criminal justice system have failed either to recognize or to instigate any meaningful scrutiny of such appalling and repeated perversions of justice?

Informal conversations among the Loyola Law School faculty on exactly that question were the genesis of this Symposium. We deemed it essential to examine the responsibility of the entire criminal justice system for the miscarriages of justice associated with Rampart and to consider what might be done to ensure that it never

happens again. We felt a particular responsibility for two reasons to provide a forum for such an inquiry. First, our law school is located in the Rampart Division. Our neighbors were both the likely victims of the police abuse and the likely victims of the crime wave that was thought to justify such police tactics in the first place. It is a working-class, immigrant community without much power or influence in the political process. We felt it imperative to invite the leaders of the justice system to our neighborhood to speak to the very people who were so multiply victimized by the system's failures. Second, we felt a particular obligation to ensure that no aspect of the Los Angeles criminal justice system, including the lawyers and judges, escaped scrutiny. A law school, with its concern for all aspects of the justice system, is the obvious place for such an examination.

The two reasons for having the Symposium shaped the two days of the event. The first day was intended to be a public forum at which many of the officials responsible for the administration of criminal justice in Los Angeles could speak, listen to one another, field questions from moderators, and respond to questions from the audience. Panelists on the first day included the chief of the Los Angeles Police Department, the chair of the LAPD's civilian Police Commission, the Inspector General of the LAPD, the president of the police officers' union, the law professor who authored an independent report (published in this issue) evaluating the LAPD's inquiry into the scandal, the supervising judge of the Los Angeles County criminal courts, the United States Attorney for the Central District of California, the L.A. County Public Defender, representatives of both the Los Angeles district attorney and the Los Angeles city attorney, two members of the Los Angeles City Council, and many judges, journalists, lawyers, and community activists. The first day was a public forum in the best sense. The speakers addressed this very difficult and painful topic to a standing-room-only audience.

The second day of the forum reflected the second goal of the conference: a rigorous and fair examination, by legal scholars, of the Los Angeles criminal justice system. Most of the papers published in these pages were from the second day of the Symposium. We invited professors from every fully-accredited Los Angeles law school to participate. They joined a number of Loyola faculty and two

nationally-recognized experts in the field of criminal justice in examining the scandal from a diversity of perspectives.

The characteristic of the live Symposium of which we are perhaps most proud is that the academic speakers focused on practical, as well as theoretical, issues, and the political actors were substantive and policy-oriented, as well as pragmatic and political. As we hoped, the live Symposium provided an occasion for these two often quite different groups to communicate directly. In recognizing the discursive differences between the public forum and the academic symposium, we did not want to draw a line between them. Indeed, two of the papers that are published in these pages were not written primarily for an academic audience. Professor Chemerinsky's report was written at the invitation of the Los Angeles Police Protective League, the police officers' labor union. It is an analysis of the LAPD's Board of Inquiry Report, which was the result of the LAPD's internal investigation into the Rampart scandal. It was intended for, and received, wide public dissemination, including the news media, political leaders, the LAPD leadership, and responsible officials in the all branches of criminal justice and city governance. Professor Pillsbury's contribution is the text of the luncheon address he gave to the panelists and audience on the first day of the Rampart Symposium. He brought to the attention of the legal practitioners assembled there some of the concerns to be voiced by the legal scholars on the next day, in particular, the ethical obligations of judges and prosecutors.

All the contributors to the Symposium were invited with a goal to obtain the widest possible diversity of views. We aimed for methodological and ideological diversity, as well as a diversity in the identities and backgrounds of our participants. Professor Bandes' expertise on Chicago police abuses reminds us once again of the crucial fact that the outrageous corruption of the LAPD is not unique. She traces the pattern of police abuse, a pattern that police (and others) often, as Professor Chemerinsky's report indicates, refuse to see or attempt to anecdotalize. In maintaining, in the teeth of the facts, that the Rampart scandal can be attributed to a few bad, or "unprofessional" cops, the police (and, therefore, the public) lose the opportunity for system reform that is so badly needed.

Professor Benson's expertise in the field of international human rights informs his call for a reform of the LAPD's culture marked by machismo and militarism. Centerpieces of the reform advocated by Professor Benson are hiring more female officers and abandoning the War on Drugs. Sociologists since the 1960s have studied how police behavior and the culture of police departments can support or undermine respect for constitutional and procedural norms about the rights of criminal suspects and the rule of law in law enforcement. Since the Christopher Commission following the disturbances of the early 1990s, the consensus criticism of Los Angeles policing has been that the LAPD has done too little to instill a culture of cooperation and community service. Professor Chemerinsky's report documents the nature and consequences of this failure. Similarly, Professor Gale's expertise in the field of civil rights and gender studies forms the basis for her examination how a male-dominated LAPD culture has been resistant to norms of community service and peaceful law enforcement.

Professors Beres and Griffith in their jointly-authored work focus on the demonization of youth in general and young, minority males in particular as "super-predators." They contrast the actual decrease in juvenile crime rates with the myth of ever-increasing rates for such crimes perpetuated by Proposition 21 and the largely indiscriminate lumping together of all minority youths in police gang databases. Professors Beres and Griffith argue that this demonization comes at a critical cost, since it fosters police abuse, reinforces racism, and prevents the adoption of cost-effective nonpunitive methods of reducing crime.

Other papers focus more directly on the responsibility of lawyers and judges. Professor Chase reveals how a system in which illegally obtained evidence is merely excluded, and where even police officer perjury does not lead to personal accountability, effectively places police officers above the law. Professor Goldman uses the police abuse documented in the Rampart scandal to illustrate why an innocent person might find it prudent to run upon the arrival of the police, especially in crime-ridden neighborhoods. This observation undermines recent Supreme Court jurisprudence, according to which flight in a high crime area justifies a stop and frisk. Professor Levenson challenges the often-articulated assertion—one in fact made by

one of the judges at the Symposium—that the judge, as a neutral arbiter in an adversarial system, cannot and should not attempt to evaluate the reliability of evidence. She argues instead that judges have an obligation to critically examine police credibility and actively ensure true, factual basis for guilty pleas. Professor Williams, by contrast, focuses on the prosecutors. He argues that prosecutors should direct some of the zeal and judgment they customarily display in obtaining convictions to the less glamorous but equally essential task of assessing whether the evidence in fact reliably gives rise to probable cause and whether prosecution of the suspect is thus warranted.

Professors Chang and Leonard were among the presenters focusing on the complex racial, class, and gender dynamics of the Rampart scandal, its causes, and the public's reaction to it. Historically, and indeed until the civil disturbances in the early 1990s, there was a tendency to look at the racial dynamics of the Los Angeles criminal justice system in terms of Black and White, or maybe Brown and White. But Los Angeles has never been a city in which the only racial dynamic was people of color versus Whites. Large Asian American and Latino communities, each of which include diverse sub-communities, have always lived in and around Los Angeles. During most of its history, the power structure in the LAPD and, needless to say, the bench, bar, and political leadership, were primarily White, and to a greater or lesser extent, remain so. In the Rampart scandal, however, many of the officers involved and virtually all the victims of police abuse are not White or Anglo. The victims of the crime that was thought to justify excessive police brutality are often not White, either. Against this backdrop, Professor Chang explains the Rampart scandal as part of a by-no-means novel strategy to exclude, contain, or expel ethnic minorities. His analysis situates Rampart in a rich historical context, reaching back to the Sleepy Lagoon trial and the zoot suit riots in the 1940s and even earlier events. Professor Leonard uses the O.J. Simpson and Rodney King trials as springboards for a discussion of the different realities—including Rampart—experienced by different segments of the population. He emphasizes the intersection of race with economic status and argues that only if both of these factors are taken into consideration can the Rampart scandal be fully understood.

For those living in Los Angeles, the Rampart scandal shows the need for extensive reforms in the criminal justice system. All of us—those who train lawyers, those who practice law, those who judge, those who make the laws, and those who patrol the streets—share the responsibility to ensure that the system convicts only the guilty and acquits the innocent. The failure of the system is the failure of us all; the reform of the system will be to the credit of us all. Our hope is that this Symposium and these papers will help in that long-term effort. Moreover, Los Angeles is not alone in facing serious allegations of police abuse and corruption. We hope, too, that this issue of the *Loyola of Los Angeles Law Review*, and its excellent collection of articles, might be helpful to those dealing with similar issues across the country.

