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ON CORRUPTION AND POSSIBILITY IN L.A.

*Samuel H. Pillsbury**

I'd like you to imagine the opening of a movie. A cop pulls up to the curb and gets out of the car. It's sunset, that magic time between day and night, when the light is full of possibility. The cop could be big or small, of any race or ethnicity, a man or a woman. As the camera moves for a close-up, we see in the clear eyes and carved lines of this officer's face, someone who's experienced too much of the world's evil ways, someone ready to pack it in for private life. But we know, even if he or she does not, that one last case will call this officer back to the fight for good and right. It is a movie after all.

In this picture that we've seen a hundred times in its many Hollywood iterations, we know a nightmare lurks. There are bad guys waiting, scheming: powerful, dangerous bad guys. And we know that of all these really bad guys, the most dangerous and the most powerful are those who stay hidden, who appear to fight for good, not evil. Which makes the cop gone bad, the badge-holder in league with drug dealers, who preys on the weak and frames the innocent, one of Hollywood's favorite plot lines.

In L.A., the world center of movie-making, the Rampart scandal has been just this nightmare come to life. But this being real life, the most important dramas in the scandal seem to happen off-screen, in closed meeting rooms. This being real life, a happy ending is far from assured.

But I want to talk to you today about another kind of corruption. Not the deliberate abuses of power that make headlines, the stories of police as gangsters, but a subtler kind of corruption that this scandal has revealed. A kind that is more pervasive and for that reason, I think, more serious. It's a corruption of the law-abiding, a debility of the good guys. I call it corruption of the spirit.

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Return for a moment to our movie. What is it that makes our hero the hero? Our hero may be the best-looking and have the best lines. If the film proceeds as expected our hero soon proves that he—or she—is the best shot, the most courageous, and the only one who can take down the bad guys. This being L.A., we insiders know that the actor is the only one with the star power to open the picture for that critical first weekend at the box office all across the country.

But all of this will count for nothing unless we, the audience, are convinced that this police officer believes in justice. A cliché perhaps, but vital nonetheless. Our hero need not care about procedure—movie heroes rarely go by the book. He or she may not even follow the law—in movie-land legality is no prerequisite for glory. But the protagonist *must* be committed to justice.

That's why the officer pursues the case after being taken off it, even after being suspended from the force, even after the bad guys threaten his or her family. Because the officer knows that doing justice, that punishing the guilty, and only the guilty, really matters.

The not-so-rhetorical question I pose to you today is whether the real life actors of our criminal justice system also believe in, and are committed to, justice. And if they are not, or not as committed as we would like, then we need to ask why. Are they such lowly specimens of humankind that they are immune to the appeal of one of the great principles of civilization? Or can their shortcomings be traced to the system that they serve?

For myself, I see in the Rampart scandal, particularly in the plea bargains whereby men framed by dirty cops were convicted and sent to prison, evidence of a system whose justice spirit has been corrupted.

I see a criminal justice system where many dare not believe in the larger ideals of justice because believing is professionally dangerous. I see a system where veterans devote themselves to process, to in-fighting, and to interstitial adjustments in the great bureaucratic machine. I see a system where going through the motions is all that can be expected because that is all that is recognized or rewarded. In fact, doing more is suspect, because doing more may make others in the job look bad. I see a system corrupt in the way that it slowly but surely kills ideals.

When we lose our dreams it tends to happen slowly. It's like aging, not something you notice from one day to the next. You can deny it, make deals with it, until that day finally comes when the reality is too stark to ignore. That's where we are today with the Rampart scandal.

Tell me if any of the following sounds familiar.

The police officer who responds to the call fills out the report politely. The officer asks all the right questions, but it is clear that neither the officer nor anyone else in the department will do any follow-up. And without follow-up, it's all a waste of time, an exercise in "cover your ass," not crime fighting.

A detective, anxious to clear a case, badgers a witness into an identification of the detective's prime suspect. The suspect's a bad guy and probably did it and the witness just needs some prodding, the detective figures. If there's a real problem, some lawyer down the road can sort it out. They gotta be good for something.

In filing a case, a prosecutor focuses on criminal records, enhancements, and conviction rates, and not on what he or she believes a defendant actually deserves, or whether the case is what the police reports represent it to be. Worrying about all that stuff will drive you crazy.

A defense attorney practices law by disposing of cases, a lawyer whose best advocacy is devoted to persuading clients to take a deal. And most of the time, let's face it, the legal deck is so stacked against the defense today that deals *are* the best thing for the client. And the defendant can always refuse if he or she really wants. The attorney always makes that clear. It's not the lawyer's job to decide if the accused really did it.

A judge concerned above all with managing a case load efficiently attends closely to the formalities of criminal procedure because that is what the law requires, and becomes impatient, even angry, at anyone who suggests that a judge might have some obligation to go beyond process. That's what they teach in law school, isn't it: that justice is just the product of good procedure?

And in the background, the folks who make this all not just possible but nearly inevitable, the public: fearful, angry, and simplistic. People who know what criminals look like—meaning, not like them. People who have no patience with the procedural arguments of real

criminals, but who demand full due process for any family, friends, or colleagues who face even the suspicion of a criminal charge. A public sometimes willing to pay for prisons, but grudging with resources for police, and downright stingy when it comes to crime prevention.

If you recognize any of this, if you don't immediately reject it as the bad fiction of an ivory tower academic, then perhaps you also will consider the Rampart cases as a warning, a kind of reality check.

If you recognize this picture maybe you'll also agree that the world's most expensive and procedurally complex criminal justice system does not provide justice for all, and that its failure to do so—in this city at least—is systemic rather than the product of aberrant, malicious individuals.¹ Because notice that the people described here are not, in the common phrase, bad people. They do not act with malice toward others. They just think small. And a lot of small thinking about crime adds up to big problems.

We need to stop believing our own propaganda about having built the most rights-protective, sophisticated criminal justice system in the world and look at the reality. The reality is that in L.A. today we need more security and more fairness, and we're not going to get either the way we're presently going.

That hard-bitten cop who stars in our movie, the one with the clear cold eyes and the sure aim—that cop is a dreamer. It may be hidden behind the casual cursing and dark humor of police work, but it's there. This is not someone who can just go through the motions, not when that leaves justice undone. And yes it's just a movie, and no the real world's not so simple, but still we have to believe in justice, just as our movie hero does.

We have to believe in simple things, like a right to a trial, which means giving every defendant an honest chance to test the state's

1. See Erwin Chemerinsky, *An Independent Analysis of the Los Angeles Police Department's Board of Inquiry Report on the Rampart Scandal*, 34 LOY. L.A. L. REV. 545, 553, 557-59 (2001); cf. BD. OF INQUIRY, L.A. POLICE DEP'T, RAMPART AREA CORRUPTION INCIDENT: PUBLIC REPORT 331 (2000) (“[I]t 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.” However, the Board also concluded: “We as an agency, must learn from what they did and establish systems to prevent and detect similar patterns and activities should they occur in the future.”)

case.² It doesn't mean telling misdemeanor defendants: Sure you can have a trial, but we're real busy right now so you'll have to wait a while in jail. And yeah, maybe you will do more time waiting for trial than you'd ever get if you're convicted, but we're doing the best we can with the resources available.

Nor does it mean threatening felony defendants with a hugely greater sentence for a conviction following a trial than for a conviction by guilty plea. Since when did you have to gamble with big chunks of your life to assert a constitutional right?

Believing in justice means believing in basic law enforcement, which includes prevention as well as punishment. How about, for example, providing money for enough probation officers so that this most popular of all penal sanctions might actually work the way it's supposed to. With adequate personnel, we could make probation a real force for rehabilitation, while providing an early warning system for serious criminality.

But believing by itself won't be enough. There's at least one other critical ingredient to meaningful change: listening. We need to listen to the opposition.

There's no point even thinking about reform if we just continue the same old family argument about crime we've had for the last generation. If we persist in confusing finger pointing with discussion, if our debates consist, essentially, of calling police and prosecutors fascists, or conversely, dismissing liberals as traitorous fools, then we might just as well have stayed in bed, as the saying goes. A real discussion requires something quite different, something quite hard. It requires listening to those with whom we disagree.

For those of you who work every day in criminal justice, a question: Do you have on your phone list the name of someone in the enemy camp who you can call to talk candidly about what's going on? What I mean here is the equivalent of a conservative Republican who knows a liberal Democrat he or she can talk to honestly when things get really strange. I'm talking not just about after-work bull sessions between police officers and DAs, though those can be important, but straight talk between prosecutors and defense

2. See U.S. CONST. amend. VI; *Duncan v. Louisiana*, 391 U.S. 145 (1968) (holding that a jury trial in criminal cases is fundamental to the American scheme of justice).

attorneys, even police and the defense bar. I ask because these kinds of contacts are critical to serious dialog.

We also have to listen to critics within our own organizations: within the police department; within the DA's office; within the judiciary. Such critics can enrage with their apparent betrayal of an embattled "us," but we have to find ways to listen to them without defensiveness and without rancor, because when it comes to struggling for justice it is not us versus them, it's only us.

You know that L.A. could be a great city. We all know that, don't we? We're on the verge. All the ingredients of people, money, tradition, and drive are here. But it hasn't happened yet, and it may never happen. Many days it seems we could as easily go back as forward, defeated by our innumerable divisions, that this incredible collection of peoples will congeal into one great traffic jam, a historic monument to selfish non-cooperation.

You should know, if you don't already, that the challenges of diversity and community here, of security and justice, are the same as those facing cities and nations around the world. In the post-Cold War era, crime is the single biggest threat there is to democracy on the planet.³ It may be most obvious in places like Russia and South Africa, Mexico, Brazil and Columbia, but underneath, it's the same story here in L.A., New York, Detroit, and New Orleans. Because if we cannot bring crime rates down to a reasonable level through democratic measures, we will always be vulnerable to the argument that democratic measures are too weak for the task, that rights are for the foolish.

Travel out of the United States, and you hear the argument, sometimes express, more often implicit: Yes, you Americans have a

3. See Scott P. Boylan, *Organized Crime and Corruption in Russia: Implications for U.S. and International Law*, 19 FORDHAM INT'L L.J. 1999, 2002 (1996); Dee Decker, *Niece of Kennedy Begins Police Corps*, CHATTANOOGA FREE PRESS, Sept. 2, 1997, at A2 (quoting Maryland Lieutenant Governor Kathleen Kennedy Townsend: "I think crime, and fear of crime and violence, is the biggest threat to our democracy."); Rachel Graves et al., *Politicians Take Issue with Rivals*, POST AND COURIER, Feb. 9, 2000, at B1 (quoting address given by Arizona Senator John McCain at the Criminal Justice Academy in Columbia, S.C.: "The biggest threat in our hemisphere is no longer communist dictators, but drug lords trafficking in death, civil disorder and the destruction of democracy . . ."); Peter Hermann, *On Patrol for Police Corps; Recruiting: A New York Lawyer's Relentless Drive to Build a Better Police Force is About to Pay Off in Baltimore*, BALT. SUN, Nov. 21, 1996, at 1A.

wonderful country—so free, so rich. But at least here my children can play in the neighborhood without the fear of being shot. Not in the U.S. And what can we say to that? Actually, it's not a question of what we say in response. It's a question of what we do.

Just across the street here, you may have seen it as you came in, is a large dusty field standing at the corner of Olympic and Albany. On this location once stood the neighborhood's biggest store and several apartment buildings. They were burned in the '92 Rodney King riots. The store, La Curacao, has relocated down Olympic, more successful than ever, but the space here is vacant, except for occasional use as a staging area for construction supplies, or the site of a travelling amusement park.

For me that field is a kind of memorial to injustice and its consequences, to a time when mistreatment of people, structural neglect, a fractured police department, rage, and greed pushed the city out of control. I remember coming back to this building and walking up stairs covered with ash, wondering what kind of place this really was, wondering what comes next.

Another L.A. landmark you can see from here is the Staples Center. It's a place about which I have mixed feelings. It's a monument to money and its exclusions, but also to renewal and achievement. It was the site of the Democratic National Convention and the epicenter for our most recent test of democracy and public order. It's also the home of our world champion Los Angeles Lakers.

Which brings me to something apparently far removed from our present concerns here today. Some of you may remember that final game in the Lakers' playoff series against the Portland Trailblazers. I certainly do. I was a long way from here at the time. I watched the game via cable in a Spanish language simulcast on a small TV in an apartment in Santiago, Chile where I was on sabbatical—part of our global village.

It had been a great season to be a Lakers fan up to that point, but by the end of the third quarter—I confess—I gave up on Kobe and Shaq and their supporting cast. I turned off the set. The Portland lead was too much to make up that late in a playoff game, especially the way the Lakers were playing defense. It's only because my basketball-loving daughter shamed me into tuning in again that I got a

chance to see how much the team had changed from previous versions. Believing in each other, never giving up, getting lucky, they won a game that almost no one thought they could.

The point of this Lakers moment? That perhaps if we hire Phil Jackson as crime czar we'll live happily ever after? Well, no. But, it does remind us that ability, money, and tradition aren't enough, that we also need leadership, sacrifice, effort, and belief. It reminds us that intangibles can produce some very tangible results. Indeed, the intangibles are critical to those results.

We have a long and proud history in this country of commitment to criminal justice.⁴ We understand the importance of individual rights in a way that many peoples in the world will never get. But it is also true that we have serious problems. A generation of cost-cutting, of divisiveness, of the public promotion of fear and anxiety have taken their toll in fundamental ways. Rampart is just a sign of that.

We can do better. If we are willing to speak our minds and listen when others speak theirs—if we make a serious commitment to justice rather than turf-protection—we can do it.

We tend to be a distractible people, especially when it comes to criminal justice. We lurch from crisis to crisis, drama to drama, when the hard work of building good institutions and practices, in police, in prosecution, in defense, in adjudication, takes years, even decades. And so it may be with Rampart. Perhaps the scandal will produce just another set of quick-fixes to tide us over until the next sensational failure of the system smacks us straight between the eyes. But, if we use the Rampart scandal as our chance to start a long-overdue, long-term rebuilding effort in criminal justice, I won't say that it will have been worthwhile, but we will have done something critical to make this city a better place to live, perhaps even something to make it great.

I figure today is as good a time as any, and here is as good a place as any, to begin.

4. *See, e.g.*, U.S. CONST. amends. IV-VI, VIII; *Miranda v. Arizona*, 384 U.S. 436 (1966); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Mapp v. Ohio*, 367 U.S. 643 (1961); *Powell v. Alabama*, 287 U.S. 45 (1932); *Boyd v. United States*, 116 U.S. 616 (1886).