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Tracing the Pattern of No Pattern: Stories of Police Brutality

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TRACING THE PATTERN OF NO PATTERN: STORIES OF POLICE BRUTALITY

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Remember, gentlemen. The policeman is not there to create disorder. He is there to preserve disorder.[1]

There is a certain delicacy in being an outsider invited to come to a town in the throes of a scandal and to heap additional ignominy on that town for its troubles. And therefore to assure this audience at the outset that I do not intend to lecture from the perch of one from a place where "it's done correctly," I hasten to introduce myself as being from Chicago. Or, to strengthen my bona fides even more, as a New Yorker who has spent many years in Chicago. So that in addition to being a native of the locus of the Louima[2] and Diallou[3]

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* Professor of Law, DePaul University. I would like to thank Catherine Fisk and Samuel Pillsbury for organizing the superb conference on the Rampart scandal at which this paper was first presented.

As this Article was going to print, two additional important developments involving the Rampart scandal occurred. First, a jury rendered guilty verdicts against three of four defendants in the first criminal prosecution of police officers growing out of the scandal. Second, an independent report commissioned by the Los Angeles Police Commission was issued. The report was highly critical of the department, finding deep systematic problems with LAPD culture. For a discussion of these subsequent developments, see Susan Bandes, *To Reform the LAPD, More Civilian Pressure is Necessary*, L.A. TIMES, Nov. 19, 2000, at M6.

1. Mayor Richard M. Daley, Statement During the 1968 Democratic Convention, *quoted in* CONNIE GODDARD & BRUCE HATTON BOYER, THE GREAT CHICAGO TRIVIA AND FACT BOOK 59 (1996).

2. In 1997, during a scuffle outside a nightclub, Abner Louima, a Haitian immigrant living in New York City, was sodomized by police with a plunger, suffering a torn colon and a ruptured bladder, while being subjected to racial epithets. Officer Justin Volpe eventually pled guilty to charges arising from the incident and shortly thereafter, Officer Charles Schwarz was convicted of holding Louima down while Louima was being sodomized. *See* Susan Bandes, *Patterns of Injustice: Police Brutality in the Courts*, 47 BUFF. L. REV. 1275,

scandals, I make my home in the town of which the real Mayor Daley once said: "The policeman is not there to create disorder. The policeman is there to preserve disorder."[4] At that time the statement was dismissed, obviously too hastily, as a malaproprism. Since then we have learned, among many other things, of the existence of a longstanding ring of police officers who routinely tortured suspects on Chicago's South Side, with the implicit or explicit condonation of a host of other individuals and groups. Several of those former suspects are on death row in Illinois today. So we like to think we can compete with Los Angeles in the scandal department.

I have studied in detail Chicago's Area Two Violent Crimes Unit,[5] in which the torture ring flourished for at least thirteen years, both as its own phenomenon and in the broader context of police brutality nationwide. The Rampart scandal shares some salient characteristics with the story of Area Two, and also with the Abner Louima incident. These stories are so shocking, so far beyond the pale, so unlike what we would consider ordinary police misconduct, that they seem unique, or at least highly out of the ordinary. Yet for all their shock value and seeming uniqueness, all these scandals had—to various degrees—depth, breadth, and longevity in their respective departments, and none of them arrived without warning.

These stories raise the crucial question of what we mean by systemic, as opposed to isolated, police wrongdoing. This is a crucial question because it determines the seriousness we accord the problems, the measures we take to solve them, and perhaps most important, our very understanding of the nature of the problems

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1284-86 (1999); Bob Herbert, *Living in Denial*, N.Y. TIMES, Aug. 21, 1997, at A31.

3. In 1998, an unarmed West African immigrant named Amadou Diallo was killed by a hail of forty-one bullets fired by four members of the NYPD's controversial street crimes unit. The four officers were criminally charged, but acquitted at trial. *See* Bandes, *supra* note 2, at 1286; Elisabeth Bullmer & Ginger Thompson, *Thousands Gather Again to Protest Police Shooting*, N.Y. TIMES, Feb. 10, 1999, at A33; Bob Herbert, *At the Heart of the Diallo Case*, N.Y. TIMES, Feb. 28, 2000, at A19.

4. GODDARD & BOYER, *supra* note 1, at 59.

5. During a period of at least thirteen years, a large number of African American men, perhaps as many as sixty, were tortured into confessing by several named officers in the Area Two Violent Crimes Unit on Chicago's South Side. *See* JOHN CONROY, UNSPEAKABLE ACTS, ORDINARY PEOPLE: THE DYNAMICS OF TORTURE 233-41 (2000); Bandes, *supra* note 2, at 1288-89.

themselves. And if we conclude, as I will argue we should, that the Rampart scandal, like Chicago's Area Two scandal and New York's Louima incident, must be understood as part of a much broader systemic dysfunction, that conclusion raises another question: What explains the deeply ingrained resistance to systemic reform?

Before I address that question, let me describe briefly the work I have been doing and how Rampart fits within it. My particular focus is on systemic police brutality and the ways in which its nature is masked; on the ways in which patterns of widespread wrongdoing are anecdotalized. That is, I want to focus on the resiliency of the story of the solitary rotten apple in the otherwise pristine barrel.

> [Overwhelmingly,] the view of police brutality as aberrational (or even justified) shapes the conduct of every institution responsible for dealing with the problem, including police command, review boards, administrative agencies, city, state and federal government, and the courts. This view allows police brutality to flourish in a number of ways, including making it easier to discount individual stories of police brutality, and weakening the case for any kind of systemic reform.[6]

How and why do department-wide, citywide, even nationwide patterns of brutality become transformed into the story of systemic probity and efficiency, occasionally sullied by the aberrant behavior of a few bad cops? There is no question that innumerable hurdles to identifying or addressing systemic problems exist. At every step of the way, information that could help identify patterns of brutality is either not collected, actively turned away, ignored, misinterpreted, covered up, misrepresented, or rendered inaccessible through failure to record, track, organize, or communicate it.

Let us look at the Rampart scandal, which is instructive, and, as I will discuss later, quite representative. The *Los Angeles Times* gives us a helpful timeline which begins the story on March 2, 1998, the date on which "[s]ix pounds of cocaine [was] checked out from property room at LAPD headquarters, ostensibly for use as evidence in a drug trial,"[7] and dates the discovery of the story at

6. Bandes, *supra* note 2, at 1278.

7. *The Rampart Scandal: Genesis of a Scandal*, L.A. TIMES, Apr. 25, 2000, at A18.

mid-September, 1999, when Officer Rafael Perez entered a plea agreement in his trial for stealing that cocaine.[8] Thus, the story begins with the criminal act of a single officer, Officer Perez, and is not flagged until it is authenticated by a police officer—Perez himself.

Other suspicions about Perez that might have helped identify both his own patterns of egregious misconduct and their links to broader patterns were discounted in distressingly familiar ways. To take just one of many possible examples, in 1993, Perez and his former partner David Mack fatally shot a man named Jesse Vicencio.[9] Two witnesses testified that Vicencio was unarmed, but both witnesses were easily marginalized since both knew Vicencio and both had a history of brushes with the law.[10] Two investigations accepted Perez's and Mack's accounts of the circumstances of the shooting.[11] Though the Christopher Commission[12] in 1991, specifically criticized the fact that department investigators' definition of "independent witness" excluded those who knew the alleged victim,[13] it was standard practice in 1993 to discount the statements of such witnesses, and remained so in 1999 when the scandal was "uncovered." The Commission also criticized the "unwritten rule" of automatically giving greater weight to a police officer's statement than to a complainant's,[14] yet that practice also remains standard. When the investigation was reopened in 1999, investigators upheld the propriety of the shooting without even interviewing the witnesses.[15]

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8. *See id.* He was convicted of stealing eight pounds of cocaine. *See id.*

9. *See* Scott Glover & Matt Lait, *Witnesses Say Officer Killed Unarmed Suspect*, L.A. TIMES, Sept. 23, 1999, at A1.

10. *See id.*

11. *See id.*

12. In the aftermath of the beating of Rodney King, the acquittal of the officers involved, and the subsequent riots that swept Los Angeles, an independent commission headed by attorney Warren Christopher was established to conduct a "full and fair examination of the structure and operation of the LAPD." INDEP. COMM'N ON THE L.A. POLICE DEP'T, REPORT OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT app. 1 at 2 (1991) [hereinafter CHRISTOPHER COMMISSION REPORT].

13. *See* HUMAN RIGHTS WATCH, SHIELDED FROM JUSTICE: POLICE BRUTALITY AND ACCOUNTABILITY IN THE UNITED STATES 206 (1998) (citing and discussing the *Christopher Commission Report*).

14. *See id.*

15. *See* Glover & Lait, *supra* note 9.

Questions of credibility are of paramount importance in resolving brutality claims, since most brutality takes place in secret: in interrogation rooms or back alleys.[16] Those who attempt to corroborate allegations of brutality are often dismissed as untrustworthy or self-serving, because they are often friends or relatives of the complainant, or gang members, or people who have had brushes with the law, or uneducated and inarticulate, or, for a variety of other reasons, easy to marginalize.[17] First, such corroboration is discounted, and then, once the credibility dispute is falsely reduced to a swearing contest between officer and complainant, the tie goes to the officer.[18] The officer is assumed to be a disinterested civil servant, whereas the complainant is presumed to have a motive to lie. This set of presumptions is one important means by which information about possible police brutality is suppressed or misinterpreted. An investigation conducted without such presumptions might still vindicate the officer's version, but, as the Rampart scandal makes clear, in many cases it might not.

But the system builds in ways of turning away information well before it reaches the stage of formal investigation. New officers continue to be inadequately screened despite the Christopher Commission's recommendations to improve hiring procedures.[19] The Christopher Commission had also registered concern that, as in the Rodney King case itself, the department was either actively discouraging, failing to record, or inaccurately recording civilian complaints.[20] Even if complaints were taken they were not properly tracked, despite the fact that a pattern of unsustained complaints is a valuable means of flagging problematic patterns.[21] In many cases even sustained complaints of excessive force were not entered into

16. *See* Bandes, *supra* note 2, at 1325.
17. *See id.* at 1290.
18. *See id.*
19. *See* Nicholas Riccardi & Jeffrey L. Rabin, *Report Echoes Christopher Panel's Findings*, L.A. TIMES, Mar. 13, 2000, at A1.
20. *See, e.g.*, LOU CANNON, OFFICIAL NEGLIGENCE: HOW RODNEY KING AND THE RIOTS CHANGED LOS ANGELES AND THE LAPD 142 (1997); HUMAN RIGHTS WATCH, *supra* note 13, at 202; JAMES SKOLNICK & JAMES J. FYFE, ABOVE THE LAW: POLICE AND THE EXCESSIVE USE OF FORCE 3 (1993).
21. *See* HUMAN RIGHTS WATCH, *supra* note 13, at 202; Riccardi & Rabin, *supra* note 19.

officers' personnel records, and thus decisions on assignment and promotion were made without knowledge of them.[22] Even when such findings were entered they made little difference in an officer's career; officers with many complaints were routinely promoted.[23] Moreover, sustained complaints were not tracked either since the LAPD lacked a central database of officers' internal records.[24] The recent Board of Inquiry Report found all of these problems to persist today.[25] Particularly astonishing was the continued failure to implement a computerized tracking system for complaints, in light of the fact that the Justice Department had allocated approximately $162,000 in 1997 to implement this centrally important recommendation of the Christopher Commission.[26] Another source of information that is routinely ignored is the incidence and pattern of settlements and verdicts against officers for excessive force. Despite the fact that the city pays out tens of millions of dollars a year in civil judgments and settlements against police officers, the fact of such settlements is neither recorded in the officers' files nor tracked to discover problem officers.[27]

As we now know, there were in fact a horrifying number of such unjustified shootings involving Perez, his compatriots, and his supervisors, including the shooting and crippling of a handcuffed Javier Ovando, who was then framed and imprisoned for assault.[28] But as I have argued, there were all sorts of accepted and ingrained ways to discount or anecdotalize these shootings so that any pattern was

22. *See* PAUL CHEVIGNY, EDGE OF THE KNIFE: POLICE VIOLENCE IN THE AMERICAS 51 (1995).

23. *See id.*

24. *See* Jim Newton et al., *LAPD Condemned by Its Own Inquiry Into Rampart Scandal*, L.A. TIMES, Mar. 1, 2000, at A1; Riccardi & Rabin, *supra* note 19, at A1.

25. *See* Newton et al., *supra* note 24.

26. *See* Tina Daunt & Jim Newton, *Civil Rights Probe of LAPD Expected to Grow*, L.A. TIMES, Mar. 15, 2000, at A1; Newton et al., *supra* note 24 (referring to tracking system as a "key Christopher Commission reform [which the Riordan administration allowed] to languish despite its public pledges to implement those changes and after years of publicly clamoring for the implementation of the tracking system").

27. *See* HUMAN RIGHTS WATCH, *supra* note 13, at 229-31.

28. *See* Scott Glover & Matt Lait, *2nd LAPD Shooting Targeted as Corruption Probe Widens*, L.A. TIMES, Sept. 17, 1999, at A1.

masked. These include the aforementioned presumption of police credibility, which helped cover a multitude of sins, including a widespread culture of police perjury[29] of a sort that extended far beyond the well-known blue wall of silence. The presumption of credibility helps shield not only active lying on the stand, but planting, manufacturing, and destroying evidence, use of throw-down guns, falsifying charges, and other active means of covering up wrongdoing.[30] Other means of masking patterns include the lack of meaningful supervision of an "elite" police unit that was already physically removed from the gaze of supervisory personnel.[31] Such supervision was not forthcoming from a police command that either turned a blind eye to[32] or participated in wrongdoing,[33] or wanted to know only about "the count" and not about the methods used to achieve it.[34] Nor was it forthcoming from a district attorney's office that was, depending on the source, either too cozy with the police[35] or unable to penetrate the wall of silence.[36] The lack of supervision

29. This is what Perez called "taking it to the box." Scott Glover & Matt Lait, *Police in Secret Group Broke Law Routinely, Transcripts Say*, L.A. TIMES, Feb. 10, 2000, at A1 (defining "taking it to the box" as being willing to lie on the witness stand to protect police wrongdoing); *see also* Matt Lait & Scott Glover, *City Near Critical Choice as 4th Officer Faces Charges: Rampart*, L.A. TIMES, July 9, 2000, at A1 (quoting a complainant who said Rampart Officer Michael Buchanan falsely charged him with drug possession, then taunted him about his chances in front of a jury if he sought to dispute the charge, saying "Who do you think they are going to believe? Are they going to believe you or me?").

30. *See, e.g.*, Glover & Lait, *supra* note 29.

31. *See* Jim Newton, *Ex-Rampart Commander a Focus of Probe, Sources Say*, L.A. TIMES, Sept. 24, 1999, at A1.

32. *See* James Sterngold, *Los Angeles Police Admit a Vast Management Lapse: But Their Report Seeks No Outside Inquiry*, N.Y. TIMES, Mar. 2, 2000, at A14 (discussing startling lack of internal audits).

33. *See* Glover & Lait, *supra* note 29.

34. *See id.*

35. *See* Jim Newton & Ann W. O'Neill, *Captain Under Fire as Rampart Probe Expands*, L.A. TIMES, Sept. 21, 1999, at A1 (noting that some said the district attorneys in the "roll-out" unit would simply accept the Police Department's own investigation); Beth Shuster, *Special Report: Recalling the Rodney King Beating and Riots, the City Attorney's Office Prepares for Fallout from Police Probe*, L.A. TIMES, Sept. 26, 1999, at B1 (quoting attorney Ira Salzman, who represented brutality complainants, saying "city and county prosecutors may have had 'too cozy a relationship'").

36. *See* Nicholas Riccardi & Beth Shuster, *D.A. to Revive Unit That Inves-*

meant that the police themselves had tremendous control over the portrayal of their actions, both in court and in documents.[37] Thus, although Police Chief Bernard Parks claimed that oversight would not have helped since it was dependent on the accuracy of reports generated by the police themselves, it appears that meaningful oversight could have had a substantial effect on the content of the reports themselves.[38]

In short, a large cluster of shootings by a group of police officers concentrated in a single unit is anecdotalized, first, because each individual shooting was classified as justified through a series of presumptions about credibility, lax oversight, and a culture that values results regardless of the means used to achieve them, and, second, because even if a shooting were classified as unjustified, there was no effort to track patterns to identify problem officers, locations, or situations. The pattern was identified only because it was, fortuitously, testified to by a police officer.[39] However, the pattern is anecdotalized in another, perhaps more subtle way when the participants in the Rampart scandal are called "an organized criminal subculture."[40]

In the *Los Angeles Times*, the unpleasantness at Rampart is always referred to the same way, as a corruption "incident,"[41] or a corruption scandal,[42] or some variation of those terms, like "the city's

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tigates Police Shootings, L.A. TIMES, Sept. 29, 1999, at A1 (noting that some claimed "roll-out" system which placed district attorneys at scene of police shootings was ineffective because police kept prosecutors back from the scenes and blocked interviews with officers for days); *see also* Glover & Lait, *supra* note 29 (referring to an account by Perez of methods of insuring that no supervisors—or even an ambulance—would come to the scene of an officer-involved shooting).

37. *See* Glover & Lait, *supra* note 29.

38. *See* Jim Newton, *LAPD Corruption Probe May Be Test for City Leaders*, L.A. TIMES, Sept. 20, 1999, at A1.

39. *See, e.g.*, *Genesis of a Scandal*, *supra* note 7.

40. *Id.*

41. In his superb independent report reviewing the Board of Inquiry Report, Professor Erwin Chemerinsky notes that the use of the term "incident" is itself part of the failure to convey the magnitude of what occurred. *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, 550 (2001).

42. *See, e.g.*, Scott Glover & Matt Lait, *4th Officer is Charged in Corruption Scandal*, L.A. TIMES, July 11, 2000, at A1.

worst ever corruption scandal."[43] That the scandal involves corruption is quite obviously true. That it involves serious criminal behavior, including theft, rape, and murder, also seems to be true. But to classify this conduct as corrupt or criminal, while important in terms of recognizing its seriousness and arriving at appropriate punishments, may also cloud its connection to other problematic, though less dramatic, police practices, and to the causes they share. The bottom line question is whether this way of thinking about what happened at Rampart is best calculated to lead to meaningful and enduring systemic reform.

Consider the portrayal of Perez. Detective Brian Tyndall, in trying to explain what he and his fellow investigators felt when prosecuting Perez, said, "[w]e were disappointed that a police officer would cross the line." "But," added Commander Dan Schatz, "after a while, he's just not a police officer anymore."[44] Three months earlier, Mayor Riordan had told the police department's rank and file, "[t]his incident is not about you.... You have the support of the Los Angeles community."[45] Similarly,

> [w]hen Abner Louima was sodomized by [New York City] police with a plunger, suffering a torn colon and a ruptured bladder, while being subjected to racial epithets, Police Commissioner Safir said he did not consider it "an act of police brutality" but rather "a criminal act committed by people who are criminals."[46]

He also opined: "'[a]lthough it's a horrific event, it's a rare event.'"[47] After Officer Justin Volpe's guilty plea to sodomizing Louima and Officer Charles Schwarz's conviction for holding him down, Mayor Giuliani hailed the verdict as evidence that police officers found the conduct reprehensible and perverse.[48]

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43. Matt Lait & Scott Glover, *2 Officers Likely to Face Corruption Charges*, L.A. TIMES, Apr. 13, 2000, at A1.

44. Matt Lait & Scott Glover, *Rampart Case Takes on Momentum of its Own*, L.A. TIMES, Dec. 31, 1999, at A1.

45. Newton & O'Neill, *supra* note 35.

46. Bandes, *supra* note 2, at 1284-85 (citing Bob Herbert, *Living in Denial*, N.Y. TIMES, Aug. 21, 1997, at A31).

47. *Id.* (citing Joseph P. Fried, *U.S. Takes Over the Louima Case; 5th Suspect, a Sergeant, Is Indicted*, N.Y. TIMES, Feb. 27, 1998, at A1).

48. *See* Editorial, *Verdict Shatters Blue Wall*, N.Y DAILY NEWS, June 9,

The problem with these statements is not that they brand felonious acts by police officers, including sodomy, rape, aggravated assault, theft, and murder, as criminal. Indeed, one systemic problem that desperately needs addressing is the widespread refusal of prosecutors, both state and federal, to bring criminal charges against police officers in appropriate cases.[49] The problem, rather, is the creation of a subtle and pernicious double bind that serves to disguise patterns and thwart reform. On the one hand, if behavior has to rise to the criminal level to be addressed departmentally, then the bar is far too high. Of course such a problem is compounded by overly capacious definitions of criminality. For example, Paul Chevigny, considering why both the Sheriff's Department and the LAPD had failed to discipline officers for shootings, recounts the following: The standard of both departments for imposing discipline was that it would be imposed only if the District Attorney found the conduct to be criminal; however, the District Attorney never indicted.[50] Chevigny found that both the D.A. and the police used a similar yardstick: shootings were acceptable if done "in the line of duty and in good faith—that is, for a purpose related to police work and not, for example, to settle a personal score."[51] Although this definition is too broad—it is perfectly possible to commit a criminal act, including murder, while acting in the line of duty[52]—any definition of criminal behavior is bound to exclude substantial amounts of serious police misconduct that need to be addressed.

On the other hand, once police conduct does reach a level that police management or the public are willing to recognize as criminal,

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1999, at 34.

49. *See, e.g.*, HUMAN RIGHTS WATCH, *supra* note 13, at 85-89 (discussing rarity of state criminal charges against L.A. police officers); Paul Hoffman, *The Feds, Lies and Videotape: The Need for an Effective Federal Role in Controlling Police Abuse in Urban America*, 66 S. CAL. L. REV. 1455, 1457 (1993) (discussing the Justice Department's traditional hands-off attitude toward state level police brutality).

50. *See* CHEVIGNY, *supra* note 22, at 50.

51. *Id.* at 51.

52. Chevigny notes that the many shootings by the Los Angeles Special Investigations Unit (SIS), which was castigated for standing by and waiting for suspects to commit violent crimes and then shooting them as they returned to their cars, would not be considered criminal under that definition and that, indeed, none of the officers involved were indicted. *See id.* at 48, 51.

it is recategorized as something other than police work.[53] Now the cop is no longer a cop, but a criminal committing a criminal act, and by definition, a rotten apple who in no way represents or taints the rest of the barrel.[54]

Another way of looking at the problem is that the appellation, "criminal," sometimes seems to be used only as a means of preventing accountability, rather than a means of fostering it. For example, in Chicago, after years of strenuously denying allegations of police torture at Area Two, officials finally acceded to pressure to fire the ringleader, Commander John Burge.[55] Although the torture spanned more than a decade, involved several officers, and was inflicted on approximately sixty men, none of the other officers involved in the torture suffered consequences, and no systemic reforms were even attempted.[56] Instead the city sought to isolate and demonize Burge and to avoid indemnifying him for a civil damage verdict awarded to two of those he tortured, claiming he "acted outside the scope of [his] employment," when he "cruelly torture[d]" arrestees.[57] One would hope that torturing suspects is outside the scope of employment, although note that given the fact that it occurred as part of interrogation sessions, it would meet the "line of duty" definition discussed above.[58] The Chicago Police Department remains, to this day, apparently unconcerned about systemic torture at Area Two, except that it does not want to pay damages for its effects. Branding John Burge's conduct "savage torture" and "an exceedingly marked and unusual deviation" only confirms the fiction that it is the rogue behavior of a single rotten apple.[59] In short, if it looks criminal, it is not police work. If it is police work, it is not criminal. And if it is not criminal, it need not be addressed at all.

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53. *See supra* note 44 and accompanying text.

54. *See supra* note 44 and accompanying text.

55. *See* Bandes, *supra* note 2, at 1289; John Conroy, *The Shocking Truth*, READER, Jan. 10, 1997, at 30.

56. *See* Bandes, *supra* note 2, at 1277-78; Conroy, *supra* note 55, at 30-31.

57. CONROY, *supra* note 5, at 233-34. Had the city prevailed in this argument, as Conroy pointed out, the result would have been to erect a major hurdle to civil suits for police misconduct.

58. *See supra* notes 49-50 and accompanying text.

59. CONROY, *supra* note 5, at 34 (quoting the assistant corporation counsel characterizing the acts of John Burge after judgment was entered against him and the city sought to avoid indemnifying him).

Arguably, a similar sort of reasoning helps explain the Diallo verdict exonerating four officers for killing the unarmed Amadou Diallo on his doorstep in a hail of forty-one bullets.[60] There was substantial controversy, particularly in the wake of the not-guilty verdicts, over whether criminal charges were an appropriate way to address the Diallo matter, and substantial debate over what went wrong during the trial.[61] But a far more important question has been overshadowed in the debate over the criminal charges. If we agree that something went very wrong during the police confrontation with Diallo, even if that something was not criminal and was not corrupt, what was it, and how can it be fixed?[62]

As Paul Chevigny explained in his brilliant study of police violence in the Americas, when criminality and corruption are viewed as entirely separate from police brutality, important connections are obscured in two ways.[63] First, corruption and brutality share many of the same root causes.[64] Second, corruption leads to brutality, and to the failures of accountability that allow brutality to thrive.[65]

Corruption of the sort engaged in by Perez and his compatriots unquestionably brought them profit—money and drugs—and other personal benefits, such as a flexible and largely unsupervised work place.[66] But in this situation, like the very similar situation denounced by the Mollen Commission in New York, it would be a mistake to think profit was the sole motive. Here are the highly relevant words of the 1994 Mollen Commission Report:

> Corrupt officers usually raided drug locations for profit, but sometimes also to show who was in control of the crime-ridden streets of their precincts; sometimes to feel the power and thrill of their badges and uniforms; sometimes

60. *See, e.g.*, Herbert, *supra* note 3.

61. *See, e.g.*, Jeffrey Abramson, *The Story the Jury Never Heard*, N.Y. TIMES, Feb. 26, 2000, at A31; Ginger Thompson & C.J. Chivers, *Diallo Case Yields More Nuanced View of Police*, N.Y. TIMES, Mar. 5, 2000, at A1; Jeffrey Toobin, *The Unasked Question*, NEW YORKER, Mar. 6, 2000, at 38.

62. *See* Richard D. Emery, *The Verdict: Poor Training and Supervision*, N.Y. TIMES, Feb. 26, 2000, at A15; Herbert, *supra* note 3.

63. *See* CHEVIGNY, *supra* note 22, at 78-80.

64. *See id.* at 78-79.

65. *See id.* at 78-80.

66. *See* Glover & Lait, *supra* note 29.

> because they believed that vigilante justice was the only way to teach a lesson or punish those who might otherwise go unpunished.[67]

These words ring far too true when we consider the testimony of Perez and others involved with Rampart. They describe a unit that committed acts of intimidation, including beatings and shootings, as a means of exerting control.[68] Officers would use fear and intimidation tactics to assert their domination on the street,[69] and in the stationhouse they would beat and shoot suspects "for sport."[70] There is a common thread that connects this kind of physical violence with the police torture used against Abner Louima and the suspects in Area Two. It is a kind of vigilante justice, and sometimes a form of summary punishment, which is seen as acceptable because the forces of law are inflicting it upon the forces of criminality. It is an outgrowth of assumptions embedded in police culture, but particularly in certain types of police culture. The Christopher Commission discussed the "siege mentality" and the "us-them" attitude that pervade police cultures, like that of the LAPD, that reward aggressive, hard-nosed behavior and large numbers of arrests.[71] The Chemerinsky report gives ample evidence that this aggressive, control-centered mentality, which dates back to Chief William Parker, still flourishes in the LAPD.[72] Significantly, Perez's testimony established that this was exactly the mentality, and the reward system, which pervaded Rampart CRASH.[73] Perez told investigators that the Rampart method of doing business "produced big results for Rampart

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67. CHEVIGNY, *supra* note 22, at 78 (quoting REPORT OF THE COMMISSION TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE ANTI-CORRUPTION PROCEDURES OF THE POLICE DEPARTMENT (1994) [hereinafter MOLLEN COMMISSION REPORT]).

68. *See* Matt Lait et al., *Chief Says Probe Is Likely to Snare More Officers*, L.A. TIMES, Sept. 22, 1999, at A1.

69. *See id.*

70. *See* Glover & Lait, *supra* note 29.

71. *See* SKOLNICK & FYFE, *supra* note 20, at 106.

72. *See* Chemerinsky, *supra* note 41, at 563-64.

73. Such a mentality is closely associated with "elite" police units like CRASH, or like New York's Street Crimes Unit, whose officers committed the Diallo shooting and whose slogan was "[W]e own the night." *See* Jane Fritsch, *Squads That Tripped Up Walking the Bad Walk*, N.Y. TIMES, Mar. 5, 2000, at A6.

CRASH. Officers brought suspects in by the carload . . . ."[74] In short, this course of conduct was not just about monetary rewards for a few officers, but about producing the results the unit was encouraged to produce.

The CRASH unit was described as mimicking gang behavior.[75] Yet it is likely that its officers saw themselves, not as being interchangeable with the gang members whose territory they policed, but as firmly on the correct side of the thin blue line, doing what had to be done to maintain order.[76] In the words of Paul Chevigny:

> Both corruption and brutality can be used for social control, as part of the police endeavor, found everywhere, to enforce order directly, without intervention by other parts of the criminal justice system or the government generally. The police who were caught by the [Mollen] [C]ommission were creating a renegade system of justice in which it was their function to control crime by taking its profits and administering punishment.[77]

Corruption and brutality reinforce each other in a number of complex ways. If it were just a matter of a group of renegade street-level cops taking the law into their own hands, how could it be permitted to go on for so long? Why was supervision so lax? Why was information that could have highlighted patterns of wrongdoing so resolutely ignored or misinterpreted? In particular, why were many of the Christopher Commission's recommended reforms, meant to address just these problems, not implemented? Note the testimony of Perez about why supervisors failed to more carefully scrutinize the arrest reports: "All they cared about was that at the end of the month . . . how much total narcotics was brought in, how much money and how many bodies. . . . That was the only concern."[78]

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74. Glover & Lait, *supra* note 29.

75. *See* Lait et al., *supra* note 68.

76. *See* Chemerinsky, *supra* note 41, at 564 ("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.").

77. CHEVIGNY, *supra* note 22, at 79.

78. Glover & Lait, *supra* note 29.

Supervisors may not want to root out corruption and therefore, they may not want to know about it. Of course, it is possible that they do not want to root out corruption because they are reaping some of the profits, and there is some evidence that this occurred with the CRASH unit.[79] But the causes go much deeper. The Mollen Commission discussed the willful blindness of a department that feared a corruption scandal more than the corruption itself.[80] Supervisors all the way up the chain of command want to maintain a good image of the department, and they want to keep their jobs. Furthermore, they are usually produced by the same police culture that produced those they supervise—and they are likely to share its values. That culture may well accept the infliction of a certain amount of excessive force on those who are "known" to be criminals, as well as a certain amount of perjury to protect both the police themselves and their maintenance of order.[81] The blue wall of silence, though, does not protect just "a little" excessive force. In rewarding both loyalty and silence, it protects corruption, and it implicates all those who perjure themselves in corruption as well.[82] Thus, everyone has something to lose when corruption is uncovered.

Now Los Angeles has a corruption scandal of epic proportions. If the fear of exposing corruption is in part a fear of the destabilization and chaos that will ensue,[83] the scandal provides the opportunity to come face-to-face with our worst fears, and see how bad destabilization really is. But when the maintenance of stability is dependent on perjury, corruption, and brutality, we should welcome this period of instability as a time for a systematic overhaul. At the same time, it

79. *See id.*

80. *See* CHEVIGNY, *supra* note 22, at 81 (citing the *Mollen Commission Report*); Bandes, *supra* note 2, at 1286.

81. *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. 233, 252-55 (1998); Stanley Z. Fisher, *"Just the Facts, Ma'am": Lying and the Omission of Exculpatory Evidence in Police Reports*, 28 NEW ENG. L. REV. 1, 12 (1993) (calling police deception part of the culture, not aberrational).

82. *See, e.g.*, CHEVIGNY, *supra* note 22, at 80 (citing *Mollen Commission Report*). See also the testimony of Perez that any supervisor "in the loop" would perjure himself because "he's been right there with us. He's done it all before." Glover & Lait, *supra* note 29.

83. *See* Bandes, *supra* note 2, at 1320-27.

is important to acknowledge a harder truth: the police are not the only ones who have a stake in the preservation of order and in the means used to achieve it. Although there are many aspects of police culture that are hermetic and dangerously cut off from the people the police are meant to serve, no police culture could thrive, ultimately, without the acquiescence of the more powerful portions of the citizenry. Just as supervisors are focused on the count and do not really want to know how it was achieved, so too the citizenry may be willing to turn a blind eye to perjury and to assume that officers are truthful and upstanding enough, so long as its neighborhoods are kept safe and brutality occurs outside its range of vision. Particularly in segregated cities like Chicago and Los Angeles, we need to examine carefully the implicit pact that nonminority affluent citizens have made with the police and to make it clear that lawless and brutal policing of any neighborhood is morally unacceptable.