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# CHANGING POLICE CULTURE: THE SINE QUA NON OF REFORM

*Robert W. Benson\**

## I. INTRODUCTION: THE PROBLEM IS POLICE CULTURE

My background is not in American criminal justice but in international human rights law. I asked to contribute to this Symposium because—until a few days ago with the release of the Chemerinsky report<sup>1</sup>—in all the calls for reform of the Los Angeles Police Department I had not heard a clear call for cultural reform—the one reform that the human rights movement teaches us is fundamental if any others are to succeed. Human rights advocates working on situations generically similar to those of the LAPD in Latin America, Asia, Africa, or Europe would not limit themselves to stepped-up prosecutions, monitoring, procedural change, and other technical mechanisms. They would also see the task as one of changing police culture. They would work to change it through countervailing pressure groups that champion different cultural norms and through imposing new basic police policies. Significant academic research supports this focus on cultural norms to influence behavior.<sup>2</sup> Without reform of police culture, we could end up with merely a Potemkin Village of legal reforms in which everything stays the same behind the scenes.

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\* Professor of Law, Loyola Law School. This Article was prepared for delivery at the Rampart Scandal Symposium at Loyola Law School, Los Angeles on September 14 and 15, 2000.

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 (2001). The report makes some of the same points made here.

2. See Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 *STAN. L. REV.* 777, 803 n.88 (2000).

The full job of analyzing police culture in Los Angeles would require a good deal more time and space than is allotted to me here. It would start with the history of policing in the United States and end with the particular history of the LAPD. For today, I will just jump ahead of the story to identify four current sources of cultural values within the LAPD that seem to be driving many of the human rights abuses and illegal acts that have erupted in the Rampart scandal, in the department's behavior during the recent Democratic National Convention, and in other incidents. Those sources are as follows: (1) machismo; (2) militarism; (3) racism; and (4) the code of silence.

I will discuss only the first two. The third, racism, is an oft-told story. Both the McCone Commission, reporting after the 1965 Los Angeles riots, and the Christopher Commission, reporting in 1991 after the Rodney King incident, officially urged the kind of cultural change within the LAPD that I am urging here, primarily through recruitment of more minority officers. We can say that, while some steps have been taken in the right direction, the goal of ridding the LAPD of a culture of racism continues tragically to elude us. The fourth source, the code of silence, is discussed in the new Chemerinsky report.<sup>3</sup>

## II. MACHISMO

Machismo, or what some have called hypermasculinity,<sup>4</sup> is the value system that celebrates male physical strength, aggression, violence, competition, and dominance. It denigrates the lack of these qualities as weak, female behavior. Professor Angela Harris notes in a recent article in the *Stanford Law Review* that “[p]olice work has traditionally been coded hypermasculine” by the general culture.<sup>5</sup> “The experience of street policing,” she writes,

is deeply steeped in a masculine culture of brotherhood that rests on the division between “us” and “them.” Although “us” is supposed to refer to honest citizens and “them” to

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3. See Chemerinsky, *supra* note 1 at 573-75.

4. See Harris, *supra* note 2, at 794-99.

5. *Id.* at 793.

lawbreakers, often "us" becomes simply a mirror image of "them": our guys against their guys.

....

... And, like the gangs they are dedicated to eradicating, law enforcement officers share a commitment to masculine ideals, moving within a culture of honor in which respect must be paid or violence will follow.

....

... The hypermasculinity of policing leads to a culture in which violence is always just below the surface.<sup>6</sup>

The practical results of this police machismo are that male officers get themselves involved in hostile confrontations with the public, use of excessive force, shootings, drug dealing, and apparently, as we see now in the Rampart scandal, framing of suspects through deceit and lies. The silver lining in this cloud is that female officers are rarely involved in such misconduct, precisely because they rarely share the value system of machismo.

In 1991 testimony to the Christopher Commission, Katherine Spillar, national coordinator of the Feminist Majority Foundation, analyzed academic research on the differences between men and women in policing.<sup>7</sup> Spillar noted that the research shows that female police officers are as effective in dangerous situations, but are

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6. *Id.* at 794-96.

7. See Katherine Spillar, Testimony Before the Independent Commission on the Los Angeles Police Department (May 13, 1991), in WOMEN'S ADVISORY COUNCIL TO THE L.A. POLICE COMM'N, A BLUEPRINT FOR IMPLEMENTING GENDER EQUITY IN THE LOS ANGELES POLICE DEPARTMENT app. G (1993). Spillar refers primarily to CLAREMONT GRADUATE SCH., THE IMPACT OF *FANCHON BLAKE V. CITY OF LOS ANGELES* (1990); PATRICIA W. LUNNENBORG, WOMEN POLICE OFFICERS—CURRENT CAREER PROFILES (1989); Joseph Balkin, *Why Policemen Don't Like Policewomen*, 16 J. POLICE SCI. & ADMIN. 29 (1988); Sean A. Grennan, *Findings on the Role of Officer Gender in Violent Encounters with Citizens*, 15 J. POLICE SCI. & ADMIN. 78 (1987); Robert J. Homant & Daniel B. Kennedy, *Police Perceptions of Spouse Abuse: A Comparison of Male and Female Officers*, 13 J. CRIM. JUST. 29 (1985); Daniel Saunders & Patricia Size, *Attitudes About Woman Abuse Among Police Officers, Victims and Victim Advocates*, 1 J. INTERPERSONAL VIOLENCE 25 (1986); Lewis J. Sherman, *A Psychological View of Women in Policing*, 1 J. POLICE SCI. & ADMIN. 383 (1973); Carol Ann Martin, *Women Police and Stress*, POLICE CHIEF, Mar. 1983, at 107.

less authoritarian, less aggressive, involved in fewer shootings, receive fewer complaints, more effective at diffusing potentially violent situations, and have better communication skills than male officers.<sup>8</sup>

The Christopher Commission's report found that Spillar's points held true in Los Angeles:

Virtually every indicator examined by the Commission establishes that female LAPD officers are involved in excessive use of force at rates substantially below those of male officers. There were no female officers among the 120 officers with the most use of force reports. Female officers accounted for 3.4% of the officers involved in or at the scene of incidents underlying the 83 most serious lawsuits against the LAPD resolved from 1986 through 1990.

A study also was conducted by the Commission of the top 10% of the LAPD officers ranked by the combined use of force reports, personnel complaints and officer-involved shootings. There were no female officers among the top 132 officers. Only 3.7% (30) of the 808 LAPD officers with the highest number of incidents were women officers.

The statistics indicate that female officers are not reluctant to use force, but they are not nearly as likely to be involved in the use of excessive force. The statistics are borne out by the weight of academic and anecdotal evidence gathered by the Commission. With some exceptions, female officers interviewed believed they were more communicative, more skillful at deescalating potentially violent situations and less confrontational. A suspect's defiance and disrespect of an officer often gives rise to use of force by an officer. Many officers, both male and female, believe female officers are less personally challenged by defiant suspects and feel less need to deal with defiance with immediate force or confrontational language.<sup>9</sup>

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8. See Spillar, *supra* note 7.

9. INDEP. COMM'N ON THE L.A. POLICE DEP'T, REPORT OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT 83-84 (1991).

We may extend the Christopher Commission's findings by looking at the news reports of officers accused in the Rampart scandal: So far as I can discover, while some 18.5% of LAPD officers are currently women,<sup>10</sup> only one woman's name appears to be among the approximately seventy officers currently implicated in the Rampart scandal.

The week of this Symposium, the Feminist Majority Foundation and National Center for Women & Policing took these findings into a new dimension by putting dollar figures on the civil suits against the City caused by male and female LAPD officers' misconduct. In a detailed analysis of the eighty judgments or settlements between 1990 and 1999 exceeding \$100,000 that involved excessive force, sexual assault, or domestic violence by police, the Foundation and the Center calculated that payouts on cases involving male officers exceeded payouts on cases involving female officers by a ratio of twenty-three to one, although the overall ratio of male to female police officers and sergeants serving on patrol was only four to one. The numbers of male officers involved in or at the scene of an excessive force incident exceeded the numbers of female officers by a ratio of more than nine to one. Of the total \$66.3 million paid during these years, male officers accounted for \$63.4 million, or 95.8% of it. The portion of this due to sexual assault, sexual abuse, molestation, and domestic violence was \$10.4 million, all attributable to male officers.<sup>11</sup>

Instead of acting upon the extensive evidence of differences between men and women police—and recruiting and promoting more women—police departments nationwide are bastions of what Spillar describes as “open sex discrimination and sexual harassment” and negative attitudes toward female officers.<sup>12</sup>

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10. See NAT'L CTR. FOR WOMEN & POLICING: PERCENTAGE OF WOMEN ON THE LAPD: 1995-2000 (2000) (on file with Penny Harrington, Director, National Center For Women & Policing).

11. See FEMINIST MAJORITY FOUND. & NAT'L CTR. FOR WOMEN & POLICING, GENDER DIFFERENCES IN THE COST OF POLICE BRUTALITY AND MISCONDUCT: A CONTENT ANALYSIS OF LAPD CIVIL LIABILITY CASES: 1990-1999 (2000), available at <http://www.feminist.org/police/ExcessiveForce.html>.

12. See Spillar, *supra* note 7, at 16-17.

The Christopher Commission found this was so in the LAPD, citing egregious examples.<sup>13</sup> Later, evidence about detective Mark Fuhrman during the O.J. Simpson trial revealed a secret society within the LAPD called "Men Against Women" designed to discourage women officers.<sup>14</sup> Then, research found that a large percentage of male police officers commit acts of domestic violence in their own homes.<sup>15</sup> In Los Angeles, the Board of Police Commissioners' Inspector General found that job performance evaluations failed even to mention the issue in seventy-five percent of the cases where domestic violence charges had been sustained against officers.<sup>16</sup> Is it any wonder, then, that informant and former officer Rafael Perez told investigators in the Rampart Scandal that female officers generally could not be trusted enough to "be in the loop" of illegality? To be in the loop, officers had to be what Perez called "stand up guys."<sup>17</sup>

As day follows night, it follows that we need fewer "stand up guys" in the LAPD and many more women. This will ultimately dissolve the culture of machismo. How is this to be achieved? The LAPD has consistently missed its target under the Blake Consent Decree from the 1980s to increase hiring of women to twenty percent of each entering class, though it has made slow progress. The department has also failed to meet the directives of the Los Angeles City Council to implement the Christopher Commission reforms by gender-balancing each entering class up to the number of women in the general work force, which today is about fifty percent. The Department is subverting the recruitment effort primarily by relying on inappropriate standards of physical strength, which have not been shown to be related to police effectiveness or success in dangerous situations.<sup>18</sup> The three nongovernmental interest groups in Los

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13. See INDEP. COMM'N ON THE L.A. POLICE DEP'T, *supra* note 9, at 84-88.

14. See Jim Newton & Henry Weinstein, *Simpson Lawyers Attack Key Detective's Credibility*, L.A. TIMES, July 19, 1994, at A1.

15. See NAT'L CTR. FOR WOMEN & POLICING, EQUALITY DENIED: THE STATUS OF WOMEN IN POLICING: 1999, at 5 (2000).

16. See Memorandum from the Feminist Majority Foundation et al., to the Members of the Los Angeles City Council et al. 3 (May 18, 2000) (on file with author).

17. Scott Glover & Matt Lait, *Police in Secret Group Broke Law Routinely, Transcripts Say*, L.A. TIMES, Feb. 10, 2000, at A1.

18. See NAT'L CTR. FOR WOMEN & POLICING, HIRING AND RETAINING

Angeles pressuring LAPD on this issue—the Feminist Majority Foundation, the National Center for Women & Policing, and the California Women’s Law Center—urge that the consent decree now being negotiated between the City and the U.S. Justice Department over Rampart include mandatory gender balance among new recruits and prohibition of inappropriate physical fitness tests. It is difficult to disagree with their conclusion that “gender balancing the department is the single most significant reform that could be implemented in the consent decree.”<sup>19</sup>

### III. MILITARISM

Police departments have always been organized as military-style hierarchies, but in recent decades they have gone beyond organization to mimic military tactics in the streets. This means, among other things, a maximum use of force even in minor situations, use of heavy, sophisticated gear and equipment, a threatening and hostile demeanor toward the public, and a siege mentality in which the police dehumanize the citizens into enemies in a war which must be won at all costs. It is no coincidence that this militarization started after the black urban uprisings in the 1960s. A year after the 1965 Watts Riots, the LAPD invented the nation’s first SWAT team. The national War on Crime followed and then the War on Drugs. In 1981, Congress broke the traditional separation of military and civilian law enforcement established by the 1878 Posse Comitatus Act when it adopted a drug exception in the Military Cooperation with Law Enforcement Officials Act. In 1987, Congress established an agency with an 800 number to encourage police departments to apply for military hardware, and in 1994 the Departments of Defense and Justice signed a memorandum of understanding that enables the military to transfer wartime technology to local police.<sup>20</sup> The LAPD

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#### WOMEN: A SELF-ASSESSMENT GUIDE FOR LAW ENFORCEMENT.

19. Memorandum from the Feminist Majority Foundation et al., *supra* note 16, at 4. The authors of that memorandum also recommend that the consent decree establish oversight of investigations of officers accused of domestic violence and categorize complaints of domestic violence as “at risk conduct” triggering a “problem officer” tracking system. *See id.*

20. *See* Diana Cecilia Weber, *We Have Met the Enemy: Militarization of the Police Endangers Our Liberty and Safety*, LEGAL TIMES, Oct. 18, 1999, at 90.



received 73 grenade launchers, 112 armored personnel carriers, and 600 M-16 rifles.<sup>21</sup>

Thus, law enforcement in Los Angeles came to look a little like Vietnam, a little like Fujimori's Peru. Even before the Rampart Scandal, many outrageous incidents of military-style action were well documented in print by expert police-abuse attorneys such as Paul Hoffman, Carol Watson, and others.<sup>22</sup> Bringing the picture up to the moment, one need only ask civil liberties attorney Carol Sobel or Professor Karl Manheim of Loyola Law School to describe the serious injuries they and others sustained at the hands of the LAPD in August of this year as they stood as legal observers of an unprovoked military-style sweep of citizens a few blocks from the Loyola Law School campus during the Democratic National Convention.

The antidote to the military model of policing is said to be the "community policing" model. The Christopher Commission specifically recommended that community policing replace the aggressive style of the LAPD. The recommendation was implemented by the City Council, the Police Commission, and the last police chief. Now, Chief Bernard Parks is accused of dismantling it.<sup>23</sup> In the words of political science Professor Steve Erie of the University of California at San Diego, "Los Angeles tried community policing but then went back to the invading army approach."<sup>24</sup>

Important as it may be to take community policing seriously, other policy changes will also be needed to reverse the culture of militarism. Acquisition of military equipment should be questioned, and recruitment of officers at military bases should be halted. Most important of all, the entire criminal justice system in Los Angeles

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21. *See id.*

22. *See, e.g.,* Carol Watson, Testimony Before the Los Angeles Citizens' Commission on U.S. Drug Policy, in INST. FOR POLICY STUDIES, THE WAR ON DRUGS: ADDICTED TO FAILURE: RECOMMENDATIONS OF THE LOS ANGELES CITIZENS' COMMISSION ON U.S. DRUG POLICY 39 (Robert W. Benson et al. eds., 2000); 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 (1993).

23. *See* Annette Kondo, *LAPD Community Advisors Angered by Changes to Boards*, L.A. TIMES, June 12, 2000, at B3.

24. Tony Perry, *Less-Traveled Path Leads to Success for San Diego Police*, L.A. TIMES, Aug. 14, 2000, at A3.

should declare that it is dropping out of the federal government's War on Drugs. The drug war is an irrational fiasco that needs to be replaced with drug treatment and education programs.<sup>25</sup> Among the many devastating costs of the drug war is the further militarization and the corruption of police on a wide scale. Former San Jose and Kansas City Police Chief Joseph McNamara, now a fellow at the Hoover Institution, talks of these effects with brutal frankness:

Quite often in drug war corruption, the police were the gangsters—on duty committing armed robberies, at times murder, stealing drugs, selling drugs, framing people, and committing predatory crimes. Now, this was not an aberration limited to one city. This was something that occurred all across America . . . .

. . . .

I have researched this for six years, and I'm sorry to say that I have documented thousands of instances where police officers have done this kind of thing. . . .

. . . .

. . . [Even] the otherwise honest cops that would never commit a robbery or steal anything often feel perfectly justified in conducting unconstitutional searches and perjuring their testimony to get the evidence into court.

. . . .

. . . The reason this goes on is because the police officers have been told by their superiors, the elected officials, that they're in a holy war, and that this is good against evil. The cops that got caught said, "What else could we do? We had to have a kind of street justice. The end justifies the means."

. . . .

So we have created a kind of culture within American police departments with the war on drugs that has produced not only gangster cops in thousands of cases across

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25. See generally Watson, *supra* note 22, at 41-42 (discussing the "corrupting . . . zeal underlying the paramilitary approach to the social and medical issue of drugs").

America, but we have also corrupted the rank and file cops. They have forgotten what their mission is. They are not soldiers in a war, they're peace officers with a fundamental duty to protect human life.<sup>26</sup>

#### IV. CONCLUSION

How, then, can the LAPD's culture of machismo and militarism be transformed? It will be vital to keep up all the usual pressures: civil suits for damages, oversight by the U.S. Justice Department, political accountability to the City Council, procedural and structural reforms within the department, and audits and mechanisms for individual accountability, not only within the LAPD but also in the prosecutors' offices and in the courts. But I would not expect these alone to accomplish the goal. If I were looking for the points of maximum leverage to change the system over the long term, I would look to the pressure groups that champion different cultural values, those that advocate specifically for women in the police department, community policing, and an end to the drug war. The extent to which groups like these are able to garner public and political support in the general culture will determine whether police culture will change and stay changed. Their struggle will not be easy or unopposed—recall that after the militaristic performance of the LAPD at August's Democratic National Convention, the Mayor, the police commission, the major newspaper, and the downtown merchants association all congratulated the cops, in effect, for shooting rubber bullets at hundreds of innocent citizens and wrongfully arresting many others.

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26. Joseph McNamara, Testimony to the Los Angeles Citizens' Commission on U.S. Drug Policy, in *INST. FOR POLICY STUDIES*, *supra* note 22, at 32-35.