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III. POLICE MISCONDUCT

INTRODUCTION*

Police misconduct has been historically and continues to be relevant to minority and working class communities. Police officers, as an arm of the dominant society, in a minority community have been the object of intense debate and extensive writing. The Latino experience in Los Angeles has been scattered with clashes between members of the community and police officers. Such clashes include the Zoot Suit Riots of the 1940s, the East L.A. High School Blowouts in the 1960s, and the Chicano Moratorium in August 1970. Each of these incidents resulted in claims of police misconduct.

Police misconduct continues to be a problem of nationwide concern, ranging from the shooting of Neville Johnson, Jr. in Florida to the death of Ron Settles in the Los Angeles suburb of Signal Hill. Recent community outrage in Los Angeles over several deaths attributed to the use of the "chokehold" by police officers has led to a temporary moratorium on its use. Last fall the U.S. Supreme Court heard argument by chokehold opponents who sought a permanent ban on its use in Los Angeles. *Lyons v. Los Angeles*, 615 F.2d 1243 (9th Cir. 1982), *cert. granted*, 449 U.S. 934 (1982). Los Angeles police have also been sued for surveillance and infiltration of political and community groups. Charges of police spying and police infiltration of political groups, including La Raza Unida Party in the early 1970s raise serious issues regarding privacy, political freedom, and autonomy for groups and individuals engaged in the exercise of their constitutional rights. This controversy recently culminated in extensive investigation of police spying by the LAPD Public Disorder Intelligence Division (PDID) (also known as the Red Squad). In January 1980 the Los Angeles Police Commission (LAPC) ordered PDID to be dismantled after the disclosure that PDID secretly maintained citizen files which had previously been ordered destroyed by LAPC.

The following panel offers dialogue between members of the legal profession involved with police misconduct cases. They represent diverse interests, including those of alleged police misconduct victims and those representing individual officers faced with

* Valerie Valle, UCLA Law Student

charges of misconduct or abuse. The panel focuses on how charges of misconduct are handled. It also examines the tensions between community concerns of abusive police power and police representatives' concern for their ability to adequately carry out their function. The effectiveness of internal police investigations of specific charges of police misconduct or abuse is questioned. Finally, the possible need for an independent external review board to safeguard the integrity of investigatory proceedings is discussed.

MODERATOR:¹

Law enforcement relations has long been a topic of importance to the Latino community.² This panel will discuss the issue of alleged police misconduct against citizens. Each panel member represents a constituency that would most likely come together in the event that an officer were suspected of physically abusing a civilian. The members of the panel are Samuel Paz,³ Stephen Yslas,⁴ Gilbert Garcetti,⁵ and Robert Loew.⁶

The following hypothetical situation is presented to each panelist who is in turn asked to respond as he would if he were representing his respective constituency. Here is the situation:

X is an individual and alleges that a police officer has applied, with unusual force, what is known in the community as the "choke hold."⁷ The individual now wants to file a complaint.

1. Professor Reginald Alleyne, UCLA School of Law, B.S., Tufts University, 1954, J.D., Howard University, 1959, LL.M., Columbia University, 1969.

2. See HOWARD H. EARLE, *POLICE-COMMUNITY RELATIONS* (1977) (a study of the importance of police-community relations to reduce tensions between citizens and the police); C. MCWILLIAMS, *NORTH FROM MEXICO* (1949) (a survey of Spanish-speaking people from the United States); A. MORALES, *ANDO SANGRANDO (I AM BLEEDING)* (1972) (a study of Mexican American-police conflict).

3. B.A., UCLA, 1971, J.D., University of Southern California, School of Law, 1974; Partner, Romero, Paz, Rodriguez and Sanora; Faculty, People's College of Law; Vice-Chairperson, Los Angeles Police Commission Hispanic Advisory Council; President, American Civil Liberties Union of Southern California; Past-Chairperson, ACLU Police Practices Committee; Member, La Raza Legal Alliance; Member, Mexican-American Bar Association.

4. B.A., UCLA, 1969, J.D., UCLA, 1972; President, Los Angeles Police Commission; Division Counsel, Northrop Corporation; President, Chicano Commissioner's Caucus; Lawyer's Advisory Group, Coro Foundation; Advisory Board, El Centro Legal de Santa Monica.

5. B.A., University of Southern California, 1963, J.D., University of California, Los Angeles, 1967; Head Deputy District Attorney, Special Investigations Division, Los Angeles County District Attorney's Office.

6. B.A., California State University, Los Angeles, 1971, J.D., Southwestern School of Law, 1975; Partner, Loew and Marr; City Attorney's Office, 1973-76, Employee Relations Division (dealing with police misconduct).

7. The "choke hold" refers to a type of physical restraint involving a bar hold, by either arm or baton, placed across and applying pressure to the carotid artery.

Los Angeles Police Department officers must act in accordance with the following directive issued by Chief of Police, Daryl F. Gates.

How does he go about it? Who does he see? What will happen next? How will the police officer react? How will the police department react? Finally, how will that all important question of what really happened be resolved?

A. *Panel Responses*

1. Samuel Paz:

a. *Self-help Discovery*

We have been asked to address an area that I believe has been adequately covered in two volumes produced by the ACLU.⁸ The first and most important thing to remember is that you must immediately initiate what is called self-help discovery. To do this you need some very simple items: a camera and a tape recorder. In addition, visit the scene with the victim and get a detailed account of exactly what the victim says happened to him.

While at the scene, interview the people who are available, such as neighbors and any other possible witnesses that you can find. This is probably the turning point in most cases of police misconduct. An immediate investigation has the effect of solidifying exactly what happened at that time and place. Distances,

SUBJECT: MORATORIUM ON THE USE OF UPPER BODY CONTROL HOLDS

This Memorandum restates the policy established by the Board of Police Commissioners on May 12, 1982, which was implemented and teletyped to all Department personnel on that date.

POLICY STATEMENT:

"That there be a moratorium on the use of the carotid, modified carotid, and the locked carotid hold in any situation other than one in which the use of deadly force is authorized. That the moratorium commence immediately, and it be for a period of six months, and that during the moratorium the Department shall use and assess the effectiveness of the use of alternative control techniques, such as the TASER, Chemical Shield, capture nets, and the Monadnock baton, in controlling combative suspects. And that the Department report to the Commission every two months its findings."

Department personnel shall not use the carotid, the modified carotid nor the locked carotid holds, including the carotid as utilized in conjunction with the SWARM technique, except under such circumstances as specifically delineated in the Police Commission directive.

This prohibition precludes all uses of the bar arm control hold technique as previously directed on May 7, 1982, by the Chief of Police. The balance of approved use of force techniques remain available to Department personnel and are unaffected by this directive.

Commanding Officers shall continue to initiate appropriate measures to ensure that each concerned sworn and civilian employee is apprised of the provisions of this directive.

LAPD Memorandum No. 6 (June 18, 1982).

8. H. MANES, *TRIAL ASPECTS OF POLICE MISCONDUCT LITIGATION*, (May 30, 1981) (ACLU Handbook); *POLICE MISCONDUCT LITIGATION BEFORE TRIAL*, (Oct. 25, 1980) (ACLU Handbook).

lighting, all these things are very important and in many cases can make or break a case.

An attorney should have a good understanding of what is in the government codes with respect to civil suits against public entities,⁹ such as statutes of limitation,¹⁰ the 100 day complaint,¹¹ the citizen's complaint,¹² and whether to file the suit in federal or state court. Furthermore, you have to get medical reports of the victim. Familiarity with medical terminology would certainly be an asset. You have to understand that the common perception that a dead man tells no stories is not true. The truth is, a body through pathological examination, will tell a significant story.

What is the counsel's role in terms of filing a citizen's complaint? California Penal Code Section 832.5 requires every law enforcement agency in the state to have a complaint procedure for the taking of citizens' complaints.¹³ What you can do depends on the circumstances of where the person is at. If the alleged victim is in the hospital, then often it is helpful to have an eyewitness or a family member make the complaint. It does not have to be the victim. Even if the victim has been accused of assaulting a police officer, you can have an eyewitness make the complaint so that any statements taken cannot be used against that person.

The timing of the complaint is very important.¹⁴ Many people will immediately run to the police station to make the complaint, two hours after the arrest. The police officer has not written his report as of that time, and also many times people tend to be very hot-headed at that point in time. I would advise waiting awhile, calming down, seeking the advice of a friend and waiting at least two to three days before lodging the complaint.

If the accused is the only eyewitness to the event and there is a possibility of a criminal prosecution, I would advise preparing a detailed statement that sets forth a concise, brief, factual version of what happened. Do not allow the client to go to the police station and be tape recorded and asked a number of questions that do not relate exactly to what the complaint is about. Preserve evidence of physical abuse. Take photographs. Immediately send

9. See CAL. GOV'T CODE §§ 810-996.6 (West 1980).

10. CAL. GOV'T CODE § 911.2 (West 1980) (claims to be filed "no later than the 100th day after accrual of the cause of action.") *But cf.* Williams v. Horvath, 16 Cal. 3d 834, 129 Cal. Rptr. 453 (1976) (where plaintiffs filed an action based exclusively on the federal Civil Rights Act, 42 U.S.C. § 1983, against city police officers alleging that the defendants had deprived plaintiffs of their civil rights as guaranteed under the U.S. Constitution through assault and battery without just cause, imprisonment without reasonable cause or warrant, "and by willfully threatening to shoot and injure plaintiff[s].").

11. *Id.*

12. CAL. PENAL CODE § 832.5 (West Supp. 1982).

13. *Id.*

14. See, e.g., *supra* note 10.

that person to a doctor or arrange to have a doctor examine him/her. Any emergency hospital is sufficient to take care of that. It does not have to be any special doctor.

What is the counsel's role in making the complaint to the district attorney's office? If you have done your own self-help discovery,¹⁵ then it is very helpful to provide that information to the district attorney's office. I find that the district attorney's office does a very thorough investigation of the facts of most allegations of serious misconduct.¹⁶

b. *Citizens Complaints*

Citizen complaints have a beneficial effect in the administration of justice and the elimination of or at least the reduction of police abuse. The concept is very simple. The idea is to expose those officers who abuse their authority. It is similar to medical malpractice. You have bad apples. In police misconduct cases, it appears that there is a high incidence of repeaters.¹⁷ However, many policemen are in fact very dedicated public servants who really believe that they want to do justice, much as many progressive political people do. I find that although our perspective on how to do it is different, our intent and principle is much the same. Unfortunately, in all walks of life, we have people who are not principled and who do not uphold their oath and their allegiance to their jobs as they should.

The citizen complaint has become the trademark of the bad cop; it is a red flag. It shows that this person has a problem in dealing with the community. An indication of how effective the citizen complaint has been in terms of identifying problem officers is legislation being proposed by police officer associations, SB 1025¹⁸ and SB 63.¹⁹ SB 1025 would eliminate the absolute privilege,²⁰ by allowing an officer to file a libel action against any per-

15. See *supra* p. 65.

16. See Appendix B.

17. Coalition Against Police Abuse, Survey of Police Shootings in Los Angeles County from 1971 to 1976 (unpublished report).

18. SB 1025, as amended, California State Senate (1982).

19. SB 63, as amended, California State Senate (1982).

20. Absolute privilege is an exemption from liability for the speaking or publication of defamatory words concerning another, as in the case of a statement made in the filing of a police complaint; here, such a complaint takes on a judicial or quasi-judicial nature. It protects the complainant without reference to motive or the truth or falsity of the statement. This is distinguished from "conditional privilege" which protects the complainant unless actual malice and knowledge of the falsity of the statement is shown. This may be claimed where the communication related to a matter of public interest, or where it was necessary to protect one's private interest and was made to a person having an interest in the same matter. See *Sarayan v. Burkett*, 57 Cal. 2d 706, 21 Cal. Rptr. 557, 371 P.2d 293 (1962); See generally CAL. CIV. CODE § 47 (West 1982) (stating that in filing of complaints such as those referred to here

son who files a false complaint against him. All the officer has to do is allege malice in his complaint and the person is involved in civil litigation. Many people would be afraid to file a citizen complaint if this bill is passed. SB 63 also would make it a crime to "knowingly" make a false citizen's complaint. Obviously the word "knowingly" is the key. Both bills arise out of situations where the California Supreme Court has spoken on this type of legislation²¹ or the application of this type of legislation and, in my opinion, ruled on the basis of the chilling effect on First Amendment Rights, including the right to petition the government for redress of grievances.

The citizen complaints are also useful in this respect: if an officer has a number of citizen complaints against him, it obviously becomes very important in negligence cases against a city to show that it had notice of the dangerous propensity of this officer and that it should have removed or retrained him, or supervised him, or placed him in some area where he would not become a problem. It is also very valuable in the discovery phase of a criminal defense case. It allows the defense counsel to discover whether or not this police officer has a propensity for violence. An argument can then be made that the officer was the one who started the fight and not the citizen. We know that the argument has been successfully utilized since the *Pitchess* case.²² The number of actions filed against citizens for assaults on police officers has been dramatically reduced, so we know that there has been a positive effect.²³

there is no absolute privilege "unless such pleading be verified or affidavit sworn to, and be made without malice . . .").

21. Case law has extended section 47, subdivision 2, to complaints of police misconduct lodged with a police department. *See, e.g.,* *Imig v. Ferrar*, 70 Cal. App. 3d 48, 54-57, 138 Cal. Rptr. 540, 542-544 (1977). *Cf. Pena v. Municipal Court*, 96 Cal. App. 3d 77, 157 Cal. Rptr. 584 (1979) (where the court held that the legislature did not intend a citizen's complaints to a law enforcement entity to be a report of a criminal offense and indicated that the legislature's desire was that complaints be encouraged). *See also* *Albertson v. Raboff*, 46 Cal. 2d 375, 295 P.2d 405 (1956) (where the California Supreme Court made it plain that section 47, subdivision 2 does not prevent all suits for malicious prosecution).

22. *Pitchess v. Superior Court*, 11 Cal. 3d 531, 113 Cal. Rptr. 897 (1974). In the prosecution of a civilian, defendant for battery against deputy sheriffs, the court held that the defendant demonstrated sufficient good cause to warrant discovery of Los Angeles County Sheriff's Department investigative records. The records contained accusations that the deputies allegedly attacked by the defendant had *themselves* used excessive force on previous occasions. The defendant intended to assert that he acted in self-defense in response to the use of excessive force by the deputy sheriffs.

23. In 1974 there were 1,253 attacks on Los Angeles Police Department officers reported. In 1981 the number was 917. *Attacks on Police Officers (1982)* (unpublished report available at the Los Angeles Police Department Headquarters Reference Library).

c. *Evaluating the District Attorney's Office*

With regard to evaluating the Los Angeles County District Attorney's role, it has been very reluctant to prosecute police officers.²⁴ Although the office does a very thorough evaluation of the facts, I believe there are two separate standards for evaluation of whether or not to prosecute a police officer as opposed to the standard that is used to prosecute a citizen. All presumptions are drawn in favor of the officer, therefore the law is not applied fairly in the evaluation of the facts to the law. We have a situation where very few prosecutions actually go to trial.²⁵ The district attorney has taken the role of the jury away from the people and is in fact becoming the fact finder in many situations.

I have talked to many deputy district attorneys regarding criminal cases. If you say to them, "There are contradictions in your case," they say, "that's your problem." They add, "You can cross-examine the officers, develop the contradictions, but we're going to roll the dice." That is the standard many district attorneys use for prosecution. What we have here is a situation where only if there is an important citizen or a police officer involved does the district attorney say, "We won't prosecute unless it is beyond a reasonable doubt and to a moral certainty." In closing, keep in mind that the plaintiff's role is a difficult one if you choose the road of trying to represent a person who is injured by police misconduct. It has to be done in a very vigorous, consistent and dedicated manner. Success is earned by hard work. The truth will never be given to you, you have to seek it.

MODERATOR:

Next, is Stephen Yslas, the Vice-President²⁶ of the Los Angeles Police Commission. Before he begins, however, I want to pose a couple of concerns I want him to address. Do we indeed have an *impartial* mechanism for resolving allegations of police misconduct? By "impartial," I mean not only impartial in fact, but impartial from the perspective of public appearance. In short, is it not really the case that the police are given the responsibility for investigating the police? If we look at the district attorney's office and the traditional relationship between the district attorney and

24. Of the 355 police shootings investigated between 1979 and 1981, only one resulted in prosecution. L.A. Times, Oct. 6, 1981, § 2, at 1, col. 2.

25. See, e.g., *id.* where a 1981 study prepared by the Washington, D.C.-based Police Foundation, found that the Los Angeles Police Department suffered allegations of hampering investigations and not cooperating fully with the District Attorney's special fact-finding division (Operation Rollout, see *infra* note 31) in cases of officer-involved shootings. These allegations were denied by Los Angeles Police Chief Daryl Gates.

26. Mr. Yslas is now serving as President of the Commission.

the police department, including the reliance by district attorneys for evidence from police officers in criminal cases, should not the public look upon the district attorney and the police department as all one big ball of wax? Thus, when we have an internal investigation of police misconduct by the police and an investigation of alleged police misconduct by the district attorney's office, are we not in fact allowing the police to investigate the police?

2. Stephen Yslas:

a. *Civilian Participation*

The civilian control exercised by the L.A. Police Commission with respect to its supervision of the Department and its supervision of internal affairs and investigations, and in particular, the Commission's role in allegations arising out of either serious injury or shootings injects more integrity into the system. Let me give you an example of what I mean.

In the hypothetical that was posed,²⁷ the citizen complainant had the choke hold applied with unusual force. Let us say that this resulted in a serious injury. In allegations of serious injury involving the Los Angeles Police Department, the Police Commission takes a direct role in the adjudication of those matters. The five member civilian panel in fact makes the policy judgment as to whether or not the officers acted in accordance with the Department's policy.²⁸ The separation of the Department's internal mechanisms, that is, that separation that provides for civilian control over the police department, injects a great measure of integrity into the system. Now, the outcome of the investigation and adjudication is ultimately made public through a Commission report. This is very different from how these measures were han-

27. *See supra* pp. 64-65.

28. An officer is authorized to use deadly force when it reasonably appears necessary:

- * To protect himself or others from an immediate threat of death or serious bodily injury, or
- * To prevent a crime where the suspect's actions place persons in jeopardy of death or serious bodily injury, or
- * To apprehend a fleeing felon for a crime involving serious bodily injury or the use of deadly force where there is a substantial risk that the person whose arrest is sought will cause death or serious bodily injury to others if apprehension is delayed.

Officers shall not use deadly force to protect themselves from assaults which are not likely to have serious results.

Firing at or from moving vehicles is generally prohibited. Experience shows such action is rarely effective and is extremely hazardous to innocent persons.

Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impracticable.

MANUAL OF THE LOS ANGELES POLICE DEPARTMENT, THE USE OF DEADLY FORCE § 1/556.40 (April 1979).

dled as recently as two years ago.²⁹

The procedure for investigating allegations of misconduct that result in serious injury or death grew out of the Eulia Love case.³⁰ A number of reforms were made that injected more civilian control over those kinds of investigations.³¹ Among those in-

29. See generally II THE REPORT OF THE BOARD OF COMMISSIONERS CONCERNING THE SHOOTING OF EULIA LOVE AND THE USE OF DEADLY FORCE (October 1979).

30. See Appendix A.

31. While there has been a variety of proposals relating to independent police review boards, none adequately resolves the complex problems inherent in devising a system which ensures a complete, thorough, and impartial examination of facts, law, and Department policies by a governmental body which (1) is fully familiar with the policies, procedures and operations of a police department, (2) has the capacity to investigate and adjudicate the issues properly, (3) has the authority to implement its decisions effectively by causing necessary changes in Department policy and by overseeing the administration of appropriate discipline, (4) is a non-political entity and functions in a non-political and objective manner, and (5) can gain the necessary confidence and cooperation of the members of the Department and the public. On the other hand, the Commission form of government, mandated by our City Charter, offers a reasonable and practical solution to these problems. That solution is for the Police Commission to assume responsibility for the final determination of officer-involved shooting incidents and death or serious injury cases. We do so willingly and with a recognition of our obligations, as head of the Department, to both the officers and the citizens involved.

We are persuaded by our own experience as citizens and Commissioners and by *The Reports of the President's Commission on Law Enforcement and the Administration of Justice* and the *National Advisory Commission on Civil Disorders and the Causes and Prevention of Violence* that a system of Police Commission Review, if properly designed and implemented, will provide an effective and impartial method of investigating and adjudicating officer-involved shootings and death or serious injury cases, and that the adoption by the Commission of such a system makes an independent police review board neither necessary nor desirable. At the least we believe that a fair test should be afforded the new procedures described in this Report before serious consideration is given to the use of any alternative system.

We should add that while we believe the changes we are instituting are necessary, we also believe that the system utilized in the past has produced fair and proper results in the vast majority of cases. The Los Angeles Police Department has led the nation in its efforts to develop procedures for thorough and objective internal review of officer-involved shooting incidents. Its voluntary actions have served as a model for other law enforcement agencies. The new system we are adopting has been developed with the full cooperation of the Chief of Police and his staff. Many of the concepts contained in this report originated directly from the Chief.

Nevertheless, the checks and balances inherent in Commission review are essential. While we are confident that in most instances it will be unnecessary for the Commission to exercise the full range of authority provided it under the new procedure, the mechanism we are establishing will ensure that in those cases where further action is required such action will be taken in a manner which will best protect the public interest.

The principal new procedures we are adopting in this Section of our Report are as follows:

- (1) The Police Commission will assume direct responsibility for the adjudication of all officer-involved shooting incidents and will make the final determination in all such cases. However, it will do so only after receiving and considering a report from the Chief of Police which will provide a full review of the incident and will contain the Chief's proposed findings and recommendations. (The Chief of Police's authority to impose discipline will remain unchanged.)
- (2) In cases where the Police Commission, after evaluating the report sub-

novations was the instruction to the Department to have officers interviewed separately, to have them taped separately, and to have the reports sent to the Commission for final adjudication. As to allegations concerning misconduct, excepting those resulting in serious injury or death, they are handled through the Department's Internal Affairs Division. The Internal Affairs Division of this Department has a reputation for high integrity.

b. Internal Affairs Division Investigations

I do see weaknesses in the system, however. In those types of investigations, it has been suggested that the Internal Affairs Investigative Division acts as a whitewashing organization. The perception of some members of the public is that Internal Affairs investigations result in detailed examinations that lead to officers being found not guilty of any type of misconduct. Likewise, officers feel that somehow the Internal Affairs Investigation Division probes are some sort of headhunting exercise. Officers feel that they are the subjects of one-sided investigations. Nothing could be worse for the Department or for the public than to have those two conflicting views of the same organization. This

mitted by the Chief of Police, feels that an independent review is required, the Commission will conduct that review and issue the final report.

(3) When the Commission decides that an independent review is necessary, it may (a) employ Special Counsel to assist it in conducting that review or (b) use the services of a former Superior Court judge (to be selected from a panel of such former judges) as a Special Hearing Officer to conduct any further investigation which may be necessary and to submit proposed findings and recommendations to the Commission.

(4) The Commission will, when necessary, exercise its subpoena powers in officer-involved shooting cases so that testimony may be adduced from non-officer witnesses.

(5) The final report in officer-involved shooting cases will set forth and analyze fully all facts, policies and procedures as well as all findings and recommendations, and will be made available to the public.

(6) All interviews with officers will be taped in the same manner as interviews with civilian witnesses. The Department is directed to interview officer and civilian witnesses in a manner that is consistent with proper and accepted methods of investigation.

(7) The composition and function of the Shooting Review Board will be expanded for the purpose of ensuring proper fact-finding and the preparation of full and complete reports that will include all relevant investigative data. The report will serve as a basis for policy changes and improved training methods. The Board will be renamed the Use of Force Review Board.

(8) All cases involving death or serious injury to a person in custody of the Department, or resulting from contact with police officers, will be adjudicated in the same manner as officer-involved shooting incidents.

(9) The Commission will employ permanent independent staff as well as such additional professional personnel as may, from time to time, be required. This independent staff will assist the Commission in the performance of its responsibility to assure that a full, fair, and impartial investigation has been conducted in every case.

II THE REPORT OF THE BOARD OF COMMISSIONERS CONCERNING THE SHOOTING OF EULIA LOVE AND THE USE OF DEADLY FORCE 3-7 (October 1979).

emerges from one particular kind of finding that is made by the Internal Affairs Division; the "not sustain" finding. In investigations, there are five classifications of allegations of officer misconduct.³²

The *not sustained* category is one in which no serious credibility judgment was made, that is, the citizen complainant said one thing and the officer said another. There is no corroboration on either side, and therefore it will be found *not sustained*. The public perceives that as not guilty.

Officers perceive that as some sort of albatross that is hung on their record. That category leads to a great deal of apprehension on the part of the public as to whether or not the Department can properly investigate its own allegations of misconduct.

c. *Citizens Complaints*

Let me say something about the complaint system because it is something that Mr. Paz brought up. The complaint system is available to all members of the public who make allegations of police misconduct. That complaint system may be utilized by any member of the public by going to the Commission, to the Internal Affairs Division, or to the division of the Department where the officer alleged to have engaged in the misconduct is assigned.³³ Access to that system and the integrity of that system is critical to the continued functioning of the Department. To the extent that the public comprehends that there is not impartiality in that system, it erodes the Department's ability to perform its function. Some time ago the Commission addressed the most serious issue of allegations of police misconduct in the officer involved shooting area and the serious injury area, resulting in the system which I have previously described.³⁴

That system has provided more public confidence. I trust

32. For purposes of disposition, complaints are classified as follows:

- * **Unfounded**—When the investigation indicates the act complained of did not occur.
- * **Exonerated**—When the investigation indicates the act occurred but that the act was justified, lawful, and proper.
- * **Not Sustained**—When the investigation discloses insufficient evidence to prove or disprove clearly the allegations made.
- * **Sustained**—When the investigation discloses that the act complained of did occur and constitutes misconduct.
- * **Misconduct Not Based on the Complaint**—When the investigation discloses misconduct that is not part of the original complaint.

MANUAL OF THE LOS ANGELES POLICE DEPARTMENT, CLASSIFICATION OF COMPLAINTS § 3/820.20 (June 1982).

33. The Los Angeles Police Department is comprised of the following eighteen divisions: Central, Rampart, Southwest, Hollenbeck, Harbor, Hollywood, Wilshire, West L.A., Van Nuys, West Valley, Northeast, 77th Street, Newton, Pacific (formerly Venice), North Hollywood, Foothill, Devonshire, and Southeast.

34. See *supra* note 31.

that with the continuing aggressive role of the Commission in this area we will eventually develop a system that inspires more confidence; a system of investigating internal allegations of police misconduct that is more consistent with the public's expectation of integrity in the Department.

We should mention the two bills pending in the legislature concerning persons who bring allegations of police misconduct that would impose criminal penalties on those who brought false allegations of police misconduct.³⁵ False accusations are wrong and I am sure if they are made under oath they could be considered perjury. They should be punished. Those two bills in particular, however, would ultimately have a chilling effect on persons bringing allegations of police misconduct. The Commission has opposed the passage of those bills because they would be detrimental to our community.³⁶

MODERATOR:

Next we have Deputy District Attorney Gilbert Garcetti, head of the Special Investigations Division. Would you be more effective and would the public perceive you as being a more effective individual in that role if you were, say, a constitutionally independent office; a special prosecutor, who did not report to District Attorney John Van De Kamp,³⁷ or anyone else, and whose sole duty was to investigate allegations of police misconduct with a view to determining whether or not they ought to be prosecuted, and to prosecute them when in your judgment you felt there should be prosecution?

3. Gilbert Garcetti:

a. *Complexity of Special Investigations Division*

Before I respond to the question directly, I will tell you how our division functions. We are an unusual jurisdiction in the fact that we have a huge district attorney's office. There are 550 lawyers in the Los Angeles County District Attorney's office. Within the office we have one division, headed by me, called the Special Investigations Division, which handles all allegations of official misconduct. Because of my position, I am putting on different hats all the time. For example, I recently had to make a decision

35. See *supra* p. 67 and notes 18 & 19.

36. SB 1025 was signed by the governor on September 30, 1982. SB 63 has been introduced for the three consecutive years following *Pena v. Municipal Court*, 96 Cal. App. 3d 77, 157 Cal. Rptr. 584 (1979), and was defeated in committee in 1982. The bill was reintroduced in 1983 by State Senator Robert Presley as SB 34.

37. Mr. Van de Kamp was elected Attorney General of California on November 2, 1982. Robert H. Philibosian is now the Los Angeles County District Attorney.

whether we would be investigating the Coroner/Medical Examiner, Dr. Thomas Noguchi.³⁸ I decided that we would not. Then I had to go put my other hat on and have a professional consultation with him prior to flying to New York for the re-autopsy of Mr. Ron Settles.³⁹ So it is obviously a difficult position, sometimes fraught with conflict, but we are used to it. This begins to address the area that the Moderator raised.

b. Conducting Investigations

The attorneys and the investigators that are assigned to the Special Investigations Division handle allegations of official misconduct. They do not have the ongoing daily relationship that the rest of our office has with police officers and others. We are not looked at kindly by most police officers because they view us as out to get them. You have others that voice the concern that some have raised: "Hey, you are so closely intertwined with law enforcement, you cannot properly divorce yourself from it because even if you want to, your background has been to work with law enforcement."

You know that if you take a particular action as we did, a year and a half ago, when we filed a case against the Los Angeles Police Department alleging that three officers wrongfully shot an

38. In December of 1981 the Los Angeles Board of Supervisors ordered a grand jury investigation of the Los Angeles County Coroner's office. As a result, the Board suspended Chief Medical Examiner Dr. Thomas Noguchi for alleged mismanagement. The Board found that Dr. Noguchi had lost or destroyed criminal evidence, made it impossible to issue death certificates by delaying lab work, employed untrained personnel, delegated duties to unqualified personnel, and allowed outside interests to interfere with his work. On March 25, 1981, the Board suspended Dr. Noguchi for thirty days without pay. L.A. Times, Mar. 26, 1982, § I, at 1, col. 6. In April the Board voted to demote Dr. Noguchi and formally removed him from his post. L.A. Times, Apr. 28, 1982, § II, at 1, col. 5. Dr. Noguchi filed an appeal with the Civil Service Commission. In September the Commission held a hearing on the matter. The hearing lasted from September 1 to September 20. See generally L.A. Times, Dec. 27, 1981 through Sept. 21, 1982.

On February 11, 1983, an 87-page report was filed concerning the three-month hearing regarding Dr. Noguchi's mismanagement. Civil Service Hearing Officer Sara Adler recommended to the Civil Service Commission that the Board of Supervisors' demotion of Dr. Noguchi be rejected. Adler stated that mismanagement alone was insufficient grounds to demote him. She also stated that only a few of the charges by the board were sustained by the evidence. However, Adler endorsed the Board's decision to suspend Dr. Noguchi for 30 days. L.A. Times, Feb. 12, 1983, § I, at 1, col. 5.

On Wednesday, February 23, 1983, the decision to demote the Los Angeles County Chief Medical Examiner was reinstated. In a 4 to 1 vote, the full Civil Service Commission rejected the hearing officer's recommendation. Dr. Noguchi vowed to fight to win back his job. His attorney, Godfrey Issac, stated that he would request that the Commission reverse its decision. If the Commission does not reverse, Mr. Issac said that he would appeal the decision in court. L.A. Times, Feb. 24, 1983, § I, at 1, col. 2.

39. See Appendix B.

individual,⁴⁰ it affects the rest of the Department. We get the pressure. "Hey, you know," we are told, "take it easy, don't do that." Well, we do not ease up. The division is formed, and continues to exist because we want to be able to assure public officials and the community that when there is an allegation of official misconduct, such as an officer-involved shooting incident, or an in-custody death or something else is brought to our attention as the hypothetical raises, the officer involved will be treated fairly. He is not, however, going to be treated with any greater leniency or with greater degree of severity than any other citizen.

The real question as to our independence is the alternative—a constitutionally mandated special prosecutor. In thinking about the possibility of a position like that, consider whether you would be getting something better than what you have now. I looked into this when I was in New York, and had a series of meetings with the special prosecutor there. To my knowledge, the states that do have special prosecutors are all appointed by the governor of the state and they are under the jurisdiction of the attorney-general. They have independence, yes, but they are still reporting to someone who is, for better or worse, a political person.

The other question that is raised: even if you have this quasi-independence, who is going to be doing the investigating? Now we are attacked because the people we have doing our investigation are employees of the district attorney's office and they invariably have some type of law enforcement experience; a former deputy sheriff, a former LAPD officer, whatever. We have some careful guidelines here. We do not permit any of our investigators to go back and investigate any allegation that affects their former department. If they have friends in another department, that is out, too. If you are investigating someone from that department you cannot have any friends or have any knowledge about that particular department. Again I raise the question, who do we get as investigators? We have tried students, we have tried people that have some law education background, but that is not the same as having someone with real experience in investigating.

Our investigators have been, on the average, with the district attorney's office 14 to 15 years. Because of their previous law enforcement experience, they have learned an investigative technique. Believe me, there is a technique. There is some expertise required in investigating cases. You cannot have attorneys going out interrogating or questioning all the witnesses and directing the investigation.

40. *People v. Nelson*, No. A357807 (Los Angeles Super. Ct. March 1980).

c. *Responding to the Hypothetical*

Now, how do we handle the hypothetical situation that has been presented to us?⁴¹ Well, that begs the question. Is the complaint presented to us, and when is it presented to us? The most important issue is the timeliness, how it is brought to our attention.

I have been very critical of many LAPD procedures in the past. I feel, however, when a compliment is due, it should be given. In November 1980, the LAPD was the first department in the County, to bring us the results of an internal investigation conducted without our knowledge after establishing a prima facie case of criminality. Whether or not it is a prosecutable case is not their concern; they bring it to the district attorney's office for our decision whether to commence proceedings. They were, until recently, the only police department to do that. The Long Beach Police Department, however, has also undertaken a similar procedure. I hope more police departments will be doing that in the future. Such a process could have averted a few problems if the Signal Hill Police Department would have done that long ago.⁴² On the other hand, if the LAPD brings us a case, it has usually been investigated even though it may have happened two to six months ago. I do not say this about any other department, but I do have the utmost confidence in the investigative objectivity of the LAPD Internal Affairs Division. They have brought us a number of cases. In 1981 our office prosecuted three cases against LAPD officers, which had been brought to us by the Department, none of which had been brought to us directly by a private attorney or a citizen's complaint.⁴³ Sometimes private attorneys do not know that we can be of assistance. Sometimes private attorneys believe it is a better civil case, than a criminal case, and it could hurt their civil case if the D.A. says no criminal prosecution is warranted. They may say, "Hey, I don't trust the D.A.'s office." A very good possibility, too, is that citizens do not know about us, especially in the Hispanic and Black communities. They either do not know about us or they do not trust us because we are part of the D.A.'s office. The police and the D.A. may appear to the public as being the same thing. People might think, "They all have badges, they all prosecute, and you know, they're usually after *me*. You know, are they gonna go after a cop?" Well, we do, when it is brought to our attention.

41. *See supra* pp. 64-65.

42. *See* Appendix B.

43. The cases involved unnecessary force. Two of the cases ended in not guilty verdicts. Charges in the third case were ultimately dropped. Interview with Mr. Gilbert Garcetti (November 17, 1982).

If it has been privately investigated, fine. We might do some additional investigation ourselves. Ordinarily, because of our manpower problems, unless the charge involves a very serious injury, we cannot and will not investigate it initially. We would ask the department to look at it, then we review it. And then we will do our own investigation if necessary. If it is a serious case, we will conduct our own investigation.

d. *Factors Considered Before Bringing Charges*

The decisions to prosecute are all made on these factors: the available facts; the applicable law; and the charging standards. The charging standards include: (a) Whether a crime has been committed; (b) Whether you know who did it; and (c) Is there a reasonable probability of conviction by an objective fact finder?⁴⁴

44. See, e.g., In Re Scott Allen, Los Angeles District Attorney's Final Report (December 5, 1980), where it was found that an off-duty Long Beach Police sergeant's shooting of a civilian during an altercation was done in legal self-defense. Investigators applied the following analysis to the facts:

* * * *

IV. Scope of Applicable Law

The sole question addressed by the District Attorney's investigation into the shooting death of Mr. Scott Allen is whether or not Sergeant Sutton committed any crime when he fatally wounded Mr. Allen.

A. The District Attorney's Filing Standards

Whether or not Sergeant Sutton is criminally liable in this case depends upon how the factual questions are resolved, and how the factual resolutions apply to existing statutory and case law. The quality of the evidence indicating the occurrence of a criminal act must be measured against the District Attorney's crime charging standards to determine whether a decision to initiate or not to initiate criminal proceedings is mandated.

The California District Attorney's Uniform Crime Charging Standards Manual as incorporated in the District Attorney's Departmental Operations Manual, directs that criminal charges shall not be brought unless the prosecutor, based upon a complete investigation and thorough consideration of all pertinent data readily available to him, is satisfied that the evidence shows the accused as guilty of the crime to be charged. (*District Attorney's Departmental Operations Manual*, IAia.) Additionally, the charging standards direct that there must be legally sufficient, admissible evidence to prove each element of the crime. The admissible evidence must be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after that fact-finder has heard all the evidence, *and* after hearing the most plausible, reasonable foreseeable defense that could be raised under the evidence. *Id.* at IAid.

Lastly, criminal charges may not be filed because of an alleged affirmative defense if the defense would both result in complete exoneration of the accused, and, cannot be refuted by substantial evidence available to the prosecution at the time of the filing. *Id.* at IF1, 2.

The commentary to IF1, 2 directs, however, that self-defense and

The hairs might be beginning to rise on the back of your neck.

defense of third parties, while technically affirmative defenses, should be carefully evaluated at the charging stage to determine whether the legal requirements of the crimes under consideration are established. We have so evaluated the case.

The charges under consideration in this case are murder and manslaughter.

B. MURDER AND MANSLAUGHTER

California Penal Code section 187 defines murder as the unlawful killing of a human being, with malice aforethought. The term malice aforethought can be shown in either of two ways:

1. Where there is an expressed manifestation of an intent unlawfully to kill a human being; or
2. Where the killing results from an act involving a high degree of probability that it will result in death *and* that act is done for a base, anti-social purpose and with wanton disregard for human life. [People v. Reed, 270 Cal. App. 2d 37, 75 Cal. Rptr. 430 (1969).]

First degree murder is that which is perpetrated by any kind of willful, deliberate and premeditated killing with malice aforethought. Second degree murder is an unlawful killing with malice aforethought when there is manifested an intention unlawfully to kill a human being, but the evidence does not establish deliberation and premeditation. (See California Penal Code section 189).

California Penal Code section 192(1) defines voluntary manslaughter as the killing of a human being without malice. If a person intentionally kills another as the result of an honestly held but legally unreasonable belief that the killing was necessary in self-defense, the accused can only be convicted of manslaughter not murder. *People v. Flannel*, 25 Cal. 3d 668, 160 Cal. Rptr. 84 (1979). [California] Penal Code section 192(2) defines involuntary manslaughter as a killing in the commission of a lawful act which might produce death, when the act is committed without due caution and circumspection. The phrase "without due caution and circumspection" has been given meaning by the California Appellate Courts. In resolving whether Sergeant Sutton committed any criminal act when he shot Mr. Allen, we are not only required to follow the statutory law, but also the legal opinions of appellate courts who interpret the statutory law. One of the most important cases discussing what constitutes involuntary manslaughter is *Sommers v. Superior Court*, 32 Cal. App. 3d 961, 108 Cal. Rptr. 630 (1973).

In the *Sommers* case, a police officer in charge of a crime suppression team organized to halt the activities of an armed hold-up gang was indicted by a grand jury for involuntary manslaughter, as the result of the shooting of a youth by another member of the defendant's team. The officer had mistakenly concluded that the three suspects had just robbed a bar and were armed with shotguns. When the three failed to halt pursuant to the officer's commands, the officer fired his weapon at them. After several shots from the officer, the other officers fired and the suspect was killed. The three suspects had not robbed anyone. They had just come from a roller skating rink and were carrying sticks while walking home because they had trouble with dogs. Apparently, they never heard the police identify themselves and ran out of fear. The police were not in uniform, and drove unmarked cars. At the time of the shooting, the police had no probable cause to arrest the suspects.

The theory urged by the prosecution in *Sommers* was that the officer was negligent when he concluded that the three suspects had just left a bar and were carrying shotguns. Further, it was argued that he was negligent in firing his gun, thus causing the other officers to fire theirs. The Court of Appeal flatly rejected these theories, finding that no *rea-*

One might say, "What do you mean, you're playing jury at this

sonable person could conclude that the officer's conduct was aggravated, culpable, gross or reckless. *Nor could any reasonable person* conclude that the officer's actions manifested a disregard of human life or an indifference to consequences, within the meaning of [California] Penal Code section 192. (Emphasis added.)

The court said that for a negligent act that results in death to amount to involuntary manslaughter, something more than ordinary negligence is demanded to support guilt. The negligence must be aggravated, culpable, gross or reckless, that is, the conduct of the accused must be of such a departure from what would be the conduct of an ordinary prudent or careful man under the same circumstances as to be incompatible with a proper regard for human life, or, in other words, a disregard of human life or an indifference to consequences. [*Id.* at 969.]

The *Sommers* court found the evidence insufficient to establish probable cause to support an indictment, therefore, the case was dismissed. (See [California] Penal Code section 995.) However, to sustain a conviction, the prosecution must prove the charges beyond a reasonable doubt, a considerably higher standard of proof than merely establishing probable cause to support an indictment or criminal complaint. Negligence far greater than that shown in *Sommers* must exist before a conviction of involuntary manslaughter will be affirmed by the appellate courts.

C. JUSTIFIABLE HOMICIDE AND SELF-DEFENSE

A killing done in self-defense is a legal defense to murder and involuntary manslaughter.

Specifically, an intentional killing is justifiable when committed by any person in the defense of himself or another if a reasonable man in a like situation would believe that the person killed intended to commit a forcible and atrocious crime and that there was imminent danger of such crime being accomplished. *A person may act upon appearances whether such danger is real or merely apparent.* (CALJIC, 5.13, [California] Penal Code section 197(3). (Emphasis in original.) A forcible and atrocious crime is any felony, the character and manner of the commission of which threatens, or is reasonably believed by the person doing the killing to threaten life, or great bodily injury so as to cause in him a reasonable fear of death or great bodily injury. (CALJIC, 5.16.). These are the standard instructions the court gives to the jury whenever the defendant claims he was acting in self-defense.

[California case law] specifically provides that '[A] defendant [is] entitled to act upon appearances, and if the conduct of the decedent was such as to induce in the mind of a reasonable man, under all the circumstances then existing and viewed from the standpoint of the defendant, the fear or belief that death or great bodily harm was about to be inflicted by decedent upon defendant, it does not matter whether such danger was real or apparent. (Emphasis in original). If defendant acted from reasonable and honest convictions he cannot be held criminally responsible for a mistake in the actual extent of the danger, when other reasonable men would alike have been mistaken.' *People v. Dawson*, 88 Cal. App. 2d 85, 96, 198 P.2d 338 (1948) (emphasis added); *People v. Thompson*, 145 Cal. 717, 79 P. 435, [1905]; *People v. Smith*, 164 Cal. 451, 129 P. 785 [1913]. [Case law] also provides that ". . . where the peril is swift and imminent and the necessity for action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety.' *People v. Collins*, 189 Cal. App. 2d 575, 11 Cal. Rptr. 504 (1961).

point.” Yes, we are playing jury and we are mandated to do that by law.⁴⁵ That is our function. If we decide there is no reasonable probability of conviction by an objective fact-finder, and please underline *objective fact-finder*, we cannot go forward with the prosecution. It would not be proper to do so.

4. Robert Loew:

I should first clarify my role. Our firm represents not only the Los Angeles Police Protective League, but other law enforcement associations as well. With respect to any statements I make, they should not be attributed to those associations.

a. *Police Officer's Perspective*

From the point of view of the police officer, as you might have gathered, he feels stuck between a rock and a hard place. First, he is subject to an internal affairs investigation as the result of an allegation he often does not even know about. Second, the district attorney's office holds out the threat of a criminal prosecution. Last, but not least, he faces the possibility of a civil rights suit or civil liability. It is for those reasons that the accused officer feels he bears the brunt of the whole system.

I want to make some comments about what happens in an internal affairs investigation. The LAPD has five classifications of complaints as mentioned earlier by Mr. Yslas.⁴⁶ Internal Affairs Division (IAD) investigators are perceived by the officers as overly aggressive and not impartial. When IAD does an investigation, it does not attempt to exonerate the officer; IAD attempts to prove that the alleged misconduct occurred. Incidentally, the hypothetical we are given regarding a choke hold applied with unusual force,⁴⁷ would be one incident probably dealt with by IAD, I am not sure that it would ever get to the Police Commission.

b. *Responding to the Hypothetical*

Depending on the injuries involved, IAD will accept a complaint and initiate an investigation. The last individual it will talk to in its investigation is the police officer. Let us say in this instance that the district attorney's office will want to consider the

45. CAL. GOV'T. CODE §§ 26500-26501 (West 1968). See *People v. Municipal Court*, 27 Cal. App. 3d 193, 103 Cal. Rptr. 645 (1972) (“The district attorney's function is quasi-judicial in nature (citation omitted) and . . . he is vested with discretionary power in determining whether to prosecute in any particular case.” *Id.* at 207.). Accord, *Salcido v. Superior Court of Los Angeles City*, 112 Cal. App. 3d 994, 1002, 169 Cal. Rptr. 597, 601 (1980).

46. See *supra* note 32.

47. See *supra* pp. 64-65.

possibility of a criminal prosecution. The officer is called in by IAD and he asserts the Fifth Amendment.⁴⁸ Normally, that should end the questioning. Under the law, however, a police officer can be required to answer questions anyway.⁴⁹ Any statements he makes, however, cannot be used against him in a criminal proceeding.⁵⁰

Mr. Garcetti suggested he is in favor of the LAPD's policy which was changed in November 1980. The police officer is not. The change that occurred was that criminal investigations are also conducted by the IAD. Internal Affairs investigators come out, and if they think there is a crime involved, investigators will read the police officer his rights.⁵¹ They then tell him, "Look, unless you respond you're going to be discharged." At that point the officer says, "Without waving my Fifth Amendment rights, I will respond under the threat of discharge." Those statements are purportedly not used against him. But they provide a foundation to the Internal Affairs investigators to go out and do further investigating. The information is then compiled and presented to the district attorney's office.

There are problems inherent in that process. The Los Angeles County Sheriff's Department, for example, bifurcates the criminal investigation of a deputy from the IAD investigation. It literally conducts the criminal investigation, completes that package, then makes the decision whether to present it to the district attorney's office. After that decision is made, the investigator then turns over the information to the Sheriff's Internal Affairs Divi-

48. U.S. CONST., amend. V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; *nor shall be compelled in any criminal case to be a witness against himself*, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (Emphasis added).

49. There is no statute that requires an officer to talk to investigators when he is the subject of an investigation. There is, however, a rule of law regarding administrative prerogatives requiring the officer to answer questions to determine whether he is fit to continue working for the department. *See* Civil Service Association, Local 400, SEIU, AFL-CIO v. Civil Service Commission of the City and County of San Francisco, 83 Daily Journal D.A.R. 338 (Feb. 15, 1983). *See also* Uniformed Sanitation Men Association, Inc. v. Commissioner of Sanitation of the City of New York, 426 F.2d 619, 626 (1970), *cert. denied*, 406 U.S. 961 (1972).

50. *See* Garrity v. New Jersey, 385 U.S. 493 (1967), where it was held that "the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office, and that it extends to all, whether they are policemen or other members of our body politic." *Id.* at 500.

51. *Miranda v. Arizona*, 384 U.S. 436 (1966).

sion. In that way, the criminal investigation is not tainted by inadmissible evidence.

c. *A Double Standard*

I have found the district attorney's office willing to prosecute, especially when the Internal Affairs Division wants to pursue a case. For example, it will refer over a trivial courtesy card case. You know what a courtesy card case is? That is where the police officer gives you a card that says, "This is a good buddy of mine, please don't write him a ticket." There is a statute that it violates.⁵² So Internal Affairs will turn up a courtesy card case and ship it over to the D.A.'s office.

Many crimes committed by citizens are simply overlooked, but the D.A. will file against a police officer who does the same thing. An example is a guy registering his car out of state in order to escape paying taxes on it. Many members of the public do that. Generally, it is overlooked. The D.A.'s office will charge him criminally if a police officer does that. From the police officer's perspective, there is greater emphasis on his actions and he is more frequently subjected to unnecessary scrutiny.

d. *Citizens' Complaints*

Turning to the civil complaint, virtually anybody with \$75.00 can file a complaint, and they do. The reason you have seen a decrease in the number of civil suits, in my view, is not a change in police practices, but a growing awareness by private attorneys that many of the cases simply cannot be won because there is no factual basis for them.

I would also like to comment on the alleged repeaters.⁵³ Mr. Paz suggested that if you look at a personnel file to see how many complaints have been lodged against a police officer, that will somehow indicate the quality of that officer. That is simply not the case. Complaints will vary from the division that he is assigned, and to the type of assignment he has. A patrol officer will draw more complaints than a vice officer or a detective. If you take a police officer who has been on the streets for 15 years, his file is going to be substantial because he is most likely to encounter the general public. Thus, anyone who files a complaint can initiate the process that begins an investigation.

52. CAL. PENAL CODE § 146(d) (West 1970).

53. See *supra* note 17 and accompanying text.

B. Rebuttals**1. Samuel Paz:****a. Double Standards**

Many defense attorneys will tell you that there exists a different standard for charging citizens as opposed to police officers in the district attorney's office. I will make that outright assertion. We can also talk about the many cases that come before the district attorney's office, and I can say there is a difference and Mr. Garcetti will say there is not. The reports and evaluations of the district attorney's office are public record. I have taken those reports and reviewed them, and I have researched the laws as they are applied to facts in those cases. I have found that there is a huge discrepancy in the proper application of the law to the facts.⁵⁴

b. Civilian Input

As Mr. Yslas suggests, civilian control should be interjected into the process. In serious cases there should be an overview and some type of mechanism for resolving each case. What exists now under the Police Commission is inadequate. Mr. Yslas has a full-time job, as do the other members of the Commission. They are paid only ten dollars for meeting three to four hours a week. Moreover, they are extremely hard working people. Nonetheless, they have a large commitment to other interests. So being a member of the Commission is basically a figurehead position and even if they could triple their time commitment, they could not do the job they are mandated to do, which is to review. Besides reviewing hundreds and hundreds of citizens' complaints, they are also a policy-making body. That type of civilian control, I conclude, is not public input.

54. Criminal charges will not be brought unless the prosecutor, based upon a complete investigation and thorough consideration of all pertinent data readily available, is satisfied that the evidence shows the accused is guilty of the crime to be charged. Additionally, there must be legally sufficient, admissible evidence to prove each element of the crime. The admissible evidence must be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after having heard the evidence, and after hearing the most plausible, reasonably foreseeable defense that could be raised. Los Angeles District Attorney's Departmental Legal Policies Manual, § 1 (198—). Compare *People v. Walls*, 239 Cal. App. 2d 543, 49 Cal. Rptr. 82 (1966) (where the court found defendant so reckless as to be incompatible with a proper regard for human life and guilty of involuntary manslaughter when death resulted as result of showing his fast draw to his niece) with *Somers v. Superior Court*, 32 Cal. App. 3d 961, 108 Cal. Rptr. 630 (1973) (where the court found that a police officer must have acted in an aggravated, gross, or reckless manner in excess of ordinary negligence to be guilty of manslaughter).

2. Stephen Yslas:

a. *Civilian Input*

The role of the Commission is an evolutionary one. If you look historically at the Commission, the Commission was largely ceremonial until Los Angeles Mayor Tom Bradley's appointments. Since that time, the Commission has vigorously asserted its authority, and with the expansion of the Commission staff, we have taken more and more responsibility, more direct control of the Police Department. The Department has been resistant to that, however it is our proper mandated charter role. We have taken direct action to ensure a higher degree of credibility to officer-involved shooting and serious injury cases. Notwithstanding the fact that each commissioner has full-time commitments to other things, we do have a staff. That staff has been expanded. I believe we can fulfill that vital civilian role in the control of the Department.

3. Gilbert Garcetti:

a. *Reluctance to Prosecute Police Officers*

I will address our reluctance to prosecute police officers. In 1981 there were in excess of 30 police officers prosecuted by my division for various crimes; bribery, excessive force, you name it. Nothing, however, involving a shooting.

Everything that we do is a public record, and I encourage anyone to look into it. Responding to the questions the moderator raised: Is there independence, and is it better to have a special prosecutor? We can only do so much, and then it is up to the public. We are one of the few departments in the country that puts every decision we make in writing, making it a public record. It is up to the public to take those reports and determine whether the investigation was slipshod; whether it was improper; whether we are misquoting a witness; or whether the legal analysis is incorrect. It has to be the public's responsibility—we are going to make mistakes. Nonetheless, we stand behind every decision we have made and we continue to stand behind every one.

b. *Double Standard*

The last area I will respond to concerns the question about political decisions, the double standards. I have been in this position for four years. I am not a political appointee. I am a civil service employee. I can assure you that the decisions are based on what I have told you in the past. That is, the available facts, the evidence, and the filing standards. The fact that it is a police officer makes no difference to us. You have heard from Mr. Loew,

who seems to think that at times we bend over backwards to prosecute an officer.

So you see, I get it from both sides. All I can tell you is that we put everything out in front. When we prosecute a case, we do so vigorously. Unfortunately, I know, certainly from personal experience how difficult those cases are to successfully prosecute.⁵⁵ That, however, is not going to stop us. If everything is there and the prosecution should go forward, it will. I do not care how much the public yells and screams at me, if it is not there, it is not going to be prosecuted.

4. Bob Loew:

a. *Civilian Input*

I find myself in general agreement with Mr. Paz. I do not think Mr. Garcetti's section is doing its job. Perhaps, Mr. Paz and I can lobby the Los Angeles County Board of Supervisors to cut his division's budget. With respect to the Police Commission, it has been our perception that the Police Commission has taken a greater role than it has in the past with respect to implementing policy for the Department. The problem has been that the increased role by the Police Commission has been directed against the individual officer at the line level, the patrol officers and the sergeants. The Commission has yet to step in and stop management abuses against those very same officers in that area. It is no small wonder, then, that there is a perception by police officers that the Police Commission is against them. There are also abuses in the Department's system of internal affairs investigations.⁵⁶

MODERATOR:

I would like to make clear what has been apparent to me in my dealings with the Police Commission. The independent investigation is needed at the beginning, while the injury is still fresh, or if it is a shooting, while the body is still warm. It is at that initial stage where it seems to me the investigation is conducted almost entirely by the police. As it is now, the Internal Affairs'

55. In cases involving officer involved shootings and unnecessary force (no choke holds) during the period of January 1978 to November 1982, there were only four prosecutions against nine officers. There were 15 prosecutions for misdemeanors and other felonies. Six cases were successfully prosecuted, the others were found not guilty or ended with a hung jury in favor of not guilty verdicts. There were 54 prosecutions of police officers for other violations. Interview with Gilbert Garcetti (Nov. 17, 1982).

56. *See Bagget v. Gates*, 32 Cal. 3d 128, 649 P.2d 874, 185 Cal. Rptr. 232 (1982) (where the California Supreme Court held that the Public Safety Officers Procedural Bill of Rights Act, CAL. GOV'T CODE §§ 3300-3311 (West 1980), is applicable to charter cities thus requiring a charter city to provide an administrative appeal process when reassigning police officers to lower paying positions for alleged misconduct).

report will be written then presented to the Police Commission. Thus the Police Commission does not conduct an independent inquiry. Therefore, Mr. Yslas says, "We now look into these matters," what really happens is the Commission reviews reports that have been made by the police. If the wrong facts are in those reports, those reports may look good, even though factually they are in error. Even Mr. Garcetti is dependent in large part on reports that have been prepared by the police. Therefore I ask, is there a need for an impartial and independent means of investigating these incidents when they happen, so that the initial report is prepared by an impartial individual or group of individuals?

C. *Audience Questions*

1. What is the Purpose of an Internal Affairs Division Investigation in a Police-involved Shooting?

Stephen Yslas:

The answer to the question concerning officer-involved shootings and the investigations that follow, is determined by guidelines established by the Commission. In the wake of the Eulia Love incident,⁵⁷ the Commission laid down some strict guidelines and established strict policies with respect to the way investigations were to be conducted.⁵⁸ The Commission found, in effect, that investigations of officer-involved shootings had not been conducted in accordance with what we considered to be professional standards.⁵⁹ That led to a revision in the way that these investigations are now conducted. With respect to procedure, assuming the integrity of officers who are engaged in that kind of investigation, we have appropriate safeguards as to the way that investigations are conducted.

The function of the officer in charge of investigating officer-involved incidents is to investigate as impartially as is possible, to bring the facts in an unsanitized, uneditorialized version of what occurred to the Commission, the Use of Force Review Board and the Chief of Police. To the extent that he does not, and there have been occasions in which the Use of Force Review Board and the Commission have been critical of those investigations, then he is not fulfilling his job.

57. See Appendix A.

58. See *supra* note 31.

59. See Appendix A.

2. How Are Police Officers Suspected of Wrongdoings Kept from Collaborating with Each Other?

Gilbert Garcetti:

Various departments have different procedures. The LAPD until recently did not separate their officers even though we were demanding that they do so. Otherwise, what credibility can its investigation have in the eyes of the public if investigators say, "Okay, there are four officers involved and they're allowed to stay in one room together for three or four hours." By the time you get to them, everyone has got his story down. That policy has been abandoned. Now they are separated; one officer now goes in and interrogates one then the other.

Other police departments, do not always separate officers during an investigation. The best practice, obviously, is to keep them apart.

The LAPD is supposed to be tape recording these interviews. They tape record only the final interview because sometimes investigators may talk to or interview an officer as many as twenty times. We want them to tape record every interview because it is the initial statements that are of particular interest to us. Otherwise, how do we find any discrepancies?⁶⁰

Let me add, any time there is a police officer who is a witness or who was involved in a particular incident under investigation, and he takes the Fifth Amendment, we are out of it. We cannot force that officer to talk to us even though one attorney represents all of the officers. That is a problem, unless we grant him immunity from prosecution. That is what happened in Signal Hill.⁶¹ We had to give some officers immunity from prosecution.⁶²

Samuel Paz:

I think it is clear from Mr. Garcetti's remarks and from remarks made by the other panelists, we are still in the position of relying on police investigations and that all of the mechanisms and all of the reviews are based on that procedure. That is a fundamental fact. Until there is an outside mechanism to investigate alleged incidents involving police misconduct, we will remain in the same situation.

Robert Loew:

I want to clear up what I believe may be some confusion.

60. According to Mr. Garcetti, it is not certain that *all* interview sessions are being tape recorded. Interview with Mr. Garcetti (November 17, 1982).

61. See Appendix B, at 119-20. See also CAL. PENAL CODE § 1329 (West 1982).

62. See Appendix B.

Officer-involved shootings are investigated differently from investigations by Internal Affairs. The other point was this confusion on requiring the police officer to speak despite his Fifth Amendment rights. The district attorney cannot use statements in a criminal proceeding that are made as a result of the officer being forced to talk to Internal Affairs investigators. Those are coerced statements, so that is why he says they are out of it. The problem is, however, Internal Affairs investigators are not out of it. Investigators continue their investigation after having talked to the officer, which in our view would taint subsequently developed evidence. We would prefer to see separate administrative and criminal investigations.

Stephen Yslas:

To the extent that officers are not being tape recorded initially, and are not being separated, that is inconsistent with the Police Commission's mandate to the Department.⁶³ The Commission imposed these regulations for the very purpose of ensuring integrity in those investigations. This was a departure from how the Department had previously investigated these matters.⁶⁴ I think that if that is in fact not occurring, then clearly, after the enormous battles the Commission has gone through with the Department, that would contravene the Commission's directive.⁶⁵

MODERATOR:

Would the Commission's directive include legal representation for the police officer at the scene of the shooting? Would he be entitled to consult counsel before he had to respond to these questions?

Stephen Yslas:

If it was in the nature of a criminal investigation, I would believe so.

If there was a criminal investigation undertaken and the officer asserted the right to counsel, I would suppose that he would be entitled to it.

3. Is There a Double Standard Applied to Prosecutions of Police Officers?

Gilbert Garcetti:

The question illustrates the dilemma we are in. I detect the

63. See *supra* note 29, at 11.

64. See *supra* note 29.

65. See *supra* note 63.

various perceptions held by the panelists. Mr. Paz thinks that the alleged double standard is in favor of police officers; Mr. Loew thinks it is against them. I am saying that they are both wrong, it is right down the middle. I refer you to our cases. Look at some of them and draw your own conclusions. I have dealt with you honestly. That is, I have told you how we function.

a. *Successful Prosecutions*

Regarding our success rate, it cannot be compared to the normal criminal case. We had five or six criminal prosecutions last year of officers for allegations of excessive force and lost every one of them.

We have gone to the extent where we have had a judicial confession by a police officer, who said, "I guess I did it." The guy was handcuffed and the officer just beat the hell out of the victim. The officer will repeat, "I guess I did it. Everyone says I did it. I must have, but I really don't remember all of it." Well, that is about as close as you are going to get to an outright confession. At the first trial, the jury was deadlocked 11 to 1 for guilty. At the second trial, the defense attorney argued the officer was unconscious when he did it. The jury bought it.⁶⁶ Our frustration level with these cases is high because the attorneys I bring into the division are all very experienced, successful prosecutors, and they are used to winning all the time. Regardless of what Mr. Loew says, and despite the fact that we lost a case in which we prosecuted three LAPD officers,⁶⁷ that will never stop us. It is never going to stop us from prosecuting any police officer if we feel that the facts are sufficient, the law applies, and the filing standards are met. This is so even though we know that the subjective jury, not the objective trier of fact, but the real jury in fact, is probably going to acquit or at least result in a hung jury. We will go forward with that prosecution because that is what we are mandated to do.⁶⁸

b. *Deterrent Effects*

Some people think that bringing those cases to trial might have a deterrent effect against the use of excessive force by police officers. That may be. There are others who think that if you continue to lose these cases no one is going to give a damn if you prosecute the officers. The officer is going to say, "Big deal. The city's going to pay for my expenses, and I don't have to go out in the street for a while, during the trial. So what?" Well, I have not seen that yet. I have seen a lot of faked concern at times, perhaps,

66. *People v. Jacquez*, No. M-31129033 (Los Angeles Super. Ct. 1979).

67. *See supra* note 40.

68. *See supra* note 45.

but I have also seen honest concern from law enforcement officers when they are charged with crimes.

Appendix A

THE REPORT OF THE BOARD OF POLICE COMMISSIONERS CONCERNING THE SHOOTING OF EULIA LOVE AND THE USE OF DEADLY FORCE PART I—THE SHOOTING OF EULIA LOVE

I.

INTRODUCTION

This section of the Commission's Report presents the results of an examination and evaluation conducted by the Board of Police Commissioners of the events leading to the death of Mrs. Eulia Love on January 3, 1979.

On April 17, 1979, the District Attorney notified the public of his decision that no criminal charges would be filed against the two police officers involved in the shooting. The sole issue resolved in the District Attorney's report was whether the officers committed the crimes of murder or manslaughter; this necessarily included the issues of self-defense and justifiable homicide.

Similarly, the United States Attorney for the Central District of California considered the matter from the standpoint of possible violations by the officers of federal law. On August 9, 1979, that Office announced its conclusion that there was no basis for prosecution of the officers under the Civil Rights statutes.

The Department's investigation and evaluation of officer-involved shooting incidents, unlike those of the District Attorney and the United States Attorney, is not undertaken for the purpose of resolving issues relating to criminal prosecution of the officers. Rather the Department's task is to analyze the existing Department policies and apply them to the facts of each case so that it may properly evaluate the conduct of its officers and determine what administrative action, if any, is required.

In the case of Eulia Love, the majority report of the Department's Shooting Review Board concluded that the actions taken by the involved officers complied in all respects with Department policies concerning the use of firearms and deadly force. A minority report of the Review Board concluded that the officers' actions "in policy but failed to meet Department standards."

The Police Commission has completed an independent examination of the circumstances and reevaluated the Department's previous determination in light of additional factual information. The Commission concludes, in direct contrast to the majority findings of the Shooting Review Board, that the actions taken by the

officers violated the policies of the Los Angeles Police Department governing the use of firearms and deadly force, and that the officers made serious errors in judgment, and in their choice of tactics, which contributed to the fatal shooting of Eulia Love.

II.

STATEMENT OF FACTS

The facts presented in this report combine the results of investigations performed by the Los Angeles Police Department's Robbery-Homicide Division (R.H.D.) and the Los Angeles District Attorney's Office (D.A.). At the request of the Commission, the Department reopened its investigation and the results of that supplemental investigation are included herein.

On January 3, 1979, at approximately 11:15 a.m., Mr. John Ramirez, an employee of the gas company, arrived at the Love residence. He identified himself and spoke to Mrs. Love at the door. He then went to shut off the gas at the side of the house. Mrs. Love approached Ramirez, advised him that she would not allow him to disconnect her gas, and hit him with a shovel, inflicting a contusion to his arm. He noted that she was "frothing at the mouth" and, as she prepared to hit him again, left the area. He went back to his office, at which time the Police Department was called. (D.A. 9-10; R.H.D. 1-2)

Sometime between eleven and noon, Mrs. Love went to the Boys Market to attempt to pay her gas bill. When she was informed that she could not pay her gas bill there, she purchased a money order in the amount of the minimum payment required to continue her gas service (\$22.09). (R.H.D. 12)

At 1:15 p.m., Mr. William L. Jones, an employee of the gas company, told his supervisor what had happened to Ramirez, and told him that he would be going to the Love house. The supervisor said that Jones should have the police accompany him. (R.H.D. 2-3) At 2:30 p.m., Ramirez was interviewed by the Los Angeles Police Department and signed an assault with a deadly weapon report (ADW). He was given a Victim's Report Memo. (R.H.D. 2)

Jones and Mr. Robert Aubry, gas company employees, went to the vicinity of the Love residence. At 3:59 p.m.,¹ Jones called the police dispatcher and asked for a patrol car to join them at the residence. They stopped down the street from the Love house in their separate vehicles. (D.A. 11; R.H.D. 3) Mrs. Love came out

1. The times in this Statement of Facts differ from those reported in both the Department's investigative report and the District Attorney's report. The times used in this Report were taken directly from communication cards prepared at the time of the incident. These cards are on file at the Department.

of her house and spoke to Aubry, who told her that he was not there to turn off her gas. She indicated that she would pay \$20.00, but that she would not pay the \$80.00. (D.A. 12; R.H.D. 3-4) She went back in her house, and two or three minutes later came out with a knife, at which time she began hacking the branches of a tree on her front lawn. (D.A. 12; R.H.D. 4).

At 4:15 p.m., the police dispatcher put out a call for a car to join the gas company employees ("415 business dispute. Meet the gas man at 11926 South Orchard. Code 2."). Shortly thereafter, at 4:15:52 p.m., Officers Hopson and O'Callaghan acknowledged the call.

When the police officers arrived at the scene, they stopped their patrol car near the gas company vehicles and spoke to Jones. Jones advised the officers that Mrs. Love had hit one of their men with a shovel earlier that day when he tried to shut off the gas, showed them the Victim's Report Memo, and asked them to stand by while he and Aubry either collected the money or turned off the gas. (D.A. 12) The officers observed Mrs. Love as she walked back and forth on the sidewalk in front of her house with a knife in her hand and yelled at the gas men. The officers drove to the front of Mrs. Love's house and got out of the car, immediately drawing their guns. (D.A. 13) Mrs. Love appeared to be agitated and told the officer they were not going to shut off her gas. She uttered a number of obscene remarks. (D.A. 13; R.H.D. 5) The officers demanded that Mrs. Love drop the knife. (D.A. 13; R.H.D. 5) During this time, one of Mrs. Love's daughters, Sheila (age 15), came out of the house briefly, but went back in at the command of Officer Hopson. (D.A. 14).

When Mrs. Love began to back up towards her house, Officer O'Callaghan followed her. As she retreated, she was making thrusts towards him with her knife. O'Callaghan was approximately six feet away, and had his gun and baton out. At this point Mrs. Love's younger daughter, Tammy (age 12), came out onto the porch and then went back into the house. The policemen heard children's voices² inside the house at this time. (R.H.D. 6) Three witnesses, including Aubry, also indicated that Hopson signalled the gas company employees, as if to say, "come on" during the time Mrs. Love was retreating. (D.A. 14-15)

Mrs. Love stopped at the intersection of the walkway leading from the public sidewalk and the walk to her house, and faced the policemen with the knife in her right hand. O'Callaghan was, at this point, five feet west of her, and Hopson was ten feet southwest

2. Neither the District Attorney's Report nor the Department's investigation indicates that anyone other than Mrs. Love's two daughters were in the house at any time during the incident.

of her. (D.A. 16; R.H.D. 6) Hopson had his gun in his right hand, pointed at Mrs. Love, and his baton in his left. Mrs. Love started to lower her right hand with the knife in it. O'Callaghan hit her hand with his baton and knocked the knife to the ground, backing away as he did so. She picked up the knife and drew her arm back as if she was going to throw it. At this time Hopson warned her not to throw the knife. O'Callaghan was twelve feet away and Hopson was eight feet away. O'Callaghan dropped the baton and moved into a two-handed, semi-crouched position. Hopson was still in a two-handed, semi-crouched position. Each officer fired six rounds in a rapid-fire sequence, (while the knife was thrown by Mrs. Love) wounding her eight times. (D.A. 16-26; R.H.D. 6-7) The order of these events is uncertain, as the events were almost simultaneous and witness reports are in conflict. The knife was recovered 68 feet away.

After the firing ceased each officer ejected the spent casings and reloaded his gun. O'Callaghan then returned to the police car and at 4:21:45 p.m. placed an "officer needs help" call and a request for a rescue ambulance. Hopson walked to Mrs. Love's body, rolled it to the left and placed handcuffs on her wrists. (R.H.D. 8)

The ambulance arrived at 4:25 p.m. (R.H.D. 8), and at 4:26 p.m. Mrs. Love was pronounced dead. (D.A. 25; R.H.D. 8)

Although there are no records of the officers' time of arrival at the scene, there are records that show that the officers were at or near Avalon and 120th Street when they accepted the call at 4:15:52 p.m. Empirical tests demonstrate that the average Code 2 (urgent but without red light or siren) driving time to the Love residence is two minutes and 11 seconds. Allowing approximately 30 seconds for the conversation with Jones, this would place the officers at the Love house at approximately 4:18:33 p.m. The time of death may be estimated at 4:21 p.m., allowing 45 seconds after the shooting for the officers to reload and place the call for the ambulance. Thus, the maximum period of time which could have elapsed between the officers' arrival and the shooting of Mrs. Love was two to three minutes.³

3. The time estimates were developed by Robbery-Homicide Division in its supplemental investigation, at the request of the Commission. Accepting these time estimates, the following time line can be established:

4:15 p.m.	Dispatcher puts out call
4:15:52 p.m.	Call acknowledged by Hopson and O'Callaghan
4:18:03 p.m.	Officers arrive at gas company truck
4:18:33 p.m.	Officers arrive at Love residence
4:21 p.m.	Time of death

Elapsed time (arrival to time of death): 2 minutes, 27 seconds

The majority report of the Shooting Review Board (S.R.B.) relied upon the following in reaching its conclusions:

1. The officers left their vehicle with the intent to disarm Mrs. Love and arrest her for assault with a deadly weapon (S.R.B. 2).
2. The officer did not rush the situation but spent a minimum of seven minutes talking to Mrs. Love (S.R.B. 2.).
3. The officers advanced toward Mrs. Love, instead of retreating, because they feared for the physical safety of the children inside the house. (S.R.B. 3)
4. Six shots were fired without pause and in rapid succession by each of the officers. (S.R.B. 3)

The following facts (which are discussed more fully later in this report) should be noted with respect to the conclusions contained in the majority report of the Shooting Review Board. First of all, there are no substantial objective facts to support the conclusion that the officers' intent at the time they left the car was to arrest Mrs. Love for an assault with a deadly weapon. Second, the seven-minute time period described by the majority was based on erroneously reported facts. Third, there are no facts which support a reasonable basis for the officers' fear for the safety of the children, nor is there any substantial evidence that the officers advanced while Mrs. Love retreated because of fear for the children's safety. (D.A. 28) Finally, as discussed below, rapid-fire discharge of twelve shots was improper under the circumstances, and in conflict with departmental policy.

One additional factor was raised by the minority report of the Shooting Review Board. This factor involved some uncertainty as to the position of Mrs. Love when the shots were fired. Contrary to the opinion of Dr. Jennifer Rice, the pathologist who conducted the autopsy of Mrs. Love under the auspices of the County Coroner's Office, the report of Dr. Richard Myers, a highly respected independent forensic pathologist consulted by the Department,⁴ concludes that at least one of the gunshot wounds⁵ was inflicted when Mrs. Love was on the ground. Although stating that it is not possible to determine the sequence of the shots, Dr. Myers' report concludes that the pattern of shots fired is consistent with the officers following a moving target down. The majority report did not comment on this issue.

4. Dr. Myers has been attending Pathologist at Los Angeles County-University of Southern California Medical Center since 1950. He is also Director of Laboratories and Pathology at Valley Presbyterian Hospital.

5. The shot in question was labelled in the coroner's report as Gunshot Wound No. 6. The bullet recovered near the exit wound was completely flattened on one side, indicating contact with a hard surface. Such a surface which might have caused this result was the sidewalk where Mrs. Love fell during the shooting.

III. COMMISSION ANALYSIS

A. *Justifications for Shooting in Majority Report of the Shooting Review Board*

1. Officers' Intent to Arrest for ADW

The first factor cited in the majority report of the Shooting Review Board in support of the actions of the officers was their intent to arrest Mrs. Love for assault with a deadly weapon. However, there is no substantial evidence in the record to support this intent; in fact, the records reflect the contrary.

First, the record indicates that the officers' purpose in being on the scene was to assist the gas company. The initial call placed by the gas company to the dispatcher asked for back-up assistance. (R.H.D. 3) The dispatcher's call received by Hopson and O'Callaghan instructed them to meet the gas man to handle a business dispute. (R.H.D. 4) When the officers arrived at the scene, Officer Hopson inquired of one of the gas company employees, "What will you need from us?" (R.H.D. 5)

Second, there are no facts indicating that the officers at any time told Mrs. Love that she was to be arrested for assault on Ramirez earlier in the day.⁶

Finally, Hopson's signal to Jones and Aubry during Mrs. Love's retreat indicates the officers' belief that it had become possible at that time for the gas company employees to proceed with their task.

2. The Seven-Minute Discussion

Although the Shooting Review Board stated that there was a seven-minute period during which officers attempted, verbally and by the use of a baton, to disarm Mrs. Love, the reported facts contradict this conclusion. At most, a period of two to three minutes transpired between the time the officers got out of their car and drew their weapons, and the time of Mrs. Love's death.

The Department's emphasis in training is on the use of minimal force and the attempt to de-escalate and defuse a situation wherever possible. Great importance is attached, in both ordinary patrol training and SWAT training, to attempt to calm a potentially violent individual. In Eulia Love's case the officers were faced with a clearly distraught and agitated individual. The of-

6. Penal Code Section 841 requires an arresting officer to inform the person to be arrested of the intention to arrest him unless there is reasonable cause to believe that the person is actually committing or attempting to commit an offense, or is being pursued immediately after the commission of an offense or after an escape.

icers' decision to draw their guns and approach Mrs. Love with weapons pointed served to escalate the situation drastically.

3. Danger to Children

There are no reported facts to indicate that Mrs. Love's daughters were in any danger from her at the time the officers acted, or at any time. In addition, witness reports state that each of the daughters was outside of the house at least once during the incident, but returned almost immediately. No attempt was made to have either daughter leave the "zone of danger". Similarly, no attempt was made by the officers to get between Mrs. Love and the front entrance of her home, as the minority report of the Shooting Review Board points out.⁷

4. Rapid Firing of Shots

The statements of witnesses with respect to the brevity of the period in which the shots were fired, and the conclusions of Dr. Myers are, in general, consistent with the Shooting Review Board's conclusion that the entire series of twelve shots were in rapid-fire sequence. In this respect, we agree with the Shooting Review Board's factual findings.

B. *Application of Department Policies to the Love Case*

Two central questions with respect to Department policy and procedure are raised by this case:

Were the decisions to draw weapons and to advance as Mrs. Love retreated consistent with Department policy?

Were the use of deadly force and the extent of deadly force used consistent with Department policy?

1. The Drawing of Firearms and Subsequent Tactics

In analyzing the first of these questions, it is necessary to evaluate the knowledge of the officers at the time they made the decision to draw their guns, that is, at the time they arrived at the Love house.

At that time the officers knew the following:

- (a) Earlier that day when a gas man attempted to turn off the gas at her house, Mrs. Love hit him with a shovel;

7. The minority report concluded, we believe correctly, that "[b]oth officers reiterated that they were afraid that Love would enter the dwelling and injure the children inside. I believe this statement, while not fallacious, was an after-thought added to justify their actions. To me, this statement emphasizes poor tactics by both officers. If the officers believed this, then either could have stepped over the hedge and onto the porch preventing Love from entering the house. Neither chose to do so, but rather continued advancing on the retreating Mrs. Love."

- (b) Mrs. Love was agitated, as indicated by her pacing and her continual yelling at the gas company employees;
- (c) she had a knife in her hand; and
- (d) the gas company employees had requested stand-by assistance.

The factors that should be considered in assessing the action taken by the officers are the following:

- (a) Department escalation/de-escalation policy on using the least amount of force necessary;
- (b) the degree of danger presented to the officers and others;
- (c) available techniques for disarming a person with a knife; and
- (d) tactical effects of drawing and pointing guns.

a. *Department Policy*

The training policy of the Los Angeles Police Department stresses the importance of gradual escalation in the use of force. The objective is to escalate or de-escalate to the minimum force necessary for control of the suspect. In employing such a procedure, officers should try to talk to an individual first, and then use gradually increasing levels of force in response to further actions taken by the individual. The display of a weapon considered a high level use of force, is one of the last alternatives to be used. Only deadly force itself is considered to be a higher level of force.

The Department policy regarding the use of firearms authorizes the use of deadly force only in the following three situations:

- (1) To protect (the officer) or others from an immediate threat of death or serious bodily injury;
- (2) to prevent a crime where the suspect's actions place other persons in jeopardy of death or serious bodily injury; or
- (3) to apprehend a fleeing felon for a crime involving serious bodily injury or risk of deadly force when there is a substantial risk that the person whose arrest is sought will cause death or serious bodily injury to others if apprehension is delayed. (Department Manual Section 1/556.40)

The policy on the use of firearms provides clearly that deadly force shall be exercised only when all reasonable alternatives have been exhausted or appear impracticable. With respect to the drawing of firearms, the policy states that there are limited circumstances in which a firearm should be drawn and emphasizes that officers must not draw their weapons without a reasonable belief, at the time of drawing the weapons, that it is necessary. In no case does a mere feeling of apprehension justify drawing of the weapon. The Department policy governing the use of firearms specifically states:

Unnecessarily or prematurely drawing or exhibiting a firearm

limits an officer's alternatives in controlling the situation, creates unwarranted or accidental discharge of the firearm. Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create a reasonable belief that it may be necessary to use a firearm in conformance with this policy on the use of firearms. (Department Manual Section 1/556.80.)

The Police Commission's interpretation of that section of the firearms policy adopted in September 1977, includes the following language:

An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief that there is a substantial risk that the situation may escalate to the point where deadly force may be justified.

b. *Danger to Officers and Others*

In this situation, the officers were presented with a clearly distraught individual who had committed an assault with a shovel earlier in the day. However, no one was within any reasonable "zone of danger" or was being threatened by Mrs. Love at the time of the officers' arrival at the scene.

After getting out of the car the officers approached Mrs. Love but did not come within striking distance. They maintained a narrow separation from her, even when she retreated toward her house. However, during the retreat, they did motion for the gas company employees to approach. Had the officers believed that there was serious danger to themselves, they had reasonable alternatives available to minimize that danger; had they believed that there was serious danger to others, they would not reasonably have motioned others forward.⁸

c. *Techniques for Disarming an Individual with a Knife*

The usual techniques used in disarming an individual with a knife are baton strikes and kicks. Other techniques, such as the use of martial arts, are generally not maintained. In choosing a technique, officers are to consider the relative size of the individual, his or her mental state, and other similar factors. In any event, these techniques are to be employed *before* resorting to deadly force.

d. *Tactical Effects*

By displaying their guns immediately, the officers severely

8. As was pointed out in the Shooting Review Board's minority report, "[t]hat their fears were minimal is indicated by the fact that both officers fully exposed themselves and neither attempted to take defensive action".

limited their alternatives. It would not be reasonable to believe that Mrs. Love could be calmed by the approach of two police officers with drawn guns. Thus, the first result of the officers' actions was, predictably, an immediate escalation of the situation.

The effective use of baton strikes, the preferred technique, was eliminated as the events proved. The officer who used the baton to knock the knife out of Mrs. Love's hand was unable to retrieve it because he had a gun in one hand and a baton in the other. Thus, the decision to draw guns immediately meant that if the display of force was not sufficient the use of deadly force would be required.

Once the stage for the use of force was set, the officers continued to escalate the situation by their actions. By advancing on Mrs. Love as she attempted to retreat, they put themselves in a situation of increased danger.⁹ The justification given for the continued pursuit (concern for the safety of the children) was, as has been shown above, without basis in any of the reported facts.

The decision to draw and point their weapons immediately, and to advance as Mrs. Love retreated, locked the officers, before all reasonable alternatives had been exhausted, into a situation which precipitated the use of deadly force. Given the circumstances of the case, and the availability of tactical alternatives, the officers' actions demonstrated poor judgement, and poor choice of tactics, and violated the departmental policy which prohibits the premature drawing of weapons. The result of their actions clearly demonstrates the necessity for that policy.

2. Deadly Force—Its Use and Extent

We will next consider the situations in which the use of deadly force is authorized. The first situation is the apprehension of a fleeing felon. This justification is limited, but the limits are of no concern here, as Mrs. Love was not a fleeing felon.

The second situation, the prevention of a crime where the suspect's actions place persons in jeopardy of death or serious bodily injury, is also not applicable. At the time the officers left the car, Mrs. Love had not threatened anyone with her life. The only threat at that point had been five hours earlier.

The final situation in which deadly force may be used, the protection of self or others from an immediate threat of death or serious bodily injury, is the only conceivable basis for its use in this case. However, at the time the officers left the car, Mrs. Love did not appear to be an immediate threat to anyone. There could

9. Department records show that, at least since 1907, no Los Angeles Police officers have been killed by suspects using a sharp object.

have been no question of any need to protect her daughters at this time. Further, there is nothing in the record which indicates that she was advancing toward the officers or any other person at the time they left the car. The only use of the knife up until that time had been to hack the branches off a tree.

Approximately two and a half minutes later, when O'Callaghan knocked the knife out of Mrs. Love's hand with his baton and she picked the knife and drew her arm back, the situation has escalated considerably. The shooting of Mrs. Love and the throwing of the knife followed immediately after Mrs. Love retrieved her knife. Although the inconsistencies in the witness statements about this series of events cannot be satisfactorily resolved, it would appear that the shots and the throwing of the knife occurred almost simultaneously. If at that time the officers were justified in using deadly force in self-defense—and the facts before the commission do not enable us to make a final determination as to that question—it was in substantial part because they had themselves prematurely escalated the confrontation and placed themselves in a situation where the use of deadly force became necessary. Moreover, since we conclude below that the officers violated departmental policies by using rapid fire under the circumstances of this case, it is not necessary that we determine which specific shots violated those policies.

We next consider the officers' use of rapid-fire, which resulted in the firing of twelve bullets by the two officers.

Department policy and training with respect to shooting, stress two basic concepts:

- (a) shoot to stop, not to kill; and
- (b) first-shot accuracy.

It is often difficult to shoot with great accuracy in an emergency situation; the training program therefore emphasizes shooting at the central body area, although such shots are more likely to be fatal. However, there is a concomitant emphasis on limiting the number of shots and attempting to stop the individual with the first shot. In any event, stress is placed on observing the effect, if any, of the first shot before refiring.

Department policy requires in those rare cases where the use of firearms is necessary that the risk of death must nonetheless be minimized. To that end, the Department policy governing the use of firearms states:

"Minimizing the Risk of Death. An officer does not shoot with the intent to kill; he shoots when it is necessary to prevent the individual from completing what he is attempting. In the extreme stress of a shooting situation, an officer may not have the opportunity or ability to direct his shot to a non-fatal area. To require him to do so, in every instance, could increase the risk

of harm to himself or others. However, in keeping with the philosophy that the minimum force that is necessary should be used, officers should be aware that, even in the rare cases where the use of firearms reasonably appears necessary, the risk of death to any person should be minimized." (Department Manual Section 1/556.35)

The opinion of Dr. Myers suggests that the officers, in "following a moving target" continued to shoot after the threat of the thrown knife had ended. The disregard of single-shot accuracy and the use of rapid fire may have meant the difference between injury and death for Mrs. Love. This cannot be determined conclusively, however, in the absence of certainty concerning the order in which the shots were fired. In any event, and in light of Department policy regarding minimizing the risk of death, the firing of twelve shots in rapid-fire sequence was excessive and cannot be justified. Under these circumstances, the use of rapid-fire was contrary to departmental policy.

IV. DISCIPLINE

We believe that the final departmental record and public record must reflect the conclusion that the officers involved in the shooting of Eulia Love violated applicable Los Angeles Police Department policies and standards. The question of whether these officers should now be ordered by the Chief of Police to stand trial before a Board of Rights, which has the sole authority under our City Charter to impose significant punishment, is a separate matter which has troubled the Commission greatly.

Prior to the Commission's study of the Love shooting, the Department conducted an investigation under the then existing rules and procedures, found no violation of Department policies. Finally, the Chief of Police, who, under the Charter, has the legal responsibility for discipline, considered the matter thoroughly and decided that no discipline should be imposed. Under the then existing rules and procedures, the Chief's decision constituted a final determination regarding the issue of discipline. His final decision was communicated to the individual officers and to the public. The officers were entitled, under the then existing procedures, to rely on the Chief's final decision and to conclude that, since their case had been finally adjudicated by the Chief of Police, they could not again be placed in jeopardy.

Based on our examination and review of the Love shooting, we are in disagreement with the decision reached by the majority of the Shooting Review Board. Certain of the facts which affect our conclusion were not before the Chief of Police when he adju-

dicated the disciplinary issue. However, while the Commission might well have reached a contrary conclusion to that reached by the Chief even under the facts presented to him, we believe that any attempt to impose discipline at this time would violate the rights to due process of law to which the two officers, like all other persons, are entitled.¹⁰

For the reasons set forth above, we are not directing that the Chief institute disciplinary proceedings. We are, however, directing that a copy of our findings be placed in the officers' personnel files. We would also note, although it is not a basis for our decision, that referral of this matter, by the Chief, to a Board of Rights at this time would in our opinion be futile and would serve no useful purpose, since we are persuaded that the Board would not impose discipline upon the officers in view of the judgements regarding this case previously expressed by the Chief of Police and the Shooting Review Board.

We must add, in fairness, that the fault for the disastrous shooting of Eulia Love does not lie solely with the individual officers involved. A serious question exists in our minds as to how well the Department trained and prepared the officers to deal with the situation they encountered. We question also whether the Department should have sent its officers on the assignment which resulted in the fatal shooting, just because the gas company wanted to collect an overdue bill. These and other matters will be considered fully in later sections of this Report.

V. COMMISSION FINDINGS

1. The officers' premature drawing of their weapons, and their use of rapid-fire under the circumstances of the Love case, were both in violation of Department policies. In addition, the officers made serious errors in judgement, and in their choice of tactics, which contributed to the fatal shooting of Eulia Love.

2. The Commission has reviewed the Department's policy on the use of firearms and finds that there are no inadequacies in that policy which contributed to the shooting of Eulia Love. On the contrary, if properly implemented, the policy provides sufficient safeguards against such a shooting. The Commission has concluded that further revision of the policy is not necessary at this time. The present Department policy is appropriately more restrictive than the requirements imposed by state law.

3. The Commission's review of the Department's investiga-

10. In addition, application of the equitable principles of laches and estoppel might well bar the Department from proceeding with disciplinary action at this time.

tion and evaluation of the shooting of Eulia Love reveals that many of the factors on which the majority of the Shooting Review Board relied in reaching its conclusions were based on erroneous or misconstrued facts. The Board's failure to properly exercise its fact-finding function, and to obtain and assess all available evidence, prevented it from giving due consideration to all elements of Department policies and standards.

4. In view of the Department's previous final determination, in accordance with existing rules and procedures, that no discipline would be imposed upon the officers, the Commission has concluded that an attempt to impose discipline at this time would violate the officers' due process rights. We are, however, directing that a copy of our findings be placed in the officers' personnel files.

5. Substantial changes are required in the system of investigating and adjudicating officer-involved shootings and other use of force incidents. This subject will be considered fully in a subsequent section of our Report.

6. Training standards and methods require reevaluation. This subject will also be considered fully in a subsequent section of our Report.

7. The Department's written civil disputes policy does not clearly prohibit officers from assisting in bill collection efforts or giving the appearance of providing assistance. The Commission is adopting a revised policy in order to prevent a recurrence of the events which led to the officers' intervention in a dispute between the gas company and a customer delinquent in the payment of her bill. The revised policy will be included in a subsequent section of our Report.

8. The Commission has determined as a result of its review of the Love shooting that there are a number of other areas in which reevaluation or changes in Department policies, standards, or procedures are necessary. These additional matters will be considered fully in a subsequent section of our Report.

Appendix B

MEMORANDUM: INVESTIGATION OF THE DEATH OF
RON SETTLES—CONCLUSION AND
RECOMMENDATION, BY L.A.
COUNTY DISTRICT
ATTORNEY'S OFFICE, JANUARY 12, 1982

I. INTRODUCTION

The Special Investigations Division has completed its investigation of the circumstances surrounding the death of Ron Settles. A list of the witnesses interviewed or who testified before the Grand Jury or Coroner's Inquest is attached as Appendix A.

It is our recommendation that this office decline to initiate criminal proceedings against any Signal Hill Police officer in connection with Mr. Settles' death. The evidence accumulated during our seven-month investigation does not warrant criminal prosecution.

The following discussion is a summary of the events leading to the death of Settles and the subsequent investigative efforts to determine whether there is sufficient evidence to prove that: (1) Settles was murdered while in the custody of the Signal Hill Police Department, and (2) a particular person(s) was criminally responsible for that death.

The circumstances surrounding Settles' death can be best explained by dividing the events into six sections: the arrest of Settles, the altercation in the booking cell, Settles being placed in cell 1, the discovery of Settles' body at 2:35 p.m., the autopsy and opinion of pathologists, and the presence or absence of a mattress cover in cell 1.

II. ARREST OF SETTLES

A. *Settles Seen Speeding*

On June 2 at approximately 11:15-11:30 a.m., near the intersection of Orange and Hill Street, Mr. Settles was stopped by uniformed Signal Hill Police Officer Jerry Lee Brown for speeding. Settles was by himself in his Triumph TR-7, and Brown was accompanied by a former police cadet, Cynthia Orel.¹ Settles was apparently late for his part-time job at Franklin Junior High. He

1. Orel had previously dated Brown when she was a Signal Hill Police cadet. She was scheduled to have her psychological examination as part of her application

was due there at 11:30 a.m. It is not clear whether Brown's intent was to warn Settles about his driving or issue a ticket. No citation was ever issued to Settles as a result of this traffic stop. Brown had a citation book with him in the car, but he did not issue any citation for moving violations on June 2.

A citizen, Mrs. Gloria Zabala, seated at a bus stop bench approximately 10-15 feet from the TR-7, witnessed nearly the entire incident beginning shortly after Settles had been stopped to the ultimate departure of all parties after Settles had been arrested. Zabala had a clear unobstructed view of Settles through the windshield of the TR-7. She never moved from her seated location on the bus bench. There is no evidence that Brown, Orel or Zabala had ever had previous encounters with Settles.

A discussion between Settles and Brown ensued in which Settles admittedly refused to give Brown his driver's license as requested. Zabala heard Brown as he stood next to the driver's side of the sports car and asked Settles—who was still sitting in the driver's seat—for his driver's license and registration. She could not hear Settles' responses but she concluded that ". . . Settles wasn't being cooperative at all." At one point Zabala overheard Brown say to Settles, "I'm just trying to do my job." After about the third request for his driver's license, Brown called Settles an "asshole."

Orel, who had stayed next to the police car, then called for a back-up unit. Within approximately one or two minutes of the call, the back-up unit arrived. These two officers, John Parker and Patrick Shortall, got out of their car which was parked directly behind Brown's car and began to approach the Triumph. Both walked along the passenger side of the TR-7. As the two officers approached, Brown was trying to open the driver's side door and Settles was resisting. Parker and Shortall moved to the driver's side of the TR-7 to assist Officer Brown. Settles was then seen by all witnesses to make a motion down and to his right as if reaching for something under the car seat. The officers immediately drew their weapons, placed them against or near Settles' head and ordered him out of the car. Settles was handcuffed and escorted to the police car by Shortall without incident. Other than ordering Settles out of the car at gunpoint and then spinning him around and shoving him against the car, there was no other physical altercation at the location of the arrest.

B. *Search of Settles' Car*

After Settles had been taken out of his car, Parker searched

for employment with the Long Beach Police Department and she was seeking the advice of Brown. Brown invited her to ride with him while they discussed the test.

the interior of the TR-7. Parker had had one previous contact with Settles but did not recognize him at the time of the arrest.² Zabala testified that Brown searched the car but all other witnesses interviewed say Parker searched the car. The police reports also state that Parker was the one who searched the car. Found in the general vicinity of where Settles was apparently reaching when the officers drew their guns was a butcher-type knife with a nine-inch blade and a wooden replica of a small pirate-type sword.

Zabala claims that the coke kit was found in the trunk of the car. The testimony of Parker and Orel and the police reports indicate the kit was found on the passenger seat of the car. The officers admitted inspecting the coke kit at the rear of the TR-7 while standing behind the trunk. This explanation appears reasonable under the circumstances; it may explain why Zabala concluded that the pouch had been found in the trunk.

The vial and straw contained minute amounts of cocaine. The straw also contained a minute amount of PCP.

On January 5, 1982, we were informed by Drs. Orm Aniline and Ferris Pitts of the U.S.C. County General Medical Center that their tests of the blood and urine of Settles established the presence of a trace amount of PCP—an amount that could very possibly have been ingested by Settles passively and without his knowledge, e.g., breathing the smoke of a marijuana cigarette laced with PCP. On January 11, 1982, we were informed by the Coroner's Office that they too had confirmed the presence of PCP in Settles' body. A trace amount of six nanograms was found in the stomach contents of Settles. The original tests by the Coroner's Office failed to reveal the presence of PCP. It was only after the coroner's equipment was considerably upgraded to detect such small amounts of PCP that the drug was found. As of this writing, the Coroner's Office and Drs. Aniline and Pitts planned to check anew brain, liver, blood and urine samples of Settles for the presence of PCP.

The trace amount of PCP thus far isolated by the Coroner's Office was slightly more than that isolated and identified by Drs. Aniline and Pitts. The six nanograms is still of the level that would be possible for one to passively ingest, e.g., being in a room on *several* occasions when a "Sherman" cigarette is being smoked. Whether Settles might then have been affected by PCP is doubtful.

2. On November 29, 1981, a reporter interviewed a girlfriend of Settles, Palmida Willis. She related that on May 9, 1981, she and Settles were in her car when the car became inoperable. A Signal Hill Police officer came to their assistance and transported both to Settles' TR-7. Parker was this officer. It was only after Parker had read this story that he realized he had in fact had this previous encounter with Settles before the June 2 incident.

but possible. Dr. Aniline informs us that approximately 20% of the population is particularly susceptible to even minute amounts of PCP. There is no evidence whatsoever to conclude that prior to his arrest by Officer Brown, Settles had acted in a manner consistent with PCP ingestion, i.e., bizarre or unusual behavior.

Officers Shortall and Parker transported Settles to the station without incident. Brown and Orel proceeded to the station with the evidence. Orel brought the recovered evidence into the station and immediately left the station to meet some friends for lunch.

II.

BOOKING CELL ALTERCATION

At approximately 11:45 a.m., Settles, still handcuffed, was led from the police car through the rear door of the police station to the booking cell. (See diagram 1.) The cell is six feet by seven feet and is used to process arrestees before they are placed in a detention cell to wait for release or arraignment. Shortly after being placed in this cell, Settles complained that the handcuffs were hurting him. Brown and Shortall were in the cell with Settles. Apparently after a verbal exchange between Settles and one or both officers, Settles was able to grab hold of Brown's crotch and the altercation between Brown and Settles ensued. Shortall elected not to get involved and merely witnessed the fight.

Cadet Gerry Fleisher, who was in the communications and reception area of the station, overheard the altercation and went back to investigate. (See diagram 1.) He observed that Settles had his hands handcuffed behind his back but had managed to grab hold of Brown's crotch and Brown was desperately attempting to free himself from Settles. Brown was seen to be hitting Settles with his fists around Settles' face and head. This is confirmed by Shortall's version of the altercation. Somehow Brown was able to free himself, pull his baton and hit Settles with a number of forceful blows on the legs as Settles was on the floor kicking out at Brown. After managing to stand up, Settles was then grabbed from the rear in a bear hug by Brown. Fleischer gave Settles one or two hard blows with his fist. The blows landed on Settles' chest or abdomen. Settles was then driven to the floor face down by Brown and Fleisher. Settles was pinned to the floor with the knees of Brown and Fleisher on the back of Settles. The floor is composed of concrete covered by linoleum. This ended the altercation. There is no evidence that Settles was ever hit on the head, face or neck area with the baton. Fleisher and Shortall testified that once Settles was driven to the floor and became submissive, neither Fleisher nor Brown gave Settles any gratuitous blows of

any kind nor were there threats of future harm. We have not been able to prove otherwise.

Settles was 5'10", 206 pounds, age 21; Brown was 5'9", approximately 175 pounds, age 36; Fleisher was 5'6", approximately 140 pounds, age 20.

After the fight had ended, Shortall completed the booking process which included removing Settles from the booking cell and escorting him to the adjacent area where the booking photo was taken. (Attached photo, Appendix B.) (Also, see diagram 2.) Brown and Fleisher apparently had nothing more to do with Settles at this time. While in the booking cell and photo room, Shortall and Settles engaged in conversation concerning Settles playing football and his playing at Banning High School and Cal State. (Grand Jury transcript page 457.) Settles was booked for assault with a deadly weapon against a police officer.

IV.

SETTLES TAKEN TO CELL #1

A. *Parker and Shortall Leave the Station*

At about 12:45 p.m. Shortall walked the unhandcuffed Settles to cell 1. (See diagram 3.) Officers Parker and Shortall immediately left the station to pick up a prisoner in Riverside County. They did not return to the Signal Hill Police Department until approximately 4 p.m., 1½ hours after Settles' body had been found.

B. *Recollection and Testimony of Bernard Bradley*

Bradley, who was in cell 2 (see diagram 3), observed Settles being escorted into the cell complex and noted that the left side of Settles' face was swollen, that he was walking with a limp, and that his hair was messed up. Bradley had previously overheard the sounds of the altercation which had taken place between Brown and Settles.³ Settles was placed in the cell immediately to the east of Bradley. (See diagram 3.) However, Bradley could not see Settles because a solid cinder block wall separated the two cells. During the approximate ½ hour that they were in adjacent cells, they discussed Settles' arrest, booking cell altercation, mutual high school acquaintances and the bail process.

Settles had never been arrested before whereas Bradley had

3. Bradley also testified that after the altercation and before Settles was brought to cell 1, he overheard a conversation between a police officer and Settles regarding the butcher knife found in Settles' car. Bradley related, "I heard the officer say that he could use that knife against him as an assault against an officer. And Settles said no, he wasn't using that knife against the officer but to, you know, cut some wires." (Grand Jury transcript page 804:27 to page 805:2.)

been in custody on a number of occasions and was therefore offering his advice to Settles. Settles never complained about his injuries. Settles told Bradley that he hit or grabbed Brown by the testicles because he was being hurt with the tight handcuffs. Settles did admit to Bradley that if he had just given Brown his driver's license as requested he would not be in jail. ". . . I (Bradley) said, 'You mean . . . if you had have given up your license, this wouldn't have happened? You wouldn't be here?' And he said, 'Yes,' like that." (Grand Jury transcript pages 806:14-18.) But Settles also told Bradley that he felt the cops were harassing him. There was never any mention to Bradley that a cocaine kit had been found in Settles' car or that he was being charged with any drug related offense.

Bradley has told us that during the entire time he was with Settles, Settles seemed worried about being in jail and at one point about being alone. (Grand Jury transcript page 816:13.) By the time he left Settles at about 1:15 p.m., however, Settles appeared to be a little less worried. When Bradley was taken from his cell, he stopped in front of Settles' cell for 2-3 seconds and said, "See you around." Settles was lying on the lower bunk propped up on his elbows with a blanket behind him. Settles was facing toward the front of the cell. Settles acknowledged the good-bye and nothing more was said.⁴

V.

DISCOVERY OF DEATH OF SETTLES AT 2:35 P.M.

At 2:35 p.m., off-duty Officer Steve Owens discovered the lifeless body of Settles hanging in cell #1. Between Bradley's departure from the jail, approximately 1:15 p.m., and the discovery of Settles' body at 2:35 p.m., we have found only one person that we can prove either talked with or actually saw Settles—Cadet Gerry Fleisher.

Immunity was granted Fleisher concerning the incarceration and death of Settles. He was then compelled to testify as to the facts he knew concerning the case. Fleisher said that to his knowledge he was the only person to see or talk with Settles after Bradley was taken to court and before Officer Owens found his body. Fleisher had control of the jail keys and while he cannot recall anyone taking the keys, he admits it is possible that it could have been accomplished without his knowledge. He correctly states, however, that from his position in the reception area he should

4. Bradley was arrested on May 30, 1981. Under California law, he had to be arraigned or released by the end of the court day on June 3. Bradley was advised earlier in the day that he was going to be taken to court for arraignment that afternoon when felony arraignment are ordinarily held.

have been able to hear any altercation emanating from cell 1. This is confirmed by our tests as well as the interviews of Sean Rodgers and Rita Williams, the other Signal Hill Police Department employees who were working in the reception and communications area with Fleisher. Fleisher, Rodgers, and Williams deny hearing such sounds.

Bradley related to us that Settles told him he had attempted to place one call but there was no answer.

Fleisher first explained to us that after Settles had been placed in cell 1, Settles asked him for permission to make a phone call. Fleisher said he told Settles he would let him make the phone call as soon as he had time. Fleisher claimed he was very busy but when pressed, admitted he was upset with Settles over the altercation, was afraid to go back to Settles' cell and take him to the phone without the assistance of another officer. On his first appearance before the Grand Jury, Fleisher stated those were the only reasons he did not grant Settles his request for a phone call. A few weeks later and after an interview with a newspaper reporter, Fleisher admitted that another reason he did not give Settles the requested phone call was because Officer Jerry Lee Brown had ordered him not to do so.⁵

The last time Fleisher saw Settles alive was at 1:55 p.m. when Fleisher made a visual check on Settles. He saw Settles seated on the lower bunk. Settles asked for a phone call and Fleisher told him he would get it when he had time. Settles did not look at Fleisher and Fleisher described Settles as looking "spaced-out."

Officer Owens, who had the day off, arrived at the station between 2:15 and 2:30. He was dressed in civilian clothes having just finished playing a game of racquet ball with Mark Risinger, another off-duty Signal Hill Police officer. The game ended at 2 p.m. Owens had come to the station to use the shower facilities. He had arranged to meet Risinger at the station after showering and changing clothes. Shortly after his arrival at the station, Owens was asked by Fleisher to go to cell #1 and give Settles his phone call. The keys to the jail are located on a ring next to Fleisher's desk in the reception area. (See diagram #1.)⁶

5. By Fleisher's own estimates, it would have taken him about 45 seconds to leave his post, escort Settles to the booking cell, leave him there, walk around the corridor and dial the requested number. Fleisher would have gone back to his duties while Settles remained in the locked booking cell talking on the phone.

6. Different keys are needed to open the doors into the jail complex and the individual cells. Apparently the only keys to the jail complex other than those in the communications room are kept in a locked box in the lieutenant's office. The key to the locked box is kept in the back of a drawer in the chief's desk, but we are informed that only the chief, lieutenant and sergeants are aware of the keys in the lieutenant's locked box. Neither the chief nor his second in command, Lt. Robert Deeley, were present between the time Settles was taken to cell #1 and the discovery of the body.

Owens took the keys and upon opening the east door to the cell complex saw Mr. Settles hanging from the bars in cell #1. He yelled for Fleisher. Owens attempted to lift Settles in order to take pressure off of his neck. When Fleisher arrived, he immediately yelled for Brown who was down the hall in the report writing room. Brown had never left the station after Settles was arrested.⁷ Brown ran down the hall and as Fleisher and Owens were supporting Settles, Brown tried to untie or loosen the mattress cover that was around Settles' neck. Not being successful, scissors were obtained from the reception area and Brown then cut the mattress cover. In the process of cutting the mattress cover, Brown nicked Settles' neck with the scissors. Mr. Settles was dead. Paramedics were summoned and subsequently so were Coroner's investigators.

The body was removed by the Coroner's Office. The mattress cover was not recovered by the Coroner's Office until it was turned over to them on July 15, 1981. The Signal Hill Police Department had retained possession until that date. The District Attorney's Office was notified of the death on June 3, 1981, when the Coroner's Office called to advise us of the autopsy.

VI.

PRESENCE OR ABSENCE OF MATTRESS COVER IN CELL

An important facet of our investigation is the inability from an evidentiary standpoint to establish the absence of a mattress cover in cell 1 at the time Settles was placed in that cell.⁸ It is clear from statements of Signal Hill Police personnel that Settles was not provided one when placed in the cell. Mr. Bradley's statements also indicate that a mattress cover was not present in Settles' cell when Bradley was removed and taken to court. This state of Bradley's is predicated on Bradley having glanced into Settles' cell and saying "See you around" to Settles on his way out of the cellblock. On questioning by us, Bradley did indicate that while he did not see a mattress cover, he was not looking for one either. (Grand Jury transcript page 823:27.)

Bradley re-created for the Grand Jury his leaving his cell and

Chief Wert was at a conference outside of Signal Hill and Lt. Deeley was out of the station on personal business and lunch for approximately 2 hours. As Deeley left the station, he saw Settles in the photo room. When he returned, Settles was dead and lying on the floor.

7. Brown was working a 12-hour shift beginning at 3:30 that morning and ending at 4 p.m.

8. The mattress covers used by the Signal Hill Police Department are sack-like in appearance, i.e., a fairly heavy cloth sewn together with only one opening at the end. We are told that the mattress cover is used for its designed purpose but also often used as a pillow.

bidding Settles good-bye. However, merely because Bradley did not see a mattress cover does not mean one was not present. The mattress cover could have been wrapped or bundled behind the blanket Settles was leaning against in the lower bunk, he could have been sitting on it, or there could have been a mattress cover on the top bunk. Again, while Bradley said that he did not see a mattress cover in Settles' cell, neither was he specifically looking for one.

Detective Bruce Kramer was instructed to take Bradley to court for arraignment. He obtained the keys for the cell from the communications/reception area and brought Bradley his clothes and told him to get dressed. Settles asked him for permission to make a phone call. Kramer said he would tell the operations officer (Fleisher). Kramer does not know whether there was a mattress cover in cell 1 when he was in the cell complex at 1:15 p.m. But he did not see one.⁹

The Signal Hill Police Department had delegated the responsibility of providing inmates a mattress cover and blanket to the custodian. It was the custodian's responsibility to occasionally check the cells for mattress covers and blankets and change them when necessary. The custodian, Al Galang, told us that he was not permitted into the cell complex if a prisoner was present. For the few days preceding June 2, 1981, the jail was occupied. He has not independent memory of the last time he went into cell 1 and placed one or more mattress covers and blankets on the bunks.

However, we have learned Signal Hill Police Officer L. Lucky permitted prisoners to change cells to facilitate conversation between the inmates. They would be permitted to take their bedding with them.

In an effort to learn if other inmates who had been in jail just prior to Settles' incarceration ever saw any mattress cover, various former inmates were contacted by S.I.D. personnel and, independently, by Signal Hill Police Department detective Russell Putnam. A tape recorded telephone conversation between Det. Putnam and a prisoner who had been in cell 1 as recently as June 1, 1981 at 12 noon, places a mattress cover on the lower bunk in the cell. Mr. Dareyle Fernando McElroy stated to Det. Putnam that while he, McElroy, did not have a mattress cover on his top bunk, a Mexican National prisoner on the lower bunk did have one. This statement was taken from McElroy on August 26, 1981.

9. Though ordinarily detectives were not asked to transport prisoners to court for arraignment, occasionally Kramer and other detectives were called upon to do so. Kramer returned to the station at approximately 2:15 p.m.

During his testimony at the coroner's Inquest, he denied seeing a mattress cover.

Two prisoners shared, at different times, cell 1 with McElroy. We have been able to locate only one of these two Mexican National prisoners. Mr. Nicholas Garcia Salinas stated to us that he had no mattress cover, only a blanket. The other Mexican National prisoner is being sought for failing to appear in Long Beach prisoner is being sought for failing to appear in Long Beach Superior Court on an allegation of violating Penal Code Section 220.

We have also interviewed two persons who were incarcerated in Signal Hill Jail and released the morning of June 2, 1981. Mr. Terry Mayne and Mr. Kenneth Chapman had been in different cells at the west end of the cellblock. (Cells 1 and 2 are at the east end.) Mr. Mayne stated he had been provided a mattress cover and blanket. Mr. Chapman said he was provided a blanket but no mattress cover. Chapman did, however, state that he thinks he saw a mattress cover in an adjacent cell.

Given the above evidence, we cannot prove the absence or presence of a mattress cover in cell 1 at the time Settles was placed in the cell.

VII.

AUTOPSY AND OPINIONS AS TO CAUSE OF DEATH

As can be seen from the above summary, we have been unable to find any direct evidence that explains the death of Mr. Settles. Because of the absence of any direct evidence, any prosecution would be forced to rely heavily on the expert opinions of forensic pathologists. Three pathologists testified at the Coroner's Inquest: Drs. Sara Reddy, Ronald Kornblum, and John Ryan.¹⁰ Only one of the three is certified by the American Medical Association as a forensic pathologist, Dr. Ronald Kornblum. Drs. Reddy and Ryan are not certified in the subspeciality of forensic pathology. A forensic pathologist deals in unnatural or in unusual causes of death. A plain pathologist deals in natural causes of death. Nevertheless, we have studied the testimony of the three doctors with care. Drs. Reddy and Kornblum were called before the Grand Jury and elaborated on their inquest testimony. The testimony of Dr. Ryan was read for the benefit of the Grand Jury.

Dr. Reddy, who has been employed as a deputy medical examiner by the Coroner's Office since October 1980, performed the autopsy of Mr. Settles under the supervision of Dr. Kornblum. Dr. Ryan was not present for the autopsy and never examined the

10. Drs. Reddy and Kornblum are employed by the Coroner's Office. Dr. Ryan is a private pathologist retained by the Settles' family.

body of Mr. Settles. An explanation of the physical injuries found on Settles is contained in the Coroner's report. (Appendix C.) Unfortunately, x-rays were not taken of Settles to determine the presence of fractures. However, Dr. Reddy testified that during her external examination of Settles, she did not observe any evidence of fracture to any bones. The explanation is less than adequate given the swollen condition of the face. It is possible, though apparently only remotely so, that Settles could have suffered a hair-line fracture of a facial bone and it has gone undiscovered. When the throat of Settles was examined, Reddy did not observe any physical evidence of fracture of the jaw bone. Ordinarily facial skin is not reflected during the autopsy nor was it done here. Johnny Leggett, the family mortician, testified to massive hemorrhaging in the facial area. Drs. Reddy and Kornblum felt that such hemorrhaging was of no consequence to their findings and opinions.

The three doctors are in general agreement that the injuries evidenced in the neck area of Settles were consistent with death by hanging or death by choke hold. However, Dr. Kornblum opined that even though the injuries to the neck area were consistent with death by hanging or death by choke hold, in his opinion he was certain that death was by hanging. (Grand Jury transcript pages 857-865.) He explained that when one dies by police choke hold, the injuries to the neck are much more severe than those suffered by Settles because the deceased is usually engaged in a violent struggle.

Dr. Thomas Noguchi, Los Angeles County Coroner-Medical Examiner, did not participate in the autopsy of Settles. Soon after the autopsy of Mr. Settles, Noguchi had a number of meetings with his staff to discuss the available evidence relative to the cause of Settles' death. Based on his review, he ordered that an inquest be held and that a reconstruction of the hanging be attempted. The reconstruction was held at the Signal Hill Jail on July 15, 1981. (See Coroner's Inquest transcript, pages 724-922.)

On December 9, 1981, Noguchi was subpoenaed before the Grand Jury. As of that date, Noguchi had never been formally interviewed by anyone concerning the Settles' case nor had I had any informal discussions with him regarding the case. Based on his review of the autopsy, discussions with his staff, the reconstruction, and his past experience in forensic pathology, Dr. Noguchi testified that in his opinion death was by hanging and not by choke hold. He did admit that it would be possible for Settles to have been knocked unconscious before being hanged, but given the evidence of injury to Settles' head and face, he felt that the possibility was remote. Yet, when one compares the booking

photo of Settles with his photo taken just before the autopsy (Appendix D), the general swelling of the face is evident and gives rise to considerable speculation. Noguchi and Kornblum explained that the swelling was in part a result of blunt force trauma, e.g., being driven to the floor face down or his head being shoved against a wall, but primarily caused by death by asphyxia which restricts the outflow of blood from the head causing substantial swelling and hemorrhaging throughout the face.

Near the conclusion of his 3½ hours before the Grand Jury, Dr. Noguchi ended his testimony with his opinion that Mr. Settles had committed suicide and was not murdered. The relevant questions and answers are set forth:

Q. (Garcetti)

Do you have an opinion whether Mr. Settles committed suicide or whether he was murdered?

A. (Noguchi)

Based on available information, time of autopsies, informations that are given to us in the beginning, and gathering information during inquest, somewhat limited in the testimony on the part of the police officers' participation, there are a number of possibilities does exist. Just possibilities, unknown possibilities.

But based on available information, checking with our experience in dealing with cases, it is, within medical certainty, consistent with suicidal hanging.

The possibility, the rare possibility, that a person could be suspended while unconscious, that is a remote possibility.

But although we did not conduct psychological autopsy, Mr. Settles bringing, and also some reactions that may or may not confirm by our study, but the personality and so forth, the response is again consistent with suicide rather than homicide.

Q. Just to make it perfectly clear now, in your opinion, your opinion, your expert opinion, based on the information that you have concerning this case, it is, based on a reasonable degree of medical certainty, your opinion that Mr. Settles committed suicide; is that correct?

Y. Yes.

This is—I'm not only willing to testify with this body but anyplace else.

Q. All right.

Obviously your opinion is contrary to the findings of the coroner's inquest in the case.

A. Yes. As you may recall, that coroner's jury rendered a verdict, split verdict, five for hand of another, four for suicide.

I have at that time accepted majority rule.

Q. Now, the burden of proof in a coroner's inquest is not proof beyond a reasonable doubt, it's proof by a preponderance of the evidence.

A. First of all, coroner's verdict is advisory verdict to the coroner.

Q. Correct.

A. It is a vehicle that the coroner use to air differences and gathering additional scientific and investigative information.

I chose to accept majority rule on this case.

Q. Why did you accept the majority rule if, in your opinion, that decision was an incorrect decision?

A. I do not consider it totally incorrect. The cause of death is not any question.

As to circumstances surrounding the death, even though scientifically we find to be this, scientific method is one of the method.

We cannot uncover every truth to the point we can be absolutely certain.

And the investigation and also testimony offered, I respect the wisdom of the jury.

(Grand Jury transcript pages 983:4-985:22)

VIII.

CONCLUSION AND RECOMMENDATION

The grief and anguish being felt by Settles' family as a result of his seemingly unexplainable and very tragic death are still being felt today with the same impact as they were seven months ago. The community too continues to share their grief and concern. We are not oblivious to the tragedy of Settles' death nor to our professional commitments.

The purpose of our seven-month investigation has been to determine whether there is sufficient evidence to warrant the prosecution of any person for the death of Mr. Settles. The District Attorney's Office has a duty and responsibility to the community and to all individual citizens to apply state laws in a fair and objective fashion. Decisions whether to prosecute must be based on the evidence and the law and not on other factors. The evidence must be legally sufficient to prove by the criminal standard of proof both that a crime has been committed, i.e., that Settles was murdered, and that a particular person(s) was responsible for that crime. The evidence is insufficient to establish either fact.

We have theorized that if Settles was murdered, it could have been accomplished by either a police carotid choke hold or by hanging after he had been rendered unconscious. There appears

to be no dispute that death was by asphyxia and no other means. That limits us to death by hanging or choke hold.

Though the physical injuries inflicted on Settles' neck are consistent with death by hanging as well as death by choke hold, Drs. Noguchi and Kornblum's explanations concerning their opinions that death was by hanging are persuasive and logical. One would expect that a man of Settles' strength would put up a vicious struggle if a choke hold were being applied against him. This struggle would then have evidenced itself in the autopsy with greater injury to the neck area than actually suffered by Settles.

These same doctors, however, admit that it would be possible for Settles to have been rendered unconscious and then hanged. But they have opined that such a possibility would be remote given the injuries Settles sustained about his face and head. Nevertheless, the possibility exists and if one were to look for a witness who would be willing to opine that such a possibility is real and perhaps even probable, I am sure such a witness could be found. Even if such a witness or witnesses were found, we would still be faced with the contradictory testimony of two highly qualified and respected forensic pathologists, Drs. Noguchi and Kornblum.

When the expert opinion and findings of the pathologists are considered together with circumstantial evidence we have developed, we must conclude that the evidence falls considerably short of that required to prove that a crime has been committed.

Even assuming hypothetically that we could prove that Settles was murdered, who do we charge? Of the seven persons who immediately became suspects in the eyes of some community members when they invoked their constitutional privilege to remain silent at the Coroner's Inquest—Parker, Shortall, Orel, Kramer, Fleisher, Owens and Brown—three of the seven—Parker, Shortall and Orel—were not in the station during the critical time period between 1:15 p.m. and 2:35 p.m. Parker and Shortall left the station at approximately 12:30 p.m. and went to the Riverside County Jail to transport a prisoner back to Signal Hill. They did not return to the station until 4:00 p.m. Settles had been found at 2:35 p.m.

Orel returned to the station with Officer Brown at approximately 11:45 a.m. After she brought the evidence in from the car and placed it inside the station, she immediately left the station to have lunch with a friend. She did not return to the station at any time during the remainder of that day.

Why these three witnesses were advised to invoke their Fifth Amendment privilege is still puzzling. Assuming they were can-

did in their testimony before the Grand Jury, nothing they said could possibly have incriminated them.

Detective Kramer voluntarily submitted to an interview by this office and related that he took Bradley to court at approximately 1:15 p.m., returned to the station at approximately 2:15 p.m. and went to the detectives' squad room. We have no evidence that he was at or near the cell of Settles after his return to the station and before the discovery of Settles' hanging.

Cadet Fleisher was granted immunity but did not reveal anything that would incriminate him or anyone else for the death of Mr. Settles other than his refusal to grant Settles his oft repeated request for a phone call. Obviously, this factor may be of some import to any civil case, but it is much too tangential for criminal culpability.

Officers Jerry Lee Brown and Steve Owens are the only officers of the original seven persons who invoked Fifth Amendment privilege at the Coroner's Inquest not to have been questioned by this office. On the advice of counsel, Owens would speak to us only if he were granted immunity. Since we had interviewed witnesses who placed Owens out of the station until approximately 2:15-2:20 p.m., we concluded that immunity was not necessary or warranted. There is no evidence that implicates Officer Owens with the death of Settles.

Brown has continually refused our invitation to be interviewed. However, even if the evidence were to prove the existence of a crime—which it does not—before we could legally and ethically charge Brown with the murder of Settles we must have some connecting evidence that Brown was somehow criminally responsible for the death of Settles. That evidence is lacking.

Summarizing the relevant evidence as it applies to Officer Brown, we can prove that Brown:

1. Was the arresting officer who had engaged in a verbal altercation with Settles at the location of the arrest;
2. Engaged in a fairly violent physical altercation with Settles in the booking cell;
3. Told Fleisher not to give Settles a phone call;
4. Was present in the police station during the critical time period between Bradley's removal from jail (1:15 p.m.) and the discovery of Settles' hanging in his cell (2:35 p.m.). But no one apparently saw Brown in the jail complex or recognized his voice in that area between approximately 1:15 p.m. and 2:35 p.m.¹¹ He was seen by numerous Signal Hill

11. Based on our tests and observations of the cell complex and station layout, we would have expected that those persons in the communications and reception area would have heard any altercation involving Settles between 1:15 and 2:30 p.m. It is possible that a very brief altercation would have gone unnoticed, e.g., Settles being

Police Department employees (sworn personnel and civilian employees) around the coffee room, report-writing room and detectives' squad room—all rooms on the western side of the building. He apparently changed clothes, sought to have one of the civilian employees sew the crotch of his pants that were ripped during his fight with Settles and engaged in conversation with individual employees.

The conclusion is self-evident. The evidence gathered during our investigation does not permit us to legally and ethically initiate a criminal prosecution against any person for the death of Mr. Settles. There must be evidence proving the existence of a crime and evidence that a particular person or persons committed the crime. The evidence is insufficient. Mr. Settles' death is tragic for us all. But the tragedy of his death cannot lead us astray from our moral and ethical principles as prosecuting attorneys.

Our investigation has been exhaustive and no reasonable further investigative efforts appear to be warranted. The Grand Jury has informed me that they are not requesting any additional witnesses and that they are satisfied everything possible has been done to investigate the circumstances surrounding the death of Mr. Settles. Neither the federal authorities nor Johnnie Cochran have any evidence or information that we do not have. Therefore, given the state of the evidence, Mr. Sundstedt and I must respectfully recommend that this office decline to prosecute any Signal Hill Police officer in connection with the death of Mr. Settles.

[Editor's Note. The Settles Family reportedly settled out of court for nearly \$1 million. L. A. Times, Jan. 28, 1983, § II, at 1, col. 5.]

knocked unconscious with a blow to the head; but the physical evidence does not prove such a conclusion. All witnesses who were in the station, with the exception of Brown, have been interviewed and deny hearing any noise emanating from the cell complex between 1:15 p.m. and 2:30 p.m. that could have been the sounds of an altercation.