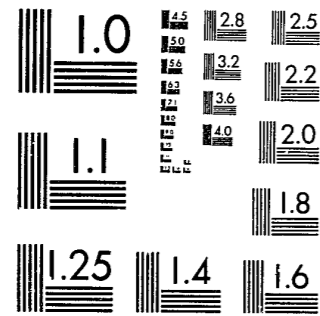


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Department of Justice

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REMARKS

OF

THE HONORABLE WM. BRADFORD REYNOLDS
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

BEFORE THE

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC.
LEGAL OFFICERS SECTION

U.S. Department of Justice
National Institute of Justice

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ATLANTA HILTON AND TOWER
ATLANTA, GEORGIA

November 13, 1982

ENCLOSURE

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I am delighted to have this opportunity to meet with you to discuss an area of law enforcement that is of profound importance to all of us. In one terribly significant respect, we stand on equal footing: each of us is a law enforcement officer. I, therefore, can, and certainly do, appreciate and share many of the frustrations and concerns that you experience; and a sensitivity to such matters frequently provides useful insight in carrying out my responsibilities.

As Assistant Attorney General for Civil Rights, I am charged with, among other things, the enforcement of all federal criminal civil rights matters investigated and prosecuted by the Department of Justice. This responsibility can largely be defined in terms of three types of cases: those dealing with racial violence, those implicating involuntary servitude and slavery, and those involving misconduct by law enforcement officers. The last category provides the context for my remarks today.

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I start with the proposition that, in this complex society in which we live, there are regrettably some questionable individuals that have chosen to do police work as surely as there are lawyers, doctors, politicians, and others who do a disservice to their respective professions. My responsibility is, in an appropriate situation, to bring the full weight of the criminal civil rights laws to bear on police officers who insist upon treading impermissibly on individual rights in the name of law enforcement.

But your responsibility is even greater. It is a responsibility to rid police forces throughout this country of those few among your numbers who abuse, rather than honor, their position, and in so doing tarnish the integrity of law enforcement at all levels--federal, state and local. Viewed in these terms--which is, in my opinion, the proper perspective--our efforts should be coordinated and cooperative. And that has certainly been the direction in which this Administration has moved.

In order to enhance even further this cooperative attitude, I would like to take a few minutes to explain to you our enforcement program. A better understanding of what we do, and how we do it, in the civil rights area will serve to remove some misperceptions that I am told exist among the officers you represent. I think you will see that our criminal enforcement activities, as they relate to police misconduct cases--while fully responsible to our legal mandate--are neither as intrusive nor as rigid as some may believe.

The federal criminal civil rights statute most often employed in the area of police misconduct is Section 242 of Title 18 of the United States Code. Section 242 makes it a crime for anyone acting under color of law willfully to deprive any inhabitant of the United States of a right secured or protected by the Constitution or laws of the United States. This statute

dates from the post-Civil War era; the rights protected, as amplified by court decisions in the ensuing years, have been held to include, among others, the right to be free from unwarranted assaults, to be free from illegal arrests and illegal searches, and to be free from deprivation of property without due process of law.

Most of our prosecutions under this statute involve only misdemeanors, since a Section 242 violation is a misdemeanor offense unless death results from the official misconduct. Upon receiving information of a possible violation, the FBI is called upon to do an investigation. As a matter of general interest, you might find it instructive that we receive about 12,000 complaints and inquiries each year concerning alleged criminal civil rights violations. Approximately 3,500 of these complaints are of sufficient substance to warrant an FBI investigation.

After the FBI has gathered the relevant information, it is reviewed by a Division attorney who decides either to close the investigation or to recommend a grand jury presentation. There are at least two levels of review--first by the Deputy to the Chief of our Criminal Section and then by the Section Chief himself--before any particular incident is authorized for grand jury presentation. Of the 3,500 investigations conducted each year, approximately 70 will ultimately be authorized for grand jury presentation and probable indictment.

We do follow a policy of presenting virtually every case that goes forward to a federal grand jury in the district where the misconduct allegedly occurred--notwithstanding that, as a constitutional matter, any misdemeanor can be prosecuted by an information signed by a Department attorney and consideration of the evidence by a federal grand jury is not required.

There are several reasons for this. Because criminal civil rights prosecutions are generally so sensitive, we feel it is important to establish the credibility of each witness under oath. It will come as no surprise to most of you that alleged victims of police misconduct are often far from being pillars of the community in which they live. Testing the credibility of their allegations before the grand jury is thus important in assessing the strength of the evidence.

In addition, we much prefer to have members of the community assess the governments' evidence before an individual officer is required to defend himself in a court. This provides us with a better understanding of the issues that so frequently play a significant role in the resolution of a case of this sort.

You should in this connection be aware of the fact that our grand jury presentations are not one-sided summaries of the incident at issue. Not only the victim, but all other relevant witnesses are subpoenaed to testify. The subject of the investigation is also invited to appear.

At the conclusion of the grand jury proceeding, we make a determination whether to request an indictment. Here, again, we proceed with caution. While a criminal indictment can be returned on a showing of probable cause, our request for such action by the grand jury depends on a determination that we have evidence establishing the defendant's guilt beyond a reasonable doubt.

Criminal civil rights prosecutions for police misconduct are among the most difficult under federal law. Emotions invariably run high, and community biases that understandably tend to credit (rather than discredit) the "law enforcement" representative, counsel against marginal prosecutions. We therefore proceed only against the clearly offensive police misconduct

that unmistakably violates the rights of the individual victim. This standard has led on occasion to situations where, after a full and complete grand jury presentation, we decided not to present any indictment to the grand jury.

You should also be apprised that our prosecution decisions are strongly influenced by how adequate we perceive the response to be of local authorities in dealing with the misconduct of the subject officers. Local action can include administrative proceedings by the law enforcement agency, as well as state prosecutions. What might fall short of "adequate" local action will depend, of course, on the facts of each particular case. A slap-on-the-wrist suspension of a few days for a brutal beating could well be considered insufficient to vindicate the federal interest under the criminal civil rights laws. At the other extreme, where it appears that the local law enforcement agency, acting in good faith, is moving swiftly and decisively to punish

misconduct, we generally will defer to that process and not seek to impose duplicative federal measures. Experience teaches that quick and commensurate discipline, imposed on police officers by their supervisors, is a far more effective deterrent to misconduct than any federal prosecution.

Where egregious misconduct is an issue (such as a brutal beating of an already shackled victim), we much prefer to await the outcome of a local criminal prosecution of the officers involved. Most often, the local prosecution adequately deals with the charges and there exists little reason to proceed with a federal prosecution. This is not to suggest any legal impediment to pursuing the civil rights violations following conclusion of the state or local criminal prosecution--whether it ends in conviction or acquittal. But, to take such action, we must be satisfied that federal interests remain unvindicated.

Let me allude just briefly to one other factor that controls our prosecution decision in this area, namely: the state of mind of the police officer accused of misconduct. In the leading case of United States v. Screws, the Supreme Court held that, in any prosecution under 18 U.S.C. §242, the government must prove the defendant's specific intent to engage in the misconduct that violates the victim's constitutional rights. Thus, the willfulness of the officer's action is very important to our deliberations.

We fully appreciate that police work can be dangerous, and that often split-second decisions must be made. We recognize as well that false complaints are frequently levelled against officers by criminal defendants. To insure against overreaction to claims that may not be as well grounded as they first sound, we subject to close scrutiny the officer's alleged misbehavior. For our purposes, the critical inquiry is whether the officer's misconduct is deliberate and willful--for example where a suspect

is beaten to coerce a confession, or where an arrestee who initially resisted police efforts to apprehend him has been subdued and is subsequently "worked over" in retaliation. In such instances, we will not hesitate to prosecute.

In the final analysis, we are, as are good prosecutors everywhere, guided by the evidentiary strength of our case. If the victim has been seriously injured, that generally works in favor of federal prosecution. However, prolonged threats to kill someone have also been sufficient, even where no injury results. If we can obtain independent corroboration of the victim's claim, the federal case is measurably stronger. We almost never prosecute police officers on the strength of the victim's statement alone. Obviously, the testimony of different witnesses is entitled to differing degrees of weight; we place greater reliance on corroboration provided by the testimony of a fellow officer than on testimony from the victim's mother. Again, the objective is to garner the most credible and convincing evidence available in order to insure a proper prosecution.

I hope that this outline of how we receive and evaluate complaints of police misconduct provides a better appreciation of how exceedingly careful, and selective, we are in choosing cases for federal prosecution.

In closing, let me reiterate what I said at the outset. To me, it is inconceivable that responsible law enforcement officials would quarrel with the proposition that police misconduct which is left unaddressed by local and state officials is a proper area of federal concern. It is in our mutual interest, it seems to me, to join forces in a cooperative effort to investigate fully and prosecute vigorously all instances of willful misconduct on the part of police officers. The extraordinary reputation of this Association has been built in no small part on the effective enforcement record of its many members. To the extent that civil rights violations by police officers are condoned or tolerated by any of us, we all are the worse for it.

Brutality and corruption undermine respect for the law and ultimately erode the essential integrity of the overall law enforcement effort.

It is this consideration, as much as any other, that counsels for renewed cooperation in this area among the federal, state and local authorities. To that end, I would welcome any suggestions that you or other members of your agencies may have.

Thank you.

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