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April 11, 2007

The Honorable Gloria Romero
Chair, Senate Public Safety Committee
State Capitol, Room 313
Sacramento, California 95814

Re: SB 1019 - Support

Dear Senator Romero:

I am writing in strong support of SB 1019, your legislation which would overturn the California Supreme Court case in *Copley Press v. Superior Court* (2006) 39 Cal.4th 1272. Unfortunately, the interpretation of the *Copley Press* decision has had the effect of closing down public access to information about police complaints in jurisdictions throughout the state. The resulting secrecy surrounding police complaints, in my view, has only served to undermine police community relations and reduce accountability of the police to the communities they serve.

As you know, the Los Angeles Police Department has held public hearings in serious misconduct cases for decades, and the Police Commission regularly released information on use of force incidents, including officer-involved shootings (OIS). Such public information access was strongly supported in the Christopher Commission Report, Board of Inquiry (BOI), and the Report of the Rampart Independent Review Panel, and helped play a critical role in bringing about much needed changes in the LAPD. However, on the advice of the Los Angeles City Attorney, the Police Commission is no longer releasing any identifying information in the many OIS or other use of force incidents that continue to plague the Los Angeles community. Indeed, all disciplinary information is now closed to the public.

I do not agree with the City Attorney's advice about, or the Police Commission's support of the *Copley Press* decision. Their actions tie the City Council's hands in ensuring the transparency in Police investigations demanded by the residents of the City of Los Angeles. The most recent example was the controversial LAPD board of rights' decision in the case of 13 year old Devin Brown who was killed by an LAPD officer in 2005. In a hearing that was not open to the public nor where any identifying information was released to the public per the *Copley Press* decision, Officer Steven Garcia was found to have acted properly when he shot and killed the youngster. Interestingly, in the same case, the Police Commission found the shooting "out of policy," directly contrary to the findings of the Board of Rights for the Police Department.



Sen. Gloria Romero

April 10, 2007

Page 2 of 3

The secrecy around the proceeding resulted in community protest. Although initially Police Chief William Bratton was neutral on this issue, he now wants to return to a public process and release the concerned information, that he was prohibited from doing so as a result of *Copley Press*. Chief Bratton now calls for the *Copley Press* decision to be overturned.

Before the California Supreme Court's *Copley Press* decision, state law held that police department internal affairs documents were confidential and could not be released to the general public. The records could only be released to criminal defendants pursuant to the California Evidence Code and *Pitchev v. Superior Court* (1974) 11 Cal.3d 531. The *Pitchev* case in 1974 held that a defendant in criminal cases is entitled to obtain records of citizen complaints about police officers whose conduct may be at issue in the case. Instead of abiding by the decision, many law enforcement agencies around the state shredded their complaint files. This behavior, based on the City Attorney's advice, was seen in the LAPD, which shredded all non-sustained civilian complaint records dating back to 1949, ultimately resulting in the dismissal of dozens of criminal cases due to this misconduct.

In 1978, state law was enacted which required departments to hold complaints for five years and created the confidentiality provisions and process set up in the Penal and Evidence Codes. Although the state legislature revisited this issue a number of times since 1978, the issues involved always applied only to the confidentiality of internal affairs records. Police unions and associations only started raising the argument that the secrecy provisions should be extended to civilian oversight agencies in recent years.

While I agree that the privacy of police officers needs to be protected against unfair intrusion, I do not agree that officers have a privacy interest in a sustained misconduct finding. Police officers work in public, interact with the public, are paid with public funds, and, occasionally, receive complaints from the public. When complaints are filed and found to be true, the public should have a right to know as there is for all other public employees. In fact, some courts have found that where there is reasonable cause to believe a complaint against a public employee is well founded, that employee's privacy must give way to the public's right to know.¹

As maintained by the ACLU, SB 1019 remedies the problems created by the *Copley Press* decision in a modest and balanced manner. First, it directly overturns *Copley Press*, allowing oversight agencies throughout the state to function as they did prior to the decision. Second, with regard to internal affairs cases, SB 1019 allows a police chief or sheriff to release limited summary information in sustained cases (officer name, complaint's name, unless requested withheld, charges, factual summary, discipline). The amount of information that may be released still amounts to far less information about police complaints than for other public employees. SB 1019 indicates that these records *may* be released to the public rather

¹ *Bakersfield City School District v. Superior Court*, 118 Cal.App.4th, 1041 (2004) (access to complaints and disciplinary action against school employee over allegations of sexual misconduct, violence, and threats of violence); *See also American Federation of State County and Municipal Employees (AFSME) v. Regents of the University of California*, 80 Cal.App.3d 913 (1978) (access to portions of audit report looking at alleged retaliatory action against an employee for reports on financial irregularities by superiors ordered released); *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742 (access to information including investigators report related to possible sweetheart deal between superintendent who was under investigation and school board granted).

Sen. Gloria Romero

April 10, 2007

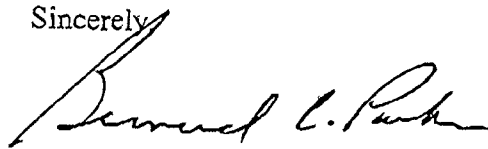
Page 3 of 3

than requiring that they *shall* be released. Third, SB 1019 allows a police chief to release information in cases that have not been sustained when another governmental entity such as a police commission or human rights commission makes a finding that a departmental action was out of policy. Under those circumstances, the police chief may disclose information related to the investigation in order to explain to the public the rationale for the department's decision. This would help address situations such as what occurred in Los Angeles following the shooting of Devin Brown.

Ultimately, this debate is about whether or not the public should have a right to know about how their government works and functions. Secrecy around citizen complaints about police misconduct will only result in greater mistrust of the police, poor police-community relations, and ultimately less responsive and accountable police agencies. SB 1019 presents a step in the right direction towards addressing the problems caused by the *Copley Press* decision.

If you or your office wish to discuss this matter further, please do not hesitate to contact my office.

Sincerely,



BERNARD C. PARKS
Councilman, 8th District

cc: Members & Consultant, Senate Public Safety Committee

bcp:dh