IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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| COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING,<br><br>Petitioner,<br><br>vs.<br><br>SUPERIOR COURT FOR THE COUNTY OF SACRAMENTO,<br><br>Respondent.<br><br>LOS ANGELES TIMES COMMUNICATIONS LLC,<br><br>Real Party in Interest. | ) | No. **S134072**<br><br>On Petition for Review from the Court of Appeal, Third Appellate District (No. C045494) |

APPLICATION OF THE ACLU OF NORTHERN CALIFORNIA, THE ACLU FOUNDATION OF SOUTHERN CALIFORNIA, AND THE ACLU FOUNDATION OF SAN DIEGO & IMPERIAL COUNTIES TO FILE A BRIEF AS AMICI CURIAE IN SUPPORT OF REAL PARTY IN INTEREST, LOS ANGELES TIMES COMMUNICATIONS LLC

BRIEF OF THE ACLU OF NORTHERN CALIFORNIA, THE ACLU FOUNDATION OF SOUTHERN CALIFORNIA, AND THE ACLU FOUNDATION OF SAN DIEGO & IMPERIAL COUNTIES AS AMICI CURIAE IN SUPPORT OF REAL PARTY IN INTEREST, LOS ANGELES TIMES COMMUNICATIONS LLC


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TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE OF THE SUPREME COURT OF CALIFORNIA:

Pursuant to Rule 29.1(f) of the California Rules of Court, the American Civil Liberties Union of Northern California, the ACLU Foundation of Southern California, and the American Civil Liberties Union Foundation of San Diego and Imperial Counties, respectfully request permission to file the attached brief as amici curiae in the above-captioned case. This brief supports Real Party in Interest, Los Angeles Times Communications LLC.

The American Civil Liberties Union (ACLU) of Northern California and the ACLU Foundations of Southern California and San Diego and Imperial Counties are regional affiliates of the American Civil Liberties Union, a non-profit, non-partisan membership organization with more than 400,000 members nationwide. The ACLU is dedicated to protecting liberty and equality assured by the United States and State Constitutions. The ACLU has participated in hundreds of cases in federal and state courts that involve the interplay between police policies and procedures and the protection of individual rights and liberties.

The ACLU believes that public accountability is essential to a free society. Further, the ACLU recognizes that police and police agencies have extraordinary powers to curtail individual freedom, such as the power to search and arrest, and extraordinary powers to invade personal privacy. While much of this power is

necessary for an orderly democracy, the power is easily and too frequently abused.

The ACLU believes it is critically important that the press and the public monitor the police and that outside agencies and reviewing bodies provide crucial mechanism for the public to investigate and hold police accountable for exceeding the limits of their vast powers. The ACLU believes that external monitoring and oversight are essential because police departments and agencies seldom police themselves adequately. Police accountability simply does not occur in the absence of public scrutiny. When there is public scrutiny, public confidence in the police increases, just as public access to our courts assures confidence in the judicial system.

For these reasons, among others, the ACLU has been actively involved throughout California in promoting police accountability and oversight in a variety of ways. The ACLU has worked to promote various forms of civilian review of alleged police misconduct. In addition to helping to create civilian review boards in several California cities, the ACLU also represented citizen interveners in Berkeley Police Officers Association v. City of Berkeley (1977) 76 Cal. App. 3d 931, and participated as amicus curiae in San Francisco Police Officers' Association v. Superior Court (1988) 202 Cal. App. 3d 183. Most recently, the ACLU participated in litigation over whether a California Penal Code provision

that leaves unregulated knowingly false statements by police officers and their supporters during misconduct investigations while penalizing only statements critical of the police violates the First Amendment. See Chaker v. Crogan (9th Cir. 2005) 428 F.3d 1215. In each of these cases, police unions challenged outside oversight and/or regulation of the police in connection with misconduct investigations.

The ACLU frequently employs the Public Records Act to obtain information about police practices or specific instances of police misconduct. For example, the ACLU recently requested information from various agencies throughout the state regarding police officers' use of Taser guns and several individual Taser-related deaths.

The ACLU has also actively participated in litigation involving the scope of the Public Records Act with respect to issues of police accountability. See e.g., Haynie v. Superior Court (2001) 26 Cal.4th 1061 (petitioner sought access to police records relating to his detention by sheriffs); Williams v. Superior Court (1993) 5 Cal.4th 337 (newspaper sought access to sheriff's records of disciplinary proceedings against two deputies involved in beating of a suspect); ACLU v. Deukmejian (1982) 32 Cal.3d 440 (1982) (ACLU sought documents relating to state intelligence files); Northern California Police Practices Project v. Craig (1979) 90 Cal. App. 3d 116 (police reform organization sought access to California

Highway Patrol Department policies and protocols); Cook v. Craig (1975) 55 Cal. App. 3d 773 (police reform organization sought access to rules and regulations of the California Highway Patrol governing the investigation and disposition of citizens' complaints of police misconduct). In each of these cases, the police agencies involved sought to keep information about police conduct, practices and policies hidden from public view.

We are familiar with the issues in this case and with the scope of their presentation. We respectfully request permission to file the attached brief because the outcome of this case will affect public scrutiny of the police and police accountability.

Accordingly, amici respectfully request leave to file the attached brief.

Dated: January 17, 2006

Respectfully Submitted,

by: _____
Amitai Schwartz

Amitai Schwartz
Lisa Sitkin
Alan L. Schlosser
Mark Schlosberg
Jordan C. Budd
Peter Eliasberg

Attorneys for Amici Curiae

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# BRIEF OF THE ACLU OF NORTHERN CALIFORNIA, THE ACLU FOUNDATION OF SOUTHERN CALIFORNIA, AND THE ACLU FOUNDATION OF SAN DIEGO & IMPERIAL COUNTIES AS AMICI CURIAE IN SUPPORT OF REAL PARTY IN INTEREST, LOS ANGELES TIMES COMMUNICATIONS LLC

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## INTEREST OF THE AMICI CURIAE

This case implicates the scope of public access to records and proceedings concerning oversight of the police. The Superior Court held that Real Party in Interest, Los Angeles Times Communications LLC ("The Times"), is entitled under the California Public Records Act to obtain from the California Commission on Peace Officer Standards and Training ("POST"),[1] the names, departments and employment dates of California police officers included in POST's databases. The Court of Appeal reversed, holding that "all of the information sought by The Times was obtained from peace officer personnel records within the meaning of Penal Code sections 832.7 and 832.8," and was thus exempt from disclosure under Government Code § 6254(k). Slip Op. at 2. In reaching its conclusion, the Court of Appeal relied on a single declaration in which a former employee of a sheriff's department without personal knowledge of current law enforcement agency information practices testified "on information and belief" that the law enforcement agencies that provide the information in POST's databases retrieve the information from police officers' individual personnel files. Id. at 12. The Court of Appeal

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[1] POST is a state agency created to train and educate peace officers. Penal Code § 13500 et seq. There are 626 law enforcement agencies in California that participate in POST's programs and receive its services. Slip Op. at 3. Whenever a peace officer employed by one of those agencies is newly appointed, promoted, demoted, terminated, or undergoes a name change, the agency must notify POST by submitting a "Notice of Appointment/Termination" form. Id. (citing Cal. Code Regs., tit. 11, § 1003). POST collects these forms and stores the data from them in a computerized database. Id.

also held that Penal Code sections 832.7 and 832.8 protect "any information in a file maintained by the employing agency that contains records relating to any of the items specified in subdivisions (a) through (f) [of Penal Code § 832.8] " Id. at 17 (emphasis in original).[2]

In its petition for review by this Court, The Times raised the following three questions:

1. Do the name and employing agency of a peace officer fall within the definition of a "personnel record" under Penal Code §§ 832.7 and 832.8?

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[2] Penal Code § 832.7(a) protects as confidential "personnel records," as that term is defined in § 832.8, and "information obtained from [personnel] records." Section 832.8 defines "personnel records" as "any file maintained under that individual's name by his or her employing agency and containing records relating to any of the following:

> (a) Personal data, including marital status, family members, educational and employment history, home addresses, or similar information;
> (b) Medical history;
> (c) Election of employee benefits;
> (d) Employee advancement, appraisal, or discipline;
> (e) Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties;
> (f) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy."

Penal Code § 832.8.

2. If the name and employing agency of a peace officer are contained in a file along with "peace officer personnel records" as defined by Penal Code §§ 832.7 and 832.8, is that information categorically exempt from disclosure under the California Public Records Act, even if it available from sources other than "peace officer personnel records"?

3. Can a government agency shift the burden of proof on a claimed exemption to the California Public Records Act merely by submitting a declaration based on information and belief that the information sought comes from "peace officer personnel records"?

Times Opening Brief at 1 (emphasis in original).

Amici are deeply concerned about the effects a ruling endorsing the Court of Appeal's decision would have on police accountability and oversight. California's peace officer associations have a long history of resisting public oversight and access to information crucial to such oversight. See, e.g., San Francisco Police Officers Association v. Superior Court (1988) 202 Cal. App. 3d 183 (challenging right of complainant and representative to be present during fact finding hearings of Office of Citizens' Complaints); Berkeley Police Officers Association v. City of Berkeley (1977) 76 Cal. App. 3d 931 (opposing new procedures permitting a member of a citizens' police review commission to sit in at department hearings

regarding citizens' complaints against officers); Brown v. City of Berkeley (1976) 57 Cal. App. 3d 223 (police association challenge to activities of Berkeley Police Review Commission); see also Dibb v. County of San Diego (1994) 8 Cal. App. 4th 1200 (challenging county's authority to establish civilian review board). The associations' efforts in this regard have intensified in recent years. See, e.g., Davis v. City of San Diego (2003) 106 Cal. App. 4th 893 (seeking to prevent City from releasing citizens review board report); San Diego Police Officers Association v. City of San Diego Civil Service Comm. (2002) 104 Cal. App. 4th 275 (seeking to limit disclosure of personnel records at public disciplinary appeal hearings before the Civil Service Commission).

Armed with a decision endorsing the Court of Appeal's decision in this case, peace officer associations and law enforcement agencies will very likely attempt to use the peace officer confidentiality statutes as a shield against access to nearly any information at all, regardless of whether it is even related to the categories of information the Legislature actually intended to protect. As discussed in more detail below, the Court of Appeal's overinclusive interpretation of the peace officer confidentiality statutes could render secret not only materials actually obtained from protected peace officer personnel files, but also information that is independently created and separately maintained either by a law enforcement

agency itself or by an outside entity such as a civilian review board. Moreover, under the Court of Appeal's approach, police unions and law enforcement agencies would be able resist disclosure of any and all information concerning police officers without ever affirmatively proving that the information either constitutes or was actually obtained from protected personnel records, as required by the Public Records Act. As a result, the public's right of access to information about police activities, including investigative proceedings and reports of civilian review boards and other police oversight bodies, would be severely curtailed.

## ARGUMENT

"The labels of 'personnel records' and 'internal investigation' are captivatingly expansive, and present an elasticity menacing to the principle of public scrutiny of government." New York Times v. Superior Court (1997) 52 Cal. App. 4th 97, 103. Public scrutiny may not be avoided under the rubric of "personnel records" to shield "unrestricted information." Id. Amici Curiae agree with the arguments of Real Party in Interest Los Angeles Times Communications LLC demonstrating that the Court of Appeal's "expansive" interpretation of the peace officer personnel record confidentiality statutes is overbroad and does not comport with either their plain meaning or their intended purpose. We also agree with Real Party's arguments showing that the Court of Appeal erred in relying on a

single declaration made on information and belief to support its finding that the information sought was obtained from protected peace officer personnel files.

Rather than repeat the arguments effectively presented by Real Party, Amici will use this brief to demonstrate that the Court of Appeal's approach in this case is "menacing to the principle of public scrutiny of government" because it threatens to undermine mechanisms like civilian review boards that provide for independent, external review of the police and their activities. New York Times, 52 Cal. App. 4th at 103. The Court should consider the adverse consequences of the Court of Appeal's decision if it has any uncertainty regarding the plain meaning of the statute. Dyna-Med, Inc. v. Fair Employment & Housing Com. (1987) 43 Cal.3d 1379, 1387; see also North County Parents Organization v. Department of Education (1994) 23 Cal. App. 4th 144, 153 (considering consequences of a specific interpretation of the Public Records Act).

## I. Adoption of The Court of Appeal's Unjustifiably Overbroad Construction of the Peace Officer Personnel Record Confidentiality Statutes and Displacement of the Burden of Persuasion Under the Public Records Act Would Seriously Undermine Access to Records Relating to Police Departments and Police Conduct

In its opinion, the Court of Appeal held that the basic employment information The Times is seeking -- police officers' names, employing departments and employment dates -- was covered by the peace officer personnel record

confidentiality statutes, Penal Code §§ 832.7 and 832.8, and was therefore exempt from disclosure under the Public Records Act pursuant to Government Code § 6254(k).[3] Although the Legislature took care to spell out in considerable detail what is and is not confidential under Penal Code §§ 832.7 and 832.8, the Court of Appeal disregarded the Legislature's careful distinctions, holding that confidentiality attaches to "any information in a file maintained by the employing agency that contains records relating to any of the items specified in subdivisions (a) through (f) [of Penal Code § 832.8] " Id. at 17 (emphasis in original).[4] In other words, according to the Court of Appeal, whenever a document is physically placed in a file containing any protected personnel records, that document and all information contained in it automatically become confidential as well. This means that any information contained in records in a personnel file -- whether it belongs in one of the categories enumerated in Penal Code § 832.8 or not -- would be confidential, even if it was also maintained in a separate file and even if the information was independently developed or created.

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[3] Government Code § 6254(k) exempts from disclosure records "the disclosure of which are exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Gov. Code § 6254(k). Thus, if public records are determined to be confidential pursuant to Penal Code §§ 832.7 and 832.8, they will be exempt from public disclosure under Government Code § 6254(k).

[4] See note 1, supra, for the text of § 832.8.

This gives new meaning to the term "secret police." The public cannot even learn from POST who its police are.

As The Times has demonstrated, this staggeringly broad holding conflicts with both the text and the purpose of Penal Code §§ 832.7 and 832.8. As a practical matter, the Court of Appeal's decision also endangers the effectiveness of police oversight mechanisms in at least three ways:

First, under the Court of Appeal's overinclusive interpretation, the peace officer personnel record confidentiality provisions could sweep in not only documents and information actually obtained from protected peace officer personnel files, but also information independently created and separately maintained. As a result, the public's right of access to investigative proceedings and reports of outside bodies could be called into question. Even though oversight bodies such as Oakland's Citizens Police Review Board conduct independent investigations and make public only information that the Board itself develops or creates, see Oakland City Ordinance No. 12454, section H, the Court of Appeal's decision could be used to prevent a public airing of the results of their investigations. Denying public access to independent investigations would largely defeat the purpose of having external oversight. It would undermine the deterrent effect of public disclosure of misconduct. And it would diminish public

confidence in the integrity of the police.

Second, this overly expansive reading of the peace officer personnel record confidentiality statutes could allow law enforcement agencies to withhold from civilian oversight bodies basic information that is crucial to an effective investigation on the ground that a duplicate record is present in an officer's personnel file. For example, when seeking out witnesses or other evidence relevant to a review of alleged police misconduct, civilian review boards often rely on basic information from police incident reports, roster lists reflecting which officers were on duty at the time of an incident, training information and forensic evidence. Under the Court of Appeal's analysis, information contained in these types of records could be withheld solely because a copy was present in an officer's personnel file. This result would conflict with the Court's recognition in Williams v. Superior Court (1993) 5 Cal.4th 337, 355, that an agency may not shield otherwise unrestricted information from Public Records Act disclosure by placing it in a file containing confidential information. Accord, New York Times, 52 Cal. App. 4th at 103 (placing incident report in a peace officer personnel file does not immunize it from disclosure under the Public Records Act).[5] It also would make it

[5] The Court of Appeal asserts that its decision in this case does not conflict with the New York Times opinion. Slip Op. at 19. However, as articulated in the opinion, its holding is so broad that it will likely be relied on by police

(continued...)

nearly impossible for civilian review boards to perform their jobs effectively.

Finally, under the Court of Appeal's approach, these roadblocks to effective civilian oversight will be compounded by a standard of proof that makes it far too easy for law enforcement agencies or peace officer associations to prevent disclosure of information developed and maintained by outside entities. It is well established that the party opposing disclosure under the Act bears the burden of showing that the records being sought are covered by one of the Act's enumerated exemptions. The Act itself requires a public agency denying a request for access to "justify withholding any record by demonstrating that the record in question is exempt under the express provisions of this chapter or that ... the public interest [in nondisclosure] ... clearly outweighs the public interest served by disclosure." Gov. Code § 6255 (emphasis added); see CBS, Inc. v. Block (1986) 42 Cal.3d 646, 651-52 & n.8 (citing San Gabriel Tribune v. Superior Court (1983) 143 Cal. App. 762, 780)); New York Times v. Superior Court 52 Cal. App. 4th at 104.

This burden applies equally to parties claiming that a record is exempt from disclosure pursuant to Government Code § 6254(k) and Penal Code §§ 832.7 and 832.8. See City of Richmond v. Superior Court (1995) 32 Cal. App. 4th 1430,

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[5](...continued)
departments to engage in precisely the type of tactics used by the sheriff and condemned by the Court of Appeal in the New York Times opinion.

1432, 1438 (holding that requests for disclosure under the Public Records Act are governed by the procedural requirements set forth in the Act). Likewise, this Court has repeatedly rejected claims of exemption based on speculation rather than actual evidence. See, e.g., Williams v. Superior Court (1993) 5 Cal.4th 337, 356 ("[a] public agency may not shield a document from disclosure with the bare assertion that it relates to an investigation [covered by a Public Records Act exemption]"); CBS, Inc., 42 Cal.3d at 652-55 (scrutinizing agency's asserted justifications for withholding records and rejecting them as speculative).

Here, the Court of Appeal correctly recognized that POST's databases are not "personnel records" within the meaning of Penal Code § 832.8, because POST is not an "employing agency" within the meaning of the statute and because the records sought are not kept in files maintained under individual police officers' names. Slip. Op. at 10. However, the majority determined that the information in POST's database was still exempt from disclosure because it was "obtained from" protected records for purposes of Penal Code § 832.7.[6] Id. In reaching this conclusion, the majority relied on the single piece of evidence presented by POST: the declaration of Paul Harman, a POST employee who testified "on information

[6] Penal Code § 832.7(a) protects as confidential both "personnel records," as that term is defined in § 832.8, and "information obtained from [personnel] records."

and belief" that law enforcement agencies consult peace officer personnel files when providing appointment and termination data to POST. Id. at 11-12; see also POST Exh. O at 280-81, 284 ¶ 13. Harman worked for the Los Angeles Sheriff's Department some time before 1993, but did not claim to have any personal knowledge of current police department information practices relating to data submitted to POST. POST Exh. O at 280-81, 284 ¶ 13. The majority also emphasized the fact that The Times had not presented evidence to refute POST's "showing". Slip Op. at 13.

As explained in the dissent, the majority's approach violates basic evidentiary rules because testimony based on information and belief is not competent evidence. Conc./Diss. Op. at 7-8; see also Evidence Code § 702 (requiring personal knowledge). It also violates the procedures set forth in the Public Records Act. By accepting so readily evidence that was plainly insufficient and then requiring the party seeking disclosure to prove that the records sought were not exempt, the majority effectively relieved POST of its statutory burden of "demonstrating" that the records being sought were exempt and impermissibly shifted the burden of proof to The Times. Gov. Code § 6255; see Conc./Diss. Op. at 5-6 (describing the majority's reasoning as "a topsy-turvy view of the allocation of the burden of proof in CPRA proceedings").

If the Court of Appeal's "topsy-turvy" approach were adopted by this Court, the practical effects would be devastating to police accountability and oversight. The logical consequence of the majority's ready acceptance of the Harman declaration is that whenever a party opposing disclosure of information maintained by an outside entity simply asserts that the information is likely to have been obtained from a protected personnel file, the party seeking disclosure would have the virtually insurmountable burden of proving that the information sought could not be traced back to a protected personnel record. If that were the law, peace officers and their unions would be able to block disclosure of information independently derived or created -- such as witness statements developed by civilian review boards or non-confidential information in police department incident reports -- in virtually every case. As a result, both the public and the police would lose the benefits of public oversight of the police.

We submit that the California Public Records Act requires public disclosure of the names, departments and employment dates of California police officers contained in POST's database. However, even if this Court decides that some or all of the information sought by The Times is exempt from disclosure in the specific context of this case, the Court's holding and dicta should not expand beyond the specific circumstances of this case. Specifically, the Court should not

allow Penal Code §§ 832.7 and 832.8 to be used to permit peace officers and their unions to bar public access to the proceedings and investigations of civilian review boards or other independent oversight bodies. Closing off such avenues of public information would only serve to increase the perception that police departments are closed, insular institutions with little public accountability, leaving costly and unwieldy litigation in the courts as the only available forum for public scrutiny.

## II. Adoption of The Court of Appeal's Unjustifiably Overbroad Reading of the Peace Officer Personnel Records Confidentiality Statutes Would Undermine the Effectiveness of Outside Oversight of the Police

In Part I of this argument we demonstrated that the Court of Appeal's construction of the Peace Officer confidentiality statutes and unwarranted shifting of the burden of proof undermines police accountability to the public. Such an interpretation of the law would have a potentially devastating impact on accountability functions performed by civilian review boards and other outside oversight bodies.

Since the first civilian review board was established in California in Berkeley in 1973, similiar boards with distinct local features have proliferated throughout this state and the country. Samuel Walker (2001) Police Accountability, pp. 20-45. On the national level, the number of oversight agencies increased between 1980 and 2000 from 13 to over 100. Id. In California, there are

at least 12 oversight bodies in cities ranging from Los Angeles and San Diego to Oakland and San Francisco. See National Association for Civilian Oversight of Law Enforcement, Roster of Civilian Oversight Agencies in the United States (Dec. 2004), available at <http://www.nacole.org/ >. At least five of these oversight bodies provide for public hearings and/or allow some public access to their files. Oakland City Ordinance No. 12454 section H; Berkeley City Ordinance No. 4644-N.S. section 7; CLERB regulations section 13.3; Richmond Municipal Code section 3.54.080(b)(7); Riverside Municipal Code section 2.76.060. These oversight bodies differ from one another in makeup and procedures, but they all have as part of their mandate respecting the confidentiality of police department personnel records and releasing information independently developed as part of the investigations they themselves conduct. Id.

Civilian oversight provides an open and independent alternative to internal affairs investigations and – when fully empowered – provides a much needed check again police misconduct. According to the United States Commission on Civil Rights,

> Civilian review boards provide important protection against police abuses, and they afford members of the public the opportunity to have a voice in police practices and procedures. Without some form of external review, investigation and discipline of police officers will be left up to the discretion of other officers or police officials who may be sympathetic to or biased in favor of the accused officers. In the end,

> the empowerment of civilian review boards may prove to be the most effective weapons in the battle to end police brutality.

United States Commission on Civil Rights, Revisiting Who Is Guarding the Guardians (2000), p. 62.

Civilian review agencies do not only benefit the public. Because they are open, independent, and transparent, an outside civilian review finding can convincingly clear a police officer of misconduct charges in the eyes of the public. According to Skolnick and Fyfe: "In the long run, only an independent investigative body can allay public suspicions of the police and render a convincing exoneration of police who have been accused of misconduct." Skolnick and Fyfe, Above the Law (1993), p. 230.

Because outside civilian review bodies provide an independent check on an otherwise closed, fraternal organization, civilian review bodies increase public confidence in law enforcement generally. Providing a public forum where questions and complaints about law enforcement are listened to and answered "can help police regain credibility and restore public confidence in law enforcement." Hecker "Race and Pretextual Traffic Stops: An Expanded Role for Civilian Review Board," 20 Colum. Human Rts. L. Rev. 551, 603-604 (1997); see also Bobb "Civilian Oversight of the Police in the United States" 22 St. Louis U. Pub. L. Rev. 151, 166 (2003) ("Civilian oversight not only corrects deficient systems, but also

bolsters public confidence in the police, and thereby makes policing better and more effective."); Brent "Redress of Alleged Police Misconduct: A New Approach to Citizen Complaints and Police Disciplinary Procedures" 11 U.S.F. L. Rev. 587, 607-08 (1977) ("A system can be theoretically sound and objective in practice, but if it is not respected by the public, cooperation between the police and the public can suffer.").

Preserving access to information about oversight of police activities promotes a number of crucial values. Public disclosure of information about the police serves as a deterrent against misconduct. It also serves as a tool to uncover and combat unlawful practices and policies. See, e.g., Shlansky, "Police and Democracy," 103 Mich. L. Rev. 1699, 1829 (2005) (noting that "effective criticism of racial profiling of minority motorists, for example, arose only when statistical studies by journalists and social scientists demonstrated its widespread presence."). Public access also generates greater public confidence in law enforcement, while "opaqueness in [police] policy and practice undermines the legitimacy of criminal law and its administration, damages community trust in law enforcement, and decreases popular compliance with legal commands." Luna, "Transparent Policing," 85 Iowa L. Rev. 1107, 1121 (2000). "Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of the state. In order

to maintain trust in its police department, the public must be kept fully informed of the activities of its peace officers." New York Times Co. v. Superior Court (1997) 52 Cal. App. 4th 97, 104-105 (internal citation omitted).

Indeed, there is "broad agreement that whether or not the police retain the power to investigate themselves, law enforcement's business, in general, is the public's business, and therefore must be an open and transparent process." Bobb, supra, at 158. In the specific context of police misconduct investigations, the release of information to the public is often as important as the actual result of a misconduct investigation. See Phillips and Trone, Building Public Confidence Through Oversight (2002), Vera Institute of Justice, p. 8, available at <www.parc.info/pubs/pdf/verapaper.pdf>. An adverse decision in this case will jeopardize both police accountability and public confidence in the police.

## CONCLUSION

The Court should reverse the decision of the Court of Appeal.

Dated: January 17, 2006

Respectfully Submitted,

by: _____
Amitai Schwartz

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Certificate of Counsel as to Word Count Pursuant to C.R.C. 14(c)(1)

I, Amitai Schwartz, certify that the attached Brief of Amici Curiae consists of 4,894 words, exclusive of tables.

Dated: January 17, 2006

_____

Amitai Schwartz
Attorney for Amici Curiae

PROOF OF SERVICE BY MAIL

Re: Commission on Peace Officer Standards and Training v. Superior Court for the County of Sacramento, California Supreme Court Case No. S134072

I, Jackie Hasa, declare that I am over 18 years of age, and not a party to the within cause; my business address is 2000 Powell Street, Suite 1286, Emeryville, CA 94608. I served a true copy of the attached

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on the following, in accordance with Federal Rule of Civil Procedure 4(I), by placing a copy in an envelope addressed to the parties listed below, which envelope was then sealed by me and deposited in United States Mail, postage prepaid, at Emeryville, California, on January 17, 2006.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 17, 2006 at Emeryville, California.

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Jackie Hasa