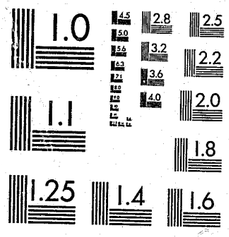

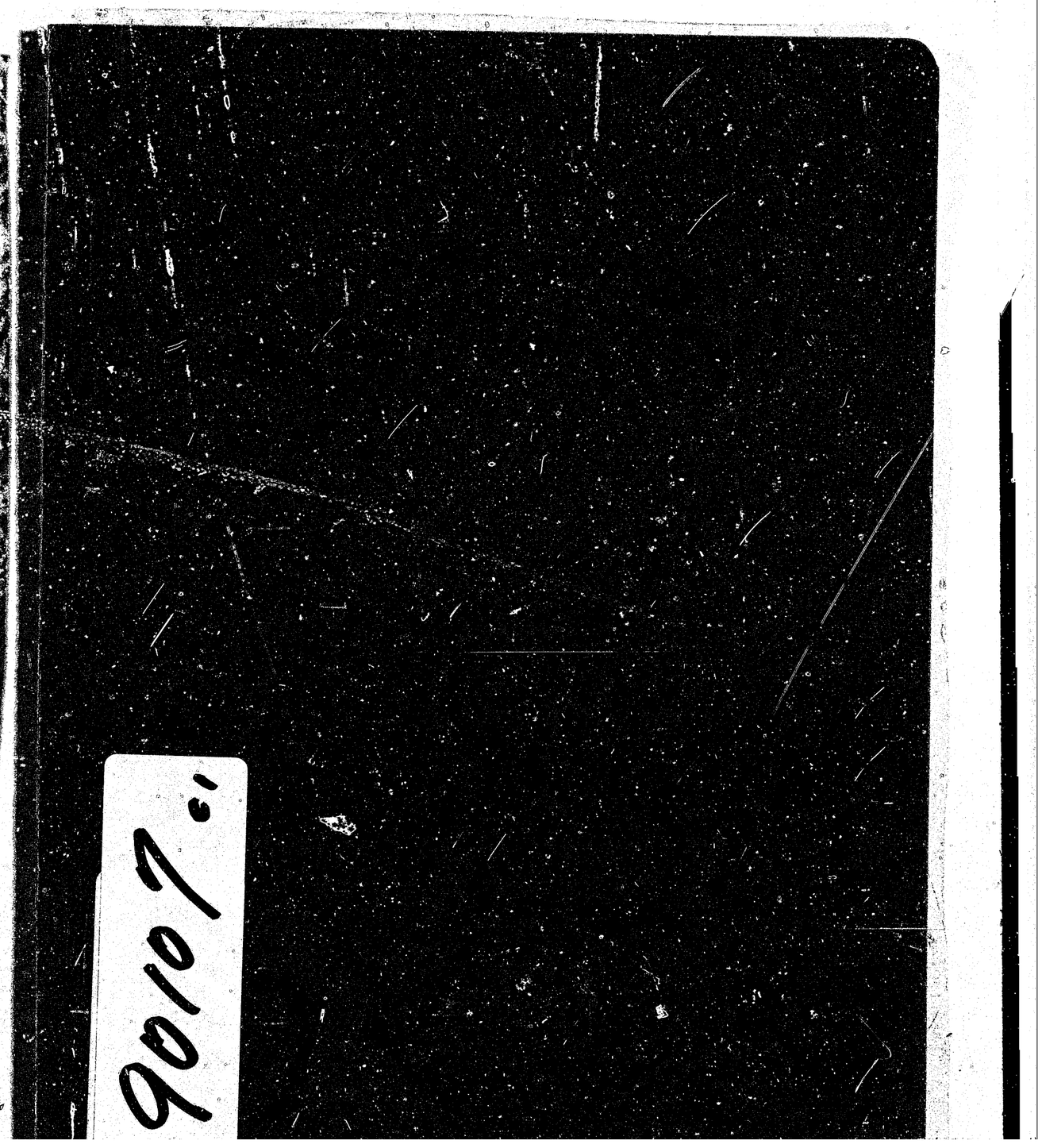

Department of Justice

REMARKS

OF

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

BEFORE THE

NATIONAL SHERIFFS' ASSOCIATION

OPRYLAND HOTEL
NASHVILLE, TENNESSEE

JUNE 20, 1983

I am delighted to have this opportunity to participate in this meeting of the National Sheriffs' Association. As you know, more than 75 percent of the 3,094 Sheriffs' Departments are members of your Association, and you can be justly proud of the Association's contributions over the years to improvements in law enforcement. I consider this a unique opportunity to reach an important audience of law enforcement professionals to explain our civil rights enforcement program.

In one very 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. My responsibilities in the criminal area 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.

I start with the proposition that, in this complex society in which we live, there are regrettably individuals who have chosen to do police work who do a disservice to their profession as surely as there are unsavory characters among lawyers, doctors, politicians, and others. My responsibility is, in an appropriate situation, to bring the full weight of the criminal civil rights laws to bear on law enforcement 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 law enforcement agencies 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 some law enforcement officers. I think you will see that our criminal enforcement activities, as they relate to law enforcement misconduct cases--while fully responsible to our legal mandate--are neither as intrusive nor as rigid as some have suggested.

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, as Terry O'Connor and Bill Riley have explained to you, the FBI then conducts an

investigation. Of the very large number of complaints and inquiries that we receive concerning alleged criminal civil rights violations, (as many as ten to twelve thousand in a given year), only a fraction (in the neighborhood of one-third) are of sufficient substance to warrant 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. We are very selective about the cases we pursue. Of all the investigations conducted each year, only approximately 75 to 100 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 law enforcement misconduct are rarely 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 government's evidence before an individual officer is required to defend himself in a criminal trial. This provides us with a better understanding of community attitudes that so frequently play a significant role in the ultimate resolution of a case of this sort.

You should in this connection be aware that our grand jury presentations are not one-sided summaries of the incident at issue. Not only the victim, but all other significant 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 invaribly 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 have 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.

In this regard I understand that training sessions on the conduct of internal affairs investigations have been offered by the National Sheriffs' Association during the past several years. I strongly applaud that activity and I suggest to you that every Sheriff's Department, even the smallest, should have established procedures for dealing with citizen complaints of law enforcement misconduct. While these procedures will obviously vary among Departments, they should enable objective investigation of complaints and they should not include artifical and unnecessary barriers to the filing of complaints. If local citizens are aware that such procedures exist and that their complaints will be given a fair hearing, even though the vast majority of complaints will

not be sustained, it far less likely that citizens will believe it necessary to bring their complaints to the attention of higher levels of government or that federal intervention will become necessary.

Let me allude just briefly to one other factor that controls our prosecution decision in this area, namely: the state of mind of the law enforcement 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 law enforcement 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 responsible 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 law enforcement 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 inconceiveable 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 law enforcement 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 federal, state and local authorities. To that end, I would welcome any suggestions that you or other members of your agencies may have.

Dan Rinzel, Chief of the Criminal Section of the Civil Rights Division, is prepared to describe to you some of the typical cases which we have prosecuted in the past several years. I hope these cases will give you a better idea of the kinds of misconduct that we prosecute. After he concludes his remarks, we will be happy to answer questions.

END