

ACLU**LIBERTY
AND JUSTICE
FOR ALL**

ACLU FOUNDATION OF SOUTHERN CALIFORNIA

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Chair
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November 21, 2006

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Los Angeles Police Department
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Dear Commissioners:

Legal Director
Mark Rosenbaum

I write in response to the Department's announcements today regarding the investigation of the use of pepper-spray on Benjamin Barker, a videotape of which was released last week. At this morning's regular meeting of the Board of Police Commissioners, Assistant Chief Jim McDonnell reported that the Department had completed its investigation of the incident, but that it could not publicly release its findings. Chief McDonnell also stated that the Department had reviewed its policies governing use of pepper-spray and found no change was warranted.

Chief Operating Officer
Heather Carrigan

The citizens of Los Angeles have seen what occurred on the video of Barker's arrest. Barker appears to be handcuffed and already in the back of a police car, when an LAPD officer pepper sprays him and shuts the car door, leaving Barker in visible pain. But in the wake of this alarming footage, the Department has not rushed to address justified public concern, but has instead declined to state whether the conduct at issue was acceptable. This response is reminiscent of days before the Rampart Commission or the Christopher Commission, when the Department refused to acknowledge any obligation to share, much less discuss, their methods with the people of Los Angeles, for whom they work.

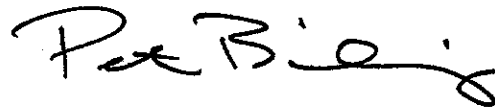
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Chief McDonnell suggested that the Department feels bound to silence on the Barker incident by the California Supreme Court's recent ruling in *Copley Press, Inc. v. Superior Court*. We do not agree that *Copley* goes so far as to require complete silence on incidents that have already come to the public's attention. But whatever limits that decision may impose, it cannot make secrecy in police matters into good policy. Good policing depends on public trust of the police, and public trust is undermined when the Department decides behind closed doors what kind of behavior is appropriate and what is not. The public is entitled to know what conduct the LAPD thinks is acceptable. Other officers should also be made aware when high-profile incidents are found to be wrongful, as part of the education of the entire

force. If the Department believes that California law now precludes it from taking any position on the propriety of widely publicized and publicly discussed incidents, or otherwise inhibits the transparency required for effective policing and reporting to the public, then the Commission must demand that the Legislature reinstate the law as it existed prior to the recent *Copley* decision.

The Department's cursory report on the review of its pepper-spray policy is no less troubling. Chief McDonnell's report that the Department has looked into the policy, and it warrants no changes, amounts to a dismissive demand that the public simply trust that the Department's policies are appropriate. The years of work towards police reform in Los Angeles have been built on the premise that the public's trust depends on the Department's transparency and accountability, which in turn requires that the Departments be forthcoming about its policies and activities. In light of the Department's refusal to address the Barker incident itself, the obligation to make the Department's policies on pepper spray clear to both the public and the general police force is all the stronger. The guidelines for use of "non-lethal control devices" in the Department's Manual, v. 1/573, are so vague as to be useless in informing the public about what under what circumstances the Department authorizes use of pepper-spray. Accordingly, the ACLU calls on the Board of Police Commissioners to demand that the Department report on its pepper-spray policies and recommend more explicit policies (1) barring or limited the use of pepper spray against individuals who have been handcuffed, placed in police cars, or otherwise restrained, and (2) setting forth what type of behavior justifies use of pepper-spray (and in particular clarifying that spitting at an officer, without other suggestion of violence, does not constitute justification for use of pepper-spray).

Sincerely,



Peter Bibring
Staff Attorney