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'TESTILYING' --- THE PSYCHOLOGICAL AND SOCIOLOGICAL
DETERMINANTS OF POLICE TESTIMONIAL DECEPTION

by

WILLIAM H. MCDONALD

A dissertation submitted to the Graduate Faculty in Criminal
Justice in partial fulfillment of the requirements for the
degree of Doctor of Philosophy, The City University of New
York.

2000

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This manuscript has been read and accepted for the Graduate Faculty in Criminal Justice in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

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Date

Robert J. Kelly
Chair of Examining Committee

11/22/99
Date

[Signature]
Executive Officer

Robert Kelly, Ph.D.

Eli Silverman, Ph.D.

James P. Levine, Ph.D.

Supervisory Committee

THE CITY UNIVERSITY OF NEW YORK

Abstract

'TESTILYING' --- THE PSYCHOLOGICAL AND SOCIOLOGICAL
DETERMINATE OF POLICE TESTIMONIAL DECEPTION

by

WILLIAM H. MCDONALD

Adviser: Professor Robert Kelly

Police testimonial deception --- the use of false or misrepresenting statements or intentional omissions of fact by the police, in writing or in speech, to further an arrest, or the seizure of evidence, or a criminal prosecution --- has long been the subject of scholarly speculation. Unfortunately, it has not been the subject of much research, and almost nothing is known about the phenomenon from the police themselves. Using a descriptive research methodology, this study surveyed the deceptive testimonial practices of 444 police officers and of other police officers the participants knew personally. They reported on the frequency of its use; the methods employed; the reasons and rationales for engaging in such practices; and organizational or systemic influences to the behavior. Study results suggest the practice of reordering facts or omitting facts to strengthen a criminal case is much more common than previously realized. Findings also suggest police officers engage in 'testilying' in response to intense social pressure for crime control --- the protection of society by the arrest and conviction of those factually guilty of crime. Such behavior is made necessary because some officers believe the socially approved means to this valued social goal --- the rules of criminal procedure and similar legal technicalities --- are ineffective. They make goal satisfaction difficult, frequently impossible. Many police officers react similarly to any such obstacles to goal satisfaction. Study concludes with an explanation of the psychological process involved based on the work of Albert Bandura, and offers suggestions for social responses to the problem, and for future research.

DEDICATION

This work is dedicated to the memories of three people who made a difference: Dr. Ken Lenihan; Dr. Ed Sagarine; and Sr. Mary Henrica, PCJ.

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It is not possible to acknowledge here the many people who contributed to this work. Hopefully, I have expressed my appreciation to each of them personally. I would, however, be seriously amiss if I failed to mention those who played critical roles at critical times. I am most grateful to Dr. Ken Lenihan, who worked with me until the week of his death, and to Dr. Robert Kelly who assumed the mentor's burden at the last minute. The patience of Dr. James Livine, and the willingness of Dr. Eli Silverman to help despite his own considerable work load are greatly appreciated. I extend my deepest thanks to my friend Dr. Robert Loudon for his unwavering support and steady supply of resources; to Dr. Ronald McVey for wise advise and consistent encouragement; to Dr. Tony Simpson for being an honorable man; to Ms. Lisa Degnan Lavoie for her superior library skills; and to the Neiderhoffer Family for their financial support. Finally, I must thank my family, who, more than anyone, know the real price of this project.

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CHAPTER I

INTRODUCTION

Los Angeles Police Officers discovered the brutally murdered bodies of Nicole Brown Simpson and Ronald Goldman shortly after midnight on June 13, 1994 (Margolick, 1995). No one, not the officers, nor their superiors, nor the scores of reporters who flocked the scene, could predict or even envision the effect that discovery would have on American society and its Criminal Justice System.

The unprecedented media coverage of the next 15 months provided attorneys for accused murderer O.J. Simpson with a unique opportunity to publicly argue for Mr. Simpson's acquittal. Their reasoning followed two related, but distinct lines; 1) Mr. Simpson should be acquitted because he was in fact innocent; and 2) Mr. Simpson should be acquitted because the conduct of the police, especially in their treatment of Mr. Simpson, was so flawed as to make his conviction unjust and immoral.

In support of the first argument, defense lawyers offered alternative theories, claimed new and mysterious evidence, promised previously unknown but critical witnesses, and hinted at drug war vendettas. In the second, they demanded the court and the nation consider the question

of Mr. Simpson's guilt in light of complicated and troublesome incongruities within the Justice System. Ordinary people, many for the first time, struggled with the possibility of racism and unfairness in the legal process, questions about the 'proper' role of attorneys, the realization that some police officers use perjury or other forms of testimonial dishonesty, and the effect these should have on the question of justice for Mr. Simpson (Fletcher, 1995; Margolick, 1995).

The impact these defense strategies had on the trial and on the Justice System may never be fully understood. Clearly, the immediate outcome freed Mr. Simpson. And while most of the more complex issues continue to be debated, one has emerged as a critical factor in the Simpson acquittal, and a substantial threat to the Criminal Justice System and to society --- the credibility of the police.

Almost immediately after Mr. Simpson's arrest, his attorneys publicly argued that evidence and testimony offered by police investigators could not be believed. They had framed Mr. Simpson through falsified evidence, perjury, and testimonial deception (Fletcher, 1995). These accusations gained considerable legitimacy when, early in the prosecution, it became apparent that lead detective William Vanadder had intentionally used false information in

his application for a search warrant for Simpson's residence. Vanadder admitted, during a televised pretrial hearing, he had included two statements in his affidavit, submitted under oath, that he knew were untrue. He swore the "blood found on Mr. Simpson's Ford Bronco had tested as human," when he knew no such tests had been conducted; and that "immediately after the murders, Mr. Simpson took an unexpected trip to Chicago," when Vanadder was aware the journey had been planned for weeks (Margolick, 1995, p.1). The judge found Vanadder's conduct a "reckless disregard for the truth" (Slobogin, 1996, p.1046).

But the most spectacular vindication of the defense's allegations came during the trial. Simpson's attorneys refuted the testimony of key prosecution witness, Detective Mark Furhman, with a previously tape recorded interview in which Furhman boasted 17 times that he and other police officers regularly manufactured and planted evidence, and used false testimony to win criminal convictions (Reibstein, 1995). When asked under oath if he had done so in the Simpson Case, Furhman refused to answer, citing his constitutional privilege against self- incrimination. His refusal confirmed, in the minds of many, assertions that the case against Simpson was the product of police lies and fabrications (Margolick, 1995).

Speaking on national television after the acquittal, defense attorney and Harvard Law Professor Allan Dershowitz attributed the outcome not to Simpson's innocence, but to the exposure of police testimonial deception (Reibstein, 1995). He held the Simpson experience as proof such behavior was pervasive, a long standing and well hidden national problem that threatened the legal process and correspondingly the nation (Terry, 1995). Many agreed.

In the 1995 Gallup Poll of honesty and ethical standards among occupations, conducted shortly after the Simpson verdict, 59% of those polled gave police low marks for ethical conduct. The results represented the poorest police integrity rating in 25 years. Pollsters blamed the Simpson Trial and specifically the testimony of Mark Furhman (The Pulse of the People, 1996).

Similarly, the majority of 800 perspective New York City jurors surveyed in 1996 reported they could no longer trust the police because of the conduct of detectives in the Simpson Investigation (Vuilleumier, 1996). One chief prosecutor summarized the dilemma "Our prosecutors have to begin their cases defending the cops. [They} have to bring the jury around to the opinion that cops aren't lying" before the real question of the defendant's guilt can be considered (Sexton, 1995, p.3).

This loss of police credibility threatens society in that it diminishes the ability of the police to be effective in protecting society. If jurors systematically disbelieve the testimony of police officers, criminals will not be convicted, and crime cannot be controlled (Slobogin, 1996).

In truth, revelations that some police officers might use testimonial deception, that is false or misrepresenting statements or intentional omissions of fact, either in writing or in speech, to further an arrest, or the seizure of evidence, or a criminal prosecution, are neither particularly new nor unique. Local media stories report such incidents with some regularity (Terry, 1995). But the Dershowitz assertions amounted to more than criticism of the occasional testimonially corrupt police officer. He alleged an epidemic of testimonial misconduct, and indicted the entire police system before a highly attentive and most sensitive national audience. Dershowitz was not alone in his accusations.

Just months before the Simpson Trial New York City's latest public inquiry into police corruption, the Mollen Commission, identified police testimonial deception, known locally as "testilying," as the most significant corruption problem in the 44,000 member City Police Department (Interim Report, 1994). Like several earlier such inquiries, the

Commission found the police regularly use deceptive testimony in pursuit of arrests and convictions. Some, "good faith violators, ... lie in court about how evidence was obtained to insure conviction," while others act as "vigilantes, who take the law into their own hands in pursuing suspects" (Interim Report, 1994, p. 41).

But the Mollen Commission and the Dershowitz contentions do not go unchallenged. Simpson's attorneys can hardly be called objective. And the Mollen Commission, like most such bodies, based its findings on testimony from a handful of police officers. Most of whom had already been convicted of criminal conduct (Interim Report, 1994).

Except for an occasional aberrant episode, police and prosecutors officially deny the existence of police testimonial deception. The 1988 American Bar Association (ABA) study of police perjury supports their position. After extensive hearings and a survey of more than 800 defense lawyers, prosecutors, judges, and police officials, the ABA found police testimonial deception an "isolated" phenomena, the occasional misdeeds of a few officers (Criminal Justice System in Crises, 1988). Even some well known critics of the police attending the November 1996 Harvard University Conference "Police, Lawyers and the Truth," argued that things were not nearly as bad as the

Furhman testimony or the Mollen Commission portrayed (Reibstein, 1995). And the nation's leading authority on police deception, Jerome Skolnick (1995) expressed doubts about the Mollen and Dershowitz conclusions. "The sweeping charge that cops commonly lie under oath is irresponsible ... after decades of observation, I'd say that most police testify straightforwardly most of the time" (p. 17).

But do they? The question has no answer. Very little is actually known about police testimonial deception. It has not been the subject of significant research (Reitz, 1996; Hunt & Manning, 1995; Criminal Justice System in Crises, 1988). There have been no national studies of the subject, and relatively little data exists (Terry, 1995). Nothing, other than occasional anecdotal information and speculation, is known about its frequency; the methods employed; the reasons and rationales police believe motivate them to engage in such practices; or the organizational or systemic influences to the phenomena (Reitz, 1996). And even less is known from the police themselves.

Yet questions surrounding police testimonial deception are important. Once brought before the public it diminishes one of the most important 'social goods' ----- trust in the legal system (Slobogin, 1996). A legal system, like any

moral system, is a complex and interdependent social arrangement, necessary for the continuation of social order and the benefits it provides. It requires the constant support, reinforcement, and allegiance of all the participants to avoid the ever-present temptation to let the ends justify the means.

One of the cornerstones upon which this system is built is the presumption that agents of the government, the police, will be truthful in their testimony, and will avoid perjury and other forms of testimonial deception. Police officers swear in their oaths of office to abide by this principle. They reaffirm their commitment each time they enter the witness box. And serious criminal, civil, and administrative penalties exist to reinforce their obligation. Criminals are expected to lie, but not the police.

But do they? And if so, what reasons motivate them? What methods do they employ? Do situational factors alone explain the phenomena, or are personal characteristics, unique to those individuals who engage in testimonial deception, responsible for their behavior?

This study could not focus on testimonial deception in its entirety, nor did it attempt to determine exactly how much testimonial deception occurs. Rather it is descriptive

in nature, concerned with surveying and identifying, as accurately as possible, facts, characteristics, and conditions about a relatively unknown phenomena --- police testimonial deception. Specifically, the study considered the frequency with which participating police officers use testimonial deception; the forms that deception takes; those conditions, circumstances, or factors that may motivate officers to engage in deceptive testimonial practices; and organizational influences to the behavior.

CHAPTER II
REVIEW OF THE LITERATURE

THEORY

Social

Robert K. Merton (1968) theorized that the existing social structure produces all socially deviant behavior, as it does all socially conforming behavior. More specifically, "social structures exert a definite pressure upon certain individuals in our society to engage in nonconforming rather than conforming behavior" (Merton 1968, p. 187). If true, the explanations of police testimonial deception lie within the society and society's institutions.

Merton believed that all behavior is governed by the interplay between two basic elements common to all societies; (a) the goals defined and reinforced by the culture as legitimate objectives for all members of society and society's institutions; and (b) the culturally defined means of achieving those goals, which serve as society's behavioral standards.

Under normal circumstances, goals and means operate jointly to shape prevailing behavioral practices. They continue to do so as long as individuals and institutions

conform to both; attain the desired goals through the culturally acceptable means; and find appropriate rewards and satisfaction in doing so (Merton, 1968).

But when the coordination of the goals and means is imperfect, Merton argues, social structures exert intense pressure for deviance. He cites two related circumstances; conditions wherein the approved means make goal attainment difficult or impossible; and a differential cultural emphasis on goal achievement over the means used to attain those goals. Both may explain police testimonial deception.

Institutionally approved means, culturally imposed standards of behavior, generally reflect the 'value laden sentiments' of controlling members of society, with little or no concern for means efficiency, or the actual necessities of goal attainment. More efficient means to goal achievement may be available, force or deception for example, but are ruled outside the range of acceptable behavior (Merton, 1968).

According to Merton, if the approved means make goal attainment too difficult or impossible individual concern will focus primarily on success in achieving goals. A corresponding change to more efficient means, with or without cultural consent, can be expected. Any such unauthorized change is socially deviant because the means

employed, that is the specific behaviors, lack society's approval (Merton, 1968).

Many police officers see the institutional means that govern their behavior as ill conceived, unrealistic obstacles to the truth and to their socially defined goals - --- arrests and convictions (Manning & Hunt 1995; Kleinig 1987; Skolnick 1982). These rules of justice frequently free those the police know are guilty, making crime control difficult, sometimes impossible. In these circumstances, Merton's theory suggests, the police will turn to more efficient means of achieving assigned goals, like police testimonial deception, with little concern for cultural approval.

Other factors exacerbate the problem. Some societies, including America, place a heavy, even exclusive, social emphasis on some highly desirable cultural goals without a corresponding emphasis on the means. Individuals are led to center their emotions on the successful achievement of these prized ends, with much less emotional support for the methods they might use. Social and institutional rewards, formal and informal, accompany goal achievement. Continued unsuccessful adherence to approved means merits little or no reward and frequently incurs social sanctions. 'Success' becomes the primary goal and the primary measure of self and

social worth.

Powerful constituents within the existing social structure pressure the police for crime control at any price. Community cries for safer neighborhoods; prosecutorial pressure for court room victories; political figures campaigning as crime fighters; judges reluctant to free factually guilty criminals on technicalities; media demands for success in the 'war on crime;' the pleas of crime victims, all expect, even demand, that the police successfully carry out crime control duties regardless of legal restrictions on the means employed.

This differential emphasizes on goals over means can cause the social structure to generate so much pressure for goal success, arrests and convictions, that accepted standards of behavior, like the rules of justice, are demoralized. Efficiency replaces proscribed behavior. Only results matter, and any means might be considered (Merton, 1968). In these circumstances, police conduct in fighting crime is only limited by questions of efficiency.

Merton (1968) believes that any emphasis on goals at the expense of means weakens or circumvents the pressure for conformity to established codes of conduct and standards of behavior, regardless of the goal, i.e., scientific productivity, academic achievement, or financial success.

These problems are exacerbated in cultures with extreme emphasis on success. "The moral mandate to achieve success thus exerts pressure to succeed, by fair means if possible, by foul if necessary" (Merton 1968, p. 196). Such pressure generates great emotional investment in goal acquisition, and a corresponding psychic toll on those who fail. When established means fail to produce the desired goals, Merton believes, individuals find themselves in a state of 'normlessness,' or 'anomie,' accompanied by frustration, anger, and stress. They naturally seek methods to adapt to their new and stressful circumstances. He describes five such methods of adaptation: Conformity, Innovation, Ritualism, Retreatism, and Rebellion. Of these, 'Innovation,' the use of culturally prohibited but more effective methods of achieving valued goals, is most likely to produce deviant behavior.

If Merton is correct, departures from institutionally required behavior, like police testimonial deception, are induced by the social structure and its institutions. Accordingly, the explanation for police testimonial deception does not lie in the aberrant behavior of a few individuals, but within the society and the Criminal Justice System itself. This study will consider that possibility.

Psychological

Clinical psychologist Michel Girodo's (1992, 1991, 1985) studies of police corruption led him to a different explanation of police testimonial deception. He believes that unethical police behavior occurs when police officers with a unique combination of individual personality traits interact with specific situational factors conducive to corrupt practices.

Girodo worked with drug undercover officers to determine if identifiable personality characteristics could predict job performance and misconduct in the field. He found a combination of certain personality factors, measured by standard personality assessment tests like the Cattell 16 Personality Factor (16PF) Questionnaire (1989), correlated positively with increased risk of corruption. Specifically, officers with extroverted-neurotic personalities in combination with an undisciplined self image were more likely to engage in corrupt practices than other officers.

An extroverted-neurotic personality is generally a highly social, outgoing, and uninhibited person who demonstrates a high level of anxiety. He is fretful, emotional, and has a short temper. The person will demonstrate neurotic symptoms, psych-somatic complaints, and neurotic fatigue. When found in combination with an

undisciplined self image, the personality has poor impulse control and is careless of social rules with little regard for social demands. The individual has poor self control, impetuous and impulsive rather than considered, careful, or painstaking in their conduct (Cattell, 1989).

Girodo (1992) noted that the suspect personality traits alone did not cause misconduct. Influences found within the work environment play a critical role. Only when officers with these particular characteristics interact with situational factors high in potential for corruption did misconduct take place.

The exact nature of the interaction is not clear. But Girodo suspects that the environmental influences facilitate the expression of otherwise dormant personality characteristics, causing a personality change. When this occurs, officers are more likely to misrepresent evidence, a type of police testimonial deception, engage in criminal activity, abuse drugs or alcohol, and experience disciplinary problems. And, according to Girodo, the longer the exposure to the situational factors, the more likely the misconduct.

If Girodo is correct, officers with extroverted-neurotic personalities and an undisciplined self image will use testimonial deception in work situations where the

situational factors create a high potential for testimonial deception. This study will test Girodo's thesis by assessing the personality characteristics of police officers who engage in testimonial deception.

HYPOTHESIS

1. Police officers employed in large, urban police agencies will report more police testimonial deception than officers employed in small police agencies.
2. Police officers who perceive their jurisdictions as having a high crime rate will report more police testimonial deception than officers who perceive their local crime rate as low.
3. Police officers assigned to investigative duties will acknowledge more police testimonial deception than patrol officers.
4. Police officers who believe their arrest statistics are important to their regular departmental evaluations will report more police testimonial deception than police officers who do not believe their arrest statistics are

important to their departmental evaluations.

5. Police officers with experience in narcotics investigation or enforcement duties will report more police testimonial deception than other police officers.

6. The more arrests an officer makes in an average year, the more he or she will acknowledge police testimonial deception.

7. Police officers who believe the legal system restricts their effectiveness will acknowledge more police testimonial deception than officers who do not believe that the legal system restricts their effectiveness.

8. When the guilt of the defendant is factually clear, regardless of the strength of the criminal case, officers are more likely to engage in testimonial deception.

9. Police officers who believe prosecutors tolerate police testimonial deception are more likely to acknowledge police testimonial deception, than officers who do not believe that prosecutors tolerate testimonial deception.

10. Police officers who believe judges tolerate police testimonial deception are more likely to engage in testimonial deception than officers who believe judges do not tolerate police testimonial deception.

11. Where a case is likely to be plea bargained, police officers are more likely to engage in testimonial deception.

12. Police officers dissatisfied with their jobs will report more police testimonial deception than officers who are satisfied with their jobs.

13. Police officers who demonstrate an extroverted-neurotic personality in combination with an undisciplined self image (as measured by the 16 PF) are more likely to engage in testimonial deception than police officers who do not have an extroverted- neurotic personality with an undisciplined self image.

REVIEW OF THE LITERATURE

Forms of police testimonial deception

According to the literature, police jargon has developed different names to describe the methods or forms

of police testimonial deception commonly employed, including "testilying" (Interim Report, 1993), "shading" (Hunt & Manning, 1994), "fluffing" (Barker, 1990; Punch, 1985), "firming up" (Uviller, 1988), "stretching" or "tidying up" (Rubinstein, 1973) or "shaping" (Cohen, 1972). All refer to three basic forms or types: officers either reorder existing circumstances to meet legal requirements; or they add fictitious details to existing circumstances; or they omit information that would weaken the strength of their official representation of events.

All three can be employed before a police action, in a sworn affidavit for an arrest or search warrant for example (Fisher, 1993; Orfield, 1989; Walsh, 1987; Cohen, 1972), or afterwards, in an officer's reports and testimony about the action (Bunker, 1974; Harris, 1989; Harrison, 1976; Levine, 1988; Orfield, 1992, 1987; Wambaugh, 1975; Yant, 1991). Regardless of the point of introduction, once engaged in, the deception becomes 'the reality.' It must be repeated at every subsequent stage of the prosecution: affidavits, pre-trial, and trial testimony.

The three basic forms have nine primary variants. The specific form or variant to be used is largely determined by the circumstances in which it is to be employed.

(1) "Officers will testify to facts that never occurred

or occurred in a different fashion" (Hunt & Manning, 1994; Barker, 1990, 1969). (2) Some will "reconstruct a set of complex happenings in such a way that, subsequent to arrest, probable cause can be found according to appellate court standards" (Skolnick, 1964, p. 215). (3) They might "insert a little invention to fortify probable cause" or "to put flesh on a hunch" (Uviller, 1988, p. 116). (4) Evidence can be planted (Hunt & Manning, 1994; Merina, 1990; Harrison, 1976; Cohen, 1972). (5) An informant might be created, or the reliability of an informant or his information exaggerated (Slobogin, 1996; Gold, 1989; Walsh, 1987). (6) In another variant, officers intentionally leave reports vague. The original facts are then expanded in any direction necessary during testimony without fear of impeachment by the report (Hunt & Manning, 1994; Orfield, 1992, 1989). (7) Or an officer might omit facts that embarrass or threaten a criminal prosecution, or the officer, or his organization (Hunt & Manning, 1994; Barker & Carter, 1994).

(8) Officers who violate the procedural rules of justice can hide their flaw by making "slight" adjustments to their prosecutorial reports and testimony. Circumstances are made to look as though they complied with all legal requirements (Uviller, 1988). Thus, some "slightly advance

the moment a Miranda warning was given" to insure a confession is admitted as evidence (p. 116). Or an officer might report he observed a drunk driving suspect for the required 15 minutes before administering a breath test when in fact no such observations occurred (Harris, 1989). Or evidence seized illegally from a safe is reported as found legally in plain view (Levine, 1991).

(9) Another variant of testimonial deception, the use of pre-approved legal 'boiler plate language,' consists of scenarios or 'plots' previously approved by the courts. Officers learn them during basic training. As court decisions change, new plots are developed and passed on during in-service training. The official explanation for an event is constructed around one of these legal story lines. Affidavits, incident reports and testimony are altered accordingly (Slobogin, 1996; Intrium Report, 1993; Barlow, 1968; Cohen, 1972; Gold, 1989; Younger, 1971, 1967). For example, officers who seize narcotics illegally from a person's pockets know the evidence will be suppressed. The case can be saved by using the 'dropsy plot.' They simply report that the evidence seized when the police observed the suspect drop it to the ground. The dropsy plot provides a convenient and procedurally correct justification for the police action (Barlow, 1968; Cohen, 1972; Levine, 1991).

Other plots include 'plain view,' 'reliable informant,' and 'suspect apologies' (Gold, 1989; Orfield, 1987; Columbia Law Students, 1968; Veney v. US 344 F.2d 542 D.C. Cir).

The circumstances in which police officers use testimonial deception

Police use testimonial deception in five circumstances; (1) to create or improve probable cause; (2) to insure the admissibility of evidence; (3) to hide the identity of an informant; (4) to make a misdemeanor crime a felony, or a felony a misdemeanor; and (5) to protect themselves from liability.

(1) Prosecution evidence needs to meet certain standards. Depending on the situation, it needs either to establish probable cause or to put certain conclusions beyond reasonable doubt. (2) In addition, to be admissible it must meet certain constitutional requirements. If obtained in violation of a defendant's rights it will be excluded from the judicial process.

These may be high demands. The levels of proof required for convictions in criminal courts may be unrealistically too high. To meet them, some police may use testimonial deception to create or improve upon probable cause (Slobogin, 1996; Barker, 1994b; Dershowitz, 1982; Barker, 1994b; Orfield, 1989, 1987; Uviller, 1988;

Rubinstein, 1973; Rubinstein, 1973; Cohen, 1972; Barlow, 1968; Columbia Law Students, 1968; Skolnick, 1964), or to meet the constitutional requirements for the admission of evidence and avoid its exclusion (Slobogin, 1996; Barker, 1990; Levine, 1991; Orfield, 1989; Dershowitz, 1982; Cohen, 1972; Oaks, 1970; Skolnick 1975, 1964; Barlow, 1968; Columbia Law Students, 1968). Similar unrealistic standards of proof are credited with giving rise to the widespread use of torture in criminal investigations during the Middle Ages. Conviction was allowed only on the testimony of at least two eye witnesses or a confession. And confessions were far more obtainable than eye witnesses (Barker & Carter, 1990).

(3) In other circumstances, some officers employ testimonial deception to hide the identity of informants and even their existence; informant information is credited to another source; officers "luck onto" or accidentally discover incidents or evidence; or learn of them from some other informant (Slobogin, 1996; Barker, 1994b; Commonwealth v. Lewin, 1989; Gold 1989; Wambaugh, 1975). Or an informant might be invented to justify a police action (Wambaugh, 1975). (4) Testimonial deception is sometimes used to make a misdemeanor offense a felony, called 'padding,' or to reduce a felony complaint to a misdemeanor

(Hunt & Manning, 1995; Punch, 1991). In narcotics cases, for example, some officers will report that evidence weighs more or has a greater value than it actually does, so that felony standards are met (Barker, 1990). Likewise, a reported felony offense might be reclassified a misdemeanor to maintain clearances rates, or to avoid unnecessary paperwork (Hunt & Manning, 1995).

(5) In the practice called 'covering your ass,' police use testimonial deception in ways that justify their conduct to protect themselves from disciplinary actions, civil suits, or criminal prosecutions (Hunt & Manning, 1995; Barker, 1994b; Wambaugh, 1975; Cohen, 1972; Skolnick, 1964).

Why some police engage in testimonial deception

The literature offers at least sixteen rationales to explain why some police officers engage in testimonial deception.

(1) One explanation is to be found in the basic nature of some police organizations. Many officers believe that their primary duty is crime control, the discovery of crime and the punishment of criminals. "Good pinches, clearance rates and convictions are the goals of police agencies, not justice" (Cohen, 1972). These departments are at war with

criminals, a war in which any means to victory, including police testimonial deception, is justified. Everything else is secondary or irrelevant.

Some police officers believe that the rules of justice and similar limitations on the police interfere with effective law enforcement. Many see them as "ill conceived or overly constraining" (Skolnick, 1982, p.42), "unrealistic and criminally inspired" (Kleinig, 1987, p.7), and as obstacles to the truth (Skolnick, 1982). They frequently free those the police know to be guilty (Rothwax, 1995; Skolnick, 1982). Testimonial deception can become a routine method of handling these legal impediments (Slobogin, 1996; McNamara, 1995; Orfield, 1989; Kleinig, 1987; Skolnick, 1982, 1964; Manning, 1978; Barker, 1976; Bunker, 1974; Little, 1970; Wambaugh, 1975; Younger, 1967).

Skeptical of a system that suppresses the truth in the interest of the criminal, some police officers "lie to get at the truth" (Skolnick, 1975, p. 214). Sensitive to the way the rules of evidence may exclude relevant data, "the policeman ... operates as one whose aim is to legitimize the case, rather than as a jurist whose goal is to analyze the sufficiency of the evidence based on case law" (1975, p. 214). This attitude may be basic to the role of the police as the police themselves see it, and incorporated into the

formal process of socialization that transforms recruits into police officers (McClure, 1986; Rubinstein, 1973).

(2) Police are not alone in believing that safe streets are more important than the rights of criminals. Many citizens are equally scornful of legal technicalities (Slobogin, 1996; Rothwax, 1995). They expect the police to carry out certain tasks without too much concern about legal restrictions. The police understand this attitude and the relationship between arrest statistics, public support, and budgetary needs. Police testimonial deception might be a response to such pressures (Cohen, 1972; LaFave, 1964).

Prosecutors exert their own pressures on the police.

(3) An aggressive district attorney, concerned that officers present their testimony in constitutionally rigorous form, may either intimidate or encourage some officers to employ testimonial deception (Kleinig, 1987).

(4) Some prosecutors, because they are certain of a defendant's guilt, will refuse to allow a "procedural impediment" to undermine his conviction and punishment (1987). They tolerate, even encourage, police testimonial deception (Dershowitz, 1994b, 1982; Terry, 1995; Orfield, 1992, 1989; Kleinig, 1987; Bunker, 1974; Cohen, 1972). In doing so, they justify it in the minds of some police officers and promote its further use (Slobogin, 1996;

Terry, 1995; Commission Report, 1994; Dershowitz, 1994B, 1982; Cohen, 1972).

Winning is important to many prosecutors. (5) For some, caught up in the competitiveness of the adversarial system of justice, winning brings great personal satisfaction. (6) For others, concerned with career advancement, winning has instrumental value. Both groups might find it tempting to wink at or support some police testimonial deception (Yant, 1991).

Tolerance and encouragement of police testimonial deception may extend to more than the prosecutor's staff. (7) Some judges are just as reluctant to see a criminal freed on a technicality. They are reported to refuse to do anything about police testimonial deception in their courtrooms, ratifying and encouraging its use (Slobogin, 1996; Orfield, 1992; Dershowitz, 1994b, 1982; Terry, 1995; Rothwax, 1995; Bunker, 1974). Twenty percent of the judges, 21% of prosecutors, and 43% of the public defenders interviewed by Orfield (1992, 1989) felt that some kinds of police testimonial deception did not constitute perjury. (8) Some appellate courts apparently deal with it the same way (Dershowitz, 1982).

(9) The use of deception is natural to the detection process. Society and the law allow, even encourage, its use

by the police during investigations and, to a lesser degree, in interrogations. Likewise, some police tasks require officers to lie; hostage negotiations, vice and narcotics undercover operations, street confrontations, and more (Hunt & Manning, 1995; Marx, 1992, 1988; Skolnick, 1982; Manning, 1980). It is, however, forbidden at the testimonial stage of the process. The fact that some police testimonial deception does occur may be due to a natural progression from investigative and interrogatory deception to testimonial deception. "Judicial acceptance of deception in the investigative process enhances moral acceptance of deception by detectives in the interrogative and testimonial stages of criminal investigation and thus increases the probability of its occurrence ... Deception in one context increases the probability of deception in the other" (Skolnick, 1982, p. 45).

(10) Police departments, peer groups, or individual officers who rely on arrest statistics as the primary measure of department or officer efficiency often encourage, intentionally or otherwise, deceptive testimonial practices (Fisher, 1993; Levine, 1988; Kleinig, 1987; Orfield, 1987; Rubinstein, 1973; Cohen, 1972). Because failure to prosecute an arrest may expose the officer and his agency to civil damages, and all arrests must be presented to the

prosecutor under oath, some officers will be tempted to lie about the circumstances of those arrests. The issue here is not crime control but measures of officer efficiency. The "number of arrests made" is still the most widely used police method of assessing productivity. Whether for a program, a squad, or an individual officer, a high number of arrests guarantees success (US News and World Report, 1984).

Many police agencies award prized assignments and promotions, even days off and vacation schedules, to officers with the greatest number of arrests. Supervisors and command officers are rated on the arrests made by subordinates. Ever increasing demands for more arrests may invite an indifference to the methods used. Officers unable or unwilling to comply can suffer personally and professionally (Fisher, 1993; Levine, 1988; Orfield, 1987; Rubinstein, 1973).

(11) The natural desire of some police officers to win cases may contribute to police testimonial deception (Orfield, 1989; Kleinig, 1987; Manning, 1980). The law requires police to 'know' a person is guilty before they can arrest him (Manning, 1978). But despite their certitude, police do not control the final outcome of the judicial process. The court or the prosecutor can change the face of the case by the selection of the evidence presented.

Testimonial deception provides a means to influence that outcome, and many officers lie to insure conviction of a defendant they know is factually guilty (Slobogin, 1996; Hunt & Manning, 1995; Dershowitz, 1994, 1982; Barker & Carter, 1990; Manning, 1978; Skolnick, 1982).

(12) Failure to win a conviction after investing the time and energy to make the case can be a particularly demoralizing personal frustration. Officers can experience adverse personal reactions (Orfield, 1989), negative job satisfaction, and low morale. The health of law enforcement can be damaged as well. The loss of notable cases can lead to a decline in public respect for law enforcement (Kleinig, 1987; Cohen, 1972).

Testimonial deception is one way to insure more convictions and to reduce individual frustration. Job satisfaction and morale are improved. And, provided the deception is not uncovered, public confidence in the police is restored (Orfield, 1992, 1989; Kleinig, 1987; Cohen, 1972).

(13) Some police might justify the use of testimonial deception because the targets of the deception are deceivers themselves. Most have prior criminal records and there is little doubt about their guilt in the matter at hand. Using testimonial deception against them is playing by their own

rules (Kleinig, 1987).

(14) The use of testimonial deception might be justified by some because of its social benefits. The convicted criminal is unable to commit more crimes during incarceration. And his conviction and punishment may serve as a deterrent to others. Future crimes are thereby prevented (Kleinig, 1987).

(15) Some officers use testimonial deception to protect themselves or their associates from disciplinary actions or liability, civil or criminal. They may do this even if the actions against them or their associates would not or should not be sustained. In any case, deception reflects the importance of fraternal and group loyalty (Commission Report, 1994; Fisher, 1993; Skolnick, 1982, 1964; Barker, 1980; Cohen, 1972; Wambaugh, 1975).

(16) The Supreme Court has consistently ruled that police officers who use testimonial deception may not be sued for their conduct under the Federal Civil Rights Act. Although this does not provide a reason for police officers to engage in testimonial deception, it provides little disincentive to such deception and may even erode the disapprobation normally associated with the practice (Brisco v LaHue, 102 S. Ct. 170, 1983; Kauffman, 1988; Love, 1983).

Clearly these different rationales will carry different

weights, and some are more common than others. But they indicate that despite the prohibition against such conduct, police testimonial deception remains a vital and significant issue.

Police personality and their professional conduct

The literature offers two primary theoretical approaches to understanding the relationship between police officers and their professional conduct; (1) police conduct is a product of pre-existing personality factors; and (2) situational factors particular to the working environment of police officers determine their professional conduct.

Behaviorists believe employee behavior was (1) motivated primarily by personal characteristics. People selected a profession to satisfy personal needs. Their day to day work conduct was seen as a continuing effort to meet those needs (Maslow, 1948).

Early explanations of police behavior followed suit. Existing personality traits were seen as influencing police officers to self select their occupation. Rokeal, Miller, Snyder (1971), among others, concluded that police officers are recruited through a process of self selection, as a foundation of personality predisposition. These same traits were responsible for their subsequent conduct. Those, for

example, who demonstrated authoritarian and prejudiced conduct were seen as authoritarian and prejudiced people who selected police careers because of those personality traits (Kephart, 1957).

(2) Others argue that whatever existing personality characteristics influence job selection, police personalities and police conduct are largely determined by the influence of the particular conditions of the occupational environment on the officers. Police occupational behavior stems largely from situational factors in police work (Neiderhoffere, 1967).

Becker (1964) concluded that the situational context determined police behavior, not inherent personality characteristics. People adjust to their occupation as they interact with occupational peers and as they respond to institutional expectations and the daily demands of the job. If an individual has a strong desire to continue in a situation, and he has the ability to determine accurately what is required of him and he can do what is required, according to Becker, "he will turn himself into the kind of person the situation demands (p 12)."

Niederhoffer (1967) agreed. The police system, and not the personality of the police candidate, was responsible for police behavior. The police intentionally strip every

officer of his/her past and present life, and personality during the process of entering the police profession. They do so to reduce or eliminate the influence of that past or present life on the performance of their official duties. As officers progress through their careers, ongoing occupational socialization continues the process.

Skolnick (1967) believed that the values, attitudes, and behaviors of police officers are occupationally created or determined, and not produced by the backgrounds or personalities of the officers. Their working personality develops from the social psychological interaction with citizens.

Like Skolnick (1967), James Q. Wilson (1974), Egon Bittner, (1974) and others hold that the working personalities of police officers, and their subsequent professional conduct, are produced by their common working experiences. Particular characteristics of police officers' working environment, i.e., threats, isolation, low social status, lack of public respect, alienation, unappreciation etc., force officers to form a subculture. This subculture enables officers to deal with the dilemmas of police work. It provides things denied them by the public; a sense of professional worth and respect; protection from dangers; coping mechanisms necessary to deal with daily frustrations

and the contradictions of their jobs, and more.

New officers are socialized into the subculture through the process of applying to the force, completing the police academy and an extended apprenticeship. And like apprentices in every profession or trade, they learn and adopt the working personality characteristic of their field. That forms the core of the subculture and of their occupational behavior.

Sterling (1977) studied personality changes that occur in police officers as they moved from the protected environment of training classroom to the realities of the street. During their first eighteen months their personality changed toward more a active, assertive, and self-directing orientation in response to situational factors.

Explanations of police misconduct, one form of police behavior, have consistently held to these same two traditional arguments. When an officer is found to be corrupt, his conduct is the result of either preexisting personality characteristics, "the rotten apple theory," or the influence of environmental factors, the "rotten barrel theory" (Girodo, 1991).

The "rotten apple theory," accounts for misconduct by attributing it to some pre-existing defect in the

individual's personality. The now infamous Miami River Cops Scandal serves as an illustration. Over 80 Miami River officers were charged with a variety of crimes including murder, robbery, and narcotics activities in a large corruption scandal. Official explanations blamed the pressures to hire minority officers, pressures that discouraged proper screening and hiring methods, including background checks. Individuals with prior narcotics use and some with criminal arrest records, clearly symptoms of 'pre-existing character flaws,' entered police service. The preexisting personality traits that caused their prior behavior were responsible for their subsequent corrupt conduct (Girodo, 1991).

"The rotten barrel theory" finds situational factors in the officer's working environment responsible for officer misconduct. The Knapp Commission Report on Police Corruption in New York City (1973) and the popular novels about that period, "Prince of the City" (Daley, 1981) and "Cop Hunter" (Murano, 1990) serve as examples. They blame environmental factors for the corruption that plagued the New York City Police Department during the 60's and 70's; the adulteration of the principles, rules, and probity of the Department; the deterioration of the honesty and integrity of police officers; and the erosion of the ideals

and values inculcated during training brought about by the older, disgruntled, deprecating, and cynical role models among the police department who provide socializing experiences. The environment created conditions which eroded the ideals of police officers (Girodo, 1991).

The 1989 International Association of Police Chiefs' report on the problem of drug corruption reaffirmed these two widely held explanations of police misconduct (IACP, 1989). The character of the police applicants or the criminal environment in which undercover officers carry out their duties were singled out as the reasons police officers engage in drug corruption. But a third possible explanation has evolved.

Michel Girodo (1991, 1988, 1985) believes police misconduct, especially corruption, is a much more complex process. He suggests a third explanation for improper police behavior. (3) Police misdeeds result from some, as yet not understood, dynamic interaction between environmental conditions and existing personality traits. In order to understand that behavior one must understand how some personality characteristics only emerge in the presence of situational factors that facilitate their expression (Girodo, 1992).

Girodo (1988) studied drug undercover agents. Looking

for identifiable personality characteristics to predict job performance and misconduct in the field, he found a combination of certain personality factors, measured by the 16 Personality Factor Questionnaire (Cattell, 1989), positively correlated with an increased risk of corruption, including the misrepresentation of evidence, a form of testimonial deception. Agents with extroverted-neurotic personalities, combined with an undisciplined self image, were more likely to engage in corrupt practices when confronted with the situational factors common to drug undercover work than other agents (Girodo, 1992, 1991). And the longer their exposure to undercover assignments, the more likely these characteristics were to lead to misconduct.

An extroverted-neurotic personality is generally a highly social, outgoing and uninhibited person, good at making and maintaining interpersonal contacts. At the same time, the individual is marked by anxiety, fretfulness, emotionality, a short temper, phobias, sleep disturbances, psych-somatic complaints, neurotic fatigue, and other neurotic symptoms. When found in combination with an undisciplined self image, the personality has poor impulse control and low self control. He has little regard for social demands and is careless of social rules. The person

is impetuous and impulsive, rather than considered, careful, or painstaking in his conduct, and suffers general feelings of maladjustment (Cattell, 1989).

Girodo noted that "disciplined self image," self control, appeared to play a critical, perhaps controlling, role in police integrity. Officers with high scores in disciplined self image, regardless of other personality traits, were less likely to engage in corrupt practices than those with high scores in undisciplined self image.

The phenomena, Girodo believes, occurs when the specific situational factors associated with drug corruption interact with the otherwise pro-social agent personalities causing a personality change. Dormant characteristics, i.e., low disciplined self image, become controlling as environmental factors eroded existing positive personality traits.

CHAPTER III

METHODOLOGY

RESEARCH DESIGN

This study used a descriptive research methodology.

The existence of police testimonial deception is often alleged, but little empirical information on the subject exists. The phenomenon has not been the subject of much research, despite an increasing number of anecdotal reports, including the Mollen Commission. No national studies have been done. There are no data bases nor statistics (Hunt & Manning, 1995; Terry, 1995). Nothing, other than speculation, is known about its frequency: the methods employed; the reasons and rationales the police believe motivate them to engage in such practices; or the organizational circumstances that might influence its use.

This lack of preliminary data limits the selection of methodologies. Sufficient advance knowledge of a research subject is necessary in order to select an appropriate method of study, structure questions, and to predict probable responses that accurately capture relationships and the experiences of respondents (Hagan, 1981; Patton, 1984;

Kahn & Cannell, 1957).

Absent preliminary or exploratory data necessary predeterminations cannot be confidently made (Stewart & Cash, 1982). "When one knows little or nothing about a research problem, one must understand it in a general way before specific inquiries about specific aspects of the problem can begin" (Simon and Burstein, 1985, p.147).

In such circumstances Maxfield and Babbie (1998), Simon and Burstein (1985), and Isaac and Michael (1981) recommend a descriptive research methodology. Such studies employ methods grounded in the social sciences to systematically describe, as accurately as possible, facts and characteristics about a relatively unknown phenomena (Maxfield & Babbie, 1998). This approach is not intended to explain relationships in detail, develop meanings, or make predictions, but to survey, identify, and catalogue problems, current conditions, and practices (Isaac & Michael, 1981).

While the results can not be generalized to a larger population, and any conclusions apply only to the subject matter and sample under consideration, descriptive studies have important scientific value (Simon & Burstein, 1985). They produce the clues, provide the focus and the foundations necessary for more exacting studies of the

subject (Maxfield & Babbie, 1998; Simon & Burstein, 1985).

Descriptive designs are widely used for that purpose in Criminal Justice. Examples include some of the fields' most recognized and important work, including the Uniform Crime Report, the National Crime Victims' Survey, the National Youth Survey, and the annual study of juvenile misbehavior by the University of Michigan's Institute of Social Research. The methodology is not limited to Criminal Justice. The Gallup Polls, the National Household Survey of the U.S. Department of Health and Human Services, and the U.S. Census successfully employ descriptive techniques (Maxfield & Babbie, 1998; Simon & Burstein, 1985).

A descriptive research methodology was used in this study to address the need for elementary information about police testimonial deception. Four hundred and forty four police officers were surveyed to get some understanding of how often testimonial deception is used, the forms it takes, and the factors and conditions that influence police officers to engage in such practices.

LIMITATIONS OF METHODOLOGY

Two special, and somewhat related issues influenced this study and its results; a) the closed and secretive

subculture of the police, and of police organizations; and
b) the dilemmas inherent to studies of highly sensitive
subject matter and socially undesirable behavior.

a) The closed and secretive nature of the police
subculture, and the unique police working personality have
traditionally made police studies difficult, even
impossible. Both have successfully thwarted the efforts of
many researchers interested in the internal dynamics of the
police. Dominated by a strong sense of solidarity, a
clannish suspicion of outsiders, and a strict code of
silence, the police successfully shield much of what they do
from outside examination (Katz, 1990; Brown, 1981;
Skolnick, 1975; Westley, 1970).

Deviance and misconduct are among their most carefully
guarded secrets (Virg, 1989; Punch, 1985; Criminal Justice
Newsletter, 1985; Van Maanen, 1978). Attempts to study
them traditionally meet with a "siege mentality common to
secret societies" (Punch, 1985, p. 121). Even with the
recent influx of minority and woman employees, and an
increased number of college educated officers, police
silence and solidarity persist (Katz, 1990; Bouza, 1990;
Criminal Justice Newsletter, 1985). Consequentially, many
officers regularly refuse to take part in any research
project, while those who do frequently evade full and open

disclosure.

Orfield's (1987) attempt to study police perjury serves as an example. Unable to obtain a suitable random sample willing to participate, he interviewed detectives introduced to him by an apparently cooperative police administrator. The detectives, equally cooperative, led him to conclude that some police perjury existed, but only as a minor problem. They convinced him that existing internal police procedures provided adequate controls. Two years later, after a similar inquiry with lawyers and judges, Orfield substantially changed his mind. The police officers, he realized, had not been as candid as he had assumed (Orfield, 1987).

This problem had two immediate effects on this project. First, the unwillingness among many police agencies and police officers to participate made it impossible to obtain a scientifically valid random sample. Instead, this study had to rely on a non-random, but unbiased and non-peculiar sample that generally reflected the characteristics of the police population. Accordingly, generalizations were not possible. Because the nature of descriptive research --- the accumulation of details about an unknown phenomena --- precludes such inferences, the technique lends itself to this circumstance.

Secondly, the potential for less than truthful and open responses among those police officers willing to participate threatened the findings. Maxfield and Babbie (1998) found that strong adherence to the principles of anonymity and confidentiality, while convincing the participants that the researcher is doing so, helps resolve this dilemma.

Considerable steps were incorporated into this project to insure that no details that might identify the officers or their agencies were requested or recorded. And the participants were made aware that no such information was available to the researcher. Additionally, the subjects were informed of the researcher's considerable police service in an attempt to lessen concerns associated with 'outside examination,' and enhance their sense of confidentiality.

Nonetheless, it must be assumed that data developed on any item or issue in this study has been influenced to some degree by the secretive nature of the police.

b) By its nature, testimonial deception is highly secretive and therefore not easily observed. It is widely considered improper conduct, and frequently constitutes criminal perjury. Officers take oaths to tell the truth. Those who do not risk severe penalties and are understandably reluctant to admit to it. Studies of such

secretive and personally threatening behaviors are hampered by the social desirability-undesirability bias. When asked about their own conduct, people, even cooperative subjects, will under-report their socially undesirable conduct, while they over-report socially desirable behavior. They do so because of a natural tendency to want to appear to others as good people (Maxfield & Babbie, 1998; Sudman & Bradburn, 1983; Stewart & Cash, 1982).

This phenomena presents a serious research problem. It makes it impossible to accurately measure or estimate the frequency of socially desirable or undesirable behavior in any given population (Maxfield & Babbie, 1998; Sudman & Bradburn, 1983; Stewart and Cash, 1982). Examples abound.

In an anonymous study of recently arrested drunk drivers, socially undesirable behavior, 35% reported they had never been arrested for drunk driving, despite the fact that the entire sample had been drawn from court records of drunk driving convictions. In a similar study, 50% of a random sample of convicted drunk drivers denied they had ever been charged with DWI (Sudman & Bradburn, 1983). A comparison of the number of abortions reported by hospitals annually and the number collected in survey data from the National Survey of Family Growth reveals that survey subjects report only 50% of the actual number of abortions

(Bradburn, 1983).

Studies of voting habits, a highly desirable social behavior, consistently demonstrate that the number of subjects who report they voted in recent elections far exceeds the actual number of votes cast. And more people report voting for the winning candidate than published records (Sudman & Bradburn, 1983). A Denver study of charitable giving, socially desirable, asked a random sample of area residents if they had contributed to a specific local charity. A comparison of survey results with the actual records of the charity revealed that 34% of the respondents reported giving, when they clearly had not (Sudman & Bradburn, 1983).

The exact amount of such under or over-reporting is unknown, and can not be estimated accurately. No methods can insure error free results. Research on the phenomena, however, allows the assumption that the frequency of undesirable behavior in the sample is actually greater than reported, and where generalizations to a population are possible, larger in the population than in the sample. Likewise, as specific questions or topics get more threatening, under-reporting increases (Sudman & Bradburn, 1983).

According to Maxfield and Babbie (1998), Sudman &

Bradburn (1983), and Stewart & Cash (1982) two methods can help reduce the effects of the social desirability bias; a) provide as much anonymity and confidentiality in the research design as possible; b) and design questions and introduce topics to make respondents more comfortable with the subject matter. Both proved particularly important to this project. They enhanced subject participation, and provide a greater opportunity for honest, straight forward responses.

But clearly, the social desirability factor impacted this study. Officers under-reported their use of testimonial deception, the forms of deception they employ, and the reasons and justification they believe motivate their conduct. The use of testimonial deception is probably more common among police officers than the study indicates. And the reasons, justifications, and circumstances that give rise to deceptive testimony were more influential than reported. No other estimate of the frequency of such behavior in the larger population can be considered. And this study makes no attempt to do so.

SAMPLE

Access to a population of police officers from which to

draw a random sample is traditionally limited to police departments themselves. Neither state governments, nor local communities maintain public lists or directories of police officers serving within their jurisdictions. And, unfortunately, most police agencies are as closed as their officers. Police managers, career police officers, and by extension the agencies and departments they control, share the same closed and secretive subcultural values. Few are eager to risk professional or organizational reputation by permitting outsiders to explore, without control, every corner of the station house for evidence of illegal, immoral, or unethical conduct (Katz, 1990; Bouza, 1990; Punch, 1985; Skolnick, 1975).

The 1992 National Institute of Justice attempt to randomly survey police officers nationally about official misconduct demonstrates the problem. The nation's two largest police departments, New York and Chicago, declined to participate. And police officers from the entire State of Pennsylvania excluded themselves when their union officials rejected NIJ's proposal (Terry, 1995). The automatic exclusion of more than 20% of the nation's police officers from the potential sample made randomization impossible.

Absent cooperation from police departments, a random

sample was not possible in this project. But a non-random, yet unbiased and non-peculiar sample was obtained with the assistance of police training facilities located in Florida, New York, Connecticut, Kentucky, Illinois, Missouri, and Montana. Some were regional police academies, like the Connecticut Municipal Police Academy serving police officers from throughout Connecticut. Others were academic institutions that provide training to police officers from a variety of departments primarily in their geographical area like St. Petersburg Community College in Florida and John Jay College of Criminal Justice in New York. None were affiliated with a single police department. Most requested anonymity in exchange for their participation.

The use of officers attending such programs at independent training facilities offered several advantages. Class populations represented a variety of police agencies, ranks, ages, backgrounds, and experiences, insuring a non-biased, non-particular sample. The anonymous nature of the setting, well removed from participants' departments, peers, and supervisors, helped control for the problems associated with secretive and threatening topics.

The sample population consisted primarily of police officers attending mandatory police recertification training programs. State law or departmental policy, in most of the

participants' jurisdictions, required all police officers, regardless of rank or duty assignment, to periodically renew their state certification, a form of licensure. Those who do not lose their authority. Renewal requires the successful completion of a mandatory training course.

An officer's certification period begins with the completion of basic training and extends for a defined period of time beyond that date, usually one to three years, throughout his or her career. At the end of that period officers must attend a recertification program.

Most departments used the same standard procedure to select officers for training. Classes, usually 30 to 35 students, were scheduled well in advance and the dates were announced to all police agencies within the training facilities jurisdiction. Departments received a specific number of seats in each program determined by the size of their organization in relation to that of other agencies in the region. Officers were selected for training by their individual departments based on the date their certification expired.

Because recertification is demanded of all officers regardless of age, gender, rank, or assignment, and the only mechanism for assignment to a training class is an officer's recertification date, and individual recertification dates

vary widely within a specific department, the selection for training was unbiased and non-particular.

Classes tended to reflect the demographic characteristics of police officers and agencies in the region. Each group contained a medley of professional experiences.

When such classes were made available to the study, the instruments were offered to the entire group.

Recertification training curricula varies. Some states, like Connecticut, require specific training subjects. Others, Florida for example, satisfy the recertification requirement with successful completion of any additional training program. In these instances, recertification officers were placed into programs with non-recertification officers.

Between May of 1994 and October of 1995, 221 police officers participated through recertification training. Unfortunately, the March 1995 testimony of Los Angeles Detective Mark Furhman during the OJ Simpson trial, 11 months after this project began, substantially disrupted the process. As it became obvious in the weeks following his testimony that Detective Furhman had used testimonial deception, and as the national media focused on his conduct and that of his department and his supervisors, most of the

participating agencies withdrew from the project.

Between February, 1996 and September, 1996 several institutions provided access to an additional 223 officers. Most were recertification officers, but exact figures could not be determined because some programs included both recertification and general training officers.

The final sample contained 444 officers of all ranks, from thirty states, representing police agencies employing from one to 44,000 officers. It is an unbiased sample, and generally represents police population characteristics.

Gender

Four hundred and twenty three participants identified their gender. Fifteen percent were females and 85% males. These figures generally reflect national averages. According to the most recent survey, 1993, about 88% of all police officers are male and 12% female (Reaves, 1996).

Education

Four hundred and thirty five subjects provided information about their educational backgrounds. Fifteen percent had a high school diploma or equivalent; 68% had at least some college education; and 15% had attended graduate school. A total of 98% of the participants had at least a

high school diploma and 15% had a college degree.

While no national studies have specifically determined the levels of education for serving police officers, secondary sources demonstrate that study participants generally reflected the educational levels of the police population. Ninety-nine percent of all local police departments require at least a high school diploma for employment. Twelve percent demand some college education, and 8% require a college degree (Reaves, 1996).

Age

More than half of the participants, 53%, were between the ages of 31 and 40; 21% between the ages of 21 and 30; 22% were 41 to 50; and 4% were over 50. No national studies have focused on the age characteristics of serving police officers. However, secondary sources support the argument that these results reflect national trends and characteristics.

More than 90% of all police agencies limit entry level employment to candidates at least 21 years of age, and the average age for police recruits nationally in 1995 was 25 years (Johnson, 1996). Standard police retirement practices allow officers to leave service after 20 or 25 years (Reaves, 1996). It is thus reasonable to assume that most

police officers will be between the ages of 21 and 50, with the largest number at mid-career, 30 to 40. The ages of the participants in this study are consistent with that assumption.

Duty assignment

Almost 88% of the participants reported they were assigned to field operations, positions that provide direct services to the public, i.e. patrol officers, detectives, field supervisors. That number reflects national practices. The U.S. Bureau of Justice Statistics found that 90% of all serving police officers are assigned to field operations (Reaves, 1996).

Demographics of jurisdiction

Nearly 46% of the subjects said they worked in urban jurisdictions, with 54% assigned to suburban or rural locations. That number is consistent with police officers across the country. Fifty percent of all police officers are employed by departments serving populations of 100,000 or more while the remainder serve in smaller communities (Reaves, 1996).

INSTRUMENTATION

A police testimonial deception questionnaire (Appendix B) containing 34 questions was developed from the existing literature and from focused interviews with experienced police officers done in preparation for the study. The first page of the questionnaire (Appendix A) was an open letter to the subjects outlining the process. Subsequent questions asked about testimonial deception --- the use of false or misrepresenting statements or intentional omissions of fact, either in writing or in speech, to further an arrest, or the seizure of evidence, or a criminal prosecution. They addressed 5 specific areas; a) the respondents' perceptions of the use of testimonial deception in their individual departments; b) the frequency with which police officers they know personally use testimonial deception; c) how often each respondent engages in testimonial deception; d) the forms of testimonial deception used by officers they knew personally; and e) the forms of testimonial the participants used.

Additional questions provided opportunities for subjects to identify reasons and rationales that might motivate some police officers to use testimonial deception; assessed the role of the Exclusionary Rule in police

testimonial deception; tested specific operational circumstances credited with contributing to police testimonial deception; and collected demographic data.

In order to validate the questionnaire and test the administration process, fifty experienced police officers attending mandatory recertification training completed the testimonial deception questionnaire in a pilot study. The process took about 30 minutes. Immediately afterwards, participants recorded their individual reactions to the questionnaire and the process on a separate form, specifically identifying problems, ambiguities, unclear or confusing language, questions or answers. Each was subsequently interviewed. Questionnaires were scored, comments and interviews reviewed, and appropriate adjustments made.

The most significant concern subjects expressed was the fear that they, the specific training group, or their departments might be identifiable in the process. These concerns made it difficult, some said impossible, for them to fully and openly participate. Most police officers, they believed, would react similarly. Assurances of anonymity were not sufficient. They advised several actions; a) persons administering the test should be police officers, or former police officers, and clearly identify themselves

accordingly; b) and that no records be maintained of participants, specific training courses, training dates, or training institutions, and that this information be conveyed to potential subjects. These recommendations were incorporated into the process.

A second instrument, the Cattell 16 Personality Factor Test (16 PF), developed by Dr. Raymond B. Cattell (1989) assessed participants' personality traits. The test contains 187 questions. All had to be answered for proper scoring and evaluation. The 16 PF required about 40 minutes to administer.

Based on more than 35 years of research and experience, it is widely accepted as a reliable and valid instrument for evaluating personality factors. "Many studies have used the 16 PF to produced a great deal of normative data for assessing personality profiles and characteristics" with considerable empirical validity (Yates, 1970 p. 78). Michel Girodo (1992) successfully employed the 16 PF to identify personality traits associated with corrupt and unethical practices among undercover police officers.

It measures 21 normal personality factors, each segmented into a ten point rating scale. The results allow for the psychological description of more than ten quadrillion characteristics (Yates, 1970).

The 16 PF requires no special skills or training to administer. Two hundred and twenty one 16 PF exams were completed. Results were machine scored by the Institute for Personality and Ability Testing of Champagne, Ill., and a descriptive summary prepared for each subject.

DATA COLLECTION PROCEDURES

Questionnaires were administered during a time period most convenient to the sponsoring agencies. The researcher briefly introduced himself, citing his background, including information about his police career, and outlined the process. He distributed an unsealed manila envelope with a testimonial deception questionnaire and his business card clipped to the outside to each participant. A 16 PF exam booklet and answer form were inside.

Participants read the cover letter to the testimonial deception questionnaire. The researcher then explained the steps taken to insure anonymity and confidentiality; a) the questionnaires asked for no information that might lead to their identification or the identification of their organizations; and b) no record would be made of the particular date, the specific location, or the name of their training program.

Those interested in study results, or with questions or comments about the study, were encouraged to contact the author directly at the telephone number or address provided.

Participants completed the testimonial deception questionnaire first and placed it into the manila envelope. They then removed and completed the 16 PF. All forms and booklets were then returned to the original envelope, sealed by the participants and placed into one of three boxes located near the classroom exit as each participant left. The same process was used at those sites where time constraints prohibited the use of the 16 PF, absent the 16 PF material.

Once all participants finished, the administrator collected the sealed envelopes and opened them. He labeled each testimonial deception questionnaire and corresponding 16 PF answer sheet with a unique sequential identifying number to facilitate coordination of the results. Four hundred and forty four testimonial deception questionnaires were returned and coded. Two hundred and twelve completed 16 PF's went to the testing company for evaluation.

During the course of the study 63 subjects telephoned the author to request study results, or for follow up comments and questions. All mentioned the testimonial deception questionnaire, or specific topics covered in the

questionnaire. Their comments, plus comments from focused interviews conducted in preparation for the study, when appropriate, have been included in the final report as illustration.

DATA ANALYSIS

Testimonial deception data were analyzed in two ways. Descriptive statistics including means, medians, standard deviation, and frequency of response were completed, summarized, and reported. And inferential analysis was used to measure correlations among the responses to various questions.

The 16 personality factor results presented 21 separate personality factors and characteristics measured in a standard ten point equal interval rating scale for each subject tested. The population average for each characteristics is fixed at 5.5 on that scale. Scores below or above the average correlate with specific personality traits within that characteristic (Cattell, 1989).

For example, the test assesses each subject's Extroversion-Introversion characteristics. A score of 5.5 represents the average populations' extravert-introvert personality traits. Any score that moves to the right of

that average, 6 through 10, is increasingly more extroverted than the average population. Scores that move to the left of the average, 5 through 1, are increasing less extroverted, that is more introverted, than the average population.

The test also measures 'Disciplined Self Image,' that is highly disciplined self image through low disciplined self image when compared to the population average. A score of 8 represents a level of discipline 2.5 interval points higher than that characteristic in the general population, in other words a highly self disciplined individual. A score of 2 indicates the subject's self discipline is 3 interval points lower than the average, or an individual with low self discipline (Cattell, 1989).

Participants who demonstrated ratings associated with an extroverted-neurotic personality with an undisciplined self image, characteristics associated with corrupt and unethical practices among undercover police officers, were identified. Inferential statistics compared their responses to relevant testimonial deception questions with those of participants who did not have an extroverted-neurotic personality with an undisciplined self image.

CHAPTER IV
THE USE OF TESTIMONIAL DECEPTION

Nineteen questions in the testimonial deception questionnaire, derived from the literature and from focused interviews, asked about testimonial deception --- the use of false or misrepresenting statements or intentional omissions of fact, either in writing or in speech, to further an arrest, or the seizure of evidence, or a criminal prosecution. They addressed 5 specific areas of concern:

a) the respondents' perceptions of the use of testimonial deception in their individual departments; b) the frequency with which police officers they know personally use testimonial deception; c) how often each respondent engages in testimonial deception; d) the forms of testimonial deception used by officers they knew personally; and e) the forms of testimonial deception the respondents employ.

Following recommendations of Sudman and Bradburn (1983) (1979), and Stewart and Cash (1982) the first and second questions asked respondents to report on the testimonial practices of others. This 'other people' approach helps control the tendency of respondents to under-report threatening or embarrassing behavior in two ways.

First, research indicates that subjects report more

accurately on threatening or embarrassing topics when asked about the conduct of anonymous friends, or persons they know personally, than they do their own behavior. While questions about the conduct of others can not substitute for measuring the respondent's own activities, they offer two advantages for estimating total levels of behavior: a) the questions are completely anonymous; and b) because they pose no personal threat to the respondent, under-reporting is reduced. Accordingly, accounts of behavior for other people, whom the respondents know, will always be higher than for individual respondents. And such accounts more accurately reflect the actual total levels of that behavior (Sudman & Bradburn, 1983). Studies of marijuana and alcohol consumption offer an example. When subjects are first asked to report on use by three close, but anonymous friends, estimates of the behavior are 50% higher than for individual use (Bradburn & Sudman, 1983).

Secondly, the gradual introduction of a threatening or embarrassing subject reduces the subject's stress associated with that topic before they are asked about their own behavior. More accurate self reporting is encouraged (Sudman & Bradburn, 1983).

A comparison of response rates between studies of library card ownership illustrates the point. Library card

ownership, a socially desirable behavior, has long been recognized as a threatening or embarrassing research subject. Questionnaires that simply asked "Do you own a public library card?" yielded more negative responses than questionnaires that led participants into personal ownership with "Would you say the Chicago Public Library facilities in your neighborhood are good, fair or poor?," and "Does anyone in your family have a library card for the Chicago Public Library?" (Sudman & Bradburn, 1983).

POLICE USE OF TESTIMONIAL DECEPTION

Testimonial deception in their departments

In response to the first question, "In your experience, how common is the use of testimonial deception AMONG POLICE OFFICERS IN YOUR DEPARTMENT?," 32% of the respondents described the practice as somewhat common or very common. Forty nine percent found it rare, while only 19% claimed it did not exist (Table IV-1). Eighty one percent of the police officers sampled conceded that at least some testimonial deception occurs within their departments.

Table IV-1. How common is the use of testimony deception in YOUR DEPARTMENT?

VERY* to SOMEWHAT COMMON	32%
RARE	49
NON-EXISTENT	19
	100%
	(441)
NA = (3)	

*** Sixteen respondents reported testimonial deception as very common.**

At first reading this question appears to provide little useful information. Police officers, especially in large agencies, can not possibly know, first hand, the conduct of all or even most members of their organizations. But the acknowledgment by 81% of the participating police officers that testimonial deception exists in their agencies is important to this study.

The police subculture, and the unique working personality of the police are dominated by a strong sense of solidarity, a clannish suspicion of outsiders, and a strict code of silence. These have successfully shielded much of the inner workings of police from outside examination (Katz, 1990; Brown, 1981; Skolnick, 1975; Westley, 1970). Deviance and misconduct are among their most carefully

guarded secrets (Virg, 1989; Punch, 1985; Criminal Justice Newsletter, 1985; Van Maanen, 1978). This 'blue wall of silence' has made it difficult, even impossible, to obtain honest, accurate information from police officers about testimonial deception (Punch, 1985; Van Maanen, 1978; Skolnick, 1975; Neiderhoffer, 1967). It threatened this project. The 81% positive response rate, however, suggests steps taken to insure anonymity and confidentiality effectively overcame much of this resistance.

Testimonial deception among police officers respondents know personally

The second question, "How often do the POLICE OFFICERS YOU KNOW PERSONALLY engage in testimonial deception?," asked for personal knowledge of such practices among officers whose conduct respondents knew first hand.

Thirty percent of the officers reported the practice occurred sometimes or frequently, 38% rarely, and 32% said it never occurred (Table IV-2). A total of 68% of the participants acknowledged at least some use of testimonial deception by police officers they know. Because they were describing the conduct of others, the results more accurately represent the actual level of testimonial deception among police officers (Bradburn, 1983). If true, 68% of all police officers know other officers who use

testimonial deception.

Table IV-2. How often do police officers YOU KNOW PERSONALLY engage in testimonial deception?

Frequently* to Sometimes	30%
Rarely	38
Never	32
	100%
	(441)
NA = 3	

*** Eleven subjects reported frequently.**

Respondents own use of testimonial deception

When asked about their own use of testimonial deception, "How often do YOU engage in testimonial deception?," 4% admitted to sometime or frequent use; 9% reported doing so occasionally; 25% reported rare use; while 62% said they never used it (Table IV-3). Thirty eight percent of the participants admitted they used some deceptive testimonial practices.

Table IV-3. How often do YOU engage in testimonial deception?

FREQUENTLY* TO SOMETIMES	4%
OCCASIONALLY	9
RARELY	25
NEVER	62
	100%
	(434)
NA = 10	

*** Three subjects reported frequently.**

As expected, subject police officers admitted less personal use of testimonial deception than they reported for officers in their department, 38% to 81%; and for police officers they know, 38% to 68% (Table IV-4). The use of testimonial deception by officers they know was almost 50% greater than their own reported use of testimonial deception.

Table IV-4. The use of testimonial deception.

In your department*	81% (441)
By police officers you know**	68 (441)
By respondents***	38 (434)

***NA = 3 **NA = 3 *** NA = 10**

FORMS OF POLICE TESTIMONIAL DECEPTION

The forms of police testimonial deception

Participants were asked to identify the particular forms of deception police officers use in reports and in testimony by describing the conduct of officers they know, and then by reporting on their own practices.

Official police reports regarding arrests or the seizures of evidence, including written statements of witnesses or suspects, laboratory reports, and affidavits in support of arrest or search warrants play critical roles in criminal prosecutions. Frequently submitted under oath, they constitute the official version of events, and detail the evidence that supports and justifies the criminal case. These reports bring the incident to the attention of the prosecutor, and form the basis for his or her actions in the matter. Bail decisions and preliminary mental evaluations rely on them (Fisher, 1993). And they influence both the prosecutor and the defense attorney during plea bargaining negotiations, often before any court room testimony has been offered.

Such reports form the substance of the officer's subsequent testimony. The rules of evidence require that they be made available to the defense attorney for use

during cross examination of the officer once he or she testifies. Testimony that differs can be impeached, putting the prosecution at risk. Civil or criminal penalties might result (Henley, Schmidt & Robbins, 1996).

Some observers of the police believe testimonial deception in reports, commonly called 'reportilying,' is far more common than testimonial deception in the court room, and lies the foundation of the problem (Slobogin, 1996; Commission Report, 1994; Fisher, 1994). Fisher (1993) documented a formalized system of 'reportilying' in the Chicago Police Department. The department employed a double filing system. All exculpatory and impeachment evidence was systematically removed from official police reports before they were sent to prosecutors, or made available to defense attorneys.

Comments from several study participants emphasize the importance police reports play in testimonial deception.

"Most of it [deception] occurs in reports. Every prosecution has reports --- arrest warrant affidavits, prosecutor's reports, investigative reports, reports of interviews --- but very few prosecutions have testimony" (Police officer #1, personal communication, winter, 1995¹).

¹ Participants are identified only by number and general date of interview to protect their identities.

"Reports get the case into the court. If you report something clearly violating Miranda, or the fourth amendment, the case gets 'nolled.' That same report hangs you in civil court ... So you either do it by the letter of the law, or you report that you did it by the letter of the law ... You start doing things around here by the letter of the law, you don't have to worry about reports, you won't make enough arrests to keep your job" (Police officer #17, personal communication, spring, 1996).

"I run a street crime suppression unit, about 50 officers. Our job is simple. When the numbers [crime statistics] go up in a neighborhood, we go in, make as many street arrests as we can. Mostly low end drugs, some guns ... minor stuff. In a good week, maybe a hundred.

When a defendant leaves our office for court the only thing that goes with him is the arresting officer's report. Now for that report to get out of our office some supervisor checks it for all the legal requirements, probable cause, legal search ... department regulations. If the report doesn't meet those standards the case does not leave the office.

Then the report goes to the intake ADA [Assistant District Attorney]. They look it over again. They decide whether to take it or not based on that report. Nobody

testifies. The same report takes the case through every stage of the prosecution. All ADA decisions get made on the report. If it looks solid, the case is solid" (Police officer #15, personal communication, spring, 1996)

"I bet 90% of our cases get settled, plead out, on the report alone. Especially misdemeanors. In this unit hardly anybody actually testifies. Sure it happens, but cases are prosecuted on the paper not in the courtroom. If the guys cover stuff {testimonial deception} its in the reports" (Police officer #19, personal communication, spring, 1996).

The literature and focused interviews done in preparation for this study identified three basic forms or methods of testimonial deception:

- 1) Officers reorder or reorganize facts or existing circumstances to strengthen their cases;
- 2) Officers intentionally omit facts that would tend to weaken their cases;
- 3) Officers create or add fictitious information to strengthen their cases.

These forms are employed in various combinations, and appear in numerous versions.

The participants were asked to identify how common each of the forms are, first in the reports and testimony of

officers they know, and then in their own reports and testimony.

The reordering or reorganization of facts

Participants were asked if officers they know reorder or reorganize facts in their reports, and in their testimony, to strengthen their cases.

Nineteen percent of the respondents acknowledged that the reordering or reorganization of facts in reports was very common, 21% said it was common, and 41% rare. Only 19% said the practice was non-existent (Table IV-5). A total of 81% of the respondents conceded at least some reordering or reorganization of existing facts or circumstances occurred in reports written by police officers they know.

Table IV-5. How common is the practice of reordering or reorganization facts or existing circumstances in REPORTS among police officers YOU KNOW?

Very Common	19%	
Common	21	
Rare	41	
Non-existent	19	
	100%	
		(439)
NA = 6		

Eleven percent said the practice of reordering or reorganization facts or existing circumstances in testimony was very common among police officers they know; 21% found it common; 43% rare; and 25% reported that it never occurred (Table IV-6). Seventy five percent of the participants acknowledged police officers they know reorder or reorganize facts in their testimony to strengthen their cases.

Table IV-6. How common is the practice of reordering or reorganizing facts or existing circumstances in TESTIMONY among police officers YOU KNOW?

Very common	11%
Common	21
Rare	43
Non-existent	25
	100%
	(435)
NA = 9	

In reporting on their own conduct, 8% admitted they frequently or sometimes reorder or reorganize existing facts in their reports. Twenty percent did so occasionally and 23% rarely. Forty nine percent never reordered or reorganized facts in their reports (Table IV-7). A total of

fifty one percent acknowledged they use some testimonial deception in their reports by reordering or reorganizing facts or existing circumstances to strengthen their cases.

Table IV-7. How often do YOU reorder or reorganize facts or existing circumstances in your REPORTS to strengthen cases?

Freq/sometimes*	8%	
Occasionally	20	
Rarely	23	
Never	49	
	100%	
		(435)
NA = 9		

*** Only 3 officers reported the practice took place frequently.**

Five percent of the subjects conceded they frequently or sometimes reorder or reorganize existing facts in their testimony. Eighteen percent acknowledged doing so occasionally, 23% rarely, while 54% never did (Table IV-8). Forty seven percent admitted to at least some reordering or reorganizing of facts or existing circumstances in their testimony to strengthen their case.

Table IV-8. How often do YOU reorder or reorganize facts or existing circumstances in your TESTIMONY to strengthen cases?

Freq/sometimes*	5%
Occasionally	18
Rarely	23
Never	54
	100%
	(434)
NA = 10	

*** Five officers did so frequently.**

Participants offered examples. Interrogations and the Miranda Rule require police to advise a person in custody of his Constitutional Rights and obtain a waiver of those rights before they can do or say anything in furtherance of an interrogation. If the defendant refuses, police must cease their efforts. Any information obtained before a proper warning and a waiver is illegal, and inadmissible as evidence (Hanley, Schmidt & Robbins, 1996). But according ;lto at least one of the participants, some officers simply ignore this requirement while they try to convince the subject to cooperate. Once the defendant does, the warnings are given and the waiver obtained. Other officers will proceed through the entire interrogation without the

necessary legal procedures, adding them only after the confession or admission. Both circumstances are illegal. The officers' reports and their testimony will reflect a reorganized sequence of events. The warning and the waiver will appear at the beginning of the process, before any interrogation took place, so as to comply with Miranda (Police officer #1, personal communication, winter, 1995).

A narcotics detective mentioned the practice of reordering the legal requirement that police must knock and announce their identity and purpose before entering a premises to carry out a search warrant. "You can't announce, everything will go down the toilet by the time you get inside. We just bust in, and as soon as we're in, everybody starts shouting 'police, police, search warrant, search warrant.' In court, that announcement came at the front door, before we got in" (Police officer #17, personal communication, spring, 1996).

Another told of the arrest of a robbery suspect hidden in the basement of a friend's house. The officer immediately conducted an illegal search of the area for evidence of the crime. The gun and a bank deposit bag, both important to the prosecution, were recovered. Realizing the evidence could not be legally used, he went to the owner and obtained his consent to conduct the search that had already

been done. The prosecutor's report showed that the consent was obtained before the search, guaranteeing the admissibility of the evidence. Based largely on the strength of the case against the accused as presented in that report, the defendant pled guilty to second degree robbery (Police officer #4, personal communication, fall, 1995).

One participant told of stopping a young man running down the street during the early evening hours. The officer "just stopped him on a hunch." During questioning, she overheard a radio broadcast describing a suspect in a nearby purse snatching. It matched the person she had just stopped, who turned out to be the thief. Fearful that her original stop might be illegal and damage the prosecution the officer reported, and later testified, that she stopped him only after hearing the radio description (Police officer #7, personal communication, spring, 1995).

Other examples are found in the still secret 1997 U.S. Justice Department's Inspector General's Report on misconduct in the FBI Crime Laboratory. Investigators found that supervising agents, with little scientific knowledge, regularly reordered or reorganized laboratory reports and results to support criminal prosecutions (Johnson & Reukin, 1997).

The intentional omitting of facts

The practice of intentionally omitting facts from reports and testimony, when those facts would tend to weaken a case, proved to be the second most common practice for both the respondents and for officers they know.

Fifteen percent admitted the omission of facts from reports was very common among police officers they know. Nineteen percent said the practice was common; 42% rare; and 24% denied it (Table IV-9). Seventy six percent admitted some intentional omitting of facts from reports did take place among police officers they know.

Table IV-9. How common is the practice of intentionally omitting facts from REPORTS that would tend to weaken a case among police officers YOU KNOW?

Very Common	15%
Common	19
Rare	42
Non-existent	24
	100%
	(441)
NA = 3	

Eleven percent of the subjects reported the practice of omitting facts from testimony that would tend to weaken a case was very common among police officers they know; 19%

said it was common; 42% rare; and 28% said it never took place (Table IV-10). Seventy two percent admitted police officers they know omit facts from their testimony when those facts would tend to weaken a case.

Table IV-10. How common is the practice of intentionally omitting facts that would tend to weaken a case from TESTIMONY among police officers YOU KNOW?

Very Common	11%
Common	19
Rare	42
Non-existent	28
	100%
	(355)
NA = 9	

Four percent of the subjects admitted they intentionally omitted facts from their own reports frequently or sometimes. Fourteen percent did so occasionally, 31% rarely, while 51% denied the practice (Table IV-11). Forty nine percent acknowledged some intentional omission of facts from their reports to strengthen their cases.

Table IV-11. How often do YOU intentionally omit facts from your REPORTS that would tend to weaken a case?

Freq/sometimes	4%	
Occasionally	14	
Rarely	31	
Never	51	
	100%	
		(435)
NA = 9		

*** Four reported frequently.**

When asked about intentionally omitting facts from their testimony, 4% reported they did so frequently or sometimes, 14% occasionally, and 31% rarely (Table IV-12). Fifty one percent never omitted facts from their testimony. Forty nine percent of the police officers admitted they intentionally omitted facts from their testimony when those facts would weaken their case.

Table IV-12. How often do YOU intentionally omit facts from your TESTIMONY that would tend to weaken a case?

Freq/sometimes*	4%	
Occasionally	14	
Rarely	31	
Never	51	
	100%	(435)
NA = 9		

*** Four officers reported frequently.**

Participants offered examples. Witnesses to a crime, for example, are often required to view a police lineup or a group of photographs to identify the offender. The strength of this identification is an important part in the prosecution. A weak or vague one makes it difficult, while a strong one helps assure success.

"Witnesses are never very sure, especially when they first see the photos. You get all kinds of negative comments, 'I can't be sure,' 'it sort a looks like #2,' 'it could be this guy or maybe that guy.' But if you let them look at it for awhile, think about it, give memory a chance to work, they'll get more positive. Nobody writes down the first comments. You just record the positive response when you get it and ignore the incidental stuff" (Police officer

#15, personal communication, winter, 1996).

A veteran sex crimes investigator told a similar story. "I've handled hundreds of rapes. The first time you ask the victim if she can identify the guy, they all give some kind of non-committal answer. Now I know they mean its too difficult, too painful for them, not that they actually can't do it. You have to wait, work with them until they can deal with the psychological. That might take a few days, even weeks. But if you report she said she couldn't identify the guy, and later she does, you created negative evidence, you made it difficult for the victim if she has to testify. So the 'I can't's' don't make it into the case file" (Police officer #8, personal communication, spring, 1995).

Several participants noted the level of intoxication of victims or witnesses, even a suspect who confesses to his crimes, is frequently not reported, or downplayed, for fear it will weaken their evidence (Police Officer #2, personal communication, winter, 1995; Police officer #31, personal communication, fall 1997; Police officer #21, personal communication, summer, 1996). "A business man, drunk as he can be, looking for a hooker, gets robbed by a female impersonator, and we catch him. You know how far the case will go if the prosecutor knows just how drunk the victim

was? Hell, you better forget the part about 'while soliciting a prostitute for sex, the prospective prostitute produced a knife and removed \$65 from the victim's wallet' as well" (Police officer #2, personal communication, winter, 1995). Likewise, severe mental or emotional problems can threaten the value of information or evidence offered by victims or witnesses, even suspects, and are omitted or minimized by some officers (Police officer #4, personal communication, fall, 1995).

Some officers omit entire witnesses. "Sometimes a slick defendant will put up some guy he knows to come forward as a witness. This guy saw the crime and of course offers a description of a suspect completely opposite our guy, or maybe he offers an alibi. Sometimes it's his family, or a girl friend, or another thief. But you almost always catch them, cause they don't know enough details to make it sound real. Eventually they go away and you act as if they never existed. Same thing happens when you get a real witness but the guy is too crazy, or too stoned to make sense. He saw it, but his story is just too ridiculous. Best leave him out of it, just creates too much confusion" (Police officer #37, personal communication, winter, 1997).

The infamous Rodney King incident offers an excellent example. Arresting officers ordered 3 civilian witnesses to

leave the scene without identifying or interviewing them. And their reports contained no reference to the presence or existence of civilian eye witnesses (Klockers, 1993).

One participant told of omitting a defendant's first refusal to waive his Miranda Rights during interrogation, a fairly common practice. One of the Miranda principles prohibits officers from obtaining a waiver of the defendant's rights once the defendant has refused to waive them. The police may not return to the accused a second or a third time in an attempt to re-advise him and obtain the already refused waiver (Hanley, Schmidt & Robbins, 1996). But some do, and if the waiver is eventually obtained, the earlier attempts are omitted from reports and testimony (Police officer #1, personal communication, winter, 1995).

A highway patrolman assigned to a drug interdiction unit on an interstate highway known as a major narcotics route regularly stops cars fitting a drug courier profile. "I explain the profile and ask for consent to search the car for drugs. Most innocent people grant permission without much discussion. But couriers try to refuse, or at least argue. I usually don't argue back, I simply tell them they have to wait until the drug dog arrives to check the car out, in an hour or so, or I tell them they will have to wait until a search warrant arrives. We rarely have access to a

drug dog, and I never have enough to get a warrant. But that doesn't matter. Most cave right in, figuring their going to get caught by the dog or the warrant anyway. I don't bother to mention the dog or warrant story in my report. Not necessary, clouds the real issue. I got the consent and drugs were found." (Police officer #35, personal communication, winter, 1997).

Narcotics and gambling investigators rely heavily on informants. The law allows the use of informant information to justify search and arrest warrants, but only when the informant and his information meet standards of reliability. The most common standard is the informant's past record of providing correct information. The more reliable he has been in the past, the more the police and the law assume his reliability in the current matter (Henley, Schmade & Robbins, 1996). In their applications for search warrants, police officers must include a statement, under oath, of the informant's proven performance. "Informants are hit and miss, sometimes they're right, sometimes wrong. We need to keep a record of hits, for the warrants, but we never keep a record of the misses. Nobody tries to prove an informant reliable with details of his failures, you only report his successes." (Police officer #40, personal communication, winter, 1997).

The U.S. Justice Department's Inspector General's Report on misconduct in the FBI Crime Laboratory documented similar behavior among some FBI employees. It criticized the Crime Lab for presenting their scientific analysis in ways that supported prosecutors. Agents overstated their findings. Information that might have cast doubts on their conclusions or the tests used to reach them were found to have been omitted from their reports and testimony in several major cases, including the World Trade Center and Oklahoma Bombing Cases (Under the Microscope, 1997).

In the prosecution of Walter Moody, for example, accused of sending mail bombs to a federal judge and a civil rights activist, an agent testified his scientific analysis determined the same person manufactured all the explosive devices used in the crime. He neglected to mention that the FBI Laboratory did not actually possess the scientific equipment necessary to make such a determination (Lewis, 1997).

During the impeachment proceedings against a federal judge, one agent testified his forensic tests proved the strap on a piece of luggage, critical to the government's case, had been cut. The Inspector General found the testimony a complete misstatement, a reorganization of scientifically unfounded, unqualified, and biased

information into incriminating 'scientific' facts. The agent had neither the expertise nor equipment to reach his conclusion (Lewis, 1997).

The creation or addition of fictitious information

According to the respondents, the least common form of testimonial deception was the addition or creation of fictitious information in order to strengthen cases.

Only four percent said the practice of adding or creating fictitious information in reports was very common among officers they know. Nine percent reported it common; 40% rare; and 47% non-existent (Table IV-13). Fifty three percent acknowledged that officers they know created or added fictitious facts in their reports to strengthen cases, while 47% denied the practice.

Table IV-13. How common is the practice of creating or adding fictitious information in REPORTS among police officers YOU KNOW?

Very common	4%	
Common	9	
Rare	40	
Non-existent	47	
	100%	
		(439)
NA = 5		

Four percent of the participants reported it was very common for officers they know to create or add fictitious information in their testimony to strengthen cases. Five percent found it common and 38% rare. Fifty three percent denied the practice entirely (Table IV-14). A total of 47% of the officers acknowledged that at least some addition or creation of fictitious facts occurred in the testimony of police officers they knew personally.

Table IV-14. How common is the practice of creating or adding fictitious information to TESTIMONY by police officers YOU KNOW?

Very Common	4%	
Common	5	
Rare	38	
Non-existent	53	
	100%	
		(333)
NA = 11		

Just 1% of the subjects admitted they sometimes created or added fictitious information in their reports to strengthen their cases. Two percent did so occasionally and 11% rarely (Table IV-15). Eighty six percent never added or created fictitious facts in their reports.

Table IV-15. How often do YOU create or add fictitious information to your REPORTS to strengthen cases?

Sometimes	1%	
Occasionally	2	
Rarely	11	
Never	<u>86</u>	
		100%
		(436)
NA = 8		

Thirteen percent of participants admitted adding or creating fictitious information in their testimony. One percent did so sometimes, 3% occasionally, 9% rarely, while 87% never added or created facts during testimony (Table IV-16).

Table IV-16. How often do YOU create or add fictitious information in your TESTIMONY to strengthen cases?

Sometimes	1%	
Occasionally	3	
Rarely	9	
Never	<u>87</u>	
		100
		(435)
NA = 9		

A number of examples illustrate the practice. Officers who seize narcotics, illegal weapons, or other contraband from a suspect without a search warrant or other lawful justification know that evidence cannot be used to prosecute the suspect. It will be suppressed under the principles of the Exclusionary Rule (Henley, Schmidt & Robbins, 1996).

Some will create a fictitious story, an 'official' version, to insure the incident meets the necessary legal standards and guarantees a prosecution. In one such account, officers falsely testify they saw a suspect drop the evidence to the ground as they approached. 'Dropsy' evidence complies with the requirements of the Exclusionary Rule (Barlow, 1968).

Similarly, officers may not search automobiles absent a search warrant or very specific legal authority (Henley, Schmidt & Robbins, 1996). But as one participant described, "Everyone carries a gun in their vehicle. After a few months in my district you can spot them. It's always in the glove box, or under the driver's seat. I mean always. We know it, and they know we know it. And they know we can't legally search them. We can look, but we can't touch. But that's a lot of guns in a city with one of the highest murder rates in the country ... All it takes is a quick look in the glove compartment and a sweep of the hand under the

seat. Totally illegal, but done all the time. You can't report it that way though. Prosecutor won't take the case, and the guy might make a complaint. Probably get the gun back too. So you say you saw the butt or the barrel in plain view, sticking out from under the seat, or in the glove compartment when the driver was searching for the registration or insurance card. Plain view makes everything legal" (Police officer #2, personal communication, winter, 1995).

Recalling his first experience with testimonial deception, another subject offered a similar illustration. "I had just gotten into street narcotics and we were on this dealer for about 3 weeks. Never saw him do a thing. Finally, late one afternoon he takes a tin foil packet from the passenger in a cab. Our guy passed some money, got the package and went directly up the front steps of an abandoned brownstone. We raced after him, chased him down a hallway. Just as we got to him he threw the packet down the basement steps. My partner took the dealer and I went after the dope. The place was dark and full of shit. Dirty pampers, needles, garbage. It took me 20 minutes to find it. Well when the case came to trial I told the story just as it happened. But the defense attorney started asking about the condition of the basement. I knew where he was going. He

wanted to know how I could be sure the package I found was the same one the defendant had. I knew it was the same one, but that wasn't going to make it. So I told him I saw where it landed. I didn't even hesitate. The guy got prison time. It really bothered me afterwards. Never did anything like that in my life. Finally went to my priest. He just asked me if the guy was really guilty and told me to forget it. I never looked back after that" (Police officer #1, personal communication, winter, 1995).

In one of the largest manufactured evidence cases in law enforcement history, 5 New York State Police Troopers, including a supervising lieutenant, admitted creating false finger print evidence in more than 30 major criminal cases, including both a double and a quadruple murder. The case came to light in 1995, after one of the troopers admitted, during a CIA job interview, that he had faked fingerprint evidence during criminal investigations.

Prosecutors subsequently learned the officers would 'discover' key fingerprint evidence linking a suspect to a particular crime only after colleagues identified the suspect through routine investigation. In one case, a trooper testified that he found the defendant's fingerprint on a murder victim's credit card. The accused was sentenced to 49 years in prison. Later the officer admitted that he

took an extra set of fingerprints at the time of the suspect's arrest, and falsely claimed to have found one of them on the credit card.

In another incident, according to the trooper's own statement, he took an extra set of fingerprints from a 12 year old murder victim during the autopsy. He planned to plant them on the belongings of anyone later charged with the murder. Their testimonial deception included false reports and faked court room exhibits in support of their manufactured testimony (Ex Trooper admits plot to falsify fingerprints, 1995).

Four DuPage Illinois Sheriff's deputies and 3 former prosecutors, one now a judge, were indicted in 1996 following revelations they had manufactured and used a false confession to twice convict a defendant murder. The officers testified the main suspect in the case had confessed to them that he 'dreamed of murdering' the 10 year old victim. This critical testimony led to his conviction and subsequent death sentence. The officers repeated their testimony during the suspect's retrial. At his third trial, the judge dismissed all charges after one of the investigating officers admitted under oath that he and the others had manufactured the entire 'dream confession.' Another man, convicted of 2 similar murders but never

charged in this case, confessed to his lawyer in 1985 that he had actually murdered the girl (Terry, 1996).

In 1989, the Boston police detective leading the raid on a known crack dealers residence was shot and killed as the police entered the suspect's apartment. The police had earlier obtained a search warrant for the premises based on their sworn testimony that a reliable informant had observed crack cocaine inside, just hours before. At the subsequent prosecution of the officer's murderer, his colleagues revealed no informant existed. They had invented him and his information (Gold, 1989).

An experienced narcotics detective told of similar practices. A colleague of his, under increasing pressure to "do something about neighborhood narcotics activity" invented an informant, and with him a constant supply of reliable information. The detective continued to rely on "Cool Breeze" for years, with excellent results. "It was faster, easier and more efficient" (Police officer #40, personal communication, winter, 1997). The confidential informant at the center of controversy in the landmark U.S. Supreme Court case *Spinelli v. United States*, one of two such cases that define and govern the use of informants by the police, according to most experts, never really existed either (LaFave, 1986).

In October of 1995 a senior administrator of the U.S. Treasury Department's Bureau of Alcohol, Tobacco and Firearms publicly admitted to a long standing institutional practice of adding or creating fictitious facts to their criminal prosecutions. The Bureau enforces the National Firearms Act, and maintains the National Firearms Registry of legally licensed machine guns and other high powered speciality weapons. The law makes illegal the private ownership of such weapons without a federally issued license, and such licenses are no longer issued. All prosecutions under the Act require testimony from a duly-authorized official of the Bureau certifying that the firearm in question is not registered with the National Firearms Registry. In lieu of testimony, most courts accept a certified copy of a written declaration of 'non-registration' from a Bureau official submitted under oath with the seal of the US Treasury Department.

But Thomas Busey, the official keeper of the Register, confessed in a tape recorded interview meant as an in-house training tool that the records were grossly inaccurate. Accordingly, determinations that a certain firearm or a particular defendant were not registered, and thus liable for criminal penalties, could not be reliably made. Often his agents simply did not know. This, however, did not

prevent them from falsely testifying to the accuracy of the records, and the fact that firearms in question were unregistered, as required by agency policy. By his own estimate, as many as 50% of Federal Firearms Act prosecutions relied on this institutional perjury (Roots, 1998).

OBSERVATIONS

The responses to questions about specific forms of testimonial deception offer several interesting observations. When participants were first asked about the use of testimonial deception by officers they know personally, 68% acknowledged some testimonial deception among their peers. But when questioned about specific deceptive behaviors by those officers, the reordering of facts and the omission of facts, participants reported the use of testimonial deception was more prevalent.

While 68% know officers who use testimonial deception, 81% of the participants know officers who reorder or reorganize facts in their reports, and 75% know officers who reorder or reorganize facts in their testimony (Table IV-17).

The same is true for the deceptive practice of omitting

facts. Seventy six percent of the subjects know police officers who omit facts from their reports, and 72% know officers who omit facts from their testimony. But only 68% reported they know officers who use testimonial deception.

Table VI-17. The use of testimonial deception (TD) by officers the respondents know and the forms of testimonial deception those officers use.

Officers use TD	68%
Officers reorder (reports)	81
Officers reorder (testimony)	75
Officers omit (reports)	76
Officers omit (testimony)	72
Officers create (reports)	53
Officers create (testimony)	48

A similar phenomena occurred when the participants' own use of testimonial deception was compared with the forms of testimonial deception they employ. In responses to the question "How often do you engage in testimonial deception?," 38% admitted some use of testimonial deception. But 51% of the participants reorder or reorganize facts in their reports, and 47% reorder or reorganize facts in their testimony. Forty nine percent

intentionally omit facts from their reports and 44% omit facts from their testimony (Table IV-18).

Table VI-18. The respondents own use of testimonial deception and the forms of deception they use.

Respondents use TD	38%
Respondents reorder (reports)	51
Respondent's reorder (testimony)	47
Respondent's omit (reports)	49
Respondent's omit (testimony)	44
Respondent's create (reports)	13
Respondent's create (testimony)	13

Two possible explanations suggest themselves. First, the respondents natural tendency to under-report on threatening or embarrassing subjects was reduced as they progressed through the questionnaire and became more comfortable with the topic. Secondly, when first asked about testimonial deception the respondents may not have recognized that the reordering or omitting of facts in reports and in testimony constituted testimonial deception.

CHAPTER V**REASONS AND RATIONALES**

The testimonial deception questionnaire provided subjects with three opportunities to identify reasons and rationales, or justifications, that might motivate police officers to engage in testimonial deception: a) they rated how much each reason or rationale identified in the literature influenced the use of testimonial deception by other police officers, and their own use of testimonial deception; b) they considered the effect the Exclusionary Rule had on the phenomena; and c) they agreed or disagreed with statements that tested specific operational circumstances credited with contributing to deceptive police testimony.

REASONS AND RATIONALES FOR POLICE TESTIMONIAL DECEPTION

The literature of police testimonial deception suggests a number of circumstances that might motivate some police officers to use testimonial deception. But most scholars credit two as most important to the phenomena: a) the desire to arrest and convict someone the police know is factually guilty of a crime; and b) the need to overcome

certain procedural impediments that make it difficult or impossible to accomplish that goal (Slobogin, 1996; Hunt & Manning, 1995; Dershowitz, 1994, 1982; Fisher, 1993; Barker & Carter, 1990; Klockers, 1984; Manning, 1978; Skolnick, 1982). For the purpose of this study, DEFENDANT'S GUILT represents the desire of the police to arrest and convict those they believe are guilty of some crime, and LEGAL TECHNICALITIES the obstacles to that end presented by the Constitution and the criminal justice process. DEFENDANT'S GUILT and LEGAL TECHNICALITIES interact in an interdependent and somewhat complicated relationship.

Despite the Constitution's 'presumption of innocence,' the criminal justice process actually operates on an assumption of guilt. The law demands police 'know' a person is factually guilty of the crime before they can arrest him (Manning, 1978). They must have sufficient evidence of 'probable' guilt, more commonly called probable cause, before a prosecution can be initiated. Prosecutors may only accept a case when probable guilt is clearly established by the facts and circumstances of the police investigation. A finding of 'probable cause' by a judge at a preliminary hearing, or the issuance of an indictment by a grand jury formally reaffirms that factual guilt. Both require enough police evidence to convince independent agents of the

Criminal Justice System the defendant is in fact probably guilty. When such evidence is lacking, the case must be dismissed (Henley, Schmidt & Robbins, 1996). Clearly, those the police arrest, the police know are factually guilty. And once factual guilt has been established the Criminal Justice System operates on an assumption of guilt.

But factual guilt does not insure conviction. Final justice requires more. Procedures the police used to establish guilt must comply with often complicated and controversial Constitutional principles, i.e., the laws governing arrest, search and seizure, interrogation, and more. Otherwise, the evidence may not be considered in the determination of legal guilt (Packer, 1968). And then that evidence must be so compelling that guilt can be established beyond a 'reasonable doubt.' Absent this high standard, those the police know are factually guilty can neither be convicted nor punished (Klein, 1996; Gardner, 1988; Skolnick, 1982; Manning, 1974).

"Police lie ... to punish the guilty ... But despite their certitude [of the defendant's guilt] police do not control the final outcome of the judicial process. The court or the prosecutor can change the face of the case by the selection of the evidence presented ... [testimonial deception] provides a means to influence that outcome"

(Manning, 1974, p. 74). "The given justification for much police lying is to convict ... factually guilty suspects in the face of obstacles --- but for police deception --- might unjustly defeat the prosecutor's ability to convict" (Fisher, 1993, p. 16). "The most obvious explanation for all [police] lying is a desire to see the guilty brought to justice ... As law enforcement officers, the police do not want a person they know to be a criminal to escape conviction simply because of a 'technical' violation of the Constitution, a procedural formality, or a trivial 'exculpatory' fact ... these lies are merely a well intentioned, albeit improper, effort to ensure conviction of a guilty person" (Slobogin, 1995, p. 1044). "Police lying is a routine way of managing legal impediments ... to compensate for what [the police officer] views as limitations the courts have placed on their capacity to deal with criminals" (Skolnick, 1982, p. 43). Robert Daily (1973), former New York City Detective and Knapp Commission informant, in his book Prince of the City: The True Story of a Cop who Knew Too Much wrote "[officers] committed [testimonial deception] all the time in the interest of putting bad people in jail" (p. 73).

These arguments are not new. The 1931 Wickersham Commission, the National Commission on Law Observance and

Enforcement, concluded that police officers routinely committed perjury "to secure convictions of persons believed guilty" (Hopkins, 1972, p. 236). The principle cause of perjury was the police officer's "customary abandonment of his legal role as a fact finder, and his assumption of the role of advocate" (p. 278).

But do the police agree? Are DEFENDANT'S GUILTY and LEGAL TECHNICALITIES the most important reasons or justifications for their deceptive testimony?

Police Officers

Subjects rated the influence 14 reasons and rationales had on the use of deceptive testimony by police officers (Police Officers Scale). "On a scale of 0 (not important) to 10 (extremely important) please indicate how much each of the factors listed below influences the use of testimonial deception by police officers." The results were ranked according to mean scores. The higher the mean, the more influential the reason.

1. "Technicalities in the legal system overly restrict police officers to the point that it is impossible for them to perform their duties effectively." (LEGAL TECHNICALITIES)	MEAN 5.4
2. "The belief that the defendant is guilty of the crime charged or a similar crime." (DEFENDANT'S GUILT)	4.9

3. "The belief that most defendants will lie to avoid conviction." (DEFENDANT LIES) 4.7
4. "Society benefits when criminals are convicted." (SOCIETY BENEFITS) 4.2
5. "The legal standards for establishing guilt are frequently too high and impossible to meet." (IMPOSSIBLE LEGAL STANDARDS) 4.1
6. "The need to punish the guilty." (PUNISH THE GUILTY) 4.1
7. "The knowledge that most cases will be plea bargained." (PLEA BARGAINING) 4.0
8. "An officer's desire to win a conviction after investing the time and energy to make the case." (WIN CONVICTIONS) 3.7
9. "The threat of civil suit when arrests are not successfully prosecuted, or charges are dismissed." (PREVENT CIVIL SUITS) 3.7
10. "Public demands that the police convict criminals." (PUBLIC DEMANDS CONVICTIONS) 3.3
11. "The police department's demand for arrest productivity." (DEPARTMENT PRESSURE) 3.1
12. "Knowing that an officer's arrest statistics will influence his or her chances for promotion or special assignment." (PROMOTION PRESSURE) 2.9
13. "Pressure from supervisors for arrest productivity." (SUPERVISOR PRESSURE) 2.9
14. "Pressure from peers for arrest productivity." (PEER PRESSURE) 2.1

Respondents

Participants were asked to indicate the importance of 11 reasons and rationales to their own use of testimonial

deception (Personal Use Scale). "On a scale of 10 (very important) to 0 (no influence), how much does each of the following circumstances influence your own testimonial deception." Results were again ranked according to mean.

1. "Your belief that the defendant is guilty." (DEFENDANT'S GUILT)	Mean 3.1
2. "Technicalities in the legal system overly restrict police, making it impossible for them to do their job effectively." (LEGAL TECHNICALITIES)	3.0
3. "The legal standards for establishing guilt are too high and impossible to meet." (IMPOSSIBLE LEGAL STANDARDS)	2.7
4. "Responsibility to see that the guilty are punished." (PUNISH THE GUILTY)	2.5
5. "Concern about being sued." (PREVENT CIVIL SUITS)	2.2
6. "Public demands that the police convict criminals." (PUBLIC DEMANDS CONVICTIONS)	1.7
7. "Your reputation among your peers." (PEER PRESSURE)	1.3
8. "Pressure from your superiors for productivity." (SUPERVISOR PRESSURE)	1.1
9. "The department's demand for arrest activity." (DEPARTMENT PRESSURE)	1.0
10. "Your interest in promotion." (PROMOTION PRESSURE)	0.9
11. "Pressure from prosecutors." (PROSECUTOR'S PRESSURE)	0.9

OBSERVATIONS

Four observations were immediately apparent: 1) mean scores on both scales were relatively low; 2) Personal Use influences scored lower than their counterparts on the Police Officers Scale (Table V-1); 3) the participants' ratings of the reasons and rationales for their own use of testimonial deception were consistent with those for the use of testimonial deception by police officers (Table V-1); and 4) DEFENDANT'S GUILT and LEGAL TECHNICALITIES, as some scholars have speculated, were the most important reasons or justifications for police testimonial deception.

1) The highest mean score on the Police Officers Scale was only 5.4, just slightly more than a moderate influence when evaluated on a ten-point ranking. The most prominent on the Personal Use Scale was 3.1. These relatively low ratings reflect the subjects' natural inclination to under-report illegal or embarrassing behavior, the social desirability phenomenon (Stewart & Cash, 1978).

The low scores, however, do not invalidate the usefulness of the findings. Actual scores represent the priority participants placed on a particular reason and rationale in comparison to the others listed. LEGAL TECHNICALITIES on the Police Officers Scale, for example,

with a mean of 5.4, was perceived as more influential to police testimonial deception than SOCIETY BENEFITS at 4.2, and much more important than PEER PRESSURE at 0.9.

Accordingly, it is possible to grade the importance of various reasons and rationales from most influential --- LEGAL TECHNICALITIES at 5.4 --- to least influential --- PEER PRESSURE 0.9. A similar analysis can be made for the Personal Use Scale. The most influential reason was DEFENDANT'S GUILT with a mean score 3.1, the least important PEER PRESSURE at 1.3.

2) In the second problem, while most of the reasons and rationales appeared in both the Police Officers and the Personal Use Scales each scored consistently lower on the Personal Use Scale than its counterpart on the Police Officers Scale (Table V-1). These differences were expected. Sudan and Bradbury (1983) (1979) and others have shown that people report on threatening or embarrassing topics more accurately when asked about the conduct of others than when describing their own behavior. Accounts of behavior for other people, therefore, will always be higher than for individual respondents. And such accounts will more accurately reflect the actual total levels of that behavior. This 'other people' approach helps control the social desirability bias and improves actual measures of

behavior in two ways: a) the questions are completely anonymous; and b) because they pose no personal threat to the respondent, under-reporting is reduced (Sudan & Bradbury, 1983).

3) Participants were consistent in their ratings of the reasons and rationales on both the Police Officers Scale and the Personal Use Scale. DEFENDANT'S GUILT ranked as the most important influence on the Personal Use Scale and second most important on the Police Officers Scale. LEGAL TECHNICALITIES was the most influential on the Police Officers Scale and second on the Personal Use Scale. IMPOSSIBLE LEGAL STANDARDS, third on the Personal Use Scale, was also third, of the common reasons, on the Police Officers Scale. Similar consistencies were noted throughout (Table V-1).

4) For the participants, the most important and influential reason or justification for the use of testimonial deception by police officers and for their own use of deceptive testimony was their desire to arrest and convict those factually guilty of crime - DEFENDANT'S GUILT, and its corollary, the need to overcome Constitutional impediments to do so successfully - LEGAL TECHNICALITIES.

Table V-1. Reasons and rationales for testimonial deception by police officers (Police Officers Scale), and for testimonial deception by the participants themselves (Personal Use Scale) ranked by mean scores.

	Police Officers (Scale 0-10)	Personal Use (Scale 0-10)
LEGAL TECHNICALITIES	5.4	3.0
DEFENDANT'S GUILT	4.9	3.1
DEFENDANT LIES	4.7	n/a
SOCIETY BENEFITS	4.2	n/a
IMPOSSIBLE LEGAL STANDARDS	4.1	2.7
PUNISH GUILTY	4.1	2.5
PLEA BARGAINING	4.0	n/a
WIN CONVICTIONS	3.7	n/a
PREVENT CIVIL SUITS	3.3	2.2
PUBLIC DEMANDS CONVICTIONS	3.3	1.7
DEPARTMENT PRESSURE	3.1	1.0
PROMOTION PRESSURE	2.9	0.9
SUPERVISORY PRESSURE	2.1	1.1
PEER PRESSURE	2.1	1.3
PROSECUTOR'S PRESSURE	n/a	0.9

n/a = not asked

A one way analysis of variance (ANOVA) compared the

individual participants' ratings of DEFENDANT'S GUILT and LEGAL TECHNICALITIES on the Police Officers Scale with their responses to the question "How often do the police officers you know personally engage in testimonial deception." The results demonstrate the importance or influence of DEFENDANT'S GUILT and LEGAL TECHNICALITIES to the use of testimonial deception by police officers, according to the subjects who admitted such behavior occurs.

A one way analysis of variance is a standard method of comparing the mean scores of 2 or more groups or categories of a dependent variable to ascertain if statistically significant differences exist. It assumes the means for all groups will be equal. When a variation is noted, the procedure determines if the observed differences are due simply to chance or sampling error, or if they represent a real and meaningful distinction between groups. The level of statistical significance indicates the probability such a relationship is present. A significance of .05 represents a 5% probability observed differences are due to chance, or a 95% probability of a meaningful distinction. Significance at the .01 level has a 1% probability of chance, or the 99% probability that a real difference exists (Hagan, 1995; Moore & McCabe, 1993).

However, when considering more than 2 groups the test

cannot identify which pairs of means differ significantly. Some post hoc analysis, a multiple comparison test, must be used (Moore & McCabe, 1993). This study employed a Scheffe Procedure to identify significant differences between pairs of means.

Participants who acknowledged police officers use testimonial deception reported DEFENDANT'S GUILT, population mean 4.9 on the Police Officers Scale, much more important than the population score indicated. The mean for those who felt officers frequently used deception was 5.9, and 6.5 for those who reported they sometimes did so. The score for those who answered rarely was 5.4. Never scored 2.8 (Table V-2). Results were significant at .01.

Table V-2. DEFENDANT'S GUILT (Police Officers Scale) compared to "How often do police officers you know personally engage in testimonial deception."

	PO'S USE TD (N)	DEFENDANT'S GUILT Mean Scores (Scale 0-10)	SD
Frequently	11	5.9	2.7
Sometimes	117	6.5	2.4
Rarely	163	5.4	2.8
Never	133	2.8	3.0

(F = 41.15, df = 3,420, P ≤ .01)

The Scheffe Procedure identified significant differences between the never group and each of the other groups.

LEGAL TECHNICALITIES, with a population mean of 5.4, was rated more influential to testimonial deception by those subjects who admitted at least some police officers engage in the practice. Those who reported frequently or sometimes scored LEGAL TECHNICALITIES at 7.0. Officers who reported rarely ranked it at 5.6, and never at 3.3 (Table V-3). Findings were significant at .01.

Table V-3. LEGAL TECHNICALITIES compared to "How often do police officers you know personally engage in testimonial deception."

	PO'S USE TD (N)	LEGAL TECHNICALITIES Mean Scores (Scale 0-10)	SD
Frequently	11	7.0	2.1
Sometimes	117	7.0	2.3
Rarely	166	5.6	2.9
Never	134	3.3	3.4

(F = 35.71, df = 3, 424, P ≤ .01)

Scheffe analysis indicated a significant difference between the never group and the rarely, sometimes, and frequently groups.

A one way analysis of variance also compared the individual participants' ratings for DEFENDANT'S GUILT and LEGAL TECHNICALITIES on the Personal Use Scale with their responses to the question "How often do you engage in testimonial deception." The results show the importance of DEFENDANT'S GUILT or LEGAL TECHNICALITIES to the participants' own use of deceptive testimony.

DEFENDANT'S GUILT had the highest population mean score, 3.1. But those subjects who admitted they used at least some testimonial deception felt it a more important reason or justification for doing so. Those who said they did it frequently gave it a 5.8; sometimes scored 6.1; rarely 5.6; and never 1.5 (Table V-4). Results were significant at .01 .

Table V-4. DEFENDANT'S GUILT (Personal Use Scale) compared to "How often do you engage in testimonial deception."

	PARTICIPANTS USE TD (N)	DEFENDANT'S GUILT Mean Scores (Scale 0-10)	SD
Frequently	18	5.8	3.4
Sometimes	37	6.1	2.8
Rarely	105	5.4	3.2
Never	259	1.5	2.7

(F =67.96 ,df = 3, 415, P ≤ .01)

The Scheffe procedure revealed that all groups were significantly different from the never group.

The population mean for LEGAL TECHNICALITIES on the Personal Use Scale was 3.0. Those participants who acknowledge they frequently used testimonial deception gave it a 6.1 mean score. Those who said sometimes scored it at 6.8. The rarely group had a mean of 4.9, and the never group 1.4 (Table V-5).

Table V-5. LEGAL TECHNICALITIES (Personal Use Scale) compared to "How often do you use testimonial deception."

	PARTICIPANTS USE OF TD (N)	LEGAL TECHNICALITIES Mean Scores (Scale 0-10)	SD
Frequently	18	6.1	2.8
Sometimes	39	6.8	2.5
Rarely	106	4.9	3.2
Never	255	1.4	2.6

(F = 76.57, df = 3, 414, P ≤ .01)

The frequently, sometimes, and rarely groups were all significantly different from the never group.

The ANOVA and Scheffe results support the conclusion that the primary reason or justification for police testimonial deception for participating police officers who

use it, or know police officers who do, is DEFENDANT'S GUILT and LEGAL TECHNICALITIES. Police officers engage in deceptive testimony because they believe the defendant is guilty of some crime and should be arrested and convicted, and that job is made difficult or impossible by the technical requirements of the legal process. The fact that those who denied testimonial deception among their peers or in their own behavior reported that neither DEFENDANT'S GUILT nor LEGAL TECHNICALITIES played a part in testimonial deception confirms that assumption.

Comments from many of the participants emphasize the point. "Look, people want them put away. They're tired of all the crime and violence, and they're tired of seeing the guilty walk around free ... we do what we have to do to see that doesn't happen. It's up to us" (Police officer #31, personal communication, fall, 1996). "What's wrong with that [testimonial deception] ... they're guilty" (Police officer #11, personal communication, fall 1996). "Everybody I arrest is guilty, otherwise I wouldn't arrest them ... convicting them, that's another story" (Police officer #40, personal communication, fall, 1997).

"How can you be guilty and not guilty at the sametime? ... ask a judge ... only an idiot would arrest an innocent man ... we're after the bad guys ... that's what we're paid

to do, and if it means we bullshit our way through all that legal crap, we'll bullshit our way through" (Police officer #37, personal communication, spring, 1996). "You have to lie about some things ... mostly about procedures ... otherwise you can't get anything done ... but you never lie about guilt. It's yes or no. If it's yes ... you have to do you're job, even if it takes a little reworking of the facts" (Police officer #12, personal communication, winter, 1995).

"Everybody thinks its a system ... the police, prosecutor and courts ... but it doesn't work ... we're supposed to lock up criminals ... these are bad people ... but courts have a different job ... so, unless we do something to make it work, bad guys never go to jail ... the people lose" (Police officer #14, personal communication, winter, 1995).

"You can't have guilty people going free ... and believe me courts turn more lose than they put away ... most of them ... Why do you think this city is in so much trouble ... we arrest them one day, courts turn them out the next, you either stop lock'en them up or you make sure the courts keep them ... there's only one way to do that, everything nice and legal ... courts don't care about guilt, they care about nice and legal (Police officer #27, personal

communication, fall, 1996).

"It's a question of guilt. You only do it when you're sure he's guilty. And sometime you get a case when that's not so clear. I had a triple murder, 3 old drunks burnt up in this beat up rooming house. A bunch of drunks playing cards, drinking all day. Some guy came in, some one they thought they knew, Bobo or Bubba, I can't remember. He started some trouble, and they tossed him out. A couple of hours later, they see him in the hallway pouring gasoline all over the place, the next thing the drunks know the whole place is on fire. Three died.

During the interviews, witnesses all described the same guy, nickname ... some knew this house in the neighborhood where he sometimes stayed. So we eventually find the guy, nicknames right, everybody identifies him, he's a drunk, can't remember whether he did it or not. First guy I had willing to confess to anything, he kept saying 'I mighta done it' and we could've had a confession with very little push. And if I was sure it really was him, believe me I'da pushed.

But it just wasn't right, too easy or something. I had my doubts, I just wasn't sure he did it. So'd the other guys. We just went with the straight facts, nothing else. No fluffing up or anything. The guy pled guilty to first

degree murder, got life plus. But I was never convinced ... and we were right.

Three years later, the roll call commander read a teletype form Prince George's County. Coupla drunks killed in an arson, the description fits my case. Well one thing leads to another, the drunk in the County case was a cousin to my drunk, he admitted to ours. My guy didn't do it. Anyway, so we bring the problem to the prosecutor, everything gets straightened around ... No you don't do it [testimonial deception] cause you think he's guilty, you have to be sure" (Police officer #21, personal communication, fall, 1996.

Following the 1997 conviction of several Philadelphia police officers on multiple charges of robbery, falsifying evidence, and drug offenses, their leader offered "You don't frame an innocent person ... never planted stuff on an innocent person. But aside from this line you don't cross, how you get a bad guy, if he really is a bad guy, is pretty much your own business. Your job is to get him, period ... now say you see some guy who you know is wrong. You stop him on no basis of something that could stand up in court. So you lie if you have to. You say he ran a stop sign. or didn't signal, or had a broken tail light that you break after you've determined he's bad. That makes the initial

stop legal. You search the car, which you generally have no probable cause to do. The cop who finds guns or drugs has two alternatives, lie, and testify that the guy gave you permission to search. Or say the contraband was not in the trunk at all, but rather in plainview. Why sweat it. Sure you've fabricated the probable cause and done an illegal search, but the guy is bad, right? We do what we have to do ... It's supposed to work like this. You're supposed to go to a crack house, a known crack house, and make a buy, or have someone make it for you via a controlled buy. To do that you've got to strip the guy beforehand to make sure there isn't any other money on him. Then you give him some money and he makes the buy, and you strip him afterwards to make sure he has no more money. Do it like that and the buy and arrest are legal. But it's a pain for several reasons. First you risk having your agent exposed. Second who's going to sell to a white guy standing in line at a crack house? So you get some crack addict or some whore to make the buy. Or you just pinch someone coming out of the house and find out who's in the place, where the dope is at. The you go in. Its illegal that way, but then you go an get a warrant latter and falsify the report, saying you made the buy yourself. Or, you drop a dime which means you call in a shots fired alarm to 911. Sometimes you even fire your own

gun. Then you wait for the shots fired call to come over the radio and you respond to your own call. Its all made up, but it makes the raid legal. Its so routine, that sometimes we'd laugh and say, gee which story should we use today? How about #23" (Kramer 1997, p 77).

One of his colleagues added "At the end of the day, given how we lied on the probable cause, I'd say that almost all of our arrests (2,233) were bad. On the other hand is we did every thing by the book crime would be up. Stealing the money was bad. No excuse for that, and for none of the beatings either ... but frankly, I'm proud of the arrests. It may sound crazy but, but what we did was kind'a noble, catching all those bad guys" (Kramer, 1997, p.78).

The assistant district attorney responsible to correct their wrongful arrests and convictions has only reconsidered 155 of the cases up for review. "Its pretty much true that all of those arrested were indeed bad guys, and no one is really eager to let them out on technicalities ... the history of these kinds of scandals is that cops always go back to acting as they always have when the dust settles, cause the only pressure they feel is the pressure to get results, to get the job done" (Kramer, 1997, p 78).

The identification of DEFENDANT'S GUILT and its corollary LEGAL TECHNICALITIES as the major reasons or

justifications for police testimonial deception, however, does not explain its use. Important questions remain unanswered. How is it the police come to place so much value on the arrest and conviction of factually guilty people that they would break the law to do so?

Merton's Social Structural Conflict and Police Testimonial Deception

The answer lies in the goals society has defined for the police. Police officers and police organizations believe their primary duty is to protect society from criminals by identifying, arresting, and convicting those they know are guilty of criminal acts (McNamara, 1996; Orfield, 1989; Kleinig 1987; Skolnick, 1982; Manning, 1978; Packer, 1968). Once they know a defendant is factually guilty of some crime, their job is to arrest and convict him. This view of their responsibilities is not one generated solely from within police organizations, nor one police officers necessarily chose themselves. It, and subsequently how police officers see their duty, is socially imposed, external to the police organization itself (McNamara, 1996; Manning, 1978; Dershowitz, 1982; Skolnick, 1975).

Society and powerful constituents within the social system define the police mission, as they define the goals

of all social institutions (Merton, 1968). Society wants the police to arrest and convict guilty persons, and exerts considerable pressure on them to do so (McNamara, 1996; Slobogin, 1996; Manning, 1978; Packer, 1968). DEFENDANT'S GUILT, the knowledge the defendant is guilty of some crime, represents society's mission for the police.

But the public demand for the arrest of criminals neither equates to nor legitimize deceptive police testimony. On the contrary, the practice remains illegal, the subject of constant criticism and scandal. Officers involved regularly lose their jobs, and some are penalized criminally. Why then do the police engage in such behavior?

Merton (1968) offers an explanation. All human behavior in social institutions, he argues, is governed by the interplay between two elements found in society: (a) the goals defined and reinforced by the culture as legitimate objectives for social institutions, in this case the arrest and conviction of criminals: and (b) the culturally defined means of achieving those goals, the socially proscribed standards of conduct. The approved means for the arrest and conviction of those responsible for criminal acts are derived from the U.S. Constitution, specifically the rules of evidence, arrest, search and seizure, and the process of justice. And herein lies the

problem.

Institutionally approved means, according to Merton, often develop from the 'value laden sentiments' of controlling members of society. Little attention is paid to the technical necessities of goal attainment. These means, often unrealistic and impractical, frequently fail to produce the goals society expects. More efficient means, while available, lie outside the range of approved behavior and are thus deviant (Merton, 1968).

But ineffective means, incapable of producing the desired results, do not relieve institutions from the burden of goal satisfaction. Society continues to exert intense pressure for goal attainment. Such differential emphases on goals over means demoralizes the accepted standards of behavior. Correspondingly, the pressure for conformity to established codes of conduct is weakened. Demands for efficiency replace demands for proscribed behavior. In these circumstances only results matter, and any means might be considered (Merton, 1968).

The emphases on goals over means impacts significantly on those working within social institutions. Unable to achieve the desired ends through continuous unsuccessful adherence to approved means, they experience considerable frustration, anger, and stress. A corresponding change to

more efficient means, whether socially approved or not, can be expected (Merton, 1968).

The obvious question then is 'Are the means society has authorized for the police --- the rules of evidence, and the standards of the judicial process --- sufficient to achieve the goals society demands of the police --- the arrest and conviction of persons guilty of criminal acts?'

Many police officers and police organizations think they fall short (Slobogin, 1996; Kleinig, 1987; Skolnick, 1982). They believe the rules of justice, legal technicalities, and similar limitations on the police make the successful satisfaction of society's demands too difficult, often impossible. Many see them as "ill conceived or overly constraining" (Skolnick, 1982, p. 42), "unrealistic and criminally inspired" (Kleinig, 1987, p. 7), and as obstacles to the truth (Dershowitz, 1983; Skolnick, 1982). These means often suppress the truth of a defendant's guilt by excluding relevant evidence and thus impeded the police mission (Slobogin, 1996; Rothwax, 1995; Skolnick, 1975). Instead of supporting society's goals they subvert them, freeing those the police know to be guilty.

Police are not alone in this belief. Many citizens and political leaders equally scorn these legal technicalities (McNamara, 1997; Rothwax, 1995; Dershowitz, 1982). They

expect police to carry out their mission without too much concern about such legal restrictions (Cohen, 1972; LaFave, 1964). "The pressure on the police to lie comes from all sides ... the public wants criminals behind bars without having to learn too much about how they got there" (Slobogin, 1996, p. 1053). "As Chief [Anthony] Bouza [Minneapolis Police Department] suggests, when police go astray they are often fulfilling the unwritten assignments of those of us who have real and personal property to protect" (Skolnick & Fyfe, 1993, p. 90). Some prosecutors agree. Certain of a defendant's guilt, they refuse to allow a 'procedural impediment' to undermine his conviction (Slobogin, 1996; Dershowitz, 1995b, 1983; Cloud, 1994).

The obvious conclusion then is the police, charged by society with the obligation to identify, arrest, and convict the guilty, are unable to carry out that responsibility using the ineffective methods society provides them. Under these conditions the police can only fail in their mission, and accept the accompanying personal and institutional consequences. But society is unwilling to allow that failure. It continues to bring ever increasing pressure on the police for goal achievement. This tension weakens the establish codes of conduct that control police behavior, and obliges them to develop new methods to satisfy society.

Once the police know a person is factually guilty of some crime, DEFENDANT'S GUILTY, social pressure and the rules of justice compel them to circumvent any restrictions that inhibit his conviction, LEGAL TECHNICALITIES.

Police testimonial deception is the method some have chosen. Many see 'testilying' as a legitimate law enforcement tool for bringing persons they believe are guilty to justice (Commission Report, 1994). Clearly, such departures from required standards of behavior are induced by existing society, and not by the police themselves (Merton, 1968).

The problem, and correspondingly the solution, then is not in the conduct of individual police officers, but in the relationship between the goals society has defined for the police and means approved for the police to meet those goals.

One final point need be considered. Why would some police officers chose such a clearly immoral and illegal method of satisfying society's expectations?

Merton (1968) believes once society identifies a goal for a social institution the requirement to fulfill that goal becomes a matter of morality. Goal achievement is morally mandated, anything less 'immoral.' The mission set for the police is no exception. The identification, arrest,

and conviction of factually guilty people carries a moral imperative (McNamara, 1996; Slobogin, 1996). "Police do not make their choices on a rational calculation of comparative ... values. Choices are made instead on moral grounds" (Skolnick & Fife, 1993, p. 91).

The high moral value the society places on the police mission can be best understood by considering the 'war on crime.' Richard Nixon launched the 'war' in 1972. Each subsequent president and Congress, plus countless governors, mayors, and local political officials have reaffirmed this 'holy war,' one in which the police must defeat evil regardless of the costs (McMamara, 1996). Police officers and their departments internalize both these social goals and the moral responsibility for achieving them through socialization (McClure, 1986; Rubinstein, 1972). Police believe they "have to bend the rules in order to win the war against crime. The various rules supposed to protect individuals from police overreaching get in the way of effective law enforcement and allow the guilty to go free" (Beyond the Rodney King Story, 1995, p. 18).

The police mission and the pursuit of that mission is a highly moral endeavor. "Police often identify themselves as a moral force, protecting innocent and productive members of the public against those who would brutalize and victimize

ordinary decent citizens" (Skolnick & Fife, 1993, p. 92). That which interferes with their moral objective or limits their tactics supports crime, and is thus morally despicable (McNamara, 1996). Failure on the part of the police to meet this sacred responsibility is equally reprehensible.

Clearly, that which serves a moral purpose must itself be moral. The police see testimonial deception as far from immoral conduct. It is morally appropriate and justified (Commission Report, 1994). Vuiller (1988), based on his year of observations inside an urban police department, found that testimonial deception appears morally correct to 'many morally --- even religiously --- dedicated cops' (p. 118). While most police would find the use of testimonial deception to arrest and convict an innocent person immoral and unjustified, lying to convict those the police know are guilty of criminal acts is morally acceptable, even more so, moral mandated (Vuiller, 1988).

The Mollen Commission Report (1994) reached similar conclusions. "Many honest and corrupt cops alike stubbornly defend as correct ... falsification [testimonial deception] to serve what they perceive to be 'legitimate' law enforcement ends ... in their view, regardless of the legality of the arrest, the defendant is in fact guilty and ought to be arrested" (p. 38) ... "What breeds this

tolerance is a deep rooted perception among many officers of all ranks that nothing is really wrong with compromising facts to fight crime in the real world. Simply put, despite the devastating consequences of police falsifications, there is persistent belief among many officers that it is necessary and justified, even if unlawful ... as one dedicated officer put it, police officers often view falsifications as, to use his own words, 'doing God's work' -- doing whatever it takes to get a suspected criminal off the streets" (p. 41).

If the most important reason or justification for police testimonial deception is, as this study indicates, the police desire to arrest and convict those they know are factually guilty, and the need to circumvent legal impediments in order to do so, some police can be expected to use testimonial deception to overcome similar interferences to their mission. Not surprisingly, participants rated two other such impediments important to testimonial deception. DEFENDANT LIES, "the belief that most defendants will lie to avoid conviction," was the third most important reason or justification for police testimonial deception on the Police Officers Scale.² Likewise, IMPOSSIBLE LEGAL STANDARDS, "the legal standards

² DEFENDANT LIES was not included in the Personal Use Scale.

for establishing guilt are frequently too high and impossible to meet," ranked third on the Personal Use Scale, and fifth on the Police Officers Scale.

The implication then is any socially mandated means that hinder police efforts to satisfy their socially imposed goals, the need to arrest and convict the factually guilty, will motivate some police officers to use testimonial deception. This conflict between the appropriate goals for the police and the methods they should employ to achieve them is a much more complex issue, and lies in the basic philosophical underpinnings of the Criminal Justice System -- the debate between the Crime Control and the Due Process Models of Justice.

CRIME CONTROL

One explanation frequently offered for police testimonial deception is the basic operational philosophy of most police organizations. Many people including politicians, business leaders, prosecutors, and average citizens, not just the police, believe the primary duty of the police and of the Criminal Justice System is Crime Control ---- the discovery of crime and the punishment of criminals (McNamara, 1997; Orfield, 1989; Kleinig, 1987;

Skolnick, 1982; Manning, 1978; Barker, 1976; Younger, 1967).

But Crime Control is only one of two distinct philosophical approaches to the problem of crime and justice operating within the society. The other, Due Process, works on a different and some times contradictory set of values about the system's goals and priorities, and the best methods to achieve them (Packer, 1968). Skolnick (1982) suggests that police testimonial deception reflects "the tension between Due Process and Crime Control imperatives" (p. 52).

The Crime Control Model represents the belief, held by many, that the control and elimination of crime are critical to the protection of personal freedom and the survival of society (McNamara, 1997; Packer, 1968). Criminals must be arrested and convicted, and the criminal laws enforced or public order cannot be maintained. Any loss of public order threatens personal freedom, and subsequently society. Both depend on the Criminal Justice System's ability to apprehend and convict criminals (Packer, 1968).

To be successful in this important mission the system must consistently produce a large number of arrests and convictions. But this measure is difficult to achieve, and almost impossible to maintain. Crime continues to grow.

And society compounds the problem by regularly criminalizing an endless number of otherwise uncontrollable social problems. At the same time, it denies the increase in resources necessary to meet these demands. Instead, society requires an ever-increasing efficiency from the existing Criminal Justice System --- more arrests, more trials, more convictions, all in less time, with less money, and less manpower (Packer, 1968).

Critical to this efficiency is an 'assumption of guilt.' As soon as sufficient information exists to believe a suspect is factually guilty, his guilt must be assumed. All subsequent court action on the matter must be based on the belief that he is in fact guilty. This assumption of guilt speeds the process of justice, assures efficiency, and efficiency protects society (Packer, 1968).

Packer (1968) offers an example. A man who murders his wife in view of witnesses, waits for the police to arrive, and then confesses has clearly murdered his wife. He is factually guilty. Little else need be considered. The truth is evident. Society benefits when the rest of the justice system operates quickly in support of that obvious fact (Packer, 1968).

And to be efficient, the determination of factual guilt must take place early in the process, with the police during

the investigative stage. The more legal restrictions placed on police fact finding the more difficult, time consuming, and unreliable the criminal justice process, and correspondingly, the protections that system affords society. The rules of evidence, legal technicalities, and similar constraints on the police slow the justice process down, suppress the truth, and frequently free those who are factually guilty. They obstruct the crime control mission, and thus actually threaten society (Skolnick, 1975; Packer, 1968).

Speed and finality are important to an efficient system as well. To protect society, factually guilty people must be passed through the process quickly, reliably, and inexpensively. Challenges raised about the crime, police conduct, or the process are inefficient and must be limited. Otherwise, the required production levels cannot be guaranteed (Packer, 1968).

Parker (1968) compares the Crime Control Model of Justice to an assembly line. Its purpose is the quick, cheap production of as many arrests, trials, and convictions as possible. Every stage of the operation must support these goals. Delays or obstacles put society at risk (Parker, 1968).

The Due Process Model, like Crime Control, understands

the need to protect society from crime and criminal behavior. But its adherents see the Criminal Justice System, and its power over citizens and their freedoms as equally threatening to society. It too resembles an assembly line, but one that stresses quality control over efficiency (Parker, 1968).

Due Process holds that any emphasis on efficiency in the system increases the likelihood of mistake and abuse in the process of justice. Safeguards are needed. The procedures used to determine guilt are as critical to society as the number of arrests and convictions. Mistakes, like crime, threaten individual liberty and subsequently society. Checks and balances must monitor every stage of the process to insure that it and the final product meet the highest standards (Parker, 1968).

Critical to this idea is the presumption of innocence and the concept of legal guilt. Guilt and punishment can never depend simply on facts. Factual guilt is only half the process. Similar attention must be given to how those facts are obtained and used. Legal guilt can come only when the process of justice complies with Constitutional Rules designed to protect the accused and to control potential government abuse. Ignoring the means of justice threatens society as much as ignoring the goals of justice. The

accused must be presumed innocent until both factual guilt and the means used to determine that guilt satisfy society's needs (Packer, 1968).

But quality control interferes with efficiency. Such concerns are cumbersome and time consuming. Due Process naturally produces fewer arrests, trials, and convictions than Crime Control. It will not provide society the same level of protection from crime and its consequences (Packer, 1968).

An illustration makes the point. Both Crime Control and Due Process adherents recognize that rules must govern police behavior. They must, for example, be limited in their authority to search citizens. But the Crime Control Model holds that minimal restrictions, with room for police discretion, produce the necessary high volume of arrests and convictions. Should police violate these rules but generate evidence critical to factual guilt, that evidence must stand. Doing so protects society.

That level of discretion cannot exist under Due Process. Society is best served when judicial authorities control such actions. Police evidence discovered outside legal standards, regardless of its bearing on the factual truth of events, can never be considered. It threatens society.

Most police departments, Packer argues, operate from a Crime Control philosophy. Judges and attorneys function from the Due Process perspective.

The police, both individually and in their organizations, according to many observers, see themselves as the primary agents of crime control, protecting society and personal freedom by removing criminals that threaten social order (McNamara, 1996; Orfield, 1992; Kleinig, 1987; Skolnick, 1982; Manning, 1978; Barker, 1976). They live in a cultural environment where "Good pinches, clearance rates and convictions are the goals" (Cohen, 1972, p. 221). "The policeman ... operates as one whose aim is to legitimize the case, rather than as a jurist whose goal is to analyze the sufficiency of the evidence based on case law" (Skolnick, 1975, p. 214). The police wage a constant "war on crime" (McNamara, 1996). And, as with every war, only victory counts. Any means to that victory, including police testimonial deception, might be justified. Obstacles to that mission, like the rules of evidence, legal technicalities, or the principles of Due Process free the guilty and put society at risk (Skolnick, 1975). In these circumstances, police testimonial deception can become a necessary tool for effective and efficient crime control (McNamara, 1996; Orfield, 1989; Kleinig, 1987; Skolnick,

1982; Manning, 1978; Barker, 1976). Stated simply, some police "lie to get at the truth" (Skolnick, 1975, p. 214).

The relationship between the Crime Control and police testimonial deception was examined. The reasons and rationales for police testimonial deception on the Police Officers Scale included six commonly associated with the Crime Control Model of Justice.

1. "Technicalities in the legal system overly restrict police officers to the point that it is impossible for them to perform their duties effectively."
(LEGAL TECHNICALITIES)
2. "Society benefits when criminals are convicted."
(SOCIETY BENEFITS)
3. "The legal standards for establishing guilt are frequently too high and impossible to meet."
(IMPOSSIBLE LEGAL STANDARDS)
4. "The belief that defendants will lie to avoid conviction."
(DEFENDANT LIES)
5. "The need to punish the guilty."
(PUNISH THE GUILTY)
6. "The belief that the defendant is guilty of the crime charged or some other crime."
(DEFENDANT'S GUILT)

Of the 14 possibilities offered, participants ranked the six crime control factors the most important reasons or justifications for the use of testimonial deception by police officers; LEGAL TECHNICALITIES mean score 5.4; DEFENDANT'S GUILT 4.9; DEFENDANT LIES 4.7; SOCIETY BENEFITS 4.2; IMPOSSIBLE LEGAL STANDARDS 4.1; PUNISH THE

GUILTY 4.1 (Table V-6).

Table V-6. The influence of Crime Control on police officers use of testimonial deception.

	Rank	Mean Score (Scale 0-10)
LEGAL TECHNICALITIES	1	5.4
DEFENDANT'S GUILT	2	4.9
DEFENDANT LIES	3	4.7
SOCIETY BENEFITS	4	4.2
LEGAL STANDARDS	5	4.1
PUNISH THE GUILTY	6	4.1

Positive correlations were found among all. The strongest were SOCIETY BENEFITS and DEFENDANT LIES, .72; SOCIETY BENEFITS and DEFENDANT'S GUILT, .72; LEGAL TECHNICALITIES and IMPOSSIBLE LEGAL STANDARDS, .70; SOCIETY BENEFITS and PUNISH THE GUILTY, .66; DEFENDANT'S GUILT and IMPOSSIBLE LEGAL STANDARDS, .65; PUNISH THE GUILTY and DEFENDANT LIES, .65; DEFENDANT'S GUILT and LEGAL TECHNICALITIES, .64; DEFENDANT'S GUILT and DEFENDANT LIES, .63 (Table V-7).

Table V-7. Correlations for Crime Control reasons and rationales for police officers to use testimonial deception.

	Legal Tech	Defend Guilt	Defend Lies	Society Benefits	Legal Standards	Punish Guilty
Legal Tech.	---	.64	.56	.54	.70	.55
Defend Guilt	.64	---	.63	.72	.65	.62
Defend Lies	.56	.63	---	.72	.58	.65
Society Benefits	.54	.72	.72	---	.56	.66
Legal Stndrds	.70	.65	.58	.56	---	.59
Punish Guilty	.55	.62	.65	.66	.59	---

Five of the same crime control criteria were included among the 11 reasons or rationales offered for the participants' own use of testimonial deception, the Personal Use Scale.

1. "Your belief that the defendant is guilty."
(DEFENDANT'S GUILT)
2. "Technicalities in the legal system overly restrict police, making it impossible for them to do their job effectively." (LEGAL TECHNICALITIES)
3. "The legal standards for establishing guilt are too high and impossible to meet." (IMPOSSIBLE LEGAL STANDARDS)

4. "Responsibility to see that the guilty are punished." (PUNISH THE GUILTY)

5. "Public demands that the police convict criminals." (PUBLIC DEMANDS CONVICTIONS)

Four of the five ranked as the most influential, while the fifth was rated sixth in importance (Table V-8).

DEFENDANT'S GUILT was the most important reason for the participants own use of testimonial deception with a mean score of 3.1. LEGAL TECHNICALITIES ranked second, 3.0; IMPOSSIBLE LEGAL STANDARDS third, 2.7; the responsibility to PUNISH THE GUILTY fourth, 2.5. PUBLIC DEMANDS CONVICTIONS was sixth in importance with a mean of 1.7.

Table V-8. The influence of Crime Control on participants own use of testimonial deception.

	Rank	Mean Score (Scale 0-10)
DEFENDANT'S GUILT	1	3.1
LEGAL TECHNICALITIES	2	3.0
IMPOSSIBLE LEGAL STANDARDS	3	2.7
PUNISH THE GUILTY	4	2.5
PUBLIC DEMANDS CONVICTIONS	6	1.7

Positive correlations exist between all the reasons and justifications (Table V-9). But strong correlations were

found between LEGAL TECHNICALITIES and IMPOSSIBLE LEGAL STANDARDS, .89; DEFENDANT'S GUILT and PUNISH THE GUILTY, .79; PUNISH THE GUILTY and LEGAL STANDARDS, .78; PUNISH THE GUILTY and LEGAL TECHNICALITIES, .74; LEGAL STANDARDS and DEFENDANT'S GUILT, .74; LEGAL TECHNICALITIES and DEFENDANT'S GUILT, .73; PUNISH THE GUILTY and PUBLIC DEMANDS CONVICTIONS, .67.

Table V-9. Correlations for Crime Control reasons and rationales that influence participants to use testimonial deception.

	Defend's Guilt.	Legal Tech.	Legal Stndrds.	Punish Guilty	Public Demands
Defend's Guilt	---	.73	.74	.79	.55
Legal Tech.	.73	---	.89	.74	.62
Legal Standards	.74	.89	---	.78	.64
Punish Guilty	.79	.74	.78	---	.67
Public Demands	.55	.62	.64	.67	---

Participants rated values commonly associated with the Crime Control Model of Justice the most important influences, that is reasons or justifications, for testimonial deception by police officers, and for their own

use of testimonial deception. The results suggest Packer was correct. The participants' basic philosophical approach to their duties, and by extension that of their agencies, is Crime Control --- the arrest and conviction of those who threaten social order by their criminal behavior. And testimonial deception is, for many, a method to accomplish the Crime Control mission.

CHAPTER VI

SYSTEMIC INFLUENCES TO TESTIMONIAL DECEPTION

Scholars have long speculated that some characteristics and conditions inherent to the Criminal Justice System contribute to police testimonial deception, particularly:

a) organizational pressures for arrest productivity as a measure of efficiency (Slobogin, 1996; Fisher, 1994): b) police supervisors (Commission Report, 1994; Dershowitz, 1982; Skolnick, 1982): c) the Exclusionary Rule (Vuiller, 1988; Dershowitz, 1982; Skolnick, 1982; Oaks, 1970): d) prosecutors (Fisher, 1994; Dershowitz, 1996, 1995c): and e) judges (Dershowitz, 1995, 1995b, 1995c; Rothwax, 1995).

This study considered each.

PRESSURES FOR ARREST PRODUCTIVITY

The emphasis placed on arrest statistics as the primary measure of officer efficiency by some police agencies, supervisors, and peer groups has been recognized as a powerful inducement, intentional or otherwise, to testimonial deception (Slobogin, 1996; Fisher, 1994; Orfield, 1987; Levine, 1988; Kleinig, 1987). The issue here is not one of Crime Control, but of productivity.

"Another feature of police work that fosters lying ... is the pressure on patrol officers to produce 'activity,' arrests ... that will demonstrate to the public that the department is 'doing something' about crime" (Fisher, 1993, p. 14). "A related reason for police testimonial deception is the institutional pressure to produce 'results' which can lead police to cut corners ... Peer pressure may also play a role" (Slobogin, 1997, p. 1044).

Kornblum (1976) described the police practice of "flaking" or planting evidence on suspects to meet "norms of production" (p. 80). Rubinstein's (1973) study of the Philadelphia Police Department found officers lied in response to intense pressure for "activity --- the internal product of police work --- the statistical measure by which police performance is measured, both within the organization and in the mind of the public" (p. 44).

The number of 'arrests made' is still the most widely used method of assessing success for an individual police officer, a police squad, a crime control program, or an entire department (US News and World Report, 1984). In some agencies prized assignments and promotions, even days off and vacation schedules are influenced by an officer's number of arrests. Police supervisors and command officers are evaluated on the arrest efficiency of their subordinates.

Those unable or unwilling to conform to production pressures can suffer professionally and personally (Fisher, 1994). Such ever increasing demands for more arrests invites an indifference to the methods used to satisfy production standards --- police testimonial deception (Fisher, 1993; Levine, 1988; Orfield, 1987; Rubinstein, 1973).

But participants rejected this argument. They reported 'production pressures' were not an important reason or justification for police testimonial deception.

The relationship between 'production pressure' and testimonial deception was tested in two ways. Four pressures, commonly identified in the literature, were included among the reasons and rationales offered as influences to testimonial deception by police officers, and for those that influence the participants own use of deceptive testimony.

The Police Officers Scale included

1. "The police department's demand for arrest productivity." (DEPARTMENT PRESSURE).
2. "Knowing that an officer's arrest statistics will influence his or her chances for promotion or special assignment." (PROMOTION PRESSURE).
3. "Pressure from peers for arrest productivity." (PEER PRESSURE).
4. "Pressure from supervisors for arrest productivity." (SUPERVISOR PRESSURE).

Of the 14 offered on the Police Officers Scale, 'production pressures' were rated the least important reasons and rationales for deceptive testimony (Table VI-1). DEPARTMENTAL PRESSURE, with a mean score of 3.0, was ranked eleventh in importance PROMOTIONAL PRESSURE twelfth, 2.9; SUPERVISOR PRESSURE thirteenth, 2.4; and PEER PRESSURE, 2.1, fourteenth. Only .08 points separated the eleventh rank from the last.

Table VI-1. The importance of pressures for arrest productivity as an influence on police officers to use testimonial deception.

	RANK	MEAN SCORE (Scale 0-10)
DEPARTMENT PRESSURE	11	3.0
PROMOTIONAL PRESSURE	12	2.9
SUPERVISORY PRESSURE	13	2.4
PEER PRESSURE	14	2.1

The same 'production pressures,' albeit slightly reworded, were among 11 reasons offered in the Personal Use Scale.

1. "Pressure from your superiors for productivity." (SUPERVISOR PRESSURE).
2. "Your reputation among your peers." (PEER PRESSURE).

3. "Your interest in promotion." (PROMOTION PRESSURE).

4. "The department's demand for arrest activity." (DEPARTMENT PRESSURE).

Results were basically the same. In assessing the circumstances that influence their own use of testimonial deception, participants reported that pressure for arrests from the department, peers, supervisors, and promotion were among the least influential (Table VI-2). PEER PRESSURE ranked seventh in influence, with a mean of 1.3. SUPERVISOR PRESSURE ranked eighth, 1.1; DEPARTMENT PRESSURE ninth, 1.0; and PROMOTION PRESSURE tenth, .94. PROMOTION PRESSURE actually tied for last place. Only .09 points separated the mean scores.

Table VI-2. The importance of pressures for arrest productivity as an influence on respondents' use of testimonial deception.

	RANK	MEAN SCORE (Scale 0-10)
PEER PRESSURE	7	1.3
SUPERVISOR PRESSURE	8	1.1
DEPARTMENT PRESSURE	9	1.0
PROMOTION PRESSURE	10	0.9

In both circumstances, reasons and rationales that

influence police officers to use testimonial deception and those that influence the subjects' own use of testimonial deception, participants scores were low and consistent. Pressures for arrest productivity, according to the participants, play an insignificant role in police testimonial deception.

POLICE SUPERVISORS

Some observers of the police place much of the burden for testimonial deception on police supervisors for allowing and encouraging deceptive police testimonial practices (McNamara, 1996; Slobogin, 1996; Terry, 1995; Commission Report, 1994; Dershowitz, 1982; Skolnick, 1982; Rubinstein, 1973).

The Mollen Commission (1994) reached that conclusion. Police testimonial deception was "widely tolerated by ... their supervisors" (p. 40). Officers testified that "their supervisors knew or should have known about falsified versions of searches and seizures, arrests, but never questioned them" (p. 40). Investigators documented incidents in which supervisors trained officers in testimonial deception. And the Commission found that the practice extended beyond the ranks of field supervisors. "Unit

commanders not only tolerated but encouraged such unlawful practices" (p. 38).

"Supervisors [do so by] stressing quota's" (Slobogin, 1996, p. 1053). "Cops are taught it at the police academy" by superior officers (Dershowitz, 1995c, p. 2). Rubinstein (1973), during his year in the Philadelphia Police Department, observed police supervisors regularly instructed new police officers in specific deceptive testimonial practices. Some openly selected officers known for their talents at false or misleading testimony to prepare false search warrants.

But the participating police officers in this study disputed this argument. Subjects were asked to agree or disagree with four statements designed to test the relationship between supervisors and testimonial deception.

They rejected the argument that "Most supervisors ENCOURAGE the use of testimonial deception by police officers." Five percent strongly agreed or agreed with the statement. Fifty six percent disagreed, and 39% strongly disagreed (Table VI-3). Only 5% of the subjects reported that supervisors encouraged testimonial deception, 95% said they did not.

Table VI-3. Most supervisors encourage the use of testimonial deception by police officers.

Strongly Agree*/Agree	5%	
Disagree	56	
Strongly Disagree	39	
	100	(428)
NA = 16		

*** Less than 1% reported strongly agree.**

In response to the second, "Most supervisors IGNORE the use of testimonial deception by police officers," 3% strongly agreed, 30% agreed, 46% disagreed and 21% strongly disagreed (Table VI-4). A total of 67% reported supervisors would not ignore testimonial deception by police officers. Thirty three percent felt they would.

Table VI-4. Most supervisors ignore the use of testimonial deception by police officers.

Strongly Agree	3%	
Agree	30	
Disagree	46	
Strongly Disagree	21	
	100	(429)
NA = 15		

The statement "Most supervisors ALLOW the use of testimonial deception by police officers" met with similar results. Only 1% strongly agreed, and 21% agreed. Fifty percent disagreed, and 28% strongly disagreed (Table VI-5). Seventy eight percent of the participants said supervisors did not allow officers to employ testimonial deception. Twenty two percent of the participants reported they did.

Table VI-5. Most supervisors allow the use of testimonial deception by police officers.

Strongly Agree	1%
Agree	21
Disagree	50
Strongly Disagree	28
	100
	(429)
NA = 15	

In reply to "Most supervisors DISCOURAGE the use of testimonial deception by police officers," 29% of the subjects strongly agreed, 49% agreed, while 19% disagreed. and 3% strongly disagreed (Table VI-6). Seventy eight percent of the officers felt police supervisors discouraged the use of testimonial deception. Only 22% disagreed.

Table VI-6. Most supervisors discourage the use of testimonial deception by police officers.

Strongly Agree	29%
Agree	49
Disagree	19
Strongly Disagree	3
	100
	(428)
NA = 18	

According to the participating police officers, supervisors play little or no role in police testimonial deception (Table VI-7).

Table VI-7. Police supervisors play some role in the police use of testimonial deception (TD).

	DISAGREED	AGREED
Police Supervisors ENCOURAGE TD	95%	5
Police Supervisors IGNORE TD	67	33
Police Supervisors ALLOW TD	78	22
Police Supervisors DISCOURAGE TD	22	78

Again, given the opportunity to excuse or justify their socially undesirable behavior by placing some blame on their supervisors, the participants declined. In doing so, they added credibility to the conclusion that police supervisors do not play an important role in individual police officers use of deceptive testimony.

PERSONAL STRESS AND FRUSTRATION

The literature suggests personal stress and frustration generated by two events inherent to the working environment of the police might explain some police testimonial deception: a) the threat of departmental disciplinary action, civil suit, or criminal prosecution: b) failure to win a conviction after an investment of time and energy to make the case (Hunt & Manning, 1995; Barker, 1990; Kleinig, 1987; Wambaugh, 1975; Manning, 1974; Cohen, 1972; Skolnick, 1964).

Deadly force incidents, controversial arrests, unsuccessful prosecutions, allegations of civil rights violations, and more regularly embroil officers in long, complicated internal and external litigation. Such actions can be extremely stressful and disruptive for the officers personally and for their organizations (Kleinig, 1987).

Some police officers, in a practice called 'covering your ass,' use testimonial deception in ways that justify or cover their conduct to protect themselves or their colleagues (Hunt & Manning, 1995; Barker, 1994; Barker & Carter, 1994; Ewin, 1990; Skolnick, 1982, 1964; Wambaugh, 1975; Rubinstein, 1973; Cohen, 1972; Westerly, 1970).

"Police lie to protect themselves against civil suit for false arrest or the use of excessive force" (Klockers, 1994, p. 54). "Police lying is often to cover a mistake" (Chevigny, 1969, p. 80). Skolnick (1982) found police used testimonial deception as "a routine way of managing legal impediments ... [and] to protect fellow officers" (p. 43). Westerly (1970) concluded that 77% of police officers would perjure themselves rather than testify against another officer. Many do so even if the actions against them or their associates would not be sustained (Barker, 1980; Cohen, 1972).

The Rodney King case serves as an example. Prosecution of the Los Angeles police officers responsible for assaulting Mr. King centered on their falsification of his arrest reports to protect themselves from accusations of misconduct. The video taped record of the incident proved officers, in their reports, intentionally understated the amount of force they used to subdue him, while they

substantially overstated Mr. King's resistance. And the officers neglected to identify or even make reference to 3 independent civilian witnesses present during the confrontation. Subsequent investigation revealed defendants ordered them to leave the scene to prevent them from being interviewed by investigators (Klockers, 1993).

The possibility some participants might use testimonial deception to guard against civil suit, PREVENT CIVIL SUITS, was tested on the Police Officers Scale, "The threat of civil suit when arrests are not successfully prosecuted, or charges are dismissed," and on the Personal Use Scale, "Concern about being sued."

In both cases participants reported PREVENT CIVIL SUITS of some, but limited importance to testimonial deception. It ranked only eighth in importance on the Police Officers Scale, and fifth on the Personal Use Scale.

The second source of personal stress and frustration, the failure to win a conviction after investing time and energy to make the case, can be particularly demoralizing as well. Some officers have a psychological investment in their work. When cases are lost they experience adverse personal reactions, considerable personal frustration, a damaged professional reputation, negative job satisfaction, and low morale. And the health of law enforcement can

suffer. The loss of an important case can cause a decline in public respect for law enforcement (Klockers, 1993; Orfield, 1989; Kleinig, 1987).

Testimonial deception might insure convictions, and thus manage individual frustration. Correspondingly, job satisfaction and morale improve, while personal stress is reduced. And public confidence in the police is maintained (Orfield, 1989; Kleinig, 1987; Cohen, 1972).

That possibility was tested. The Police Officers Scale contained the statement "An officer's desire to win a conviction after investigating the time and energy to make a case," WIN CONVICTIONS, among 14 reasons and justifications offered for police testimonial deception. Participants ranked WIN CONVICTIONS eighth in importance, tied with PREVENT CIVIL SUITS.³

The finding that personal stress and frustration generated by the fear of civil suits or the lose of an important case might be of some influence to police testimonial deception was not unexpected. But the relatively low priority given to PREVENT CIVIL SUITS and WIN CONVICTIONS has important implications. It suggests participants felt deceptive testimony in their own self interest or self preservation was not nearly as important a

³ WIN CONVICTIONS was not offered on the Personal Use Scale.

reason or justification for testimonial deception as their need to arrest and convict the guilty. The knowledge the defendant was guilty of some crime, the obstructions to his arrest and conviction presented by technicalities within the legal system, and the values of Crime Control Model of Justice all ranked more important, in some cases much more important.

PLEA BARGAINING

Plea bargaining, the practice of negotiating the settlement of a criminal case through an informal exchange of prosecutorial and defense concessions, has not been widely mentioned as a factor in police testimonial deception. But a number of police officers interviewed in preparation for this study suggested that possibility.

Plea bargaining has become America's primary method of dispensing justice. Criminal trials are rare. More than 90% of all felony prosecutions and even a greater percentage of misdemeanor cases are resolved through negotiated pleas (Inciardi, 1996; Newman, 1994). Fisher (1993) noted that the process relies heavily on the information police supply in their reports. In most cases, those reports constitute the principle factual bases for both prosecutor and defense

attorney during their negotiations, and often do so without challenge. In that process may lie some motivational relationship to testimonial deception.

Plea agreements circumvent almost all constitutional protections afforded the accused. In entering a plea, the defendant relinquishes all rights to challenge police arrest, force, interrogation, or search behavior. All constitutional tests of the evidence against him, and the manner in which it was obtained are bypassed. Questions about Miranda warnings, the Exclusionary Rule, probable cause, the reliability of witnesses, and much more are never asked (Newman, 1994).

Does the knowledge that most of their arrests will be settled with little or no examination or challenge influence or encourage some police officers to use testimonial deception? That possibility was examined.

The statement "The knowledge that most cases will be plea bargained" was included among 14 suggested reasons and rationales for police use of testimonial deception. PLEA BARGAINING ranked seventh in importance, with a mean score of 4.0 (Table V-1). Separated by only 1.4 points from the highest rank, this finding implied that subjects perceived plea bargaining as moderately influential to the police use of testimonial deception.

A one way analysis of variance compared the participants' ratings of PLEA BARGAINING with their responses to the question "How often do police officers you know personally engage in testimonial deception." The results suggest plea bargaining plays a more important part in testimonial deception than the composite mean indicated.

Subjects who reported their peers engaged in testimonial deception frequently scored it at 6.4. Those who reported they did so sometimes rated it at 5.6. The rarely group gave it a 4.1, and the never group 2.3 (Table VI-8).

Table VI-8. PLEA BARGAINING compared to "How often do the police officers you know personally engage in testimonial deception."

	PO'S USE TD (N)	PLEA BARGAINING Mean Scores (Scale 0-10)	SD
Frequently	11	6.4	2.9
Sometimes	117	5.6	3.0
Rarely	164	4.1	3.2
Never	133	2.3	2.9

(F = 27.54, df = 3, 421, P ≤ .01)

Scheffe analysis revealed that the frequently,

sometimes, and rarely groups were all significantly different from the never group.

The implication is that officers who reported testimonial deception among police officers they know felt PLEA BARGAINING had some influence on that behavior. While nothing can be said about the exact nature of that relationship, the knowledge that most arrests will be settled through plea negotiations that rely heavily on police reports, with little or no scrutiny of the evidence police present in those reports, presents a possibility worthy of further consideration. Several subjects suggested as much.

An experienced patrol officer explained "I don't think it actually causes anyone to lie. It's more like, with plea bargaining, especially in misdemeanors, you know you're never going to testify ... I guess you could say it makes it possible ... easier, you know like they say with alcoholics, enabling ... You say pretty much what you want in your report ... nobody's going to question it.

Last week, I stopped a kid for speeding. It was late, long country road. I walk up, and he's fidgeting with some kind'a box on the passengers' side. Really nervous, and keeps looking at this box ... some kind of cassette holder. I asked him to open it. It took some convincing ... a

couple ounces of weed, a roach clip, some rolling papers ... misdemeanor possession ... [I] reported the marijuana lying in plain view in the open box. Case will never go to trial. I'll never testify, plea bargain guaranteed" (Police officer #24, personal communication, summer, 1996).

"Its about checks and balances. Cross examination keeps you straight ... lying on the stand, under oath ... run a risk of getting caught. That always kept me straight and narrow. But with pleas, no cross examination, no oath, means no risk. I know good cops haven't been on the stand in years ... almost nothing goes to trial (Police Officer # 17, personal communication, spring, 1996).

"I've sent a few weak ones [arrest] over [to the prosecutor]. You know, witnesses all drunk ... or long records. You can tighten them up alittle by the way you report the facts ... you always report the strongest case ... skip over the weak spots ... most of them will never get to court anyway ... everybody gets a deal ... sometimes you might have to testify at a preliminary hearing, but that's nothing ... prosecutors deal most cases [plea bargain], and that's the last you hear of it" (Police officer #40, personal communication, 1996).

"I think if I knew I had to take the stand every time, I couldn't do it [testimonial deception]... too risky ...

too much stress ... but we hardly ever do ... everything ends up in a plea" (Police officer #15, personal communications, winter, 1996).

THE EXCLUSIONARY RULE

The Exclusionary Rule has been accused of inspiring police testimonial deception (Slobogin, 1996; Cloud, 1994; Vuiller, 1988; Klockers, 1984; Dershowitz, 1982; Skolnick, 1982; Oaks, 1970). Created by the United States Supreme Court in 1914 and made applicable to the states in 1961, the Rule forbids the use of police evidence obtained in violation of a defendant's Constitutional Rights. It aims to deter police from using improper and illegal investigative methods by taking away the benefit those methods might produce --- the evidence. A confession, for example, obtained without the appropriate Miranda Warnings, or narcotics seized outside the limits of the Fourth Amendment, could not be used against a defendant, regardless of their bearing on the question of that defendant's guilt (Klein, 1996; Gardner, 1988).

The Rule allows defense attorneys to challenge evidence the government plans to use on grounds police procedures violated the Constitution. Normally, the defense argument

takes place at a formal judicial proceeding called a suppression hearing (Hanley, Schmidt & Robbins, 1996). If police breached some constitutional principle, the judge must suppress the evidence and exclude it from the trial. Most such challenges arise from Fourth Amendment search and seizure issues and occur commonly in drug cases.

Interrogation evidence is often contested as well (Reitz, 1996; Commission Report, 1994; Cloud, 1994).

Because plea bargaining resolves almost all criminal prosecutions, suppression hearings play a pivotal role in the judicial process, especially in drug prosecutions (Fisher, 1994). Often the main evidence against the accused consists entirely of the actual narcotics, records, or drug paraphernalia seized by the police. If the seizure was improper, the evidence, for all practical purposes, no longer exists. Absent the evidence, criminal charges cannot go forward and must be dismissed. If the seizure is upheld, the case moves to trial. In reality, that means it actually moves to a negotiated guilty plea.

In these circumstances the suppression hearing becomes the defacto trial, the primary court of justice. The question of guilt rests entirely on the legality of the evidence. An exclusion means an acquittal. Otherwise, most defendants plea bargain.

But the Rule is controversial. Opponents point out that the suppression of evidence actually suppresses the truth. Guilty criminals are regularly freed, solely on a legal technicality (Gardner, 1988). An oft-quoted New York Supreme Court Case makes the point. "The criminal is to go free because the constable has blundered ... A room is searched against the law, and the body of a murdered man is found ... The privacy of the home has been infringed, and the murderer must go free" (People v. Defore).

The recent decision by a Federal Judge to exclude four million dollars in cocaine and heroin, plus the confession of the drug dealer provides an excellent illustration.

The Washington Heights section of Manhattan is widely recognized among citizens, the press, and the police as one of New York's major drug bazaars. Beleaguered residents have brought considerable pressure on the police for some relief.

On April 21, 1996, at about 5 o'clock in the morning, two experienced anti-drug police officers patrolled the area. Both knew recent crime studies had shown that more than 60% of all persons arrested for drug offenses in the city were from out of state. As they passed through a deserted side street, they spotted a new Mercedes Benz double parked with the engine running. The car, occupied by

a lone woman, bore Michigan license plates.

The police officers then observed four young men load large duffle bags into the vehicle's trunk. Suspicious, the officers approached. They identified themselves. The subjects immediately ran in different directions as the driver quickly pulled the Mercedes away from the curb. Certain they had interrupted a drug transaction, the officers stopped the car and found 80 pounds, \$4,000,0000 worth, of cocaine and heroin stuffed inside the duffles. The driver was arrested. Later, during a 40 minute video recorded interview, she admitted to twenty similar trips between Detroit and New York City in the previous two years. Each time she exchanged one million dollars in cash for an identical load of drugs (Kelly, 1996; Van Natta, 1996).

At the subsequent suppression hearing a Federal Judge ruled that none of the activities the officers observed were suspicious. Their actions were unjustified and constitutionally invalid. And despite pleas from the community and the police, the judge suppressed the drugs and the woman's confession. All charges were dropped and the defendant freed (Kelly, 1996; Van Natta, 1996).

Critics raise other issues. They argue the Rule does little to deter improper police investigative conduct. The only thing it has changed is the testimony of police

officers confronting its consequences (Gardner, 1988; Oaks, 1970). Oaks (1970) compared testimonies of New York City police officers given just before the Exclusionary Rule took effect with their testimonies just after. He found police investigative practices changed little. Officers simply 'adjusted' their reported conduct to insure it met all legal requirements. If so, rather than prevent illegal police conduct, the Exclusionary Rule actually creates it, fueling the practice of police testimonial deception. But does it?

Many critics believe police testimonial deception to legitimize legally questionable evidence gathering --- lying to circumvent the Exclusionary Rule --- is the most frequent venue for deceptive police testimony (Slobogin, 1996; Reitz, 1996; Cloud, 1993; Orfield, 1992; Klockers, 1984; Dershowitz, 1982; Skolnick, 1975). The most vocal of these, Alan Dershowitz argues "Almost all police lie about whether they violated the Constitution in order to convict guilty defendants" (1983, xxi-xxii). "Police perjury occurs most frequently when officers are testifying about searches and seizures and witness interrogations" (Cloud, 1993, p. 1315). Skolnick describes such practices as "systematic" (1982, p. 40). Orfield (1992) concluded as much as fifty percent of police testimony at Exclusionary Hearings was false. Uviller (1988), reporting on his experiences inside

one major urban police department, described the practice as common.

The Mollen Commission, investigating corrupt practices in the New York City Police Department, determined that most police testimonial deception was an attempt to cover up illegal evidence gathering. They documented a litany of police testimonial practices designed to avoid the consequences of the Exclusionary Rule. Officers stopped people they suspected of possessing drugs, for example, searched them illegally and then falsely reported they observed the drugs in plain view. Unlawful entries into apartments to search for drugs or guns were justified by pretending to have information from an anonymous citizen or a fictitious radio assignment. Officers who unlawfully stopped and searched cars because they suspected them of transporting drugs, falsely reported the vehicle ran a red light or committed some other traffic violation, and the drugs were then seen in plain view (Commission Report, 1994).

Joseph McNamara, former police chief of Kansas City, KS, and San Jose, CA, thinks the vast major of the nation's one million annual drug possession arrests involve false police testimony to avoid the Exclusionary Rule. "Almost all the possession arrests are made without warrant. In

other words, hundreds of thousands of police officers swear under oath that the drugs were in plain view or that the defendant gave consent to a search. This may happen occasionally but it defies belief that so many drug users are careless enough to leave illegal drugs where police can see them or so dumb as to give cops consent to search them when they possess drugs. But without this kind of testimony the evidence would be excluded" (McNamara, 1996, p. 17).

But these assertions do not go unchallenged. Most police officers and prosecutors strongly disagree, arguing police testimonial deception is 'infrequent,' or 'rare,' or 'isolated,' and that the Exclusionary Rule plays no special part in its use (Slobogin, 1996; Skolnick, 1995; Orfield, 1992; Criminal Justice System in Crises, 1988). An independent study by the American Bar Association reached the same conclusion (Criminal Justice System in Crises, 1988). Mr. Dershowitz's position is often criticized as merely the rhetoric expected of defense attorneys (Reitz, 1996; Terry, 1995). Likewise, the Mollen Commission draws criticism because their findings were based largely on the testimony of a handful of police witnesses already imprisoned for serious criminal acts including robbery, felony assault, and trafficking in cocaine (Reitz, 1996; Terry, 1995).

But despite these arguments, participants generally agreed with Mr. Dershowitz and the Mollen Commission. The Exclusionary Rule and its effect --- the suppression of evidence --- influences many police officers to use testimonial deception. They do so to legitimize illegally obtained evidence necessary to convict and punish defendants they know are factually guilty of the crime.

Subjects were asked to agree or disagree with the statement "The effects of the Exclusionary Rule influence police officers to use testimonial deception." In response 4% strongly agreed, 42% agreed, 34% disagreed and 20% strongly disagreed (Table VI-9). While the majority of the officers, 54%, rejected the idea that the Exclusionary Rule influences police officers to use testimonial deception, 46%, almost half, believed it did.

Table VI-9. The Exclusionary Rule influences police officers to use testimonial deception.

Strongly Agree	4%
Agree	42
Disagree	34
Strongly Disagree	20
	100
	(420)

NA 24

Using Chi square analysis, the participants' responses to questions about their own use of testimonial deception and the use of testimonial deception by police officers they know were correlated with their positions on the Exclusionary Rule and testimonial deception.

Chi square analysis is a frequently used test of significance in criminal justice research (Maxwell & Babbie, 1997). It compares the distribution of responses for two separate variables. If a statistical similarity is noted, the procedure determines the probability that this similarity is due to sampling error or conversely, if some relationship between the variables exists. Statistical significance allows the assumption some meaningful association is present. Results at the .05 represent a 5% probability the association is by chance, or the 95% probability of a relationship. A .01 significance indicates a 1% probability of chance, or a 99% probability of a relationship (Maxfield & Babbie, 1997; Hagan, 1995).

Of those participants who STRONGLY AGREED that the Exclusionary Rule influenced testimonial deception, 11% reported they used testimonial deception frequently or sometimes; 22% did so occasionally; 28% rarely; and 39% said they never employed testimonial deception.

A total of 61% of the subjects who strongly agreed the Exclusionary Rule influences police to use testimonial deception admitted they engage in the practice.

Four percent of the officers who AGREED with the statement reported they used testimonial deception frequently or sometimes; 18% occasionally; 38% rarely; and 40% never used it. Sixty percent of the officers who agreed that the Exclusionary Rule influences police testimonial deception reported they engaged in the practice themselves.

Of the police officers who DISAGREED with the proposition that the Exclusionary Rule influences testimonial deception, 4% admitted frequent or sometimes use of testimonial deception; 3% occasional; 19% rare; while 74% reported they never used testimonial deception.

Ninety three percent of the participants who STRONGLY DISAGREED with the idea that the Exclusionary Rule influences testimonial deception reported they never engaged in such practices, while the remaining 7% acknowledged that they used it rarely. None reported frequent, sometimes, or occasional use (Table VI-10).

These results were significant to the .01 level.

Table VI-10. "The effects of the Exclusionary Rule influence police officers to use testimonial deception (TD)" compared to "How often do you engage in testimonial deception."

PARTICIPANTS USE TD	EXCLUSIONARY RULE INFLUENCES TD			
	Strongly Agree	Agree	Disagree	Strongly Disagree
Freq/Sometimes	11%	4	4	0
Occasionally	22	18	3	0
Rarely	28	38	19	7
Never	<u>39</u>	<u>40</u>	<u>74</u>	<u>93</u>
	100	100	100	100
(n)	(18)	(179)	(149)	(84)

P ≤ .01

Sixty percent of the participants who strongly agreed and 60% of those who agreed that the Exclusionary Rule influences police to use testimonial deception admitted they engage in the practice. Conversely, most of those who do not think the Exclusionary Rule is important to the phenomena do not testify deceptively. These results support the conclusion that many of the participants who admitted they use testimonial deception see the Exclusionary Rule and its effects as a reason for doing so. Their false and misleading testimony is motivated, at least in part, by

their desire to circumvent the Rule in order to legitimize evidence of a defendant's guilt that could not otherwise be considered.

Participant reactions to the statement "The effects of the Exclusionary Rule influence police officers to use testimonial deception" were compared with their responses to "How often do police officers you know personally engage in testimonial deception," using chi square analysis (Table VI-11). Results were the same.

None of the participants who STRONGLY AGREED the Exclusionary Rule influenced police testimonial deception knew police officers who use it frequently or sometimes. Fifty six percent reported their colleagues did so occasionally; 22% said rarely; and 22% never.

Seventy eight percent of the subjects who strongly agreed that the Exclusionary Rule influences police to use testimonial deception admitted police officers they know engaged in some deceptive testimonial practices.

Three percent of the officers who AGREED with the statement reported officers they know used testimonial deception frequently or sometimes; 40% knew officers who engage in it occasionally; 38% used it rarely; and 19% reported their peers never used it.

A total of 81% of the officers who believe the

Exclusionary Rule influenced police testimonial deception know police officers who engaged in some testimonial deception.

Of the police officers who DISAGREED with the statement, 2% admitted knowing officers who frequently or sometimes made use of testimonial deception; 21% knew officers who did so occasionally; and 49% rarely. Twenty eight percent reported officers they knew never used testimonial deception.

Two percent of the participants who STRONGLY DISAGREED with the idea reported officers they knew used it frequently; 6% sometimes; 24% rarely; while 68% reported that officers they knew never engaged in such practices.

The results were significant at the .01 level.

Table VI-11. "The effects of the Exclusionary Rule influence police officers to use testimonial deception (TD)" compared to "How often do police officers you know personally engage in testimonial deception."

	EXCLUSIONARY RULE INFLUENCES TD			
	Strongly Agree	Agree	Disagree	Strongly Disagree
OTHER PO'S USE TD				
Frequently	0%	3	2	2
Sometimes	56	40	21	6
Rarely	22	38	49	24
Never	22	19	28	68
	100	100	100	100
(n)	(18)	(180)	(150)	(84)

P ≤ .01

The results suggest most subjects who know police officers who use testimonial deception believe the Exclusionary Rule influences their behavior. Seventy eight percent of those who strongly agreed with that idea reported they knew police officers who engage in testimonial deception and 81% of those who agreed admitted they knew officers who engage in testimonial deception.

Clearly, many participants who engage in testimonial deception, or know police officers who do, believe the

Exclusionary Rule is an important reason or justification for their behavior.

Comments from several subjects demonstrate the point. "I had this serial rapist. Good for 20 or 30 rapes. The guy was smart, knew the system. Always wore a mask and gloves ... Only this time he goes into the apartment of a female corrections officer. Big mistake. When the uniform officers got there, she had him handcuffed, service revolver in his ear ... Some rapists like to brag, talk about all the women they've had. ... It's a good interview approach. We talk to him for awhile about what a man he must be to have had so many women. You know the routine. We tell him we know he did the one on 21st Street, and this one and that one ... so the guy comes around. He starts telling us how he got into the building on 21st. I'm supposed to stop and advise him [the Miranda Warnings]. If I do, he's gon'na dummy up, and we'll never know exactly which ones he did. Nobody can identify him and he wore gloves.

Guy brutalized 20 women, and we have one attempt and burglary. I don't do it. He keeps talking and talking. We end up with about 10 or 12 cases. So now I tell him I got to advise him, just a formality. He sits up and looks at me like I'm nuts. I read him his rights, and he says no. End of story. Confession get's thrown out. This guy walks. I

can't let that happen, all those victims, all that fucking misery ... in a few months he's out and at it again. Either I get him or more [women] get hurt ... because of me, I'm the one that allows it to happen ... so my partner and I testify I read him his rights as soon as we got to the office, he waived them, but wouldn't sign anything. He testified I didn't, but two against one, and one of them a rapist ... judge believed us. The guy plead ... 3 rapes ... gets prison ... he won't do another one for years. I think we did the right thing ... I know we did the right thing (Police officer #1, personal communication, winter, 1995).

"The question is did the suspect do it? That's the only question. If you lie about it, it's wrong, it's perjury, ... it's a sin ... lying to get by all the legal nonsense, that's not perjury ... that's just like crossing the T's and dotting the I's ... lying about whether they did it, that's wrong" (Police officer #4, personal communication, fall, 1995). "I've been in TNT (Tactical Narcotics Team) for three and a half years ... the only legal dope searches I ever see are in the courtroom" (Police officer #31, personal communication, fall, 1997).

"Look, what about the victims. What am I supposed to say? Sorry about your son Mrs. Jones, but don't worry, we got the murderer. Oh, he isn't going to jail, but don't

worry, okay? Something better happened, we protected his rights. We didn't use his confession cause the Miranda warnings were read too fast ... not in Spanish or German, and we couldn't use his gun cause we didn't have a search warrant. Bullshit. Let some judge or prosecutor go deliver that message ... These people don't want to hear about the Constitution. They want to hear about justice" (Police officer #37, personal communications, winter, 1997).

"You just can't cover every legal base with drug cases. Things happen too fast. You have to make quick decisions in the street. Either you grab them and get the dope, or you let the guy and the dope go ... because you don't have enough time or enough probable cause to get a warrant ... we do the best we can. But if we can't get it legally, we get it anyway ... when we get to court we say what we have to. The guy had it, he's guilty, nothing else really matters, does it" (Police officer #21, personal communication, summer, 1996).

"I learned early. Search and seizure [rules] has nothing to do with reality. In the beginning, I watched dealers standing on drug corners all day and all night, snow, rain, Christmas, all day. No job, long arrest record, gold chains, beepers, phones. Everybody knows he has drugs ... ask any 10 year old kid, he knows the guy has dope in

his pocket. But we need probable cause. Probable cause can take forever, and maybe you don't get it. Maybe by the time the warrant get's here the guy has sold it all. We got 3 detectives working ... trying to get at him legally, while everybody knows he sells drugs. It doesn't make sense. People in the street think we're stupid or lazy ... so after a few months I realized I had to do something else ... Now when I have this guy and its clear he's got dope, I walk up, search him, take the dope and lie about it in court, just like everyone else. Even if they don't believe me, the guy doesn't get his dope back" (Police officer #2, personal communication, winter, 1995).

"Yeah, I think everybody does sometimes [uses testimonial deception at suppression hearings]. I mean you don't lie about the truth. He confessed ... you found a gun on him. That's the truth. It's the way you got the stuff. You have to clean it up, or you can't get it in. I mean take Miranda. Only drunks and kids just waive their rights, straight out. Everybody else watches TV. You have to motivate them, you know, make some promise, scare'em, pray with'em. But you can't admit you did anything. It's duress ... confession gets dumped." (Police officer #31, fall, 1996).

In order to examine this relationship in more detail

participants were asked if the suppression of evidence under the Exclusionary Rule should be continued. Eight percent strongly agreed and 32% agreed with "The current practice of excluding evidence obtained in violation of a defendant's rights should be continued." Forty three percent disagreed and 17% strongly disagreed with the statement (Table VI-12).

Forty percent of the subjects believed illegally obtained evidence should continue to be excluded. Sixty percent, however, disagreed. According to the majority of the participants, evidence acquired by the police in violation of a defendant's Constitutional Rights should be allowed and considered in the legal determination of the defendant's guilt.

Table VI-12. The current practice of excluding evidence obtained in violation of a defendant's rights should be continued.

Strongly Agree	8%	
Agree	32	
Disagree	43	
Strongly Disagree	17	
	100	
		(435)
NA = 9		

Subjects were asked to agree or disagree with three commonly suggested alternatives to the existing Exclusionary Rule. Taken from the literature, each permitted the use of illegal evidence, while providing a different method to control or prevent improper police investigative methods. Participants rejected all three.

The first recommended that "Instead of excluding evidence obtained in violation of a defendant's rights, the responsible officers should be disciplined by their departments and the evidence should be admissible against the defendant." Eight percent of the subjects strongly agreed, and 35% agreed with the statement. Thirty six percent disagreed, and 21% strongly disagreed (Table VI-13). A total of 43% of the officers supported the use of illegally obtained evidence against a defendant, while controlling police abuse through discipline. Fifty seven percent opposed this alternative.

Table VI-13. Evidence obtained in violation of a defendant's rights should be allowed, but the responsible officers should be disciplined.

Strongly Agree	8%
Agree	35
Disagree	36
Strongly Disagree	<u>21</u>
	100
	(425)
NA = 19	

Subjects reacted similarly to the second suggestion, "Instead of excluding evidence obtained in violation of a defendant's rights, the responsible officers should be subject to civil suit, and the evidence should be admissible against the defendant." Two percent of the participants strongly agreed, and 13% agreed. Forty three percent disagreed, and 42% strongly disagreed (Table VI-14). Only 15% of the officers accepted the idea that illegal evidence should be admitted in court and police conduct regulated by civil suit. Eighty five percent rejected this proposal.

Table VI-14. Evidence obtained in violation of a defendant's rights should be allowed, but the responsible officers should be subject to civil suit.

Strongly Agree	2%
Agree	13
Disagree	43
Strongly Disagree	42
	100
	(425)
NA = 19	

The third option, "Instead of excluding the evidence obtained in violation of the defendant's rights, responsible officers should be prosecuted for civil rights violations, but the evidence should be admissible against the defendant," was rejected as well. One percent strongly agreed, and 12% agreed with the suggestion. Thirty nine percent disagreed, and 48% strongly disagreed (Table VI-15). Only 13% of the subjects felt officers who violated the rights of defendants should be prosecuted and the evidence allowed. Eighty seven percent objected to this alternative to the existing rule.

Table V-15. Evidence obtained in violation of a defendant's rights should be allowed, but the responsible officers should be prosecuted for civil rights violations.

Strongly Agree	1%
Agree	12
Disagree	39
Strongly Disagree	<u>48</u>
	100
	(425)

NA = 19

When asked directly if the suppression of evidence obtained in violation of the defendant's rights should continue, 60% of the respondents reported it should not. And participants refused three commonly suggested alternatives that would allow improper evidence but still provide provisions to control police abuse. Eighty five percent rejected the idea that evidence should be allowed, but officers subjected to civil suit. Eighty seven percent disagreed with admitting the evidence, but prosecuting the officers for civil rights violations. And 57% objected to permitting the evidence, but disciplining the officers (Table VI-16).

Table VI-16. The Exclusionary Rule should be changed to allow the use of illegally seized evidence, and to control police behavior by other means.

	Agree	Disagree
No Change	40	60
Discipline Officers	43%	57
Sue Officers	15	85
Prosecute Officers	13	87

The obvious conclusion is that most of the participants objected to the Exclusionary Rule, and the custom of excluding evidence in its entirety. All evidence, legal or not, that establishes the defendant's factual guilt is proper and relevant to the process of justice.

Does the Exclusionary Rule influence police officers to engage in deceptive testimony? Many participants believe it does. Three factors support that conclusion: a) 60% of the subjects reported the existing practice of excluding evidence obtained in violation of a defendant's rights from the judicial process and the determination of guilt should not be continued; b) nearly half of the participants, 45%, said the existing practice influences police officers to use testimonial deception; and c) of those, 60% practice testimonial deception, and 80% know police officers who do.

PROSECUTORS

Many students of police testimonial deception maintain prosecutors bear much of the responsibility for its use (Terry, 1995; Fisher, 1994; Dershowitz, 1996, 1995c, 1983; Yant, 1991; Orfield, 1989; Kleinig, 1987; Bunker, 1974; Cohen, 1972). They contend that some government attorneys, certain of a defendant's guilt, pressure police officers into constitutionally rigorous testimony even if such testimony requires deception (Dershowitz, 1982). Others believe prosecutors, caught up in the competitiveness of the adversarial system of justice, tolerate, even support such practices to insure convictions and improve their record of victories (Dershowitz, 1995; Terry, 1995; Yant, 1991; Orfield, 1989). Some believe prosecutors ignore police deceptive testimony because they need to maintain healthy working relationships with the police, who collect the evidence necessary to carry cases forward, and are generally the most important government witness (Silver, 1994). In doing so, critics argue, prosecutors justify testimonial deception in the minds of some police officers, and thus promote its continued use (Slobogin, 1996; Dershowitz, 1995b; Cohen, 1972).

"Many prosecutors implicitly encourage police to lie

... in order to convict guilty defendants" (Dershowitz, 1995b). "Judges and prosecutors all know the police officers lie under oath ... perjured testimony is common but they do nothing about it" (Cloud, 1994, p. 1312). "Some prosecutors have been known to encourage police to write vague reports, in order to leave the police 'more running' room" (Fisher, 1995, p. 52). "Bowling to the pressures of the war on crime, prosecutors ... have turned a blind eye to systematic and pervasive police corruption and abuse ... in the court room" (Rudovsky, 1995, p. 5).

Myron Orfield's (1992) study of police perjury in the Chicago Court System is the often cited justification for this position. Fifty two percent of the prosecutors, judges, and defense attorneys he interviewed reported prosecutors know or have reason to know at least "half the time" that police manufacture evidence at suppression hearings (p. 109). Sixty one percent said prosecutors know police fabricate evidence in their reports, and 93% reported prosecutors had knowledge of police perjury "at least some of the time" (p. 110). Half believed they "tolerate" testimonial deception, while 15% reported they actually "encourage" it (p. 111).

Several former and current prosecutors who spoke 'off the record' before the Mollen Commission agreed. They

acknowledged prosecutors recognize police testimonial deception is a serious problem in the Criminal Justice System, admitting that while most do not condone its use, many ignore it (Commission Report, 1994).

Foremost among those who hold prosecutors accountable for police testimonial deception is Alan Dershowitz.

"Police perjury is rampant throughout the country ... the problem of pervasive police perjury is rampant in every major city in the country ... the challenge we face in combating police falsifications is not only to prevent the underlying wrongdoing that spawns police falsification, but to eliminate the tolerance the criminal justice system exhibits about police who fail to tell the truth"

(Dershowitz, 1995b, p. 2). "I have argued for years that the real culprits are the prosecutors and the judges who refuse to recognize the reality of police perjury. These judges and lawyers send a powerful message of approval when they close their eyes to obvious police perjury, especially in search and seizure cases. As long as prosecutors continue to allow lying cops to testify and as long as judges continue to pretend that they believe such perjury the lying will continue" (Dershowitz, 1995c, p. 2).

But the participants in this study, all serving police officers, disagreed. They do not believe prosecutors have a

significant role in police testimonial deception.

Subjects were asked to agree or disagree with two statements that tested the question. In response to the first, "Prosecutors pressure police officers to use testimonial deception to win convictions," 2% strongly agreed, and 12% agreed with the statement. Thirty nine percent disagreed, and 37% strongly disagreed. Ten percent had no opinion (Table VI-17).

A total of 76% of the participants rejected the idea that prosecutors pressure police officers to use testimonial deception. Only 14% believed they did.

Table VI-17. Prosecutors pressure police officers to use testimonial deception.

Strongly Agree	2%
Agree	12
No Idea	10
Disagree	39
Strongly Disagree	<u>37</u>
	100
	(438)

NA = 6

Subjects reacted similarly to the second statement, "Prosecutors expect police officers to alter their testimony

to meet the requirements of legal technicalities." One percent strongly agreed, and 18% agreed. Thirty nine percent disagreed, and 34% strongly disagreed (Table VI-18). Eight percent had "no idea." Seventy three percent of the participants reported prosecutors do not expect them to alter their testimony. Nineteen percent maintained prosecutors do require such behavior.

Table VI-18. Prosecutors expect police officers to alter their testimony.

Strongly Agree	1%
Agree	18
No Idea	8
Disagree	39
Strongly Disagree	34
	100
	(436)
NA = 8	

According to the participants, prosecutors play little or no role in their use of deceptive testimony. Seventy six percent rebuffed the idea that prosecutors pressure police to use testimonial deception, and 73% rejected the contention that prosecutors expect police officers to alter their testimony to meet legal requirements (Table VI-19).

Table VI-19. Prosecutors' role in the police use of testimonial deception (TD).

	Disagree	Agree
Prosecutors pressure police to use TD*	76%	19
Prosecutors expect police to use TD**	73	13
* 9% had "no idea"		
**8% had "no idea"		

In addition, when participants were asked to rate reasons and rationales for their own testimonial deception, they ranked PROSECUTOR'S PRESSURE, "pressure from prosecutors," the least influential of the 11 offered, with a mean score of only 0.9.

These findings are particularly interesting in light of the secretive nature of the subject matter and the corresponding social desirability factor --- the tendency of subjects reporting on their own embarrassing or illegal conduct to alter or adjust their image to appear to be good people (Sudman & Bradburn, 1979). The questions about prosecutors and police testimonial deception provided a ready opportunity for study subjects to excuse or justify their own illegal behavior by placing at least some of the burden on prosecutors, and thus lessen their own. But they declined to do so.

A senior detective in one of the nation's largest police departments, an attorney himself, and a participant in the study offered an insightful story. "It happened once in 15 years. I made a gun arrest early in my career. The suspect had a long criminal record, and the search was weak. At the pretrial [conference], the State's Attorney wanted me to testify to the 'old suspicious bulge' story. She never told me what to say, just asked me, maybe 10 times, 'You saw a bulge, didn't you?,' 'There was a bulge, wasn't there?.' Jesus, I thought it was some sort of setup, like an integrity test, with IA [Internal Affairs] guys jumping out of the closet any second. I stuck to my story, no bulges. And don't you know, she asked me again, twice, while I was on the stand. The defense argued it was a bad search. We lost. But that DA [District Attorney], she had some balls. I never saw anything like it, before or after ... never, in hundreds of cases [have I] had a DA even hint at anything like that" (Police officer # 35, personal communications, fall, 1996).

Another subject said, "sure some cops might adjust things, you know, forget something on purpose, but the last person you want to share it with is the prosecutor" (Police officer #19, personal communication, winter, 1996).

"Do prosecutors ignore it? I don't think anyone can

really say. But I remember in 1991 or 2, the U.S. Attorney flat out refused any arrests or warrants from 4-D Vice. It was in the Washington Post. I went to the academy with one of those guys [referring to a well published 1987 incident in Washington, D.C. in which the U.S. Attorney for the District of Columbia publicly refused to prosecute any cases submitted by a precinct narcotics unit following his determination that they may have falsified as many as 1,100 search and arrest warrants, see Walsh & Lewis, 1987]. They didn't ignore it that time. The word was around, they lied about everything, even when they didn't have to" (Police officer #7, personal communication, spring, 1995).

"I just don't think most prosecutors would risk it. I've never seen it ... I don't think they always believe us ... But that's not the same thing as ignoring. They can't tell a witness, let alone a cop, he's lying just cause they feel it. They need proof. They can't throw the thing out on a hunch." (Personal communication # 14, personal communications, fall, 1995). "Prosecutors are not part of the club" (Police officer #2, personal communication, winter, 1995).

JUDGES

Tolerance and encouragement of police testimonial deception may extend beyond the prosecutor's office to the court itself. Some judges may be just as reluctant to see criminals freed, and allow deceptive police testimony in their courtrooms to go unchallenged (Dershowitz, 1995, 1995b, 1995c; Terry, 1995; Rothwax, 1995; Cloud, 1994; Orfield, 1989; Bunker, 1974).

"All police officers lie, and all judges know it ... Most trial judges pretend to believe police officers who they know are lying" (Dershowitz, 1982 p. xxi-xxii). "Officers commit perjury knowing that judges 'may wink' at obvious police perjury in order to admit incrimination evidence" (Cloud, 1994, p. 1312). According to Michael Avery, prominent Boston attorney, and author of Police Misconduct: Law and Litigation, speaking before the 1985 annual meeting of the Civil Liberties Union of Massachusetts, "Every judge who sits in the criminal courts of the Commonwealth of Massachusetts routinely has appearing before him or her court police officers who commit perjury in order to make charges stick in criminal cases. Everyone knows this, yet few judges would admit it, and none have addressed the problem with any intention of doing anything

meaningful about it" (Hentoff, 1985, p. 17).

In the words of Allan Dershowitz, "The central villains in the {police} perjury scandal are precisely judges who, for decades, have pretended to believe the tallest tales told by lying cops in the face of overwhelming evidence of pervasive perjury. Without the complicity of judges, police perjury would be reduced considerably. Officers know that in many courtrooms they can get away with the most blatant perjury without judicial rebuke or prosecution. I have seen trial judges pretend to believe officers whose testimony is contradicted by common sense, documentary evidence and even unambiguous tape recordings" (Dershowitz, 1994, p. 21).

These judges have "sympathy for the police officers' ultimate goals" (Slobogin, 1996, p. 1047). Some put up with it because they feel the "ends justify the means" (Cloud, 1994, p. 1322). "Judges sometimes fail to suppress evidence when the law requires such suppression because (the judge) believes it is unjust to suppress evidence given the circumstances of the case before him" (Orfield, 1989, p. 121). "Judges simply do not like to call other government officials liars ... especially those who regularly appear in their courts" (Cloud, 1994, p. 1323). Their consistent refusal to do anything about police testimonial deception, critics assert, ratifies and encourages its use (Dershowitz,

1995b, 1995c, 1982; Terry, 1995; Bunker, 1974).

Subjects in this study rejected this argument as well, and reported judges play no meaningful part in the police use of testimonial deception.

They were asked to agree or disagree with the statement "Judges tolerate, even encourage, police testimonial deception to insure convictions of defendants they believe are guilty." One percent of the subjects strongly agreed with the statement, and 2% agreed. Forty one percent disagreed, and 44% strongly disagreed (Table VI-20). Twelve percent had "no idea." A total of 85% of the police officers rejected the suggestion that judges tolerate or encourage police testimonial deception, while only 3% felt they did.

Table VI-20. Judges tolerate, even encourage, police testimonial deception.

Strongly Agree	1%
Agree	2
No Idea	12
Disagree	41
Strongly Disagree	44
	100
	(436)
NA = 8	

Clearly, the findings represent the participants' perception of judicial conduct, and neither proves nor disproves the point. They cannot know what is in the mind of a presiding judge. But the officers are both participants and witnesses to their own deceptive testimony before judges. Their opinions, therefore, arise from personal experience and an informed perspective, not merely speculation. That experience lends some credence to the findings that they do not believe judges tolerate or encourage police testimonial deception.

CHAPTER VII**PSYCHOLOGICAL INFLUENCES TO TESTIMONIAL DECEPTION****TESTIMONIAL DECEPTION AND THE TRADITIONAL
EXPLANATIONS FOR POLICE MISCONDUCT**

Traditionally, two explanations have been offered for police deviance: a) officers who engage in misconduct do so because of preexisting character flaws, the 'rotten apple theory'; or b) situational factors within police organizations and the working environment of the police create conditions that erode the values and character of police officers, the 'rotten barrel theory' (Girodo, 1991; IACP, 1989; Wilson, 1974; Bittner, 1974; Knapp Commission Report, 1973; Niederhoffer, 1967; Skolnick 1967).

The now infamous Miami River Cops Scandal demonstrates the 'rotten apple theory.' During the 1980's Florida prosecutors charged 80 Miami River police officers with a variety of serious crimes including murder, robbery, and narcotics distribution. Subsequent investigation revealed the defendants had been hastily recruited into police service in response to pressures to hire minority officers, pressures that discouraged proper screening and hiring methods, including adequate background checks. All had histories of drug abuse and drug dealing, some had criminal arrest records --- character traits clearly unsuitable for

police service. These 'bad' people became 'bad' cops. Their preexisting deviant personality characteristics caused their police misconduct (Girodo, 1991).

'The rotten barrel theory' blames situational factors in the police officer's working environment for the corruption of otherwise 'good' police officers. The Knapp Commission Report on Police Corruption in New York City (1973), and popular novels about that period, Prince of the City (Daley, 1981) and Cop Hunter (Murano, 1990) serve as examples. During the 1960's and early 1970's investigation into the scandal ridden New York City Police Department revealed widespread graft and bribery. Officers of all ranks, many otherwise honest and dedicated members of the force, participated in a well organized and sophisticated system of payoffs in support of gambling and narcotics operations.

The Knapp Commission (1973) concluded the constant exposure to corrupt opportunities presented by drug dealers and gamblers, plus the influence of older, disgruntled, and cynical role models within the Department eroded honest cops, and the ideals and values inculcated during their training. These environmental factors produced a plague of corruption (Girodo, 1991; Commission Report, 1973).

The 1989 International Association of Police Chiefs' report on corrupt police practices reaffirmed these two widely held ideas. The character of police applicants, or

the environment in which officers carry out their duties were singled out as the causes of corrupt and unethical police behavior (IACP, 1989).

But in the case of testimonial deception, neither explanation seems sufficient. Most police departments go to great lengths to insure only morally fit men and women, free of serious character impediments, enter police service. National and state accreditation standards, bolstered by the ever present threat of costly civil litigation for failure to meet such standards, and considerable community pressure have significantly improved the recruiting and screening process to avoid 'rotten apples.' Extensive background checks, psychological tests and evaluations, polygraph examinations, drug screening, and more routinely identify and eliminate unsuitable candidates even in the smallest police agencies. The vast majority of serving police officers are morally responsible people who avoid corrupt and immoral practices (Skolnick, 1996; Commission Report, 1993; Girodo, 1991; Delattre, 1989); Criminal Justice System in Crises, 1988; Skolnick, 1966).

Certainly, some unfit police recruits must avoid detection. But it seems highly improbable that as many as 38% percent of the participants, those who admitted some use of testimonial deception, did so and then managed to remain

in police service undiscovered. It is even less likely the 51% who reorder or reorganize facts in their reports; or the 47% who reorder or reorganize facts in their testimony; or the 49% who intentionally omit facts from their reports; or the 44% who omit facts from their testimony all do so because of undetected character faults (Table IV-18). Most participants and most police officers who engage in testimonial deception do so for reasons other than inherent moral defects (Skolnick, 1966).

The 'rotten apple theory' appears equally flawed. While many participants reported factors and conditions found in their working environment, specifically the disparity between the goals society has set for the police -- the responsibility to identify, arrest and convict those factually guilty of criminal offenses --- and the means authorized for that purpose --- the procedural impediments imposed by the Constitution and the criminal justice process, influence police officers to use testimonial deception, environmental factors alone cannot explain the phenomena. If only they caused police testimonial deception all police officers would engage in the behavior, as all police officers confront the same social circumstances. But such is not the case. At least half of all participants denied all use of testimonial deception in all circumstances (Table V-18).

Why then do some officers react unethically when confronted with the same environmental stimuli while others do not? Clearly, something else, something individual to each participant must be involved in the process.

TESTIMONIAL DECEPTION AND THE
NEUROTIC-EXTROVERTED PERSONALITY

Michel Girodo (1991) suggests that possibility. He offers a third explanation for police misconduct. Deviance results from some as yet not fully understood dynamic interaction between existing dormant personality traits and environmental conditions.

Girodo (1988) studied drug undercover agents to identify personality characteristics that might predict job performance and misconduct in the field. He found a combination of certain personality factors, measured by the Cattell 16 Personality Factor (16 PF) Questionnaire (Cattell, 1989), positively correlated with an increased risk of corruption including testimonial deception. Officers with extroverted-neurotic personalities in combination with an undisciplined self image were more likely to engage in corrupt practices than others (Girodo, 1992, 1991).

An extroverted-neurotic personality is a highly social, outgoing, and uninhibited person with a high level of anxiety. Fretful, emotional, with a short temper, the

person will demonstrate neurotic symptoms, psychosomatic complaints, and neurotic fatigue. Personalities with an undisciplined self image have poor impulse control, a carelessness of social rules, with little regard for social demands. The individual has poor self control, and is impetuous and impulsive in conduct rather than considered or careful (Cattell, 1989).

However, the suspect traits alone do not cause misconduct. Influences found within the work environment play a critical role. Only when officers with these particular characteristics interact with situational factors high in potential for misconduct does misconduct take place (Girodo, 1991).

The exact nature of the interaction is not clear. But Girodo suspects environmental influences facilitate the expression of otherwise dormant personality characteristics causing a personality change. When this occurs, officers are more likely to misrepresent evidence, engage in criminal activity, abuse drugs or alcohol, and experience disciplinary problems. The longer the exposure to negative situational factors, the more likely the misconduct (Girodo, 1997, 1992).

'Self image,' Girodo believes, appears to play a critical, perhaps controlling role in police integrity. Officers with an undisciplined self image, regardless of other personality traits, are more likely to engage in

corrupt practices when faced with appropriate environmental circumstances than those with a disciplined self image.

If Girodo is correct, officers with extroverted-neurotic personalities and an undisciplined self image are more likely than others to use testimonial deception in response to the conflict between socially approved police goals and the approved means to those goals. Police officers with undisciplined self images, regardless of other personality traits, run similar risks.

To test that possibility 221 participants completed the Cattell 16 Personality Factor Questionnaire (1989). Eighteen subjects demonstrated extroverted-neurotic personalities with an undisciplined self image. Fifty-two had personalities with none of the three characteristics and formed a control group. Using lambda analysis, the responses to "How often do you engage in testimonial deception?" for the extroverted-neurotic personalities were compared with the responses of the control group. Thirty nine percent of the experimental group used testimonial deception frequently or sometimes, while 61% did so rarely or never. Only 13% of the control group did so frequently or sometimes, and 87% did so rarely or never. The differences were significant at .05, with a lambda value of .06 (Table VII-1).

Table VII-1. Responses of extroverted-neurotic, undisciplined self image subjects to "How often do you engage in testimonial deception" compared with the responses of subjects not extroverted-neurotic, or low selfimage.

USE TD	PERSONALITIES	
	Extra/neurotic	Not extra/neurotic
Fre/sometimes	39%	13
Rarely/never	<u>61</u>	<u>87</u>
	100	100
	(18)	(52)

P ≤ .05

Lambda .06

The results support Girono's argument. Subjects with extroverted-neurotic personalities and undisciplined self image were more likely to engage in testimonial deception than others. But these findings are still inadequate. Only 18 of the subjects, less than 10% of those who admitted some use of testimonial deception, had the questioned personality characteristics. And of those, 61% reported they used it only rarely or not at all. What explains the behavior in the remaining 90%?

Girono's suggestion that officers with an undisciplined self image, regardless of other personality traits, were more likely to use testimonial deception than those with a disciplined self image was also tested. Sixty-eight

subjects had an undisciplined self image, one hundred and forty-three a disciplined one. Group responses to "How often do you engage in testimonial deception?" were compared using lambda analysis. Seventeen percent of the undisciplined group used testimonial deception frequently or sometimes, and 63% did so rarely or never. Ten percent of the self disciplined subjects reported they did so frequently or sometimes. Ninety percent rarely or never engaged in testimonial deception (Table VII-2). Response variations between the groups were not significant.

Table VII-2. The responses of undisciplined self image subjects to "How often do you engage in testimonial deception" compared with the responses of disciplined self image subjects.

USE TD	PERSONALITIES	
	Undisciplined self image	Disciplined self image
Fre/sometimes	17%	10
Rarely/never	83	90
	100	100
	(18)	(52)
P ≤ .13		
Lambda .00		

An undisciplined self image appears to have played little or no role in the participants' use of testimonial deception.

TESTIMONIAL DECEPTION AND SOCIAL COGNITIVE THEORYSocial Cognitive Theory

Albert Bandura (1996, 1977, 1967), in his Social Cognitive Theory, offers another explanation for police testimonial deception. He believes neither social structural nor psychological theories alone can adequately account for morality. Complex social behaviors like moral thinking and moral conduct involve a much more complicated process than simple learned responses to environmental influences or personal character and associated psychological processes. Such behavior results from the interplay of three factors: social structural forces; behavior or anticipated behavior; and a person's cognitive functions. In a process called reciprocal determinism, these mutually influence each other to determine actual behavior.

Three aspects of Bandura's argument must be considered in order to understand how otherwise morally responsible police officers come to engage in the clearly immoral and unethical practice of testimonial deception; 1) how moral behavior is learned; 2) how learned moral principles and rules influence behavior; and 3) how moral people come to engage in immoral behavior.

Moral learning

1) The roots of human behavior, according to Bandura (1998), lie in the social system. Society establishes behavioral standards for its members. These moral codes represent actions necessary for social living. Social structures effect them to guide, regulate, and organize human affairs (Bandura, 1998).

Individuals learn these behavioral norms in two ways. First, people realize some moral principles through socialization, their trial and error experiences reinforced by the social reactions of other people, and direct tuition. Secondly, and more important, moral standards are acquired vicariously, through observational learning in a phenomenon called modeling (Bandura, 1977).

Most moral behavior is learned during childhood and adolescence from exposure to behavior modeled by others. The concept of 'others' extends beyond the activities of real people to literature, academic experiences, and, of considerable importance, television and the media. By watching others individuals visualize different components of the modeled behavior including judgmental skills, information processing strategies, outcome potentials, the rules and standards of conduct, and the consequences of moral and immoral actions. These observations are stored as mental images and symbolic representations even though neither actual performance nor immediate reinforcement has

taken place. They remain dormant until the individual confronts appropriate internal or external stimuli (Bandura, 1977).

Stated simply, while some aspects of moral behavior are acquired through traditional methods of learning, Bandura believes the observations of the conduct of others primary to the development of moral reasoning.

The moral regulatory system

2) Moral standards and rules of thought about moral conduct form a network of guides, directives, and deterrents --- a cognitive framework for the central processing of information about the modeled behavior. This moral regulatory system allows self regulation of future behavior. Once established, it remains fairly consistent and stable, resistant to change (Bandura, 1996, 1977).

The moral self regulatory system serves as the 'workhorse' of personality. It controls behavior through three major cognitive subfunctions: self monitoring; self judgment; and self reaction (Bandura, 1996).

People constantly monitor their own behavior. When confronted with stimuli, they consider situational circumstances, think through different behavioral options, consider possible actions, and imagine potential outcomes for those actions. This self monitoring is the first step to control over one's conduct (Bandura, 1996).

They then evaluate their anticipated behaviors against their internalized moral standards --- self judgement. These socially defined standards represent behavioral goals to be achieved. Actions that satisfy them bring expectations of positive reinforcement, those that fail --- punishment. Reinforcements can be external, praise or chastisement for example or of greater consequence, internal self reward or self punishment (Bandura, 1996).

The individual's reaction to the evaluation process and to the expectancies associated with considered behaviors determines actual conduct. People do things that bring satisfaction and avoid things that do not. Morally correct reaction brings self reward and a sense of self worth. An immoral response brings self censure and feelings of failure, damaging self worth and activating self sanctions (Bandura, 1996). An individual's reaction to the anticipated consequences of his behavior --- self reward or self punishment --- regulates their conduct (Bandura, 1996).

If Bandura is correct men and women entering police service, like most other members of society, have learned moral behavior through socialization and modeling. They have established moral regulatory systems representative of at least the standards of behavior commonly found in society (Herbert, 1996; Delaney, 1988; Muir, 1977). Background checks, polygraph examinations, and similar screening procedures verify that they possess conventional concepts of

honesty, truthfulness, and respect for the law (Delattre, 1989).

On questions of honesty and truthfulness in legal matters the moral development of police officers evolves beyond that of the general population. Hunt & Manning (1994), Sterling (1977), Wilson (1974), Niederhoffer (1967), Skolnick (1967) and others have found the police academy process and the period of supervised apprenticeship known as field training involve considerable socialization and moral training. The academy requires new officers to master the legal mandates for honesty and truthfulness required in their official reports and testimony. And they learn the consequences for failing to meet those standards, including the loss of employment, public humiliation, even criminal prosecution (Slobogin, 1996; Manning & Hunt, 1994; Fisher, 1993). Field training experiences reinforce their understanding of and commitment to these principles (Hunt & Manning, 1994; McCambell, 1986; Kaminsky & Roberts, 1985).

Most police officers and their moral regulatory systems understand the immorality of testimonial deception, and the negative consequences for the behavior (Kramer, 1996; Hunt & Manning, 1994; McClure, 1984; Skolnick, 1975). They "recognize that the public and court officials disapprove of lying, and that if caught in a serious lie, they may be subject to either legal sanctions and/or departmental punishment" (Hunt & Manning, 1994, p. 156). When they

testify falsely they "may be able to justify deception on the basis of an alternative set of norms, [they are] still aware that courtroom lying violates the norms of the system they have sworn to uphold" (Skolnick, 1975, p. 177).

In the words of one veteran, "there's a fine line between police work and criminal activity. We stop a car and you know there's narcotics in the trunk, but you have no probable cause to arrest them or search the trunk. Legally and lawfully you shouldn't do a damned thing to that person ... But you go ahead and break into that trunk, you obtain drugs and you lie about it ... you say 'okay we got the drugs this time' and to your subconscious mind you'll say 'well it's for the good of the world and me and everybody in the community'. I did it because I didn't want the stuff distributed all over the place. Yeah, I did the right thing, even though it was the wrong thing.' You moralize it, but its still *wrong*" (McClure, 1984, p. 231).

Accordingly, when faced with appropriate environmental stimuli, i.e., arrest and prosecution reports, warrant affidavits, courtroom testimony, etc., police officers consider possible behavioral responses including testimonial deception. They evaluate their options against their moral standards, and make judgements about the moral appropriateness of specific actions. In this process they anticipate the consequences associated with each. Honest, truthful and legal conduct in reports and testimony promises

positive self reinforcement. Testimonial deception threatens severe consequences, activating self sanctions.

Because moral behavior provides personal satisfaction and avoids self punishment, most police officers should abstain from testimonial deception. Their moral regulatory mechanisms and those of the participants in this study should compel them to truthfulness.

But many officers do not react as expected. At least half the study's participants admitted some use of testimonial deception (Table V-18). And 68% knew other police officers who engage in the immoral practice (Table IV-4). If most police officers have moral regulatory systems reflective of the values commonly held in society, how then do some come to ignore these values to willingly choose immoral conduct and the self punishment it must surely bring?

Immoral conduct by moral individuals

3) Bandura (1996) thinks certain social circumstances and resulting social pressures can influence the moral regulatory system in ways that eliminate or deactivate its ability to self sanction and thus control the final outcome of the regulatory process, actual behavior. Self regulatory functions, relative to environmental conditions, do not act as a continuous internal check on behavior. They can be selectively deactivated or disengaged in response to social-

structural events. In these circumstances, immoral conduct can occur without a change in personal moral standards. Most immoral behavior results from such selective disengagement of self sanctions and not from some breakdown in the self regulatory system.

The most powerful and effective means of deactivating self sanction, 'moral justification,' is particularly relevant to police testimonial deception. Bandura (1996) finds it especially compelling when the social system ascribes a high social or moral purpose to an immoral act for the benefit of social order. The phenomenon has been well documented in studies of large scale atrocities and in laboratory settings (Bandura, 1996).

In the process of moral justification strong social-structural arguments for the necessity of an immoral behavior, or the social portrayal of immoral conduct as in the service of a highly valued social goal can bring about a moral redefinition of the wrongful act. Such pressures can cause the moral regulatory system to cognitively reconstruct and justify the questionable conduct. That which was socially harmful and immoral becomes socially necessary and moral. This change alters the actor's expectancies for the behavior. Threats of self punishment are eliminated, deactivating the moral regulatory system's self control function. Indeed, the redefined conduct now promises positive self reinforcement. People then act on the issue

because it is morally responsible to do so (Bandura, 1996). And the more powerful society's inducements for such changes, the greater the incentive to do as society demands (Bandura, 1977).

Bandura's theory suggests powerful social pressure for the necessity of testimonial deception in support of a highly valued social good --- a moral imperative for social order --- causes some police officers to cognitively change the nature and the effects of the immoral behavior. Testimonial deception becomes moral. Subsequently, whenever an officer considers behavioral responses to testimonial events, the moral regulatory system recognizes deceptive testimony as morally appropriate. Self sanction is not activated, and the behavior provides positive reinforcement.

Stated simply, some powerful social-structural command for social order makes testimonial deception necessary and morally appropriate compels some police officers to engage in the practice, and rewards them for doing so.

But does society make such a powerful demand for social order of the police? One that moral behavior cannot satisfy? One so important, yet so difficult to achieve, it leads some police officers to cognitively justify testimonial deception?

Social-structural influences to immoral behavior

Merton's (1968) explanation of human behavior in

institutional settings and its application to the circumstances of the police strongly suggests so. He believes all such behavior, moral and immoral, results from the interaction between two basic social-structural forces common to all social groups; the goals defined and reinforced by the society as legitimate objectives for social institutions; and the culturally approved means for achieving them. A coordinated social emphasis on goals and means ensures moral behavior. But under certain circumstances these same forces can coax individuals to immoral conduct.

Society and influential elements within the society define goals for all social institutions and the individuals working within them. These goals represent behaviors and behavioral outcomes deemed necessary for the well being of society and its members (Merton, 1968).

Defining goals, however, does not insure people will work to accomplish them. Society must provide motivation. To do so it makes goals moral imperatives, and reinforces them with a system of rewards and punishments. Goal fulfillment becomes a matter of morality, anything less 'immoral.' Society exerts pressure for goal satisfaction and rewards goal-oriented behavior (Merton, 1968).

Some goals, more important than others, merit greater social attention. The value of any goal is proportional to the perceived threat to society presented by failure to

realize that goal. The greater the threat, the more important the satisfaction of the corresponding goal becomes. As a goal's value increases its 'moralness' and society's moral pressure for it must increase. The degree of its reward or punishment must escalate as well. Otherwise, citizens and institutions will not respond appropriately to the particular need (Merton, 1968).

Society's goal for the police is the arrest and conviction of those factually guilty of crime (DEFENDANT'S GUILT) (McNamara, 1996; Slobogin, 1996; Hunt & Manning, 1995; Fisher, 1993; Barker & Carter, 1990; Orfield, 1989). Arrests and convictions protect society from the danger presented by crime, one of society's most urgent concerns (McNamara, 1997, 1996; Packer, 1968). The protection of personal safety and personal freedom and subsequently the future of society require social order. And social order requires the efficient control and elimination of crime (Packer, 1968).

The social importance of the police mission at any particular time is determined by the extent to which society fears crime at that time (Fear of Crime, 1998; Nelson et al, 1997; Violent and Irrational, 1996; Packer, 1968). And crime has been one of society's two most critical worries since the early 1960's (Violent and Irrational, 1996). As of 1994 it has ranked with economic issues as the number one perceived threat to social order (Burke, 1996).

While individual levels of fear may vary with socio-demographic characteristics, crime causes significant anxiety in all segments of society (Fear of Crime, 1998; Nelson et al., 1997; Russell, 1995). Many believe it overwhelms daily life (Violent and Irrational, 1996). National polls consistently demonstrate the widely held beliefs that crime is an uncontrollable social epidemic; that the crime rate grows worse each year; that criminals go unpunished; and police do little to alleviate the problem (Fear of Crime, 1998; Oliver & Blake-Armstrong, 1995; Russell, 1995; Whitaker, 1986). The fear of crime so preoccupies the nation, to quote Chief Justice Warren Burger, it "paralyzes American Society" (McNamara, 1996, p. 2).

The problem's social importance can be perhaps best understood by the attention it draws from politicians. Crime has been a critical election issue for 30 years. Every candidate in the country runs against it, the declaration of 'war on crime' a campaign standard (McNamara, 1997, 1996; Violent and Irrational, 1996; Burke, 1994). And war, the definitive threat to society's survival, generates the ultimate social moral imperative --- victory at any costs (McNamara, 1997, 1996; Barker, 1994).

The words of one seasoned Philadelphia police officer make the point "politicians would scream the loudest for the police to crack down on crime ... just get it done ... tell

me when you ever heard a politician say he'd get tough on the cops for violating the civil rights of drug dealers ... I mean cops everywhere keep being told they're in a war. You're told to win it. You're never told to win it by the book, because those telling you {politicians} know it can't be won by the book ... the pressure is to produce, to show activity, to get the collars. It's all about numbers, like the body count in Vietnam" (Kramer, 1997, p. 77).

Clearly, crime and its perceived threat to social order constitutes one of society's most powerful and compelling fears (Fear of Crime, 1998; McNamara, 1997; Kramer, 1997; Russell, 1995). The social duty of the police to arrest and convict those factually guilty of crime, therefore, must be one of society's most important and thus most moral goals⁴. Correspondingly, the responsibility of the police to meet that obligation draws tremendous social pressure.

But goals alone do not insure social order. The unregulated quest for social goals threatens personal freedom and individual security as well. Society must control the methods by which institutions and individuals pursue its objectives. It does so by defining the appropriate means to those ends. These form the acceptable

⁴ But not society's only moral imperative in response to the threat of crime. The widespread use of mandatory minimum sentences, the abolition of parole, the upsurge in new prison construction, the increased use of the death penalty, and the growth of the prison population to the largest per capita in the western world all represent moral social imperatives generated by the 'fear of crime'.

norms of moral behavior. Anything else is immoral (Merton, 1968).

The socially approved methods for the police are the rules of criminal procedure defined by the US Constitution and the US Supreme Court, i.e., the laws of evidence, arrest, search and seizure, etc. (LEGAL TECHNICALITIES) (Slobogin, 1996; Hunt & Manning, 1995; Fisher, 1993; Barker & Carter, 1990; Knockers, 1984; Skolnick, 1982). By design, these legal technicalities restrain police in their efforts to arrest and convict (McNamara, 1997; Slobogin, 1996; Rothwax, 1995; Skolnick, 1982; Packer, 1968). They prohibit testimonial deception in all circumstances (Slobogin, 1996; Hunt & Manning, 1995; Fisher, 1996).

Members of society learn the social goal for the police, the importance of their mission, and the morally proper methods to it in childhood and adolescence through socialization (Merton, 1968), and according to Bandura (1977), by observing the behavior of others. All form part of the moral regulatory system. That system then motivates and controls police officers to act morally --- to satisfy society's need for the arrest and conviction of those factually guilty of crime using only methods approved for that endeavor, the rules of criminal procedure. Moral behavior, the achievement of society's goals through the socially approved means, secures social order (Merton,

1968). But a problem common to the relationship between goals and means may inhibit the ability of the police to do so.

Society's means frequently derive from the 'value laden sentiments' of controlling members of society with little consideration for their effectiveness or efficiency. Often unrealistic and impractical, they make achievement of the corresponding goal difficult, often impossible. More efficient means like deceptive testimony are frequently available but lack social approval. Absent such authorization, they remain immoral and may not normally be employed (Merton, 1968).

Many in society, including some in the media, political leaders, members of the business community, scholars, prosecutors, judges, private citizens, and police officers find the rules of criminal procedure ineffective, "ill conceived or overly constraining" (Skolnick, 1982, p. 42), "unrealistic and criminally inspired" (Kleinig, 1987, p. 7). These legal technicalities make it difficult for the police to produce enough arrests and convictions to protect society. Some believe they actually threaten social order by regularly freeing those factually guilty of criminal conduct (McNamara, 1997; Slobogin, 1996; Rothwax, 1995; Dershowitz, 1994, 1983; Skolnick, 1982; Packer, 1968).

Ineffective means, however, do not relieve the police or other institutions from their social duties. As long as

some goal remains unsatisfied society will continuously intensify its pressure on individuals and institutions in an effort to sufficiently motivate them to goal acquisition. In these circumstances, the demands for goal satisfaction take precedent over those for proscribed behavior. This differential emphasis on goals over means weakens the pressure for conformity to the required standards of behavior. Only results matter, and any methods to the desired end might be considered (Merton, 1968).

Society exerts such a differential emphasis on the police for arrests and convictions (McNamara, 1996; Slobogin, 1996; Rothwax, 1995; Cloud, 1994; Skolnick & Fife, 1993; Dershowitz, 1983; Skolnick, 1982; Cohen, 1972; Packer, 1968; LaFave, 1964). It expects the police to carry out their mission without too much concern about legal restrictions (Cohen, 1972; Parker, 1968; LaFave, 1964). "The public wants criminals behind bars without having to learn too much about how they got there" (Slobogin, 1996, p. 1053). A Philadelphia district attorney, responsible to correct more than 2000 arrests and prosecutions based on the deceptive testimony of a handful of police officers, makes the point, "In the history of these kinds of scandals ... cops always go back to acting as they always have ... cause the only pressure they feel is the pressure to get results, to get the job done" (Kramer, 1997, p. 78).

Any such social-structural imbalance impacts significantly on individuals working within institutions. Unable to meet society's moral expectations by adherence to the approved means, they experience a sense of frustration, anger, and tension. Some adapt or adjust to this socially induced psychological 'strain' through 'innovation.' They look for more efficient means to success. Doing so fulfills society's demands, reduces social stress on individuals and institutions, and eliminates the accompanying personal strain. And it can even bring considerable social and personal reward (Merton, 1968).

Not all innovation, however, is immoral. Some people create new methods to society's goals that win social acceptance and approval. But others call on the clearly immoral methods that lie outside the range of socially acceptable behavior (Merton, 1968).

According to Merton (1968) then, testimonial deception is an innovative effort by some police officers to fulfill society's moral goal for the arrests and convictions of those factually guilty of crime in support of social control. Such innovation is necessary because society, motivated by an intense fear of crime, continues to insist the police control crime despite the ineffectiveness of the socially authorized means for doing so, the rules of criminal procedure and similar legal technicalities. This clash encourages some officers to find more efficient ways

to meet society's expectations. Some use testimonial deception --- false or misrepresenting statements or intentional omissions of fact, either in writing or in speech, to further arrests, or seizures of evidence, or criminal prosecutions. While immoral, 'testilying' is an extremely efficient tool for bringing factually guilty people to justice. "In anti-social activities, what is viewed as self regulatory failure by societal agents is viewed as proficient occupational pursuit by transgressors" (Bandura 1996, p. 7).

Unfortunately, as Merton (1968) pointed out, this argument has a major flaw. While his theory demonstrates how disjointed social energies might generate pressure for immorality, the process by which moral individuals embrace immoral conduct remains a mystery. Bandura's (1977) moral justification, however, explains that process and resolves Merton's dilemma.

Social-structural conflict and moral justification

Merton's social-structural conflict produces the powerful social demand for immoral behavior described by Bandura. The differential social importance of arrests and convictions over the inadequate rules of criminal procedure argues for the necessity of immoral behavior --- testimonial deception --- in the service of the highly valued moral imperative for social order. These structural tensions

generate sufficient pressure to motivate some police officers to innovate, to choose immoral methods to goal acquisition. The cognitive process by which such innovation takes place is moral justification. Their moral regulatory systems redefine testimonial deception. For them, the practice becomes moral behavior, a proper and appropriate response to testimonial stimuli.

"Many morally ... dedicated cops" argue for the morality of testimonial deception (Vulliver, 1988, p. 118). "Many honest and corrupt cops alike stubbornly defend as correct ... falsification [testimonial deception] to serve what they perceive to be 'legitimate' law enforcement ends ... in their view, regardless of the legality of the arrest, the defendant is in fact guilty and ought to be arrested" (Commission Report, 1993, p. 38) ... What breeds this tolerance is a deep-rooted perception among many officers of all ranks that nothing is really wrong with compromising facts to fight crime in the real world. Simply put, despite the devastating consequences of police falsifications, there is persistent belief among many officers that it is necessary and justified ... doing God's work" (Commission Report, 1993, p. 41). Many see 'testilying' as a legitimate and proper law enforcement tool for bringing persons they believe are guilty to justice (Commission Report, 1994).

But before the Merton-Bandura collaboration can be said to explain police testimonial deception one additional issue

must be addressed. Can this concept account for the variations found in police testimonial conduct?

The arrests and convictions - rules of criminal procedure conflict impacts all police officers, regardless of jurisdiction or working environment. Yet not all react by 'testilying' (Slobogin, 1996; Skolnick, 1996, 1982; Hunt and Manning, 1994; Commission Report, 1993; Dershowitz, 1983; Skolnick, 1982). In this study, half the participants reported they never engaged in the practice (Table IV-4), and 32% said they knew no police officers who did (Table IV-4).

These results are consistent with Merton's (1968) findings. Most people in these circumstances, he believes, do not adopt immoral behavior. The majority conform their conduct to their social obligations. They believe in the socially defined goals and continue to pursue them by moral means. A few others realize the goals can never be obtained through the ineffective means. But unable to act immorally, they ritualistically adhere to the socially approved methods for the pleasure such behavior offers. And even among those who innovate, some develop new techniques that gain social acceptance. Only a minority act immorally.

Bandura (1996) credits this diversity to a cognitive function called 'self efficacy,' an individual's belief in his ability, by his own actions, to accomplish a particular goal through the appropriate moral behavior.

The moral regulatory system, in response to some particular social stimuli, might identify the appropriate moral conduct. However, it cannot guarantee the individual will actually initiate the correct action. Nor can it insure he will work hard or long to carry things to the desired outcome. People may believe certain actions will bring about certain results, but whether they engage in the behavior depends on a self assessment of their ability to do so successfully. That judgement determines if they will act at all; how hard or long they persist in the behavior; and how they deal with obstacles. Such appraisals generate motivations and emotions that can help or hinder personal effort. People, confident their actions will be effective, are more inspired to act, to persevere, to prosper. Those who think they have little or no chance of success lack the incentive to try. Self assessment plays a critical role in the regulation of behavior (Bandura, 1998).

People high in self efficacy, Merton's conformists, have confidence in their ability to accomplish the desired goal through the appropriate behaviors. Motivated to implement the recommendations of the moral regulatory system, they persist in them energetically. They seize on opportunities provided by the social structure. When faced with resistance or failure they rally and redouble their efforts, calling on different strategies or skills to make things work. If social constraints make their task

impossible, they create new, socially acceptable methods to circumvent structural impediments (Bandura, 1998).

Conversely, those with low self efficacy lack that conviction and energy. Behavioral tasks appear much more difficult than they actually may be. Easily discouraged, they quickly convince themselves that personal or social inadequacies make their efforts futile. They are hesitant to initiate appropriate action, ignore the enabling mechanisms offered by the system, and hastily abandon their moral efforts. Their continued inability to be successful, to meet society's expectations, leads them to bouts of anxiety, depression, and psychological strain --- Merton's 'anomie'. They turn to more efficient immoral methods to realize their social obligations (Bandura, 1998).

Police officers high in self efficacy will be honest and truthful in their reports and testimony, despite the incompatibility of the goal and means set for the police and the subsequent social push to testimonial deception. Those with low self efficacy will not. When faced with testimonial circumstances they may recognize the correct behavioral response. But because that course of action seems difficult or impossible, these officers doubt their ability to be effective. Increasing social pressure for results motivates them to innovation and testimonial deception. In the process, their moral regulatory systems cognitively justify the behavior. The now moral

'testilying,' allows them to satisfy their social obligations without the negative personal consequences of immorality.

As scholars have speculated, and as many of the participants themselves reported (Table V-1), some police officers use testimonial deception to satisfy society's demands for the arrest and conviction of those the police know are factually guilty of crime (DEFENDANTS GUILT) because those officers believe the rules of criminal procedure (LEGAL TECHNICALITIES) make that task difficult or impossible, and thus interfere with the protection of society from the threat crime presents to social order. These police officers do so because they lack self efficacy, confidence in their ability to achieve that goal through those means. Instead they respond to these social structure pressures through innovation. They create new means to society's goals, methods that lack social approval --- testimonial deception. Through the process of 'moral justification,' they redefine such behaviors as morally appropriate. Their moral regulatory systems then recognize testimonial deception as moral and self sanctions are deactivated. And the energy propelling the entire phenomenon is society's intense fear of crime.

OBSERVATIONS

Two secondary findings support this conclusion; a) the importance of IMPOSSIBLE LEGAL STANDARDS as a justification for testimonial deception; and b) the relationship between DEFENDANT LIES and testimonial deception.

a) Participants rated the importance of a number of causes or justifications, identified in the literature, for their own use of testimonial deception (Personal Use Scale), and for the use of testimonial deception by police officers they knew (Police Officers' Scale). Both scales included IMPOSSIBLE LEGAL STANDARDS, "the legal standards for establishing guilt are frequently too high and impossible to meet."

Society establishes the levels of proof required before the police can arrest or convict those factually guilty of crime. These govern the goal oriented behavior of the police. Like LEGAL TECHNICALITIES, many people find these standards too high and unrealistic. They interfere with the ability of the police to produce sufficient arrests and convictions to ensure social order (Slobogin, 1996; Dershowitz, 1994, 1982; Orfield, 1989; Kleinig, 1987; Skolnick, 1982; Packer, 1968).

If the Merton-Bandura argument explains testimonial

deception then IMPOSSIBLE LEGAL STANDARDS, like any of society's means that hinder arrests and convictions, should motivate officers low in self efficacy to testimonial deception. Subjects in this study agreed. They rated IMPOSSIBLE LEGAL STANDARDS third in importance after DEFENDANT'S GUILT and LEGAL TECHNICALITIES on the Personal Use Scale, and fifth on the Police Officers' Scale (Table V-1).

b) The Police Officers' Scale also asked participants if the belief that most defendants will lie to avoid conviction (DEFENDANT LIES) influenced the use of testimonial deception by police officers they knew. DEFENDANT LIES, unlike LEGAL TECHNICALITIES or IMPOSSIBLE LEGAL STANDARDS, does not fall within the social prescribed means to the police goal. Nonetheless, such behavior by those the police know are factually guilty of crime substantially hampers their ability to meet society's demand for arrests and convictions. Participants ranked it the third most important reason or justification for testimonial deception by other police officers⁵ (Table V-1).

This finding suggests police officers low in self efficacy might use and cognitively justify immoral behavior in response to any obstacle, socially mandated or not, that

⁵ DEFENDANT LIES was not included in the Personal Use Scale.

stands between them and their social obligations. If true, other forms of police misconduct might arise from the same dynamics. Excessive force, illegal arrests, interrogation abuses, civil rights violations, and more might be innovative efforts of low self efficacy officers to fulfill society's demand for the highly valued goal of social order despite the perceived inadequacy of the means they must use.

CHAPTER VIII

DISCUSSION

LIMITATIONS

While this study offers some insights into police testimonial deception, the results must be considered in light of several limitations. Traditionally, most efforts to study the internal dynamics of the police have been hampered by the closed and secretive nature of the police subculture. Police officers and their departments, suspicious of outsiders, tend to aggressively shun external examination and adhere to a code of silence about such matters (Katz, 1990; Bouza, 1990; Brown, 1981; Skolnick, 1975). And inquiries into official misconduct or deviance engender staunch resistance (Hunt & Manning, 1995; Oldfield, 1989; Punch, 1985; Skolnick, 1975). Because testimonial deception threatens severe criminal, civil, and administrative penalties, it is among the most closely guarded and hidden of police secrets (Hunt & Manning, 1995; Virg, 1989; Punch, 1985; Van Maanen, 1978). This complication presented three research problems.

First, the police regularly refuse to participate in studies of their misconduct. And those who occasionally do

are often less than truthful (Intrium Report, 1993; Oldfield, 1989). The unwillingness of police agencies to cooperate with this study made a valid random sample difficult to obtain.

Secondly, perhaps for this very reason, no national studies of police testimonial deception have been done, and little preliminary or exploratory data about the subject exists (Hunt & Manning, 1995; Terry, 1995). Consequently, deficiencies in the information base necessarily restricted the choice of methodology to a descriptive research design (Maxfield & Babbie, 1998; Hagan, 1991).

Finally, because the deviant nature of the subject material potentially threatened or embarrassed those participants willing to admit it, most under-reported their use of testimonial deception. This reaction was expected. Most people, when asked about their own misconduct, want to be seen by others as a 'good person.' This natural tendency compels them to under-report their socially undesirable behavior, while they over-report the socially desirable (Maxfield & Babbie, 1998; Simon & Burstein, 1985; Isacc & Michael, 1981).

These three limitations prohibit the generalization of study findings to the larger population. Nonetheless, the use of a descriptive research methodology with an unbiased

sample generally reflective of the police did generate information of scientific value. It identified some of the characteristics, conditions, and practices associated with the relatively unknown phenomenon. In doing so, details have been generated about the forms of testimonial deception officers use; the frequency; and the reasons and rationales the police believe motivate them to engage in such practices. The study also identified systemic conditions that give rise to deceptive testimony. These results provide valuable clues, foci, and foundations necessary for more exacting investigations of this unexplored and highly circumscribed subject.

DISCUSSION OF THE HYPOTHESES

Substantiated Hypotheses

Six of the study's twelve hypotheses were substantiated, H-1, H-2, H-7, H-8, H-11, and H-12.

Participants from large police departments reported more deceptive police testimony than those from small police agencies as expected (H-1). And officers who perceived their jurisdictions as ones with high crime rates acknowledged more testimonial deception than officers from areas with low crime (H-2).

At least three circumstances may explain these

outcomes. First, larger police agencies and those with higher crime figures experience more arrests and prosecutions than small or low-crime departments. This simple difference in volume provides more opportunity for testimonial deception to occur. Secondly, the circumstances this study suggests give rise to deceptive police testimony --- the fear of crime and the corresponding social demand for arrests and convictions --- are more prevalent in communities with higher crime rates, and those that require larger police departments (Meithe, 1995; Russell, 1995). And they would naturally experience more testimonial deception. Finally, a number of researchers have found that corrupt and improper police practices occur less frequently in smaller police organizations because such agencies experience greater community supervision (Moore, Trojanowitz, & Kelly, 1988). Misconduct, like deceptive testimony, is more readily discovered, and thus less likely to take place.

Hypothesis #7 was also confirmed. Subjects who believed the legal system restricted police effectiveness admitted more testimonial deception than those who did not (H-7). This outcome is consistent with the Merton-Bandura thesis put forth in this study. Society exerts an intense pressure on the police for the arrest and conviction of those factually guilty of crime. But some police officers lack confidence in their ability to satisfy that demand.

They believe the procedures mandated by the legal system make it difficult or impossible for them to make enough arrests or convictions to meet society's expectations. Some of these officers turn to testimonial deception. Subjects in this study who believed the legal system restricted their effectiveness reported more testimonial deception than their colleagues.

The participants also reported they were more likely to use deceptive testimony when the guilt of the defendant was factually clear (H-8). As the Merton-Bandura argument explains, 'factual guilt' acts as the catalyst to the police testimonial deception process. Society does not demand indiscriminate arrests and convictions. Rather, it pressures the police for the arrest and conviction of those whose socially threatening criminal conduct is certain. Only the arrest of the factually guilty will insure social order (Packer, 1968). Absent factual guilt, society has no interest in an arrest or a conviction, and exerts no such pressure. Accordingly, participants reported they were more likely to use deceptive testimony when the guilt of the defendant was factually clear (H-8).

Although the possibility of a link between plea bargaining and testimonial deception has not received much attention in the literature, the participants reported that it did by affirming hypothesis #11. 'Where a case is likely to be plea bargained, police officers were more likely to

engage in testimonial deception (H-11).’ Plea bargaining, like testimonial deception, provides an effective and innovative method of convicting the factually guilty, despite the limitations of criminal procedure.

More than 90% of all felony prosecutions, and an even greater percentage of misdemeanor cases, are resolved through negotiated pleas (Inciardi, 1996; Newman, 1994). Actual courtroom testimony in misdemeanor cases is rare, and usually limited to preliminary procedures in felonies (Fisher, 1993). This process relies heavily on the information police supply in their reports (Fisher, 1993). In most cases, they constitute the principal factual bases for both the prosecutor and the defense attorney during their negotiations. No courtroom tests of the evidence, the witnesses, or the procedures used by the police to establish probable guilt take place. And the defendant waives his right to do so as a condition of his plea (Fisher, 1993).

A strong police case for factual guilt on paper increases a defense attorney’s interest in plea bargaining, while it decreases the likelihood that the bases of that case will be challenged in open court. Testimonial deception that leads to a negotiated plea insures the quick and uncomplicated conviction of the factually guilty. This combination, testimonial deception and plea bargaining, satisfies the social demand for arrests and convictions much

more efficiently than testimonial deception alone.

Those participants who demonstrated an extroverted-neurotic personality with an undisciplined self image engaged in more testimonial deception than subjects who do not have this combination of personality traits (H-12). Michel Girodo's (1997) work on corruption among drug undercover agents helps explain this result.

Girodo believes officers with these personality traits are more likely to behave immorally when confronted with environmental circumstances conducive to corruption. External events, such as a differential social pressure for arrests and convictions, activate these otherwise dormant personality traits. They then influence some police officers to improper conduct --- in this case to testimonial deception.

This finding, however, is not conclusive. Only about 10% of those subjects, 18 officers, who admitted some use of testimonial deception had the suspect personality characteristics. Two testing difficulties explain the problem: a) the cumbersome psychological testing instrument and process: and b) the difficulties in measuring a specific psychological trait with a general personality inventory test.

Both the psychological instrument and its administration proved unwieldy, and skewed the findings. The 16 PF contained 187 questions. In most cases it took 45

minutes or longer to finish. Many host agencies were unable to provide the necessary time, substantially reducing the number of subjects who completed the test and the testimonial deception questionnaire. That number was further diminished when some participants failed to answer one or more questions. Incomplete tests could not be scored. Accordingly, the actual number of participants with the suspect personality traits could not be determined.

Fatigue may have contributed to the questionable results as well. The 16 PF was administered immediately after the subjects had spent 30 to 45 minutes finishing the testimonial deception questionnaire. The total time involved might have created a fatigue factor. If so, some participants may have simply answered questions with little or no thought to their choices, obscuring their actually personality properties.

Secondly, the use of general personality assessment instruments like the 16 PF may be inadequate to the measurement of specific personality characteristics. Bandura (1998) believes a person's cognitive functions, such as self-control or self-efficacy, are not generally applicable to all human endeavors. Rather, they exist only in certain arenas, and can only be assessed in a specific behavioral context. Such determinations in testimonial circumstances require an instrument and a process designed

for that purpose. Moreover, abridging the 16 PF for only those question pertinent to testimonial deception would have jeopardized the validity of the instrument's data. Hence, no manipulation of the test in the interests of time or subject fatigue was viable.

Unsubstantiated Hypotheses

Participants did not support six hypotheses, H-3, H-4, H-5, H-6, H-9, and H-10. They rejected the arguments that police officers assigned to investigative duties (H-3), or to narcotics enforcement duties (H-5) engaged in more police testimonial deception than patrol officers. The results may reflect the limitations of the testimonial deception questionnaire rather than a clear finding. Determining what constitutes an investigative or narcotics enforcement assignment, and the length of those assignments, proved more difficult than expected. Personal interpretations and jurisdictional variations created confusion among the participants. The testimonial deception questionnaire did not provide sufficient clarity in these areas. It is possible that a more detailed series of questions on these subjects might have produced different results, but that seems unlikely in view of other results.

Likewise, the assertion that officers would report more testimonial deception if they believed their arrest statistics were important to their regular departmental

evaluations was not supported (H-4). And no correlation was found between the number of arrests an officer made in an average year and his use of deceptive testimony (H-6). Again, the limitations of the testimonial deception questionnaire may have failed to provide enough clarity and detail to adequately assess these factors. In addition, many of the subjects were supervisory or administrative personnel, well removed from arrest activities. Information about their arrests, therefore, would tend to be less accurate than those of officers active in field operations.

McNamara (1996), Fisher (1993), Orfield (1987), Kleinig (1982), Rubinstein (1973) and many other observers of the police believe the general acceptance of the 'number of arrests' as the primary measure of police efficiency plays an important role in the phenomenon. And the Merton-Bandura explanation of testimonial deception points to the social pressure for arrests as critical to the behavior. The question of a relationship between arrest activity and testimonial deception remains somewhat unanswered and may require more careful examination.

The participants soundly rebuffed the idea that tolerance of police testimonial deception by prosecutors (H-10), or by judges (H-11) played any part in their use of deceptive testimony. Because tolerance in these circumstances is most often demonstrated passively, in silence or in feigned ignorance, participants may not have

had an appreciation of its influence on their behavior. Conversely, this finding may indicate that neither judges nor prosecutors play a significant part in the deception process. According to the Merton-Bandura thesis, the the differential social pressure for arrests and convictions motivates police officers low in self-efficacy to engage in testimonial misconduct. If so, the role of prosecutors and judges may be largely immaterial to the participants and to their behavior.

POLICY IMPLICATIONS

This study's major policy recommendation stems from the realization that any social, organizational, or individual pressure for arrests and convictions without a corresponding insistence that those arrests and convictions be accomplished through scrupulous adherence to the rules of criminal procedure may motivate low self-efficacy police officers to testimonial deception. Put simply, deceptive police testimony threatens society and social order just as bribery, racism, abuse of authority, or other forms of police corruption do. It requires a similar response, an unwavering and consistent commitment by police organizations to the highest standards of testimonial integrity. As with

any anti-corruption effort, the burden for doing so rests primarily with police leaders. They must insure that honest and truthful testimony becomes and remains an organizational value of the highest priority. A number of specific recommendations for the selection, training, and promotion of personnel, and in operational practices can assist in that end.

The routine screening of police applicants for evidence of drug or alcohol abuse, criminal conduct, or other undesirable characteristics should extend to assessments of their ability to deal with the conflict between social pressures for productivity and the realities of the criminal justice process. This may necessitate the development of instruments, like a test of self-efficacy, that can reliably make such determinations.

The regular performance evaluations of police officers must consider their respect for criminal procedure and their testimonial conduct in the same way they score an officer's productivity. The testimonial behavior of subordinates should be reflected in the evaluations of supervisors, mid-level managers, and administrators. Similarly, the suitability of officers or supervisors for assignment to high volume arrest duties, or for promotion, or for selection as police academy instructors, field training

officers, or investigators should be determined in part by their performance in this critical area.

Recruit training programs must create a sensitivity to the problem and a commitment to the solutions. More importantly, new officers need effective skills and strategies to deal with situations and circumstances that tempt deceptive testimony. And that training process must develop in them the self-confidence necessary to do so successfully. Field training officers must refine these qualities in practical settings. Newly assigned detectives, narcotics enforcement officers, supervisors, etc., need similar training, appropriate to their duties. Periodic re-training of field officers of all ranks will help reinforce these values.

The selection of personnel for units where social pressures for crime control traditionally create special risks, like crime suppression or tactical narcotics enforcement teams, and the supervision of such units require special attention. Only individuals who have consistently demonstrated the highest standards in their arrests and in their testimony should be considered. Close supervision and regular auditing of these units will help counter demands for 'results at any cost.'

Departments must systematically monitor field officers

and field operations to protect against formal and informal practices that might encourage productivity at the expense of procedure. The urgency associated with heinous crimes, for example, can generate tremendous, often irrational, pressure for testimonial deception. Agencies committed to testimonial integrity will recognize the risks inherent in these events, and, when they take place, build appropriate safeguards into their investigative and testimonial response.

Award programs based primarily on production often foster illicit conduct. The criteria for such honors should carefully balance productivity and procedure, while adequately acknowledging both.

Field supervisors must diligently scrutinize subordinates' arrest reports, warrant applications, and courtroom testimony for boiler plate language, inconsistencies, incongruities, or other indications of testimonial deception. Questionable behavior must be aggressively investigated, and disciplined when appropriate. All complaints of testimonial misconduct should receive similar attention.

Finally and most importantly, police administrators, politicians, community leaders, and the public must recognize that incidents of police testimonial deception,

like geographical fault lines, indicate significant weaknesses in the underlying structure. The organizational structure of any police department is largely determined by society's expectations for that department. An agency's particular organizational design must provide for the efficient satisfaction of its socially defined missions and goals. Otherwise, the community will insist upon changes until their demands are met.

Disproportionate calls for arrests over criminal procedure, therefore, not only compel some officers to testimonial deception, they produce organizational arrangements conducive to, even supportive of, the conduct. Any solution to the problem then requires more than the training and supervision of individual police officers, or the prosecution of offending personnel. Police leaders and communities must recognize the relationship between these social demands, the police organization's internal structure, and deceptive testimony. This awareness and a proactive program to limit or control for inappropriate social pressures on the police organization will help prevent such behavior. Correspondingly, every deceptive testimonial event necessitates a thorough and complete departmental review to identify any structural components that might have contributed to the incident.

This study advances a second policy initiative. Just as the roots of testimonial deception do not lie entirely with police officers and police organizations, neither do the solutions. If, as this research suggests, society's fear of crime generates the pressure underlying police testimonial deception, then any police efforts that reduce that fear will reduce that effect.

This idea is neither new nor unique. Robert Trojanowitz (1988) found society's fear of crime as harmful to social order as crime itself. The solution, he argued, was "instead of managing crime to control the fear, {the police} should manage the fear" (Moore & Trojanowitz, 188, p 3). Community policing may offer an important venue. Programs which keep the public's fear of crime realistic, while providing opportunities for citizens to channel their fear into meaningful anti-crime activities, will lessen the pressure for improper police testimonial behavior. The number of such incidents will likely decline.

SUGGESTIONS FOR FUTURE RESEARCH

Police testimonial deception has not been the subject of much research, and almost nothing is known about the practice. Yet this study suggests the phenomenon is much

more common, and thus a more significant social problem than previously realized. It highlights the need to bring a variety of methodologies, quantitative and qualitative, to the examination of the subject in four specific areas.

First, it is especially important that future research explore the forms, frequencies, practices, and justifications common to police testimonial deception with large and scientifically valid samples. Such studies will allow for broader, more exacting findings that can be generalized to the larger population.

Secondly, a greater understanding of the cognitive processes involved in testimonial deception is necessary. Bandura's (1998) concept of self-efficacy seems a promising area of inquiry. The possibility that police officers high in self-efficacy will resist pressures for testimonial deception, while those with low self-efficacy will not, needs to be explored in specific testimonial circumstances. And the identification of interventions to strengthen the self-efficacy of police recruits and experienced officers will prove particularly valuable.

This research failed to find evidence of a relationship between testimonial deception and specific police duties such as narcotics enforcement or criminal investigation. However, McNamara (1997), Skolnick (1983),

and other scholars strongly believe such a relationship exists. Considerable anecdotal information supports their argument (Terry, 1995). That possibility requires further investigation.

Finally, this work found a correlation between a subject's perception of their local crime rate and the use of testimonial deception. Those who believed the rate was high reported more testimonial deception. This finding contributed to the study's conclusion that society's fear of crime generates pressure for crime control over adherence for the rules of justice, and thus fuels testimonial deception. The mechanisms by which the fear of crime affects the behavior and the testimony of individual police officers should be the focus of further study.

These and related lines of inquiry will eventually provide the information necessary to understand police testimonial deception; information critical to the prevention of such conduct, and the protection of society from the threat it presents.

APPENDICES**Appendix A****TO ALL PARTICIPATING POLICE OFFICERS:**

This questionnaire is part of a study being conducted with the assistance of The Criminal Justice Center of John Jay College of Criminal Justice, City University of New York. The purpose of the questionnaire is to obtain your opinions, feelings and attitudes about several issues concerning police officers.

YOUR PARTICIPATION in this project and **YOUR ANSWERS** to the questionnaire will be kept **STRICTLY CONFIDENTIAL**. Neither your name nor the name of your department, nor other identifiers are called for or recorded. Your participation is completely **ANONYMOUS**. No member of your organization will see the completed questionnaire. The information provided by you and other participating police officers will be collected and presented in the form of statistical summaries only. This questionnaire is concerned with "testimonial deception".

In recent years many commentators and writers, including many police officers and former police officers, have speculated that police are motivated and encouraged to use testimonial deception in the course of their duties. And the existence of police testimonial deception is assumed to be a matter of general practice.

For the purpose of this questionnaire "testimonial deception" is the use of false or misrepresenting statements or the intentional omissions of fact, either in writing or in speech, to further an arrest, or the seizure of evidence, or a criminal prosecution.

This study is interested in those conditions, circumstances or factors that may influence or motivate officers to use testimonial deception, and in how often officers engage in deceptive testimonial practices.

Please answer all questions on the form itself. Once you have completed the process, place all materials in the large manila envelope provided. Seal it and place it in one of the boxes located at the front of the room as you leave.

Thank you for your contribution to this project.

Appendix B

QUESTIONNAIRE

1. In your experience, how common is the use of testimonial deception among police officers in your department (check one)?

Very common Somewhat common Rare Non-existent

2. How often do the police officers you know personally engage testimonial deception (check one)?

Frequently Sometimes Rarely Never

3. On a scale of 0 (rare) to 10 (very common), how common are the following practices among the police officers YOU KNOW (circle one number for each item)?

a. Officers REORDER OR REORGANIZE FACTS OR EXISTING CIRCUMSTANCES in their REPORTS to strengthen their cases.

(rare) 0 1 2 3 4 5 6 7 8 9 10 (very common)

b. Officers CREATE OR ADD FICTITIOUS INFORMATION to their REPORTS to strengthen their case.

(rare) 0 1 2 3 4 5 6 7 8 9 10 (very common)

c. Officers intentionally OMIT FACTS from their REPORTS that would tend to weaken their case.

(rare) 0 1 2 3 4 5 6 7 8 9 10 (very common)

4. Which one of the circumstances listed above in question #3 do you believe is most common among the police officers you know (circle one)?

a. _____ b. _____ c. _____

5. On a scale of 0 (rare) to 10 (very common), how common are the following practices among the police officers YOU KNOW (circle one number for each item)?

a. Officers REORDER OR REORGANIZE FACTS OR EXISTING CIRCUMSTANCES in their TESTIMONY to strengthen their case.

(rare) 0 1 2 3 4 5 6 7 8 9 10 (very common)

b. Officers CREATE OR ADD FICTITIOUS INFORMATION to their TESTIMONY to strengthen their case.

(rare) 0 1 2 3 4 5 6 7 8 9 10 (very common)

c. Officers intentionally OMIT FACTS from their TESTIMONY that would tend to weaken their case.

(rare) 0 1 2 3 4 5 6 7 8 9 10 (very common)

6. Which one of the circumstances listed above in question #5 do you believe is most common among the police officers you know (circle one)?

a. _____ b. _____ c. _____

7. On a scale of 0 (not important) to 10 (extremely important), please indicate HOW MUCH EACH OF THE FACTORS LISTED BELOW INFLUENCES THE USE OF TESTIMONIAL DECEPTION by police officers (circle one number for each item).

a. Public demands that the police convict criminals.

(not important) 0 1 2 3 4 5 6 7 8 9 10 (extremely important)

b. Technicalities in the legal system that overly restrict police officers to the point that it is impossible for them to perform their duties effectively.

0 1 2 3 4 5 6 7 8 9 10

c. The knowledge that most cases will be plea bargained.

0 1 2 3 4 5 6 7 8 9 10

d. The police department's demand for arrest productivity.

0 1 2 3 4 5 6 7 8 9 10

e. Knowing that an officer's arrest statistics will influence his/her chances for promotion or special assignment.

0 1 2 3 4 5 6 7 8 9 10

8. On a scale of 0 (not important) to 10 (extremely important), please indicate HOW MUCH EACH OF THE FACTORS LISTED BELOW INFLUENCES THE USE OF TESTIMONIAL DECEPTION by police officers (circle one number for each item).

f. Pressure from peers for arrest productivity.

0 1 2 3 4 5 6 7 8 9 10

g. An officer's desire to win a conviction after investing the time and energy to make the case.

0 1 2 3 4 5 6 7 8 9 10

h. The threat of civil suit when arrests are not successfully prosecuted, or charges are dismissed.

0 1 2 3 4 5 6 7 8 9 10

i. The belief that the defendant is guilty of the crime charged or a similar crime.

0 1 2 3 4 5 6 7 8 9 10

j. The legal standards for establishing guilt are frequently too high and impossible to meet.

0 1 2 3 4 5 6 7 8 9 10

k. The belief that most defendants will lie to avoid conviction.

0 1 2 3 4 5 6 7 8 9 10

l. Society benefits when criminals are convicted.

0 1 2 3 4 5 6 7 8 9 10

m. Pressure from supervisors for arrest productivity.

0 1 2 3 4 5 6 7 8 9 10

n. The need to punish the guilty.

0 1 2 3 4 5 6 7 8 9 10

9. From the items listed in question #7 and #8 identify, by letter, the three (3) circumstances that you believe are the most important influences in the use of police testimonial deception.

a. _____ b. _____ c. _____

10. Please indicate whether you AGREE OR DISAGREE, and how strongly, with the following statements.

a. Prosecutors pressure police officers to use testimonial deception to win convictions (check one).

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Strongly Agree	Agree	No Idea	Disagree	Strongly Disagree

b. Judges tolerate, even encourage, police testimonial deception to insure convictions of defendants they believe are guilty (check one).

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Strongly Agree	Agree	No Idea	Disagree	Strongly Disagree

c. Prosecutors expect police officers to alter their testimony to meet the requirements of legal technicalities (check one).

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Strongly Agree	Agree	No Idea	Disagree	Strongly Disagree

d. The effects of the Exclusionary Rule influence police officers to use testimonial deception (check one).

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Strongly Agree	Agree	Disagree	Strongly Disagree

e. Technicalities in the legal system overly restrict police, making it impossible for them to do their job effectively.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Strongly Agree	Agree	Disagree	Strongly Disagree

11. How often do you engage in testimonial deception (check one)?

Frequently Sometimes Occasionally Rarely Never

12. How often do you REORDER OR REORGANIZE EXISTING FACTS OR CIRCUMSTANCES from your REPORTS to strengthen a case.

Frequently Sometimes Occasionally Rarely Never

13. How often do you CREATE OR ADD FICTITIOUS information to your reports to strengthen a case (check one)?

Frequently Sometimes Occasionally Rarely Never

14. How often do you intentionally OMIT FACTS from your REPORTS that would tend to weaken a case (check one)?

Frequently Sometimes Occasionally Rarely Never

15. How often do you REORDER OR REORGANIZE EXISTING FACTS OR CIRCUMSTANCES in your TESTIMONY to strengthen a case.

Frequently Sometimes Occasionally Rarely Never

16. How often do you CREATE OR ADD FICTITIOUS information to your TESTIMONY to strengthen a case (check one)?

Frequently Sometimes Occasionally Rarely Never

17. How often do you intentionally OMIT FACTS from your TESTIMONY that would tend to weaken a case (check one)?

Frequently Sometimes Occasionally Rarely Never

18. On a scale of 10 (very influential) to 0 (no influence), HOW MUCH DOES EACH OF THE FOLLOWING CIRCUMSTANCES INFLUENCE YOUR OWN TESTIMONIAL DECEPTION (circle one number for each item listed)?

a. Pressure from prosecutors.

(Very influential) 10 9 8 7 6 5 4 3 2 1 0 (no influence)

b. Pressure from your superiors for productivity.

(Very influential) 10 9 8 7 6 5 4 3 2 1 0 (no influence)

c. Your reputation among your peers.

(Very influential) 10 9 8 7 6 5 4 3 2 1 0 (no influence)

d. Your belief that the defendant is guilty.

(Very influential) 10 9 8 7 6 5 4 3 2 1 0 (no influence)

e. Your interest in promotion.

(Very influential) 10 9 8 7 6 5 4 3 2 1 0 (no influence)

19. On a scale of 10 (very influential) to 0 (no influence), HOW MUCH DOES EACH OF THE FOLLOWING CIRCUMSTANCES INFLUENCE YOUR OWN TESTIMONIAL DECEPTION (circle one number for each item listed)?

f. The department's demand for arrest activities.

(Very influential) 10 9 8 7 6 5 4 3 2 1 0 (no influence)

g. Concern about being sued.

(Very influential) 10 9 8 7 6 5 4 3 2 1 0 (no influence)

h. Responsibility to see that the guilty are punished.

(Very influential) 10 9 8 7 6 5 4 3 2 1 0 (no influence)

I. The legal standards for establishing guilt are too high and impossible to meet.

(Very influential) 10 9 8 7 6 5 4 3 2 1 0 (no influence)

j. Technicalities in the legal system overly restrict police, making it impossible for them to do their job effectively.

(Very influential) 10 9 8 7 6 5 4 3 2 1 0 (no influence)

k. Public demands that the police convict criminals.

(Very influential) 10 9 8 7 6 5 4 3 2 1 0 (no influence)

c. Instead of excluding evidence obtained in violation of the defendant's rights, responsible officers should be prosecuted for civil rights violations, but the evidence should be admissible against the defendant.

Strongly Agree Agree Disagree Strongly Disagree

d. The current practice of excluding evidence obtained in violation of a defendant's rights should be continued.

Strongly Agree Agree Disagree Strongly Disagree

25. How many years have you served in investigative assignments?

_____ years.

26. If you have ever served in a NARCOTICS ENFORCEMENT or NARCOTICS INVESTIGATIVE position as your primary duty, please list the total number of MONTHS spent in that type of assignment. (If you have never served in a narcotics enforcement position please enter the number zero, [0].)

_____ Months

27. Please indicate how the supervisors YOU KNOW react to police testimonial deception by indicating whether you AGREE OR DISAGREE with the following statements.

a. Most supervisors discourage the use of testimonial deception by police officers (check one).

Strongly Agree Agree Disagree Strongly Disagree

b. Most supervisors ignore the use of testimonial deception by police officers (check one).

Strongly Agree Agree Disagree Strongly Disagree

c. Most supervisors allow the use of testimonial deception by police officers (check one).

Strongly Agree Agree Disagree Strongly Disagree

d. Most supervisors encourage the use of testimonial deception by police officers (check one).

Strongly Agree Agree Disagree Strongly Disagree

28. Approximately how many sworn officers, of all ranks, are employed in your department?

29. How often does your department do formal written evaluations of police officers (check one)?

yearly Twice a year More than twice a year Never

30. In your department, how important is a patrol officer's arrest statistics to his regular departmental evaluations (check one)?

Very Important Important Somewhat Important Not Important

31. What is your gender (circle one)?

female male

32. On a scale of 0 to 10, how important do you personally feel each of the following activities is to fulfilling your duties as a police officer (Circle one number for each item)?

a. Preventing serious crimes

(very important) 10 9 8 7 6 5 4 3 2 1 0 (no importance)

b. Meeting with neighborhood groups

10 9 8 7 6 5 4 3 2 1 0

c. Parking and traffic enforcement

10 9 8 7 6 5 4 3 2 1 0

d. Obtaining search warrants

10 9 8 7 6 5 4 3 2 1 0

e. Settling interpersonal disputes

10 9 8 7 6 5 4 3 2 1 0

f. Investigating serious crimes

10 9 8 7 6 5 4 3 2 1 0

g. Serving the needs of abused or neglected children

10 9 8 7 6 5 4 3 2 1 0

h. Providing emergency first aid

10 9 8 7 6 5 4 3 2 1 0

I. Obtaining search warrants

10 9 8 7 6 5 4 3 2 1 0

j. Giving directions

10 9 8 7 6 5 4 3 2 1 0

k. Preparing good reports

10 9 8 7 6 5 4 3 2 1 0

l. Enforcing narcotics laws

10 9 8 7 6 5 4 3 2 1 0

33. When working as a patrol officer how many felony arrests would you make in an average year (circle one)?

a. more than 15

b. 10 to 14

c. 5 to 9

d. 1 to 4

e. none

34. How many of those arrests usually resulted in conviction, including cases plea bargained (circle one)?

- a. 75% to 100%
- b. 50% to 74%
- c. 25% to 49%
- d. less than 25%
- e. none

35. In how many of these cases would you use some form of testimonial deception (circle one)?

- a. 75% to 100%
- b. 50% to 74%
- c. 25% to 49%
- d. less than 25%
- e. none
- f. I do not know.

36. How committed is your department to community service activities (check one)?

- | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Very
committed | Somewhat
committed | Slightly
committed | Not
committed |

37. In general, how satisfied are you working as a police officer (check one)?

- | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Very
satisfied | Somewhat
satisfied | Somewhat
dissatisfied | Very
dissatisfied |

38. Do you expect to stay in your current department until you retire or do you expect to leave before retirement (check one)?

- | | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Definitely
stay | Probably
stay | Undecided | Probably
leave | Definitely
leave |

39. What is your current assignment (circle one)?

- a. patrol officer
- b. investigator/detective
- c. administrative/training officer
- d. supervisor (corporal/sergeant)
- e. mid manager (lieutenant/captain)
- f. executive office

40. How satisfied are you with your current assignment?

Very Satisfied Somewhat Satisfied Somewhat dissatisfied Very dissatisfied

41. How would you describe the crime rate in your jurisdiction (check one)?

very low crime low crime moderate crime high crime

42. How would you describe the demographic characteristics of your jurisdiction (check one)?

rural suburban urban

43. What is your current rank (circle one)?

a. Police officer d. lieutenant
 b. detective e. captain
 c. sergeant f. above the rank of captain

44. How old are you (circle one)?

A. 20 to 25
 B. 26 to 30
 C. 31 to 35
 D. 36 to 40
 E. 41 to 50
 F. over 50

45. What was the last grade you completed (circle one)?

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 more
 grade school high school college grad school

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