

What follows are excerpts from Chapter 4, “Perjury and Falsifying Documents” (pages 36-43; emphasis added) of: *The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, Commission Report. July 1994.*

Perjury And Falsifying Documents

"Oh what a tangled web we weave when first we practice to deceive." – Sir Walter Scott

....

A police officer's word is a pillar of our criminal justice system. On the word of a police officer alone a grand jury may indict, a trial jury convict, and a judge pass sentence. The challenge we face in combating police falsifications is not only to prevent the underlying wrongdoing that spawns police falsifications, but to eliminate the tolerance the Department and the criminal justice system exhibit about police who fail to tell the truth.

Our investigation into this form of corruption focused on a number of manifestations of the problem, including: testimonial perjury, as when an officer testifies falsely under oath before a grand jury or at a court proceeding; documentary perjury, as when an officer swears falsely under oath in an affidavit or criminal complaint; and falsification of police records, as when an officer falsifies the facts and circumstances of an arrest in police reports. We will collectively refer to these various kinds of wrongdoings as "falsification."....

Our investigation indicated [that falsification] ... is probably the most common form of police corruption facing the criminal justice system, particularly in connection with arrests for possession of narcotics and guns. Several officers also told us that the practice of police falsification in connection with such arrests is so common in certain precincts that it has spawned its own word: "testilying."

...Officers know that the operation of the criminal justice system itself usually protects them from having to commit testimonial perjury before a grand jury or at trial. The vast majority of charges for narcotics or weapons possession crimes result in pleas without the necessity of grand jury or trial testimony....

Unlike other patterns of police corruption, greed is often not the primary motive behind police falsification. While the desire for overtime pay and career advancement sometimes encourage falsification ... [police officers also] commit falsification to serve what they perceive to be "legitimate" law enforcement ends – and for ends that many honest and corrupt officers alike stubbornly defend as correct. In their view, regardless of the legality of the arrest, the defendant is in fact guilty and ought to be arrested....

To explain how and why they were present in a particular premises or came to arrest a particular person, *officers manufactured facts*. For example, to justify an unlawful raid on a drug den where money or drugs were stolen, a common tale was that the officers entered the location in hot pursuit or on information from an unidentified informant. *To justify unlawfully searching and arresting a street dealer ... a common tale was [that] the person dropped a bag and ran as the officers approached....*

Officers reported a litany of manufactured tales. For example, when officers unlawfully stop and search a vehicle because they believe it contains drugs or guns, officers will falsely claim in police reports and under oath that the car ran a red light (or committed some other traffic violation) and that they subsequently saw contraband in the car in plain view. To conceal an unlawful search of an individual who officers believe is carrying drugs or a gun, they will falsely assert that they saw a bulge in the person's pocket or saw drugs and money changing hands.

\To justify unlawfully entering an apartment where officers believe narcotics or cash can be found, they pretend to have information from an unidentified civilian informant or claim they saw the drugs in plain view... To arrest people they suspect are guilty of dealing drugs, they falsely assert that the defendants had drugs in their possession when, in fact, the drugs were found elsewhere where the officers had no lawful right to be....

Admitting the true facts of the arrest could lead to dismissal of the criminal charges and possibly to Departmental charges against the arresting officer. To many officers, this is a perversion of justice. In short, some officers falsify their arrest reports and, if necessary, their testimony to insure that the charges stick and that they are protected.

As with other forms of police corruption, *falsifications are most prevalent in high-crime precincts* where opportunities for narcotics and gun arrests abound. In such precincts, the prevalence of open criminal activity is high and the utility of an illegal search or arrest is perceived as great. Officers – often correctly – believe that if they search a particular person, or enter an apartment without a warrant, they will find drugs or guns. Frustrated by what they perceive to be unrealistic rules of law and by their own inability to stem the crime in their precincts through legal means, officers take the law into their own hands. And police falsification is the result.... *We found that such motivations to falsify are often present in narcotics enforcement units, especially to justify unlawful searches or arrests...*

The Commission also found that an officer's motives for purported legitimate-ends-falsifications often served as mere pretext for personal gain. *Unlawful arrests, for example, were sometimes conveniently timed to generate overtime pay for the arresting officer who typically took hours beyond his regular tour of duty to process the arrest.* "Collars-for-Dollars" is a practice widely known to officers, police supervisors, and prosecutors alike. In fact, a confidential report prepared by a prosecutor's office involving a pattern of police falsifications states that of the falsified arrests they investigated, "almost every arrest generated overtime pay

for the officer who lied about observations.” *Besides overtime pay, high arrest numbers are often a factor considered for coveted assignments for patrol officers and supervisors alike.*

In one precinct we investigated, a cooperating officer told us of a regular pattern of "trading collars." The purpose of this practice was to accumulate overtime pay for the officers involved. In this scheme, the police officer who actually arrested the defendant would pass off the arrest to a colleague who was not involved or even present at the time of the arrest. Trading collars was done to maximize the overtime pay because the regular day off of the officer taking the arrest coincided with the likeliest date for a required court appearance. The officer who took the arrest would get all the details from the actual arresting officer, fill out the arrest papers, interview with the District Attorney, and, if necessary, testify to the circumstances of the arrest. This, despite the fact that the law requires the arresting officer to do this work. Officers perpetrated this scheme with the knowledge, approval, and in the presence of their sergeants. Another scheme to generate overtime was to have several officers and even supervisors state falsely that they recovered evidence incidental to an arrest. In this way, they insured that they would have to appear at the District Attorney's Office or before a grand jury on their day off and thus improperly receive overtime pay....

Regardless of the motives behind police falsifications, what is particularly troublesome about this practice is that it is widely tolerated by corrupt and honest officers alike, as well as their supervisors. Corrupt and honest officers told us that their supervisors knew or should have known about falsified versions of searches and arrests and never questioned them. In testimony before the Commission, Kevin Hembury stated that one of his supervisors joked about how an arrest was manufactured:

Question: Now you just said there was a supervisor or a lieutenant who joked about [police falsifications] in your presence?

Hembury: That's correct, sir. Scenarios were, were you going to say (a) that you observed what appeared to be a drug transaction; (b) you observed a bulge in defendant's waistband; or (c) you were informed by a male black, unidentified at this time, that at that location there were drug sales.

Question: So, in other words, what the lieutenant was telling you is: here's your choice of false predicates for these arrests?

Hembury: That's correct. Pick which one you're going to use.

.... What breeds this tolerance is a deep-rooted perception among many officers of all ranks within the Department 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 a persistent belief among many officers that it is necessary and justified, even if unlawful. As one dedicated officer put it, police officers often view falsification as, to use his words, "doing

God's work" – doing whatever it takes to get a suspected criminal off the streets. This attitude is so entrenched, especially in high-crime precincts, that when investigators confronted one recently arrested officer with evidence of perjury, he asked in disbelief, "What's wrong with that? They're guilty."

Officers and their immediate supervisors are not the only culprits in tolerating falsifications. When officers genuinely believe that nothing is wrong with fabricating the basis of an arrest, a search, or other police action and that civil rights are merely an obstacle to aggressive law enforcement, the Department's top commanders must share the blame.

Indeed, we found that for years the Department was content to address allegations of perjury on a case-by-case basis, rather than pursuing the potential for a broader based investigation. *For example, supervisors were rarely, if ever, held accountable for the falsifications of their subordinates. We are not aware of a single instance in which a supervisor or commander has been sanctioned for permitting perjury or falsification on their watch.*

Nor do we know of a single, self-initiated Internal Affairs Division investigation into patterns of police perjury and falsification. The Commission's analysis of Internal Affairs' corruption categories – designed to quantify different kinds of police wrongdoing – revealed no separate category for perjury or falsification of records. Unlike other corruption categories, Internal Affairs over the last decade had no record of the number of falsification allegations brought against officers throughout the Department or in a particular precinct or command.

There is no evidence that anyone in the Department's chain of command had focused on eliminating this practice, including past Police Commissioners and Internal Affairs chiefs, who apparently turned a blind eye to unlawful practices that were purportedly committed to fight crime and increase arrest statistics.

Members of the law enforcement community, and particularly defense attorneys, told us that this same tolerance is sometimes exhibited among prosecutors. Indeed, several former and current prosecutors acknowledged – "off the record" – that perjury and falsifications are serious problems in law enforcement that, though not condoned, are ignored.

The form this tolerance takes, however, is subtle... a story that sounds suspicious to the trained ear; patterns of coincidences that are possible, but highly unlikely; inconsistencies that could be explained, but sound doubtful. In short, the tolerance the criminal justice system exhibits takes the form of a lesser level of scrutiny when it comes to police officers' testimony. Fewer questions are asked; weaker explanations are accepted.

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AFTERWORD: THE NEGLECTED MOLLEN COMMISSION'S FINDING ON PERJURY, MANUFACTURED FACTS, AND FALSIFIED REPORTS

In 1992, in response to major police scandals, New York Mayor David Dinkins created a blue-ribbon commission to investigate police corruption. Headed by the eminent jurist Milton Mollen, the body was formally titled: *The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department*. In July 1994, after spending two years conducting an extraordinary investigation of corruption within the New York Police Department, the Commission issued its lengthy and detailed report.

Although the Mollen Commission Report centered on the most flagrant and notorious forms of police corruption – officers who stole money and drugs, and then sometimes resold what they had stolen – it devoted one chapter to the more mundane but far more common forms of police corruption. The Commission called this form of corruption “falsification” and “perjury.” The Commission Report focused on the innumerable cases when narcotics and patrol police and their supervisors routinely fabricated and falsified arrest reports and other police and court documents and testimony in order to make arrests.

Since 1994 – and contrary to the hopes of the Commission – many routine forms of fabricated police accounts have not diminished but increased. In particular, false police reports and testimony have become central to the arrest, jailing and prosecution of hundreds of thousands of mainly young black and Latino men simply for possessing small amounts of marijuana. And they are also central to the many times larger number of stop and frisks. All of which makes the Mollen report’s findings about police falsification utterly relevant.

The Mollen Commission Report insisted that the source of police falsification and perjury lay in the NYPD’s policing culture that was nurtured and sustained by its supervisors and top commanders.

Since 1994 the NYPD appears to have reduced some of the more unusual and egregious forms of corruption (such as gangs of rogue officers robbing people). At the same time, the NYPD has even further expanded and institutionalized many of the more common and routine forms of police falsification and fabrication. This falsification includes the widespread use of ‘drowsy’ arrests and similarly techniques – especially by narcotics squads and patrol police making arrests for marijuana possession, trespassing, disorderly conduct, and other misdemeanors.

All of this the Mollen Report described and warned about in 1994, long before New York City began making the scandalous 600,000 Stop & Frisks and 50,000 marijuana possession arrests a year, mainly of black and Latino teenagers and young men.

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www.marijuana-arrests.com/docs/Mollen-Excerpts-Falsification.pdf in May 2012*