THE FAILURE TO BREACH THE BLUE WALL OF SILENCE: THE CIRCLING OF THE WAGONS TO PROTECT POLICE PERJURY

I. Introduction 211
II. Historical Background 219
A. Police Brutality 219
B. Police Perjury 221
III. Federal Statutes 223
A. 42 U.S.C. § 1983 224
B. 42 U.S.C. § 14141 226
IV. Factors Affecting the Officer-Civilian Relationship 228
A. Trust 228
B. The Police Officer's Perspective 232
V. Recommendations 235
A. The Admissibility of Evidence of Bias and Motive to Lie 235
B. The Application of 42 U.S.C. § 14141 236
C. An Overall "Overhaul" of the Police Culture 237
VI. Conclusion 240

> I've handled more than 100 investigations of police misconduct over eleven years, and I can only recall one time when an officer came forward to testify against another cop.[1]

> The code of silence, adhered to by any officer who intends to remain on the job, provides a virtually impenetrable layer of protection for violence-prone officers.[2]

> Officers are more likely to get struck by lightning than prosecuted for perjury.[3]

I. INTRODUCTION

The societal pressure of living up to one's peers is enormous, especially during the early stages of adolescence.[4] For teenagers, the pres-

1. Josh Getlin, *NYPD Brutality Testimony Spotlights Code of Silence Law Enforcement*, L.A. TIMES, May 22, 1999, at A1, *available in* 1999 WL 2160863 (citing New York attorney Joel Berger's belief that police officers are wary of testifying against other officers).

2. Carol A. Watson, *Complaints Meet a Wall of Silence*, L.A. TIMES, March 10, 1991, at M5. *See also* Alison L. Patton, Note, *The Endless Cycle of Abuse: Why 42 U.S.C. § 1983 is Ineffective in Deterring Police Brutality*, 44 HASTINGS L.J. 753, 763 n.59 (1993).

3. Ruben Castaneda, *Police Officer Perjury Not Rare, Observers Say; Indictment May Be a First in Pr. George's*, THE WASHINGTON POST, Feb. 17, 1999, at B1, *available in* 1999 WL 2200043.

4. This pressure among officers is called the Blue Wall of Silence, or the Code of Silence. Other terms include the following: the "blue curtain," Patton, *supra* note 2, at 763; the "brotherhood of lies," *Serpico; Pattern of Lies Lingers*, LAS VEGAS REV. J., Oct. 3, 1993, at 9A; and the code of the "blue fraternity," REPORT OF THE COMMISSION TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE ANTI-CORRUPTION PROCEDURES OF THE POLICE DEPARTMENT

sures to drink, to smoke and to have sex are numerous and at times overwhelming. However, peer pressure does not exist merely during puberty, it persists at all stages in life and in every profession. For example, in medical malpractice cases, physicians are notorious for refusing to testify as witnesses against their colleagues.[5] Likewise, many lawyers find that suing a fellow attorney can put one's career in an uncompromising position.

Nowhere, however, is peer pressure more subject to debate and discussion than in the area of law enforcement.[6] The heated nature of the debate is due, in part, to the recent conviction of New York City police officer Justin Volpe[7] for the sadistic acts committed against Haitian immigrant Abner Louima.[8] While investigating the Louima case,

---

(July 7, 1994) [hereinafter Mollen Commission Report] (cited in Gabriel J. Chin & Scott C. Wells, *The "Blue Wall of Silence" as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. PITT. L. REV. 233, 270 n.15 (1998). Joseph D. McNamara, a former police chief of the Kansas City Police Department who is currently writing a book entitled *Gangster Cops: The Hidden Cost of America's War on Drugs*, believes that a code of silence "exists in the White House, among students, doctors, lawyers, business executives and other groups." Joseph D. McNamara, *Perspective on Police: When Cops Become the Gangsters—The War on Drugs has Spawned an Ominous Form of Corruption*, L.A. TIMES, Sept. 21, 1999, at B7, *available in* 1999 WL 26177997.

5. A recent well-publicized medical malpractice suit illustrates the reluctance that physicians demonstrate in testifying against each other. The suit involved Reggie Lewis, a Boston Celtics basketball star, who died in 1993 after collapsing during a playoff game. Karen Hsu, *Doctors Eye Lewis Case with Mixed Emotions*, THE BOSTON GLOBE, May 17, 1999, at B1, *available in* 1999 WL 6062396. Lewis' cardiologist, Dr. Gilbert Mudge, was accused by his widow of failing to correctly diagnose Lewis' heart condition. *Id.* While several physicians testified on both sides, all agreed that "[a]ny medical malpractice suit chills physicians. . . . [a]bsolutely no physician wants to see another one sued." *Id.* at B2.

6. *See* ALAN M. DERSHOWITZ, POLICE PERJURY? "I'M SHOCKED!," *in* THE ABUSE EXCUSE 233 (1994) (noting that "recent disclosures about rampant police perjury cannot possibly come as any surprise" to those participating in the legal system); Morgan Cloud, *Judges, "Testilying," and the Constitution*, 69 S. CAL. L. REV. 1341, 1346-47 (1996) (stating that reports recognizing police falsification in cities such as Philadelphia, Los Angeles, Atlanta, Detroit and Minneapolis are evidence that police perjury "is a national problem and has been for decades"); Myron W. Orfield, Jr., *Deterrence, Perjury, and the Heater Factor: An Exclusionary Rule in the Chicago Criminal Courts*, 63 U. COLO. L. REV. 75, 96 (1992) (stating that perjury "unquestionably occurs in Chicago"); Martin A. Schwartz, *Admissibility of Investigatory Report in § 1983 Civil Rights Actions - A User's Manual*, 79 MARQ. L. REV. 453, 454 (1996) ("From coast to coast, commissions and internal affairs units are being employed to investigate allegations of law enforcement misconduct and corruption."); Maura Dolan, *Jury System is Held in Low Regard by Most*, L.A. TIMES, Sept. 22, 1994, at A1 (citing a poll of Los Angeles County residents, 40 percent of whom believe "police officers commonly lie on the witness stand").

7. Ironically, Robert Volpe, Justin Volpe's father, is a retired New York detective. James Barron, *A Father Finds the Charges Against His Son Hard to Believe*, N.Y. TIMES, Aug. 15, 1997, at B1, *available in* 1997 WL 7999429. Robert Volpe was the New York Police Department's specialist in valuable art thefts and, in the 1970's, was the only detective in the nation who solely investigated art-related thefts. *Id.*

8. On August 9, 1997, Abner Louima was arrested after an altercation outside a Brooklyn nightclub. Barron, *supra* note 7, at B1. Louima was beaten in a police car on the way to the 70th Precinct station. John Kifner, *Nurse Says Some Hospital Supervisors Tried To Cover Up Facts in Police Beating*, N.Y. TIMES, Aug. 26, 1997, at B1, *available in* 1997 WL 8001223. Once there, Volpe took Louima into a restroom, and then forced a toilet plunger handle-first into his rectum and then into his mouth. Merrill Goozner, *NYC Cut in Crime Has a Brutish Side*, CHI. TRIB., Aug. 16, 1997, at A1, *available in* 1997 WL 3578749. As a result, Louima suffered a torn rectum, a lacerated bladder and broken teeth. Patt Morrison, *Deja Vu All Over Again*, L.A. TIMES, Aug. 29, 1997, at B2, *available in* 1997 WL 2242317; Goozner, *supra*, at A1.

After a lengthy investigation, Volpe admitted to committing the horrific acts. Predictably,

authorities uncovered the disturbing fact that many other officers in the 70th Precinct refused to cooperate with the inquiry, and those that did comply only did so after being threatened with criminal charges.[9]

The Blue Wall of Silence[10] is legendary among law enforcement officers and is arguably the strongest form of peer pressure.[11] Because of

---

Volpe "stayed true to traditional police omerta, declining to identify the other officer who held Louima down while Volpe wielded the broomstick." Editorial, *We Shall See*, 156 N.J. L.J. 26 (1999). The author opined that Volpe's "cop machismo" would hopefully provide "a comfort to him these next 30 years" and also cited Volpe's apology to his family and lack of apology to Louima. *Id.* Both Volpe and Charles Schwartz, who was convicted of holding Louima down during the incident, had previously been the subject of civilian complaints. Tom Hays, *Vicious Attack Stains City's Improved Image*, HOUSTON CHRON., Aug. 16, 1997, at A3, *available in* 1997 WL 13056952. In addition, two other officers were acquitted of beating Louima in the police car, while another officer was found innocent of covering up the case. Josh Getlin, *Cop Convicted, 3 Cleared in N.Y. Brutality Case*, L.A. TIMES, June 9, 1999, at A1, *available in* 1999 WL 2166469.

While the officers in this case were criminally charged with several violations, including 18 U.S.C. § 241 and § 242, this Note will focus specifically on civil liability under 42 U.S.C. § 1983 and § 14141.

9. Two officers, Rolando Aleman and Francisco Rosario, were later indicted on "federal charges of lying to authorities" who were investigating the Louima brutality incident. *2 N.Y. Officers Indicted in Beating Case*, L.A. TIMES, June 22, 1999, at A4, *available in* 1999 WL 2170694. The two officers were accused of repeatedly lying to investigators in describing what they witnessed at the 70th Precinct on the night of Louima's torture. *Id.*

10. The Blue Wall of Silence, or the Code of Silence, is "an unwritten rule and custom that police will not testify against a fellow officer and that police are expected to help in any cover-up of illegal action." David Rudovsky, *Police Abuse: Can the Violence Be Contained?*, 27 HARV. C.R.-C.L. L. REV. 465, 481 n.60 (1992). A litany of court opinions nationwide have helped to establish the existence of the code of silence. *See* Brandon v. Allen, 645 F. Supp. 1261, 1266-67 (W.D. Tenn. 1986) (establishing that a Tennessee city was liable for the code of silence that facilitated abusive behavior in the local police department); Sledd v. Lindsay, 102 F.3d 282, 288-89 (7th Cir. 1996) (alleging that officers inflicted injury upon the claimant because they knew that the code of silence would protect them from liability); Mason v. Stock, 955 F. Supp. 1293, 1313 - 14 (D. Kan. 1997) (stating that an officer's "testifying to less than the whole truth" constituted obeying the code of silence).

11. *See* Watson, *supra* note 2, at M5 (cited in Patton, *supra* note 2, at 766 n.59)(stating that the officers who beat Rodney King obviously "felt no threat of exposure from [those] who stood by and watched").

On March 3, 1991, Rodney King was beaten by officers Laurence M. Powell, Timothy Wind and Theodore Briseno, while Sgt. Stacey Koon supervised. Laurie L. Levenson, *The Future of State and Federal Civil Rights Prosecutions: The Lessons of the Rodney King Trial*, 41 U.C.L.A. L. REV. 509, 516 (1994). After leading officers on a high-speed chase through Los Angeles, King stopped his vehicle and started dancing around in what Sgt. Koon later termed a "Mandingo sexual encounter." *See* Richard A. Serrano, *Koon Pens Blunt Book About Life in LAPD*, L.A. TIMES, May 16, 1992, at B1. While "Mandingo" is the name of a tribe in West Africa, "the word has come to mean a male slave 'stud' used for breeding other slaves." Susan Seager, *Judge Edified, Unswayed About Racial Reference*, L.A. DAILY J., Mar. 29, 1993, at 2 (cited in Levenson, *supra*, at 518 n.36).

After "King eventually lay down on the ground," the three officers began to handcuff him, but were met with some resistance. Levenson, *supra*, at 518-19. It was then that Sgt. Koon decided to use a taser gun, firing two darts which immediately sent King to the ground. *Id.* at 519.

As will be explained later, George Holliday, a civilian living in the Foothills section of Los Angeles where the incident took place, captured the King incident on videotape. *Id.* The videotape showed that King was struck over fifty-three times and was kicked seven times. *Id.* at 516. The defendants admitted at trial that when King would move around on the ground, the officers would strike him repeatedly, trying to break his bones. *Id.* at 520. Interestingly, approximately twenty other police officers stood around with arms folded observing the beating, doing nothing. *Id.*

On April 29, 1992, the four officers involved in the brutal assault were acquitted of using excessive force by a practically all-white jury in a suburb of Los Angeles. Richard A. Serrano, *All 4 Acquitted in King Beating: Verdict Stirs Outrage*, L.A. TIMES, Apr. 30, 1992, at A1, *available in* 1992 WL 2920406. The verdict shocked a large majority of police supervisors and officers throughout

the Blue Wall of Silence, police brutality and police perjury have been, and continue to be, protected and facilitated by the police culture.[12] Moreover, the media's concern over the use of excessive force in the shooting deaths of Amadou Diallo[13] and Tyisha Miller[14] can be linked to

---

the country, who called the verdict "appalling." Mark Platte, *Firebomb Hits S.D. Store, Office: Police Dismayed by King Verdict*, L.A. TIMES, Apr. 30, 1992, at B1, *available in* 1992 WL 2920127.

12. DAVID H. BAYLEY, POLICE BRUTALITY ABROAD, *in* POLICE VIOLENCE 273 (William A. Geller & Hans Toch eds., 1996). Several countries have also expressed difficulty in dealing with increasing incidents of police brutality. *Id.* In England, for example, citizens have complained about the unjustified use of force during arrest. *Id.* at 276. In Australia, Aboriginals are treated brutally in comparison to the rest of the nation's population and, in fact, account for a disproportionate number of deaths while in custody. *Id.* at 274-75. Japanese law enforcement officials have repeatedly been accused of applying torture to suspects in custody, while in Brazil, the media refers to officers as "Pistoleiros" because of the high number of police shootings. *Id.* at 274.

13. On February 4, 1999, 22-year-old Amadou Diallo, a street vendor from New Guinea, was shot nineteen times by officers in the elite Special Crimes Unit of New York City. *New York Officers Charged with Murder: Four white policemen plead innocent in shooting death of unarmed immigrant; Slaying has inflamed racial tensions in city*, L.A. TIMES, April 1, 1999, at A11, *available in* 1999 WL 2144728. Kenneth Boss, Sean Carroll, Edward McMellon and Richard Murphy were allegedly investigating a serial rapist in the area when they fired 41 shots at an unarmed Diallo. *Id.* The four officers were later charged with, and pled not guilty to, second degree murder in the attack, which triggered a highly publicized civil rights rally against policy brutality. Michelle Gotthelf and Joe Beaird, *Thousands Rally over NYPD Shooting; Organizers Predict Start of New Civil Rights Movement*, (visited February 11, 2000) <http//www.apbonline.com/majorcases/diallo/stories/1999/04/15/rally0415_01.html>. Protesters participating in the rally included former New York City Mayor David Dinkins, the Reverend Jesse Jackson and actors Harry Belafonte and Susan Sarandon. *Id.* Several of the demonstrators were arrested, but the Manhattan District Attorney later dropped all charges. *Id.*

The trial of the four police officers was scheduled for January 3, 2000. Laura Italiano, *Judge Lets Charges Stand Against 4 Diallo-Slay Cops*, N.Y. POST, Sept. 30, 1999, at 12, *available in* 1999 WL 27651775. However, the trial date was inevitably postponed because of the decision to move the trial to Albany, New York. Laura Italiano, *Judges Move Diallo Trial Upstate*, N.Y. POST, Dec. 17, 1999, at 4, *available in* 1999 WL 27659078. Because the five-judge panel consists of five white Caucasian males, one of whom is linked to a defense attorney, one New York writer states "[t]he aroma of influence, favoritism and cronyism is unmistakable." Jack Newfield, *Something About Diallo Switch Just Smells Rotten*, N.Y. POST, Dec. 20, 1999, at 6, *available in* 1999 WL 27659191. The move to the predominantly white Albany County has been likened to the Rodney King trial and labeled by critics as "the Simi Valley strategy." Josh Getlin, *Cop Trial's Move Roils New York Law*, L.A. TIMES, Dec. 29, 1999, at A1, *available in* 1999 WL 26209545. While the Bronx, the sight of the killing, is "30% Black, 48% Latino and 18.6% White," Albany is "9.2% Black and 86% White." *Id.*

On February 25, 2000, the four officers accused of kiiling Amadou Diallo were acquitted of second degree murder. Lynne Duke, *Juror Says Weak Case Made Diallo Verdicts Inevitable*, THE WASH. POST, Feb. 28, 2000, at A2, *available in* 2000 WL 2288097. The jurors cited the prosecution's failure to prove the four officers guilty "beyond a reasonable doubt" in declaring the officers not guilty of killing Diallo. *Id.* The Department of Justice, in light of the verdict, is currently determining "whether there were civil rights violations in the Diallo case." *Id.*

14. Nineteen-year-old Tyisha Miller was killed in a hail of bullets while she slept in her car outside a gas station. David Rosenzweig and Tom Gorman, *U.S. Launches Probe of Police in Riverside Civil Rights: Tyisha Miller's Slaying Prompts Investigation of the Department's Use of Force and Treatment of Minorities*, L.A. TIMES, July 9, 1999, at A1, *available in* 1999 WL 2175905. Miller was laying unconscious in her car with a gun on her lap when officers were called to investigate. James J. Fyfe, *Perspective on Police Shootings*, L.A. TIMES, May 28, 1999, at B7, *available in* 1999 WL 2162915. Rather than using sirens or lights to awaken Miller, the four officers broke the window on Miller's car, startling her. Anne-Marie O'Connor, *Riverside Force Rife with Racism, Black Officer Says*, L.A. TIMES, Sept. 2, 1999, at A1, *available in* 1999 WL 26171723. Awakened, Miller reached for her gun, and the officers shot her repeatedly. *Id.* The supervising officer at the scene reportedly made racial slurs after the shooting, describing mourning relatives as a "Kwanzaa gathering," while another officer referred to mourners as making the "Watts death wail." Lisa O'Neill Hill, *Civil Grand Jury Begins Probe into Tyisha Miller Shooting*, THE PRESS ENTERPRISE (Riverside, California), Aug. 7, 1999, at B1, *available in* 1999 WL 18898766. Also, the officers re-

the publicity and public outcry generated by the Louima case and the Volpe conviction.[15]

These cases, and the many more unpublicized incidents,[16] evince certain officers' natural instincts to protect themselves justifiably. However, these same examples display a disturbing propensity on the part of some officers to shoot first and deal with the consequences later.[17]

---

portedly gave each other high fives after the shooting. *Policeman Accuses Colleagues of Racism*, THE ORANGE COUNTY REGISTER, Sept. 2, 1999, at B5, *available in* 1999 WL 4317728. The four officers were subsequently fired, but not criminally charged, because investigators found no crimes had been committed and no evidence of racism in the officers' actions. *Id.*

In relation to Miller's shooting, Officer Rene Rodriguez has filed a civil rights complaint with the California Department of Fair Employment and Housing. *Id.* The complaint alleges that fellow officers sported racist tattoos, engaged in racial profiling and were not ashamed to make racist comments in the presence of minority officers. *Id.* Rodriguez, who arrived on the scene moments after the Miller shooting, was incorrectly suspected of working for the Internal Affairs Division, and he alleges that he was threatened by the supervisor of the four officers involved in Tyisha Miller's death. *See* O'Connor, *supra*, at A1. Gregory Preece, the former sergeant whom Rene Rodriguez alleges threatened him at his home with a police baton, was eventually fired for his racist comments following Miller's death. *Policeman Accuses Colleagues of Racism*, *supra*, at B5.

15. The media plays a large role in creating unrealistic portrayals of law enforcement officers. Police officers feel that some television shows create unrealistic expectations, at times portraying them as capable of solving all crimes, while other shows portray officers as uneducated and incompetent. TIMOTHY J. FLANNAGAN AND MICHAEL S.VAUGHN, PUBLIC OPINION ABOUT POLICE ABUSE OF FORCE, *in* POLICE VIOLENCE 124-25 (William A. Geller & Hans Toch eds., 1996). Therefore, the media's portrayal of officers has "lead many to believe that police agencies are staffed by brutal and corrupt individuals." *Id.* at 125.

16. One of many incidents sparking little media interest was the death of Mark Virginia, allegedly at the hands of Lt. Gregg G. Blosat. Michael Beebe, *Indictment Cracks Police Silence*, BUFFALO NEWS, June 30, 1996, at A1, *available in* 1996 WL 5851348. The thirty-eight-year-old Virginia was involved in a struggle with police when, while "face down with his hands cuffed behind him," Lt. Blosat allegedly applied "fatal pressure" on Virginia's neck. *Id.* Prosecutors believe officers were initially reluctant to discuss what they knew, as Blosat did not become a specific focus of the investigation until the second or third interview with the same officers. *Id.* In response to this allegation, the police union denied the existence of the Blue Wall of Silence, labeling it a "media-created myth." *Id.*

Another disheartening example of police violence and the inevitable wall of silence that follows concerned the death of twenty-nine-year-old Anthony Baez. *See The police: Excessive Force*, THE ECONOMIST, July 11, 1998, at 32, *available in* 1998 WL 11699369. Baez and his family were playing touch football in the Bronx when their football hit Officer Francis Livoti's police car. *Id.* Livoti, who became livid, arrested Baez's brother. *Id.* At this point, Anthony Baez attempted to intervene, beginning the ensuing altercation. *Id.* Minutes later, Anthony Baez died from asphyxiation, and "the large bruises on his neck and burst blood vessels around his eyes and larynx showed that an illegal chokehold had been applied by Mr. Livoti." *Id.* A judge acquitted Livoti of criminally negligent homicide, in part because of the "nest of perjury" within the department. *Id.* In 1998, after federal prosecutors decided to try the case, the Baez family was allowed some recourse when Livoti was convicted "of violating Anthony Baez's civil rights." *Id.*

17. It should be noted that police departments vary in defining terms such as "deadly force" and their application to the public. The New York City Police Department states the following policy concerning the use of "deadly force:"

> The New York City Police Department recognizes the value of all human life and is committed to respecting the dignity of every individual. The primary duty of all members of the service is to preserve human life. The most serious act in which a police officer can engage is the use of deadly force. The power to carry and use firearms in the course of public service is an awesome responsibility. Respect for human life requires that, in all cases, firearms be used as a last resort, and then only to protect life. Only the minimal amount of force necessary to protect human life should be used by uniformed members of the service. Where feasible, and consistent with personal safety, some warning, such as "POLICE - DON'T MOVE," should be given. Deadly force is never justified in the defense of property. Above all, the safety of the public and uniformed members of the service must be the overriding concern whenever the use of firearms is considered.

While police brutality continues to be a societal ill, this Note addresses the more disturbing fact that in most cases of police brutality, the offending officers can effectively hide behind the Blue Wall.[18] Perhaps what is most disturbing about the Louima incident is that of the 100 officers offered limited immunity, only two would testify as to their knowledge of Louima's torture in the early stages of the investigation.[19]

NEW YORK CITY POLICE DEPARTMENT, PATROL GUIDE, PROCEDURE NO. 104-01, July 8, 1993, at 9 (cited in Robert M. Myers, *Code of Silence: Police Shootings and The Right to Remain Silent*, 26 GOLDEN GATE L. REV. 497, 500 n.9 (1996)).

> On the other hand, the Seattle Police Department states the following policy:
>
> Use of Force - Generally:
>
> The public has vested in police officers the lawful authority to use force to protect themselves and others and perform their official duties when no reasonably effective alternative to the use of force appears to exist and the amount of force used is reasonable to effect the lawful purpose intended.
>
> The Department's use of force policy implements state law. To the extent that Department policy may contain additional provisions not addressed in state law, such provisions are not intended, nor may they be construed or applied, to create a higher standard of care or a duty toward any person or to provide a basis for criminal or civil liability against the City, its officials or individual police officers. However, violation of such additional provisions may form the basis for Department disciplinary or other action.

SEATTLE POLICE DEPARTMENT, POLICY AND PROCEDURE MANUAL 197 (cited in Robert M. Myers, *Code of Silence: Police Shootings and The Right to Remain Silent*, 26 GOLDEN GATE L. REV. 497, 500 n.9 (1996)).

In *Graham v. Connor*, 490 U.S. 386 (1989), the United States Supreme Court held that an analysis concerning a police officer's use of excessive force: "[R]equires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."
Id. at 396.

The Court emphasized that the standard of reasonableness was to "be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.*

18. What is disturbing to this author is the tremendous support that officers charged with police misconduct receive from police organizations and individual officers. For example, at the trial of the officers who beat Los Angeles motorist Rodney King, Sgt. Charles L. Duke, a police use-of-force expert, testified that Stacey Koon and the other officers acted reasonably in light of King's behavior. Jim Newton, *All Baton Blows King Received were Necessary, Expert Testifies*, L.A. TIMES, March 20, 1993, at B1, *available in* 1993 WL 2336830. Sgt. Duke was of the belief that "[t]hey have the right to use force even though they are not actually being attacked." *Id.*

19. Claude Lewis, *Fallout From the Brooklyn Torture Case Police Risk Losing a Critical Ally - Their Community*, THE RECORD (Bergen County, New Jersey), Sept. 9, 1997, at L13, *available in* 1997 WL 6906010. Examples of the NYPD's attempt at a cover-up in the aftermath of the Louima torture are abundant. For instance, 36 hours passed after Louima's beating at the Flatbush precinct before an Internal Affairs officer began an investigation, perhaps allowing Volpe's colleagues to destroy pertinent evidence. Bob Herbert, *Connect the Dots*, N.Y. TIMES, Aug. 24, 1997, at 13, *available in* 1997 WL 8000655; *see also* John Kifner, *Officers Assigned to Haiti Are to Join 70th Precinct*, N.Y. TIMES, Aug. 20, 1997, at B3 (cited in Chin & Wells, *supra* note 4, at 237 n.25) (revealing that before internal investigators arrived at the Flatbush Precinct, Volpe's colleagues had time to remove from his locker the dreadlocks that Volpe had cut off of the heads of Jamaican suspects). The two officers who eventually confirmed Louima's version of the events initially agreed with their colleagues that Louima's injuries were the result of rough homosexual sex. DeWayne Wickham, *Another Voice: After Haitian Immigrant Assault, N.Y. Police Housecleaning Needed*, GANNETT NEWS SERVICE, Aug. 21, 1997, *available in* 1997 WL 8835004.

The code of silence in the Louima incident did not only apply to police officers. Nurses at the hospital where Louima was treated were pressured by hospital supervisors to adhere to the "rough homosexual sex" version of events rather than what Louima had personally told them. Kifner, *supra* note 8, at B1. The paramedics who responded to the call at the 70th Precinct allegedly attempted to cover up the officers' involvement in the attack. *Id.* Perhaps most astonishing is the report that one of Louima's surgeons was "encouraged" by an anonymous caller to end Louima's life or else the caller would "get him." Dan Morrison, *Louima's Surgeon Threatened*, NEWSDAY,

The Louima debacle is an ideal example of why the standard of liability for police officers who commit perjury must be changed, particularly in cases involving police brutality.[20] It is undisputed that the majority of officers in this country are honorable, decent citizens who endanger themselves every day to protect the lives of others.[21] This Note, however, addresses that small percentage of officers who have witnessed their colleagues engage in barbaric and unlawful behavior, and have chosen to stand behind them and say nothing, further insuring that the Blue Wall of Silence never falls.[22]

Part II of this Note looks at the historical background of brutality and perjury and their inevitable link with the traditional police culture.[23]

Sept. 6, 1997, at A29, *available in* 1997 WL 2708515. Investigators are "considering the possibility that the call came from a police officer." *Id.* In fact, the threat of retaliation for betraying the Code of Silence was so pervasive in the Louima incident that one officer who was willing to come forward had to be given police protection. Editorial, *Know Them by Their Silence*, DAILY NEWS (New York), Aug. 20, 1997, at 32; *see also* Lewis, *supra* note 19, at L13 (quoting a Manhattan police officer's fear that "[w]hen we're out there late at night, we only have each other. . . . When a problem arises, he'd only have to turn his back. I might get blown away. Trust me, it's happened.").

20. There are generally three theories that have been advanced for an officer's perpetration of abuse upon a suspect. The sociological approach states that officers are influenced by the "social attributes" of parties with whom they deal. ROBERT E. WORDEN, THE CAUSES OF POLICE BRUTALITY: THEORY AND EVIDENCE ON POLICE USE OF FORCE, *in* POLICE VIOLENCE 23-25 (William A. Geller & Hans Toch eds., 1996). Officers are thus more likely to take aggressive action against lower-status persons than a suspect of higher social status. *Id.* at 24. This approach further suggests that if the victim is also of lower social status, an officer is less likely to use excessive force. *Id.* Under the psychological theory, the personality traits and inherent characteristics of a particular officer are emphasized, specifically race, educational background and life circumstances. *Id.* at 25. The psychological theory "implicitly presume[s] that the outlooks or personalities of . . . officers [are] at the root of their seemingly distinctive behavioral patterns." *Id.* at 26. The organizational theory of police behavior views the influences of the police culture as playing a large role in defining how an officer treats individual citizens. *Id.* at 28. Under this theory, the police chiefs and captains of departments play a pivotal role in defining how officers will treat the public. *Id.*

21. The majority of police officers, in fact, purportedly view most of their colleagues as hard working and do not approve of those officers who intimidate and harass the public. CHARLES J. OGLETREE, JR., ET AL., BEYOND THE RODNEY KING STORY: AN INVESTIGATION OF POLICE MISCONDUCT IN MINORITY COMMUNITIES 76 (1995). Most officers feel that it is unfair that "bad" cops receive most of the media's attention instead of those officers who "honorably perform the job day in and day out." *Id.* at 76. Further, officers find it unreasonable for the public to condemn the use of reasonable force in police work when "[e]ffective police work often requires, and therefore justifies, the use of reasonable force." Alexa P. Freeman, *Unscheduled Departures; The Circumvention of Just Sentencing for Police Brutality*, 47 HASTINGS L.J. 677, 684 (1996).

22. In the vast majority of police perjury cases during the past decade, police officers were rarely penalized and even more rarely prosecuted. Morgan Cloud, *The Dirty Little Secret*, 43 EMORY L.J. 1311, 1313 (1994); *see also* Briscoe v. LaHue, 460 U.S. 325 (1983) (holding that police officers may receive immunity from civil damages for perjury, even if the perjury leads to a criminal conviction); Bell v. Coughlin, 820 F. Supp. 780, 788-89 (S.D.N.Y. 1993) (noting that despite an officer's perjury at trial, a motion for a new trial was denied); King v. Ryan, 621 A.2d 68 (N.J. 1993) (ruling that "procedural errors" were cause for reinstatement despite a finding of perjury); People v. Stiglin, 264 N.Y.S. 832 (1933) (allowing the reversal of an officer's perjury conviction because of the trial judge's prejudicial comments).

Narcotics officers have admitted that perjury occurs regularly during suppression hearings and trials. Myron W. Orfield, Jr., *The Exclusionary Rule and Deterrence: An Empirical Study of Chicago Narcotics Officers*, 54 U. CHI. L. REV. 1016, 1051 (1987). *See also* Sarah Barlow, *Patterns of Arrests for Misdemeanor Narcotics Possession: Manhattan Police Practices 1960-62*, 4 CRIM. L. BULL. 549, 549-50 (1968) (citing the increase in "dropsy" testimony, where officers alleged that the drugs would drop out of the defendant's pocket and thus constitute valid probable cause for a search).

23. In the Volpe trial, some officials called the decision of certain officers to step forward a

Part III discusses the current federal civil statutes dealing with police brutality in the United States, particularly 42 U.S.C. § 1983 and 42 U.S.C. § 14141. Part IV highlights the major factors that have helped deteriorate the understanding between officer and civilian. From the aftermath of the Rodney King beating and the resulting acquittal of the four officers involved, to the leniency and discrimination evident in police sentencing, minorities and the poor are indeed treated differently from the rest of society.[24] Part V looks at proposed suggestions for reform that have been advanced and methods that could help to appease both the police officer and civilian. Finally, Part VI summarizes this Note, emphasizing the critical need for an overall change in the way our legal system handles police perjury and police brutality cases. It is essential that the protection that the Blue Wall of Silence affords every officer be eliminated if the legal system is to correct the injustices that now occur in cases of police misconduct.

"breakthrough" in the code of silence. Getlin, *supra* note 1, at A1. Others, however, felt that the officers came forward only because of "intense top-level pressure to crack open a racially explosive case that greatly embarrassed city officials when it became public." *Id.*

24. For example, Mark Fuhrman, the Los Angeles Police Department detective who perjured himself on the stand during the O.J. Simpson case, "was sentenced to three years' probation and fined $200." Editorial, *Fuhrman's Perjury Revisited*, S.F. CHRON., Oct. 4, 1996, at A26, *available in* 1996 WL 3228690.

It is both interesting and disturbing to note that opinions vary widely as to what is considered racist in the eyes of the American public. Just before the King beating, two of the officers involved were recorded referring to a previous incident with an African-American family as something out of the movie, "Gorillas in the Mist." INDEP. COMM. ON THE L.A. POLICE DEP'T, REPORT OF THE INDEP. COMM. ON THE L.A. POLICE DEP'T 71-72 (1991) (cited in Levenson, *supra* note 11, at 517 n.27 & n.21). According to the mostly Caucasian Simi Valley jury that acquitted the four officers in the King beating, the comment was not racist. Paul Lieberman, *King Jury Reflects Growing Impact of Racial Diversity*, L.A. TIMES, Feb. 28, 1993, at A1, A14, *available in* 1993 WL 2345353.

Another example of the lack of sensitivity found in many officers occurred when a patrolman was asked why he stopped a car with a broken taillight and four African-American occupants. MICHAEL K. BROWN, WORKING THE STREET: POLICE DISCRETION AND THE DILEMMAS OF REFORM 170 (1981). The officer indicated that he stopped the vehicle because there were "blacks" in it, and with African-Americans "there is always a greater chance of something wrong." *Id.*

The United States Supreme Court downplayed the significance of race as a factor in stopping an automobile in *Whren v. U.S.*, 517 U.S. 806 (1996). In *Whren*, police officers in a "high drug area" became suspicious of the activity of two African-American men when they stopped at an intersection for more than twenty seconds. *Id.* at 808. The policemen pursued and overtook the speeding defendants, approached the vehicle and saw two bags of crack cocaine. *Id.* at 808-09. The defendants argued that the police officers lacked either the reasonable suspicion or probable cause to believe that the two were engaged in illegal activity, and that the stop was thus pretextual and based on race. *Id.* at 810. The Court rejected this argument, stating that "[the] subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." *Id.* at 806. *See also* Tracey Maclin, *Race & the Fourth Amendment*, 51 VAND. L. REV. 333, 337-38 (1998). The Court apparently felt that the Equal Protection Clause provided more of a valid basis under which to protest race-based searches and seizures. Maclin, *supra*, at 336-37. *See also* Jeff Brazil & Steve Berry, *Color of Driver is Key to Stops in I-95 Videos; The Tapes Show that Most Stops and Searches by Volusia County's Drug Squad Involve Minorities*, ORLANDO SENTINEL, Aug. 23, 1992, at A1, *available in* 1992 WL 4664820 (noting that while a majority of the drivers on the interstate were white, more than eighty percent of the cars searched were driven by blacks and Hispanics, and of the more than 1000 drivers stopped, only nine received traffic violations).

II. HISTORICAL BACKGROUND

A. Police Brutality

The United States has long had a history of law enforcement violence,[25] so neither police brutality nor police perjury is a new concept to American society.[26] From the nation's colonization to the Ku Klux Klan's lynching of blacks in the South, American history is filled with stories of groups fighting to preserve communities from outside influences. Moreover, violence has been and continues to be the primary tool used by the dominant class to preserve the order, culture and hierarchical structure of the status quo.[27]

The first incidents of official brutality occurred when private groups and government soldiers believed that they were waging a "war of extermination" against the Native Americans.[28] During the nineteenth century, it was the Mexicans and the Chinese who next became the frequent victims of violence because of the fierce financial competition in the gold-mining camps of the West.[29] Violence, however, was not confined to a specific geographical location. For example, during the late 1800's, Irish Democrats living in New York City refused to fight for the freedom of Negro slaves because they feared that freed slaves would migrate north and underbid them for factory jobs.[30] In fact, so many blacks were murdered in New York that it became "impossible to count the many black bodies that bloodied the streets of Manhattan Island."[31]

Most police brutality in the United States, however, has been linked to the lynching of blacks so prevalent in the South during the 1800's.

> [E]vidence from historical sources, observational studies of police—our own and others—and legal materials shows that contemporary police brutality is both historically and sociologically related to lynching and related vigilante activities. The parallel is evident in several respects: both rely on legal authority to exonerate their extralegal use of force; both respond to perceived threats and fears aroused by outgroups, especially—but not exclusively—racial minorities. Both regard the legal order as too slow,

---

25. It must be noted that three of the four officers charged in Rodney King's beating had a history of excessive force and had been previously disciplined. Levenson, *supra* note 11, at 516.

26. Investigations into police misconduct occurred as early as thirty years ago. *See* REPORT OF THE COMMISSION TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE CITY'S ANTI-CORRUPTION PROCEDURES, at preface and 60 (Dec. 26, 1972) (Whitman Knapp, Chair) [hereinafter Knapp Commission] (cited in Chin & Wells, *supra* note 4, at 240 n.19).

27. JEROME H. SKOLNICK & JAMES J. FYFE, ABOVE THE LAW 23-42 (The Free Press eds., 1993). The typical victims of police brutality include African-American and Hispanic males, homosexuals, lesbians and homeless drunks. Patton, *supra* note 2, at 754.

28. SKOLNICK & FYFE, *supra* note 27, at 26.

29. *Id.* at 26-7.

30. *Id.* at 27.

31. *Id.*

> too ponderous, too indolent, too unaware, or too constrained to deal with the "the problem," however it may be defined. Most of all, police who conduct themselves as did those we saw beating Rodney King are, like lynchers, teaching a lesson of retribution outside the bounds of the penal code. In Los Angeles, this tradition came to mean that police were entitled to go to virtually any extreme in rendering curbside justice to people who, like Rodney King, were defined as deserving wrongdoers. The Los Angeles police were doubtless not conscious of it, but they were part of the American vigilante tradition.[32]

A further example of the pervasive effect of the police culture can be found when a civilian attempts to lodge a police brutality complaint at the officer's precinct. More likely than not, the civilian is met with disbelief and is discouraged by police officers from making the complaint. This was the case in the Rodney King beating. In the aftermath of the beating,[33] both George Holliday[34] and Paul King, Rodney's brother, tried to file police brutality reports at the Flatbush Precinct.[35] Both, however, were subject to long delays and told that King was to blame for the incident.[36] Furthermore, when Holliday attempted to turn the video over to the police, they were so disinterested in filing his complaint that he decided to go to a local television station.[37] Shortly after the video was played on the Monday evening news, it became known worldwide as "the most explicit and shocking news footage of police brutality ever to be seen on television."[38] While the King incident

---

32. *Id.* at 24.

33. Rodney King was struck "over fifty-three times" and kicked seven times by LAPD officers Lawrence Powell, Timothy Wind and Theodore Briseno while Sgt. Stacey Koon observed. Levenson, *supra* note 11, at 516. Three of the four officers had previously been disciplined for misconduct. *Id.* The Simi Valley jury acquitted all four officers of using excessive force, triggering riots in Los Angeles and rage throughout the country. Richard A. Serrano, *All 4 Acquitted in King Beating- Verdict Stirs Outrage*, L.A. TIMES, Apr. 30, 1992, at 1, *available in* 1992 WL 2920406. Los Angeles Mayor Tom Bradley called the verdicts "senseless" and President Bush found it "hard to understand how the verdicts could possibly square with the video." Richard A. Serrano and Jim Newton, *3 King Case Defendants Notified of U.S. Inquiry*, L.A. TIMES, July 31, 1992, at A1, *available in* 1992 WL 2881722.

34. Holliday was the private citizen who videotaped King's beating.

35. The Christopher Commission spoke of the importance of George Holliday's videotape:

> Our Commission owes its existence to the George Holliday videotape of the Rodney King incident. Whether there even would have been a Los Angeles Police Department investigation without the video is doubtful, since the efforts of King's brother, Paul, to file a complaint were frustrated, and the report of the involved officers was falsified. Even if there had been an investigation, our case-by-case review of the handling of 700 complaints indicates that without the Holliday videotape the complaint might have been adjudged to be "not sustained," because the officers' version conflicted with the account by King and his two passengers, who typically would have been viewed as not "independent."

INDEPENDENT COMMISSION ON THE L.A. POLICE DEP'T, REPORT OF THE INDEPENDENT COMMISSION ON THE L.A. POLICE DEP'T, at ii (quoted in SKOLNICK & FYFE, *supra* note 27, at 2).

36. *See* SKOLNICK & FYFE, *supra* note 27, at 2.

37. *Id.* at 3.

38. *Id.* The Rodney King beating was not Los Angeles' first incident of police misconduct. *See Settlement Over Man's Death OK'd*, L.A. TIMES, Jan. 12, 1989, at B2. A prior incident involved William McCall, a forty-one-year old father of two who was killed in 1988. *Id.* The LAPD reportedly came to McCall's home after receiving a disturbance call when McCall was hit by a taser gun and died from "blunt force trauma to the neck," later ruled a homicide by the Los Angeles County Coroner's Office. *Id.*

brought the issue of police brutality to the public's eye, it is the tradition and lasting effect of the Blue Wall of Silence that must be attacked in order to control the criminal behavior of the police.

B. Police Perjury

> If we're going to catch these guys, f*** the Constitution, f*** the Bill of Rights, f*** them, f*** you, f*** everybody. The only ones I care about are my partners.[39]

Police perjury has become very common in brutality cases, primarily because of the pressures an officer receives from his colleagues.[40] Police perjury is a widely known problem in the legal system, but it is almost impossible to define the scope and depth to which it occurs.[41] The Mollen Commission Report, a governmental investigation of police corruption in New York City, discussed the inevitable link between police perjury and police misconduct.[42] This study found that police falsification, perhaps the most common form of police corruption, was so prevalent in the Commission's investigation that it had evolved into its own word: testilying.[43]

Furthermore, regular participants in the criminal justice system,

---

39. MARK BAKER, COPS, THEIR LIVES IN THEIR OWN WORDS 247-48 (1985).

40. A 1987 Kansas City case is evidence that police brutality and police perjury do not occur solely in the urban areas of the United States. *See* Maynard v. Sayles, 817 F.2d 50 (8th Cir. 1987) *vacated*, 831 F.2d 173 (8th Cir. 1987) (en banc). In *Maynard*, the plaintiff sued police officers alleging that they used excessive force during his arrest. *Id.* at 51. The plaintiff used the testimony of a former police officer to establish the existence of a code of silence. *Id.* at 52. After the district

and African-American men.[97] These males are not detained based on probable cause that a crime has been committed, but instead "based on their race, appearance and alleged gang affiliations."[98] In what has been described by former LAPD Chief Daryl Gates as "aggressive law enforcement," young men are stopped, humiliated and sometimes arrested because they "look[ed] as if they might have committed a crime in the past or might commit an offense in the future."[99] In a telling example of the unjust biases that exist against targeted minorities, a Ghanian immigrant stated just, a few days after the murder of Amadou Diallo, a belief held by many: "The police here are trained to expect something from African Americans. When they see black skin, that's what they are thinking."[100]

B. The Police Officer's Perspective

> The only way to police a ghetto is to be oppressive. None of the Police Commissioner's men, even with the best will in the world, have any way of understanding the lives led by the people they swagger about in two and threes controlling. Their very presence is an insult, and it would be, even if they spent their entire day feeding gumdrops to children . . . . He moves through Harlem, therefore, like an occupying soldier in a bitterly hostile country; which is precisely what, and where he is, and is the reason he walks in twos and threes.[101]

It is undeniable that a police officer faces tremendous dangers on a daily basis that most civilians will not see in a lifetime.[102] For an officer whose "beat" includes tough urban neighborhoods,[103] good judgment is

---

97. *See* Hoffman, *supra* note 58, at 1475.

98. *Id.*

99. *Id.* at 1476.

100. *See* Wilentz, *supra* note 95, at M1. The stereotypes of race affect every facet of American life. During the 1988 Presidential election, the Bush campaign ran a series of "Willie Horton" advertisements depicting African-American stereotypes about criminal behavior. *See* Thomas B. Rosenstiel, *Regional Advertising Proves Tough on Dukakis*, L.A. TIMES, Oct. 28, 1988, at 16. Likewise, in New York City, Rudolph Giuliani defeated incumbent African-American Mayor David Dinkins in a contest filled with racial tension. *See* Goozner, *supra* note 8, at 1. The police union actively campaigned for Giuliani, a former prosecutor, in part because Dinkins favored civilian participation in police brutality investigations. *Id.*

101. SKOLNICK & FYFE, *supra* note 27, at 240 (citing JAMES BALDWIN, NOBODY KNOWS MY NAME 66-67 (New York: Dell, 1962)).

102. The nature of police work heavily influences an officer's outlook on life and therefore obviates the differences between officer and civilian. *See* Hector Tobar & Leslie Berger, *Verdict Greeted with Relief and Elation Among LAPD Officers*, L.A. TIMES, Apr. 30, 1992, at A18 (positing that most Los Angeles police officers were in complete agreement with the Simi Valley jury's acquittal of all four officers in the beating of Rodney King). *See also* Comment, *Police Perjury in Narcotics "Dropsy" Cases: A New Credibility Gap*, 60 GEO. L.J. 507, 514-16 (1971)(asserting that officers are wary of a public that has no understanding of the dangers they face daily).

103. Officers who regularly patrol these neighborhoods are employing the "broken windows" theory. *See* Goozner, *supra* note 8, at 1. The broken windows theory posits that officers patrol the streets of poorer neighborhoods daily to establish personal relationships with the public, with the ultimate goal of reducing the crime level within the community. *Id.* While this theory has proven to be successful in some ways, it has also increased the chance that an officer who believes that he is

often replaced by fear.[104] As a result of this fear, officers who feel that they are in danger may resort to violence in hopes of regaining control of the situation.[105]

Not surprisingly, the most intense pressure a police officer will face during his career is not from external forces, but rather from the internal expectations of his fellow officers.[106] A new cadet's expected allegiance to the Code of Silence is introduced to him at the police academy.[107] At the earliest stages of training, officers are instilled with the subconscious need to protect the Blue Wall of Silence.[108]

Furthermore, when an officer betrays a colleague, he can expect retaliation in the form of harassment, ostracism, complaints and threats. Moreover, the officer can expect to be "left alone on the streets" in times of need.[109] For example, in *Domenech v. City of New York*,[110] an officer who "snitched" on a fellow officer was told not to expect backup if she ever called for an "officer in trouble."[111] One New York City po-

---

in a questionable or dangerous situation will overreact with excessive, or even deadly force. *Id.*

104. David C. Anderson, *Policing the Police*, AMERICAN PROSPECT, Jan. 1, 1999, at 49, *available in* 1999 WL 3720342.

105. *Id.*

106. *See* David Kocieniewski, *Perjury Dividend- A Special Report*, N.Y. TIMES, Jan. 5, 1997, at A1 (cited in Chin & Wells, *supra* note 4, at 234 n.4) (noting that ranking commanders of officers accused of perjury felt that they "should not be prosecuted. Police tradition, they said, allowed otherwise honest officers to occasionally shade their testimony by changing details of arrests to conform with search and seizure laws"). The President's Commission on Law Enforcement also recognized that "[w]henever a number of dishonest officers are tolerated by other officers within a police organization, an atmosphere of mutual support and protection may develop, and eventually it may taint the entire police system." PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE POLICE 211 (1967).

107. *See* Patton, *supra* note 2, at 780-81 (stating that field training officers serve an important role in establishing a rookie officer's compliance with the department's "unwritten" policies); *see also* Watson, *supra* note 2, at M5 (stating that "the officers who beat Rodney Glenn King felt no threat of exposure from [those] who stood by and watched").

108. *See* Deborah Young, *Unnecessary Evil: Police Lying in Interrogations*, 28 CONN. L. REV. 425, 467 (1996) (reiterating that "senior police officers teach new officers that lying is one of the basic principles of policing").

A prime example of carrying on the "tradition of the police culture" can be found in Field Training Officers (FTO's). Patton, *supra* note 2, at 780-81. FTO's are in direct control of rookies and provide the initial lessons in street training. *Id.* Because promotions and evaluations are not affected by an officer's involvement in a civil complaint, many violence-prone officers are given the opportunity to pass on to the rookies their attitudes and beliefs concerning the public. *Id.* In doing so, they successfully reinforce the attitude that excessive violence and human rights violations are acceptable in certain police departments. *Id.*

109. Chin & Wells, *supra* note 4, at 254; *see also* David Rudovsky, *supra* note 10, at 487 (noting that Boston police officers refuse to volunteer "for Internal Affairs Division assignments unless they are promised the ability to choose their next assignment" because of the fear of retribution).

110. 919 F. Supp. 702 (S.D.N.Y. 1996).

111. *Id.* at 705. Police Officer Carol Domenech filed a complaint with New York City's Office of Equal Employment Opportunity ("OEEO") alleging sexual harassment by her superiors. *Id.* After fellow officers learned of the complaints, Domenech was allegedly subject to various retaliatory actions, and was told that fellow officers would not help her if she needed assistance while on the job. *Id.* The City of New York was eventually dismissed from the suit, as Domenech failed to establish the culpability of the New York Police Department in its supervision of its police officers. *Id.* at 711. Moreover, Domenech's use of the Mollen Commission Report failed to "demonstrate a culture of retaliation for non-criminal activity such as discrimination complaints so pervasive as to constitute a custom or usage amounting to tacit NYPD policy." *Id.*

lice officer stated under the condition of anonymity that "[i]f they mark you as a rat . . . no one talks to you . . . your family gets obscene calls and every day you have to wonder if someone is going to be a little slow in backing you up in a life or death situation."[112]

Because of the persistent pressure to perform, an officer can become cynical and weary of his job. Traditionally, officers are not highly educated and are not paid well.[113] For example, a city experiencing a lower crime rate, such as the decline experienced in New York City during Mayor Rudolph Giuliani's early tenure, did not result in a pay increase for New York City officers for two years.[114] Likewise, the lack of civilian appreciation may also cause an officer to take advantage of as many protections as the law affords. An experienced officer spoke for many when he stated that "[t]he police know they are involved in a violent business, and seek the protection that flexible language will allow . . . . Police have learned that survivalist politicians will be tempted to throw them to the wolves."[115]

Some have argued that the "siege-like" mentality inherent in a majority of police departments helps to exacerbate the "us vs. them" mentality and further widens the divide between officer and civilian.[116] Additionally, "[t]his siege model focuses an officer's attention on crime control rather than crime prevention and it isolates the police from the people and the communities in which they serve."[117] This mentality, besides increasing the risk of police brutality, also instills the covenant of loyalty and duty that an officer owes to his comrades in their "war" on drugs, gangs and crime.[118] Thus, a rookie officer is "admitted into a secret society where a code of loyalty, silence, secretiveness and isolation reigns."[119] This new officer, eager to impress his superiors, will welcome this police culture with open arms.[120] Therefore, the overwhelming

---

112. Selwyn Raab, *The Unwritten Code that Stops Police from Speaking*, N.Y. TIMES, June 16, 1985, at D6 (cited in Chin & Wells, *supra* note 4, at 235 n.8).

113. Jack Maple, an NYPD Deputy Commissioner for Operations from 1994 to 1996, has stated that in order to correct current wrongs in the police system, salaries must be competitive with other jobs sought by young professionals. Jack Maple, *Police Must be Held Accountable*, NEWSWEEK, June 21, 1999, at 67, *available in* 1999 WL 19354545. Further, Maple suggests that future police candidates be traditionally educated, with up to three years training rather than the current six-month training academy. *Id.*

114. *Id.*

115. Anthony V. Bouza, *Myths and Hard Truths About Police Shootings*, 13 U. TOL. L. REV. 337, 338 (1981).

116. Cummings, *supra* note 90, at 407-08.

117. *Id.* at 408.

118. *Id.* Not surprisingly, many law enforcement agents at one time participated in the military. *Id.* at 409.

119. *Id.* at 409; *see also* Rob Yale, Note, *Searching for the Consequences of Police Brutality*, 70 S. CAL. L. REV. 1841, 1842 (1997).

120. *See* Freeman, *supra* note 21, at 699-700 (discussing the enthusiasm and support that both officers and certain members of the public have expressed for a "kick-ass," "Rambo-style" of policing).

pressure to conform to the police culture must first be eliminated before any statute or law will ably address the problems of police brutality and perjury.

V. RECOMMENDATIONS

This section will examine the several suggestions that have been posed to eliminate the practice of police perjury in brutality cases.[121] These recommendations show much potential, but stand no chance of success unless the traditional, culture of police departments is overhauled in order to increase the trust between officer and civilian.[122]

A. The Admissibility of Evidence of Bias and Motive to Lie

An overwhelming portion of this Note has addressed the pressures on an officer to maintain the Blue Wall of Silence.[123] As discussed above, this fundamental belief in lying to protect one's colleagues begins early in an officer's career.[124] For this reason, the Blue Wall's existence and the repercussions of failing to adhere to it should be explained to juries when they are receiving jury instructions in cases of

---

121. For example, affirmative action programs have been implemented to recruit minorities and to encourage the integration of police forces. *See* OGLETREE, ET AL., *supra* note 21, at 119-20. Another suggestion is the accurate collection of statistics concerning police behavior, including "complaints against the police; types of offenses; characteristics of victims; officers disciplined or prosecuted; convictions; civil actions; internal and external review systems; and judgments." Paul Chevigny, *Let's Make it a Federal Case*, THE NATION, Mar. 23, 1993, at 370 (cited in Freeman, *supra* note 21, at 710 n.130). Another scholar recommends holding local governments liable for their failure to remedy the violation of civil rights by imposing criminal liability on them. Stuart P. Green, *The Criminal Prosecution of Local Governments*, 72 N.C. L. REV. 1197, 1199 (1994). Finally, it has also been suggested that the Justice Department impose a civil action against municipalities in order to curb brutality and perjury more effectively. Jon O. Newman, *Suing the Lawbreakers: Proposals to Strengthen the Section 1983 Damage Remedy for Law Enforcers' Misconduct*, 87 YALE L.J. 447, 450-51, 455-58 (1978).

122. One of the newest recommendations in addressing police perjury and the Blue Wall of Silence has been advanced by law professor Andrew J. McClurg. McClurg, *supra* note 43, at 389. Professor McClurg states that cognitive dissonance views people as rationalized beings who will view their own actions as the logical, natural thing to do in a given situation. *Id.* at 429. McClurg posits that cognitive dissonance can be used in a mentoring program between rookie officers and police academy cadets. *Id.* at 441. Because most officers begin their careers honest and full of hope, police cadets may help to remind officers who may have become disillusioned that it is wrong to commit perjury, no matter how it is justified. *Id.* at 430. In comparing this program to Alcoholics Anonymous, McClurg believes that if an officer "commits to a belief and then is made mindful that [his] conduct conflicts with that belief, the ensuing feelings of hypocrisy create dissonance." *Id.* at 428. Thus, a police cadet would serve as the mentor, keeping the dissonance alive in the rookie officer so that feelings of hypocrisy would not disappear if he was pressured by senior officers to commit police perjury. *Id.* at 442.

McClurg also believes that the implementation of a cognitive dissonance mentoring program could successfully eliminate the peer pressure to commit perjury that currently invades the police culture, and that the only realistic solution to the problem is to "prevent good cops from becoming bad cops." *Id.* at 395.

123. *See supra* notes 10 and 14.

124. *See Teach Lies? Angry Cop Denies It*, THE ARIZONA REPUBLIC, Mar. 16, 1995, at A2 (noting that former Los Angeles Police Chief Willie Williams denies that officers are taught to lie at the police academy). *See also* Chin & Wells, *supra* note 4, at 253.

police misconduct.[125] This practice would place jurors in a better position to "evaluate the credibility of the witness before them."[126] In rendering a verdict, juries must know that the Blue Wall is a pervasive rule that, if violated, could subject an officer to harassment, retribution and death threats and could thus be a heavy influence on the testimony offered.

In *United States v. Abel*,[127] the United States Supreme Court held that under the Federal Rules of Evidence, testimony concerning the beliefs and code of conduct for the Aryan Brotherhood was relevant to impeach a witness' credibility.[128] The application of the evidentiary rules, as set out in *Abel*, is a fundamental step in addressing the injustice that now befalls victims of police abuse and corruption.[129]

B. The Application of 42 U.S.C. § 14141

Another important recommendation in successfully addressing police corruption involves the effective application of 42 U.S.C. § 14141. While victims of police abuse should still pursue a § 1983 claim to collect damages for harms that have already occurred, § 14141 could become an essential, proactive tool against police departments that foster and encourage an environment of deceit and perjury. It is essential to § 14141's success that courts interpret a police department's "patterns or practices" to include police perjury and brutality, as the drafters intended.[130] The application of this statute to police departments as a

---

125. Chin & Wells, *supra* note 4, at 290-91.

126. *Id.* Chin & Wells go on to note that

> This approach should increase the accuracy of criminal trials. Police are no different from other members of institutions in that they have reason not to say anything to harm the organization for which they work; they are different from members of other institutions in that the consequences of disobedience can be life-threatening. Jurors should know that there may be multiple explanations for consistent and uniform police testimony.

Id. at 291.

127. 469 U.S. 45 (1984).

128. *Id.* at 49. In *Abel*, members of the "Aryan Brotherhood" were indicted for robbing a bank. *Id.* at 48. The defendant attempted to argue that it would be prejudicial for the jury to hear that the Brotherhood's tenets "required its members to deny its existence and 'lie, cheat, steal [and] kill' to protect each other." *Id.* The Supreme Court held that evidence of the Aryan Brotherhood's beliefs was probative and spoke directly to possible biases among witnesses testifying for the defendant. *Id.* at 45. Thus, such testimony was relevant and was held admissible. *Id.*

129. *See* Timothy P. O'Neill, *Tearing Down the 'Blue Wall of Silence'*, CHI. DAILY L. BULL., Jan. 22, 1999, at 5. Professor O'Neill discusses the vehement dissent of Judge Carl J. McCormick in *People v. Turnipseed*, 653 N.E.2d 1258 (Ill. App. Ct. 1995). In an incredible "dropsy" narcotics case, a police officer alleged that neighbors of the defendant asked the officer to "persuade defendant for an extension of time to pay the $50 they owed her for crack cocaine." *Turnipseed*, 653 N.E.2d at 1258. The defendant's narcotics conviction was affirmed by the appellate court. *Id.* at 1261. Judge McCormick found the decision repugnant to the legal system, as "[e]veryone lived happily ever after . . . except Turnipseed, the people and the U.S. Constitution." *Id.* at 1262. McCormick also stressed that while it was "[c]omforting to know that the citizenry has such confidence in our constables . . . that they would feel comfortable disclosing drug transactions," the neighbors' unbelievable request was recorded nowhere and made a mockery of the legal system. *Id.*

130. *See* POLICE BRUTALITY: HEARINGS BEFORE THE SUBCOMM. ON CIVIL AND CONSTI-

whole will help force law enforcement officials to examine their own patterns and practices, or face the prospect of being held liable for failing to supervise and control their officers. As William F. Schulz, the director of Amnesty International, states, "[y]ou can have police out in the community talking to citizens until hell freezes over, but it will not make enough of a difference if you do not have the top leadership of the city and the department conveying the message that brutality will not be tolerated."[131] Moreover, the use of Title XXI and the power of equitable and declaratory relief are essential in tearing down a police culture that involves supervisors who willfully ignore the blatant perjury committed by some of their officers.

C. An "Overall Overhaul" of the Police Culture

This Note's broadest recommendation seeks to help not only victims of police misconduct, but also those departments and officers who honorably withstand the internal and external pressures put upon them.[132]

The first change that should be implemented is a financial penalty. Under the current system, the police department pays for its officers' legal defense. Thus, an officer is not subject to any financial risk and is not likely to feel any remorse if found guilty of using excessive force. If a suit is filed as a result of an officer's alleged brutality, the officer should be required to pay for his own defense if found either liable or guilty. Moreover, officers who are proven to have committed perjury should also be liable for their criminal defense costs. An officer who knows that his actions could make him financially responsible to the victim may refrain from committing acts of violence against civilians.[133]

A second area of reform centers around the importance of diversity in the recruitment and hiring of officers, as well as the fostering of racial understanding amongst current officers through in-house training. An essential step in fixing the current problems in law enforcement is the recruitment of a more diverse pool of rookie officers. The "us v. them" attitude that currently exists between officers and civilians is a direct result of the under-representation of minorities in law enforce-

---

TUTIONAL RIGHTS OF THE HOUSE COMM. ON THE JUDICIARY, 102d Cong., 131 (1991) (cited in Miller, *supra* note 52, at 152 n.18).

131. *See* Harden, *supra* note 82, at A1.

132. It should be noted that in Philadelphia, the current police chief has implemented a policy whereby fellow officers are required to intervene if they see other officers using excessive force. *60 Minutes: The Blue Wall of Silence* (CBS television broadcast, Oct. 3, 1999) [hereinafter 60 Minutes]. Interestingly, the policy does not require either officer to report the incident to a supervisor, nor are they required to file a written report. *Id.*

133. This would be in contrast to the current system, under which "the city pays for the defense and for any settlement or judgment; the officer is only required to cooperate in good faith." Patton, *supra* note 2, at 771.

ment. In order to curb this hostile attitude, departments should continue to expand current recruiting programs in the military, high schools and through advertising.[134] This active recruitment of underrepresented minorities will show the police department's recognition that a change is needed in how it conducts its hiring and recruiting practices.

While a lot of blame for police perjury and brutality has been placed on the militaristic approach of some departments, a valid suggestion in changing recruitment practices relies heavily on Military Reserve ideals. Adam Walinsky, a New York attorney, has created the "Police Cadet Corps" ("PCC"),[135] a program similar to the Reserve Officer Training Corps ("ROTC") now implemented in a majority of universities. Under the PCC, a cadet would receive his undergraduate education in exchange for two obligations: 1) participate in police training during college; and 2) serve as an officer within the state for at least four years after graduating from college.[136] Similarly, a recent article written by a Boston attorney suggests the adoption of:

> [E]ither a military-like draft for citizen-police, or else the kinds of incentives that cause men and women to join the military even in the absence of conscription . . . . Efforts to turn police departments into more benign institutions are doomed to failure unless we cease our efforts to make the police less militaristic and, instead, emulate the military.[137]

In both instances, the police officer would be working with individuals who are not subject to the Code of Silence and, thus, might find it easier to report police officers' wrongdoing. Similarly, the likelihood of perjury would be reduced considerably by the implementation of these programs, because there would no longer be a guarantee that the Blue Wall would protect the officer.

A third area of reform concerns police departments and their veteran officers, some of whom have been involved in law enforcement for decades. Diversity training has become a mandate in many departments across the United States, fostering their officers' understanding of

---

134. In New York City, for example, citizens have voiced a desire that policemen be required to live in one of the five New York boroughs. Eleanor Randolph, *Brutality Focus Now on NYPD Inquiry*, L.A. TIMES, Aug. 30, 1997, at A1, *available in* 1997 WL 2242459. This requirement would presumably create more empathy between the public and the officer who serves in the community. *Id.* It is logical at this point to note that in order for officers to be able to afford their own legal defense, it is essential that their salaries be increased to reflect the dangers and risks put upon them daily. Maple, *supra* note 113, at 67. Under the current pay system, police officers would rarely, if ever, be able to pay a damage judgment against them because their salaries are so small in comparison to the work they perform. *Id.*

135. SKOLNICK & FYFE, *supra* note 27, at 261 (citing John Carlisle, *Crime, Cops and Civil Peace: The Case for Police Corps*, *in* ESSAYS ON OUR TIMES, No. 13 (Washington, D.C.: Free Congress Research and Education Foundation, November 1991).

136. *Id*. at 261.

137. Harvey A. Silverglate, *Breaching the Blue Wall*, NAT'L L.J., June 21, 1999, at A23. Mr. Silverglate suggests that younger citizens serve a term in the police force "in exchange for college or professional school tuition." *Id.*

the citizens with whom they interact daily. In Miami, Florida,[138] officers must attend "street wisdom" training, which discusses how officers serving Miami's multiethnic communities can improve communication and tolerance with citizens by educating themselves about the various cultures.[139] Aside from participating in non-violence instruction called "Kingian"[140] instruction, the Miami Police Department has also created an "ethnic-sharing program," designed to address the differences between Miami police officers themselves.[141] The implementation of programs such as these could at least call to the public's attention the fact that police departments are attempting to correct the deteriorating relationship between officers and civilians.[142]

Additionally, a strict requirement of comprehensive psychological evaluations of police candidates must also be implemented, as well as frequent and routine reviews of veteran police officers' behavior in the field. There are several benefits to implementing a stringent psychological testing of police candidates.[143] These advantages include: 1) the reduction of violence by screening out violence-prone applicants; 2) the increase in the public's confidence and trust of law enforcement personnel; and 3) the reduction of an innocent civilian's exposure to brutality as well as a reduction in police brutality and perjury litigation.[144]

---

138. In the early 1980's, Miami was the site of events similar to those in Los Angeles following the acquittal of the officers who tortured Rodney King. In December 1979, Arthur McDuffie was beaten to death by several members of the Metro-Dade Florida Police Department. SKOLNICK & FYFE, *supra* note 27, 181-84. The all-white-male jury acquitted the officers and riots followed, resulting in eighteen deaths, assaults, looting and damages in excess of 125 million dollars. *Id.* In December 1989, William Lozano, one of the officers acquitted of McDuffie's death, was retried and convicted of manslaughter. Rosalano Resnick, *Miami Police Trial Is Hot Potato*, NAT'L L.J., Mar. 1, 1993, at 3. Lozano's conviction was later overturned because jurors presumably convicted the officer in fear that an acquittal would incite riots and looting similar to the events of 1979. *Id.*

139. OGLETREE, ET AL., *supra* note 21, at 99 (citing Testimony of Chief Calvin Ross, Miami Police Department, *Miami Hearings*, Nov. 13, 1991, at 445).

140. The Kingian program focuses on "in-house training in non-violent conflict resolution." *Id.* at 99.

141. *Id.*; *see also* Testimony of Chief Calvin Ross, Miami Police Department, *Miami Hearings*, Nov. 13, 1991, at 446 (stating that the Miami Police Department spent $35,000 to advocate the Kingian training while also sponsoring community representatives, students and police officers).

142. There have also been recommendations concerning the involvement of citizens in the discipline of police officers through Civilian Complaint Review Boards (CCRB's). *See* OGLETREE, ET AL., *supra* note 21, at 130-31. *But see* William F. Kuntz II, *Police Violence: Causes and Cures, Edward V. Sparer Public Interest Law Fellowship Forum*, 7 J.L. & POL'Y 103-04 (1998) (discussing the creation of CCRB's and examples of its ineffectiveness in New York City).

143. Michelle A. Travis, *Psychological Health Tests for Violence—Prone Officers: Objectives, Shortcomings, and Alternatives*, 46 STAN. L. REV. 1717 (1994). In fact, several courts have held that a city's failure to properly train, supervise and discipline its departments for their patterns and practices of police misconduct will render the city liable for damages. *See* Bonsignore v. City of New York, 683 F.2d 635, 637 (2d Cir. 1982) (finding that New York City's failure to evaluate and monitor a psychological testing program identifying violence-prone police officers could constitute negligence); Herrera v. Valentine, 653 F.2d 1220, 1224 (8th Cir. 1981) (holding that a municipality's knowing failure to "remedy" the brutality put upon a woman by a police officer is sufficient to constitute a § 1983 violation); Hild v. Bruner, 496 F. Supp. 93, 99 (D.N.J. 1980) (positing that a town's failure to conduct psychological testing on police officers, as is routinely used in other departments, could constitute gross negligence).

144. Travis, *supra* note 143, at 1720.

Moreover, the federal government should also implement and regulate an accurate national reporting system of police abuse.[145] To achieve this, each police department should be required to report every brutality complaint to a state office, which in turn would compile the information and send it to the federal administrator.[146] This system would help not only to identify recidivists, the overwhelming abusers of police authority, but could also provide counseling for officers who show a penchant for violence.[147]

Perhaps this Note's most essential recommendation is that the traditional internal investigation of police misconduct must be eliminated in favor of external scrutiny by the federal government. In moving the entire process away from local precincts, a civilian could feel that his complaint was handled in a fair and impartial manner. More importantly, an honest police officer could relay his knowledge of fellow officers' conduct to an impartial office, extinguishing some of the fear of retaliation that now pervades police departments and heightens the pressure to commit police perjury.

VI. CONCLUSION

Some may argue that incidents of police misconduct are minimal. The fact that it occurs, however, is enough to warrant an in-depth evaluation of police practices and of the judicial system that has granted police officers wide latitude to commit crimes in the name of law enforcement.[148] While I concur with Justice Burger that officers should be

---

145. *See* V. Dion Haynes, *Rights Group Hits Police Brutality: Chicago Shootings Cited in Appeal for More Oversight*, CHI. TRIB., Sept. 21, 1999, at 6, *available in* 1999 WL 2914198. For example, Amnesty International USA is lobbying the Department of Justice to initiate nationwide collection of police brutality complaints into one system to give government officials the ability to accurately address the problem. *Id.*

146. A New York citizen invoked the Freedom of Information Law, citing the city's failure to provide requested records in a timely fashion. Editorial, *Enforce the FOIL Law*, 218 N.Y. L.J. 2 (Sept. 10, 1997). The author goes on to note that the successful use of this statute would "enable ordinary citizens, including the victims themselves, to breach the 'blue wall of silence' in the innumerable brutality cases that do not receive the same public attention as Abner Louima's." *Id.*

147. Police officers who have histories of violence have successfully avoided discipline by "moving from police department to police department." *See NBC News Dateline: Gypsy Cops* (NBC television broadcast, Nov. 24, 1992). The broadcast brought to light the

> [P]revalence of these "gypsy cops" who quit their jobs to avoid being disciplined for brutality, and then go to another city and get hired by a different police department. . . . The hiring police department does not learn of the gypsy cops' history of violence because there is no state or federal system to track personal histories of police officers, and because many police departments cover up their officers' brutality when asked for a reference.

Patton, *supra* note 2, at 786 n.187.

148. The issue of police brutality has caused Attorney General Janet Reno to comment that "[f]or too many people, especially in minority communities, the trust that is so essential to effective policing does not exist because [they] believe that police have used excessive force, that law enforcement is too aggressive, that law enforcement is biased, disrespectful and unfair." Paul Koring, *Human-Rights Group Lashes Out at 'Widespread' Police Brutality: Most U.S. Officers Accused of Abuses go Unpunished, Amnesty Says*, THE GLOBE & MAIL (Toronto, Canada), Sept. 22, 1999, at A18.

granted great deference for the sacrifices they endure daily, I also believe that those who perpetrate violence and exercise perjury should be treated as criminals. In reality, that is what they are. It must be remembered by all that police officers and judges are first and foremost members of society. They possess human opinions and human vices, as does every other person. The difference is, however, that these civil servants are given great power, and this power must be exercised honestly and faithfully.[149] Recent incidents of questionable police practices are viewed by some as justified and by others as excessive. It is the legal system's duty to insure that a complaint of police misconduct is pursued diligently. An effective system of checks and balances will help to reestablish a police officer's credibility and honor. It is essential that officers such as Justin Volpe and the colleagues who protect them receive the highest degree of punishment.[150] These officers are not only violating the written laws of society, but they are also committing repulsive crimes against humanity with the approval of society's majority.[151]

---

149. At least one scholar believes that the blame for police misconduct lies not with patrol officers but with the supervisors, police chiefs and mayors who condone such actions through their silence. Fyfe, *supra* note 14, at B7. Professor Fyfe, a law professor and former police lieutenant, feels that supervisory officials should be required to provide the public with answers as to what is being done to curb not only police brutality, but also other forms of misconduct currently endemic to the system. *Id.*

150. The three officers accused of failing to provide their information of Justin Volpe's attack on Abner Louima are facing charges of conspiracy and obstruction of justice. *See* Devlin Barrett, *Convicted Louima Cop Back in Court*, N.Y. POST, Sept. 11, 1999, at 2, *available in* 1999 WL 22884931. Charles Schwarz, the only officer of the three convicted of a crime, alleges that it was Thomas Wiese who was in the bathroom with Volpe and not him. *Id.* Both Volpe and his attorney, Marvyn Kornberg, have stated that Wiese was the individual who held Louima down while Volpe assaulted him. Murray Weiss, *Volpe Drops a Bombshell, Says Acquitted Wiese, Not Schwarz, Was With Him During Bathroom Attack*, N.Y. POST, Aug. 16, 1999, at 4, *available in* 1999 WL 22881921.

On December 13, 1999, U.S. District Judge Eugene Nickerson sentenced Justin Volpe to thirty years in prison for his crimes against Abner Louima. *Ex-Cop Gets 30-Year Sentence in Torture of Haitian Immigrant*, CHI. TRIB., Dec. 14, 1999, at 10, *available in* 1999 WL 2941422. Judge Nickerson, in handing down the sentence, emphasized Volpe's "barbarous misuse of power" and "the harm Mr. Volpe inflicted on Mr. Louima, the police department and society at large." *Id.*

151. The latest allegations facing the LAPD are a "chilling" example of the Blue Wall of Silence and could have devastating repercussions. *See* Paul Pringle, *Officer's Allegations Rock L.A. Police Department: Morale Sinks, Convictions Endangered as Corruption Inquiries Widen*, DALLAS MORNING NEWS, Sept. 24, 1999, at 12A, *available in* 1999 WL 28015033. Former Police Officer Rafael Perez was caught stealing almost $1 million worth of cocaine from the police department. *Id.* In exchange for a lighter sentence, Perez pleaded guilty and has broken the Code of Silence to tell a tale of "cops stealing drugs, cops planting weapons, cops shooting handcuffed suspects, cops beating prisoners or cops lying under oath." *Id.* Perez's chief testimony concerns the shooting of Javier Francisco Ovando, an alleged gang member. *Id.*

The Community Resources Against Street Hoodlums, or CRASH Unit, is an anti-gang squad in the Rampart division of the LAPD. *See* Robert J. Lopez and Rich Connell, *Police Probe Forces Suspension of Rampart Anti-Gang Injunctions*, L.A. TIMES, Sept. 21, 1999, at A24, *available in* 1999 WL 26178093. At the time, officers from the CRASH unit claimed they were staking out a home for stolen weapons when Ovando burst in with an assault rifle and officers shot him. William Booth & Rene Sanchez, *LAPD Squad Shot, Framed Innocent Man*, L.A. TIMES, Sept. 26, 1999, at A16, *available in* 1999 WL 5155068. Perez now claims that Ovando was not armed, that officers planted a gun on him, and then lied under oath, sending Ovando to prison for 23 years. *Id.* As a result of the shooting, Ovando is now confined to a wheelchair. *Id.* The CRASH unit, which patrols one of the most crime-filled areas of Los Angeles, is now being investigated for its gang-like activities. *Id.*

Ironically, Perez disclosed in an interview that officers abused their power in part to "impress superiors." Editorial, *Send Proper Signal*, L.A. TIMES, Sept. 22, 1999, at B6, *available in* 1999 WL 26178269. In one telling example, an officer attempting to report the beating of a suspect to a police captain was told that the captain "did not want to hear the details." *Id.* The officer was instructed not to intervene, and not to make an official report of the abuse. *Id.*

LAPD Chief Bernard Parks has conceded that much of Perez's testimony is reliable, and faces the possibility that several officers will be implicated in the investigation. *Id.* As of January 14, 2000, 20 officers "have been relieved of duty, suspended without pay or fired or who have resigned in the course of the continuing Rampart probe." Matt Lait & Scott Glover, *4 More LAPD Officers Are Suspended*, L.A. TIMES, Jan. 14, 2000, at A1, *available in* 2000 WL 2200725. The investigation into the LAPD has "so far uncovered alleged unjustified shootings, beatings, drug dealing, evidence planting, false arrests, witness intimidation and perjury." *Id.* Officers Nino Durden, Brian Hewitt and Michael Buchanan have been targeted by the LAPD, who have asked District Attorney Gil Garcetti to file charges "ranging from assault under color of authority to perjury . . . ." Scott Glover & Matt Lait, *LAPD Asks D.A. to Prosecute 3 Officers in Probe Corruption: Alleged crimes range from assault to perjury in Rampart scandal, sources say.*, L.A. TIMES, Jan. 15, 2000, at A1, *available in* 2000 WL 2201116.

As stated by Erwin Chemerinsky, a professor of law and political science at the University of Southern California:

> [A]lthough their actions were different and separated by years, there is a link among Stacey C. Koon and Lawrence M. Powell, who violated Rodney King's civil rights; Mark Fuhrman who committed blatant perjury in the O.J. Simpson case; and Rampart officers, according to current charges. All were LAPD officers who broke the law and lied about it. All were protected, at least for a time, by fellow officers and supervisors who knew, or should have known, about the misconduct, but did nothing.

Erwin Chemerinsky, *Independence is the Key for Supervision of LAPD: Rigorous Oversight by the Inspector General and Police Commission Plus an Outside Prosecutor are Needed*, L.A. TIMES, Sept. 24, 1999, at B9, *available in* 1999 WL 26179128. Professor Chemerinsky adds that "[m]ounting evidence indicates that this tragedy is not an isolated incident, but part of a larger pattern of police lawlessness." *Id.*

It is imperative to note that police perjury does not only occur in large cities such as Los Angeles and New York. In Topeka, Kansas, Shawnee County Sheriff Dave Meneley is currently defending himself against an ouster proceeding and criminal felony perjury charges. Steve Fry, *Sheriff Challenged*, TOPEKA CAPITAL-JOURNAL, Jan. 12, 2000, at A1, *available in* 2000 WL 6832501. The charges stem from Meneley's testimony that he had no knowledge of the drug use of Timothy Oblander, a former narcotics investigator who stole and used cocaine from the Sheriff's Department. Scott D. Weaver, *Drug Scandal Tops Local Stories for 1999*, TOPEKA CAPITAL-JOURNAL, Jan. 3, 2000, at C3, *available in* 2000 WL 6831782. An assistant attorney general and several deputies have testified that Meneley, contrary to his sworn testimony, told them as early as 1995 that he knew of Oblander's cocaine addiction and sought advice on a recommended course of action. Fry, *supra*, at A1. Meneley reportedly knew that Oblander had "used drugs purchased through his narcotics investigation work; had taken drugs from evidence, replaced them with other substances and resealed the packages; and was undergoing treatment at a rehabilitation center." *Id.* This testimony is all in contradiction with Meneley's March 1999 testimony that he had no knowledge of Oblander's drug use while he was a deputy. *Id.*

On February 24, 2000, Dave Meneley was ousted from his position as Shawnee County Sheriff. Steve Fry, *Judges Remove Meneley Ouster ruling cites two counts of perjury, one of concealment*, TOPEKA CAPITAL-JOURNAL, Feb. 25, 2000, at A1, *available in* 2000 WL 6835268. Meneley's willful acts of concealing evidence and giving false testimony were found by the judges to be "so serious and detrimental to the public and the functioning of the criminal justice system that it warranted the ultimate and severe penalty of removal from office." *Id.*