

Good Cop, Bad Cop: Using Cognitive Dissonance Theory to Reduce Police Lying

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INTRODUCTION

Most recruits are idealists with honest intentions.

– Rabbi Alvin Kass, New York City Police Department¹

[T]he practice of police falsification . . . is so common in certain precincts that it has spawned its own word: “testilying.”

– Report of Mollen Commission investigating corruption
in the New York City Police Department²

The above quotations suggest two simple propositions about police officers:

Proposition 1. Most police officers are honorable, moral persons.

Proposition 2. Many of these same police officers lie in the course of their official duties.³

My experience teaching constitutional criminal procedure to law students has shown me that many people accept the truth of both propositions; that is, many people believe it is possible for a police officer both to lie in his⁴ official capacity and remain an honorable,

¹ HARVEY RACHLIN, *THE MAKING OF A COP* 13 (1991) (quoting Rabbi Alvin Kass, clergyperson employed by New York City Police Department).

² THE CITY OF NEW YORK COMMISSION TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE ANTI-CORRUPTION PROCEDURES OF THE POLICE DEPARTMENT: COMMISSION REPORT 36 (1994) [hereinafter *MOLLEN COMMISSION REPORT*]; see *infra* note 42 and accompanying text (providing background on Mollen Commission investigation into police corruption in New York City).

³ This Article makes a strong case that police lying, particularly in search and seizure litigation, is pervasive. See *infra* notes 48-91 and accompanying text. However, I do not believe that all, or even most, police officers intentionally lie. My late-stepfather, Captain and Detective Fred Rohloff of the Hollywood Police Department in Florida, was a lifelong law enforcement officer. He was a man of great integrity for whom I had tremendous admiration. I used to love to listen to his tales about life as a “street cop” in New York. When I was very young, he told me about a time he discovered a box containing a large sum of money at the home of an elderly man who just passed away. No one knew about the money. The deceased had no relatives. My stepfather could have kept the money, undiscovered, without causing demonstrable harm to anyone. I asked why he turned the money in. His answer was simple. He said it was “the right thing to do.” The story made a lasting impression on me. Some who read this Article might label it as “anti-cop.” That is not my intention or mind-set. I greatly respect good police officers. Their lives are difficult and dangerous.

⁴ This Article varies the use of pronouns among gender-neutral, masculine, and feminine forms. However, masculine pronouns are used more often than feminine pronouns. Reported instances of corruption involving female police officers are almost nonexistent. Undoubtedly, a primary reason for this is that police officers are disproportionately male. Another reason may be that women are less likely to be corrupt than men. See Marya P.

moral person. More importantly, many police officers hold this view.

However, these propositions are irreconcilably in conflict.⁵ Police officers are the most potent actors in our criminal justice system as measured by their power to impact the lives of ordinary citizens. A police officer's word can instantly and forever alter a person's life.⁶ Falsely told, it can be an awesome weapon.⁷

Honorable, moral police officers do not lie, particularly under oath, in situations where the life or liberty of another human being is at stake. Police officers take an oath to uphold the laws and Constitution of the United States and their respective states.⁸

McDonald, *A Multidimensional Look at the Gender Crisis in the Correctional System*, 15 LAW & INEQ.: A J. OF THEORY & PRAC. 505, 510 n.26 (1997) (stating that 833,184 men and only 50,409 women were incarcerated in U.S. prisons and jails in 1992).

⁵ See Norman Mailer, *The Great American Mystery: A New Dissent on the Methods and Findings of the Warren Commission*, WASH. POST BOOK WEEK, Aug. 28, 1966, at 1 (capturing conflict described in text: "Ah, the cops are far more complex than criminals. . . . They are attached umbilically to the concept of honesty, they are profoundly corrupt. . . . [T]hey serve the truth, they are psychopathic liars.").

⁶ See MOLLEN COMMISSION REPORT, *supra* note 2, at 36 (describing police officer's word as pillar of criminal justice system and stating that many convictions rest solely on police officer's testimony).

⁷ See *Lambert v. Blackwell*, 962 F. Supp. 1521 (E.D. Pa. 1997), *vacated*, 134 F.3d 506 (3d Cir. 1997), *petition for cert. filed*, (Apr. 23, 1998) (No. 97-8812). In *Lambert*, a federal district court judge granted the habeas corpus petition of Lisa Lambert. Lambert was convicted as a sixteen-year-old for the murder of another teenage girl. In a scathing ninety-page opinion, the trial judge documented twenty-five separate acts of police and prosecutorial misconduct, including probable perjury by "[a]t least six" officers. See *id.* at 1535-50. Calling the case a "nightmare" and "a grotesque parody of due process," the judge ordered that Lambert "be immediately released and that she should not be retried." *Id.* at 1523, 1552-53. The judge concluded his opinion with these statements: "In making a pact with this devil, Lancaster County made a Faustian Bargain. It lost its soul and it almost executed an innocent, abused woman. Its legal edifice is now in ashes, we can only hope for a Witness-like barn-raising of the temple of justice." *Id.* at 1555.

On appeal, the Third Circuit vacated the habeas writ, ruling that the district court lacked authority to consider the merits of Lambert's claim because she failed to exhaust her state remedies. See *Lambert v. Blackwell*, 134 F.3d 506, 518 (3d Cir. 1997). Lambert's petition for rehearing was denied. See *id.* at 525. Judge Jane R. Roth, joined by three judges, used strong language in dissenting from the denial for rehearing:

I am aware of the evidence of prosecutorial misconduct that occurred during Lambert's original trial. I find it to be truly shocking. This misconduct included suppression of key evidence, witness tampering, provision of false testimony, and other flagrant violations of Lambert's right to due process. . . . I find it to be a miscarriage of justice for this Court to turn its back upon the merits of her petition.

Id.

⁸ See CAL. CONST. art. XX, § 3 (West 1996); see, e.g., MASS. GEN. LAWS ANN. ch. 22C, § 15 (West Supp. 1998).

When they take the witness stand or apply for a search or arrest warrant, they take another sworn oath to tell the truth.⁹ Lying under oath is perjury, a felony punishable by a lengthy term of imprisonment.¹⁰ In federal court, the authorized five-year penalty for perjury is the same as that authorized for serious offenses such as interstate domestic violence,¹¹ interstate travel to promote a racketeering enterprise,¹² and possessing an explosive in an airport.¹³ Persons who commit serious felonies involving dishonesty and a breach of the public trust are not honorable, moral persons.

Because Propositions 1 and 2 are in conflict, believing both propositions to be true should cause one to experience what social psychologists call "cognitive dissonance." Dissonance is the conflict created when one believes two things that are psychologically inconsistent¹⁴ or believes one way and acts another.¹⁵ Dissonance theory, which has been characterized as "the most important development in social psychology,"¹⁶ holds that when one experiences dissonance, a negative drive state is created, similar to that created by thirst or hunger.¹⁷ To minimize this unpleasant feeling, the person strives to reduce the conflict to make the world appear more

⁹ See, e.g., CAL. PENAL CODE § 120 (West 1988) (stating that oath relating to official duties differs from oath taken for telling truth).

¹⁰ See, e.g., 18 U.S.C. § 1621 (1998) (punishing perjury in federal proceeding by up to five years imprisonment); CAL. PENAL CODE § 126 (West 1988) (punishing perjury by up to four years imprisonment); HAW. REV. STAT. ANN. § 710-1060 (Michie 1993) (defining perjury as Class C felony punishable by up to five years imprisonment under HAW. REV. STAT. ANN. § 706-660 (Michie 1993)); MASS. GEN. LAWS ANN. ch. 268, § 1 (West 1990) (punishing perjury by up to 20 years imprisonment).

¹¹ See 18 U.S.C. § 2261(b)(5) (1998) (authorizing prison sentence up to five years for crossing state lines with intent to injure, harass, or intimidate spouse or intimate partner and committing crime of violence that causes bodily injury to spouse or intimate partner).

¹² See 18 U.S.C. § 1952(a)(3)(A) (1998) (authorizing prison sentence up to five years for traveling in interstate or foreign commerce with intent to distribute proceeds of any unlawful activity or promoting, managing, establishing, carrying on, or facilitating any such activity).

¹³ See 18 U.S.C. § 844(g)(1) (1998) (authorizing prison sentence up to five years for possessing explosive in airport subject to Federal Aviation Administration regulatory authority).

¹⁴ See Elliot Aronson, *Back to the Future: Retrospective Review of Leon Festinger's A Theory of Cognitive Dissonance*, 110 AM. J. PSYCHOL. 127, 128 (1997) [hereinafter Aronson, *Theory of Cognitive Dissonance*].

¹⁵ See Jeff Stone et al., *When Exemplification Fails: Hypocrisy and the Motive for Self-Integrity*, 72 J. PERSONALITY & SOC. PSYCHOL. 54, 54 (1997) [hereinafter *Hypocrisy and the Motive for Self-Integrity*].

¹⁶ Edward E. Jones, *Foreword* to ROBERT A. WICKLUND & JACK W. BREHM, PERSPECTIVES ON COGNITIVE DISSONANCE at x (1976).

¹⁷ See Aronson, *Theory of Cognitive Dissonance*, *supra* note 14, at 128.

consistent.¹⁸ Dissonance reduction can be accomplished directly by changing one's discrepant attitude or behavior¹⁹ or indirectly through defense mechanisms and mental tricks such as self-justification, denial, and distortion.²⁰

Regrettably, with respect to police lying, we have as a society followed the latter path. Fearing crime, too many of us have, by denial or rationalization, managed to suppress the dissonance that should arise from the conflict between the belief that ours is a moral and ethical system of criminal justice and the reality that police lying and other forms of falsification are widespread. Worse, many police officers have come to believe that lying is a necessary and justifiable component of their jobs.²¹ "Doing God's work" is how one officer defended the practice of falsification for the purpose of apprehending and convicting criminals.²²

Once a police officer develops such a mentality, it is difficult to reverse. Immoral persons experience no dissonance from lying.²³ Otherwise moral officers who accept lying as a way of police life learn to smother their dissonance under a protective mattress of self-justification.²⁴ There is little hope of reclaiming corrupt police officers when they have reached this stage.

Commentators have advanced several proposals for combating police lying. Some of them are quite dramatic. Abolition of the Fourth Amendment exclusionary rule has been suggested as a possible solution.²⁵ One commentator has proposed requiring police

¹⁸ See *id.*

¹⁹ See *Hypocrisy and the Motive for Self-Integrity*, *supra* note 15, at 54.

²⁰ See *id.* at 55 (listing indirect methods of dissonance reduction); see also Aronson, *Theory of Cognitive Dissonance*, *supra* note 14, at 130 (discussing "tangled muddle of self-justification, denial, and distortion" persons experience in dealing with dissonance).

²¹ See MOLLEN COMMISSION REPORT, *supra* note 2, at 41 (stating that "despite the devastating consequences of police falsifications, there is a persistent belief among many officers that it is necessary and justified, even if unlawful"); see also *infra* notes 139-59 and accompanying text (discussing ends-means reasoning as justification for why police officers lie and falsify testimony).

²² See MOLLEN COMMISSION REPORT, *supra* note 2, at 41.

²³ See Elliot Aronson, *The Return of the Repressed: Dissonance Theory Makes a Comeback*, 3 PSYCHOL. INQUIRY 303, 306 (1992) [hereinafter Aronson, *Dissonance Theory Makes a Comeback*] (stating that immoral persons experience no dissonance from immoral activities); see also *infra* notes 160-67 and accompanying text (arguing that self-justification allows police officers to rationalize their immoral behavior and reduce dissonance they would otherwise experience from lying).

²⁴ See *infra* notes 160-67, 265-74 and accompanying text.

²⁵ See Christopher Slobogin, *Testilying: Police Perjury and What to Do About It*, 67 U. COLO. L. REV. 1037, 1058 (1996) (discussing abolition of exclusionary rule as solution to testilying on theory that it would reduce urge for prosecutors and judges "to wink at such lying").

officers who testify at suppression hearings to undergo polygraph tests.²⁶ A recent article advocates admitting expert testimony on the police "blue wall of silence" to assist fact finders in evaluating the credibility of police officers.²⁷ While all of these proposals are valuable contributions to the debate, some are unrealistic and some would cause more damage than they would cure.

Lasting, meaningful change must originate in the hearts and minds of police officers themselves. Most officers start their careers honest and idealistic,²⁸ but find their values eroded by repeated exposure to the harsh realities and temptations of life on the streets.²⁹ Any successful effort to combat police falsification must focus on a preventative approach aimed at keeping officers honest.³⁰

This Article proposes that cognitive dissonance theory can provide the foundation for a successful police integrity training and mentoring program matching rookie officers with cadets still in training at the police academy. The mentoring program would be fashioned after the successful sponsorship tradition of Alcoholics Anonymous, which unwittingly capitalizes on the power of cognitive dissonance theory. The goal of the program would be to prevent good cops from becoming bad cops.

The Article has five parts. Part I makes the case that police lying, particularly in Fourth Amendment matters, is pervasive and threatens the integrity of both the police and the judiciary. Part II suggests that most police officers who lie are not evil people, but moral human beings who rationalize their conduct by "end justifies the means" reasoning. Part III examines cognitive dissonance theory and explains how cognitive dissonance can be used to positively alter behavior. Part IV explains how dissonance theory can be ap-

²⁶ See Donald A. Dripps, *Police, Plus Perjury, Equals Polygraphy*, 86 J. CRIM. L. & CRIMINOLOGY 693, 693 (1996) (contending that polygraph should be used when outcome of dispute relies on testimony of officer and defendant).

²⁷ See 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, 237 (1998) (defining "blue wall of silence" as unwritten code among police officers that prohibits one officer from disclosing incriminating or other damaging evidence against another police officer).

²⁸ See *infra* notes 140-43 and accompanying text.

²⁹ See MOLLEN COMMISSION REPORT, *supra* note 2, at 5 (explaining how prolonged exposure to crime and drug ridden precincts erodes officers' values); see also *infra* notes 150-59 and accompanying text (describing how police officers' work environment and criminal justice system wear down officers' ethics).

³⁰ See MOLLEN COMMISSION REPORT, *supra* note 2, at 5 (asserting that "[t]he focus must be on *keeping* them honest").

plied to design a training and mentoring program designed to keep police officers committed to the ideal of telling the truth. A brief Conclusion summarizes the Article.

I. THE DISHEARTENING TRUTH ABOUT POLICE LYING

Only recently has the public become aware of the frequency of police falsification. Professor Alan Dershowitz deserves credit for his long-standing efforts to publicly expose police lying.³¹ He has been trumpeting the bad news since at least 1982, when he listed his "Rules of the Justice Game," which included:

Rule III: It is easier to convict guilty defendants by violating the Constitution than by complying with it, and in some cases it is impossible to convict guilty defendants without violating the Constitution.

Rule IV: Almost all police lie about whether they violated the Constitution in order to convict guilty defendants.³²

His observations were largely ignored for fifteen years until, during the O.J. Simpson case, Dershowitz lit a torch of controversy by commenting on *Good Morning America* that "[n]ot only do police departments tell their detectives it's OK to lie, they learn it in the Academy. They have a word for it, it's called 'testilying.'"³³ The reaction to his comments was "swift, vociferous, and well orchestrated."³⁴ The police held rallies against Dershowitz.³⁵ His office was picketed.³⁶ He received threatening phone calls.³⁷ The dean of the Harvard Law School was besieged with demands for his dismissal.³⁸

However, Dershowitz's only sin was telling a truth that no one wanted to hear. His statement about the police academy was a paraphrase of testimony given by Robert Leuci, a former New York

³¹ See *infra* notes 32-45 and accompanying text.

³² ALAN M. DERSHOWITZ, *THE BEST DEFENSE* xxi-xxii (1982) [hereinafter DERSHOWITZ, *THE BEST DEFENSE*].

³³ ALAN M. DERSHOWITZ, *REASONABLE DOUBTS* 60 (1996) [hereinafter DERSHOWITZ, *REASONABLE DOUBTS*].

³⁴ *Id.* at 61.

³⁵ See *id.*

³⁶ See *id.*

³⁷ See *id.*

³⁸ See *id.*

City police officer who had gone undercover to investigate police corruption in the 1970s.³⁹ Leuci said: "Cops are almost taught how to commit perjury when they are in the Police Academy."⁴⁰

Much of Dershowitz's commentary about police lying is based on the report of the Mollen Commission,⁴¹ appointed in 1992 by former New York Mayor David Dinkins to investigate corruption in the New York City Police Department.⁴² Two years later, the Commission issued a 158 page report which found police falsification to be "probably the most common form of police corruption facing the criminal justice system."⁴³ Contrary to popular opinion, it was the Mollen Commission, not Alan Dershowitz, that documented how New York City police officers coined the label "testilying" to describe their practice of perjury.⁴⁴

Thanks to Dershowitz and the O.J. Simpson case, police lying is no longer just a "dirty little secret."⁴⁵ The Simpson case had the virtue (perhaps its only virtue) of focusing public attention on the reality of police lying by exposing the blatant perjury of Detective Mark Fuhrman⁴⁶ and the suspected perjury of other detectives.⁴⁷

³⁹ See *id.*

⁴⁰ *Id.*

⁴¹ See *id.*

⁴² See Hon. Harold Baer, Jr. & Joseph P. Armao, *The Mollen Commission Report: An Overview*, 40 N.Y.L. SCH. L. REV. 73, 74 (1995) (describing commission's three areas of investigation as (1) extent and nature of corruption within New York City Police Department, (2) department's policies for controlling corruption, and (3) suggestions for improvements and reform for detecting and preventing department corruption). Dinkins established the Mollen Commission, which was named after chairperson Judge Milton Mollen, in July 1992 by executive order. See *id.* The Commission's staff studied thousands of policy documents, personnel files, and corruption case files. See *id.* at 74-75. It also conducted hundreds of interviews with private citizens and current and former NYPD police officers. See *id.* The Commission issued its final report on July 7, 1994. See *id.* at 75.

⁴³ MOLLEN COMMISSION REPORT, *supra* note 2, at 36.

⁴⁴ See *supra* note 2 and accompanying text.

⁴⁵ See Morgan Cloud, *The Dirty Little Secret*, 43 EMORY L.J. 1311, 1311 (1994) [hereinafter Cloud, *Dirty Little Secret*] (describing police perjury as "the dirty little secret of our criminal justice system").

⁴⁶ In response to questioning by F. Lee Bailey, Fuhrman testified that he had not used the word "nigger" in the past 10 years. Subsequently discovered audio tapes proved this false. See Slobogin, *supra* note 25, at 1037. Fuhrman later pleaded no contest to perjury charges and was convicted. He received three years probation and a two hundred dollar fine. See Editorial, *Fuhrman, A Good Bad Example*, L.A. TIMES, Apr. 6, 1998, at B4.

⁴⁷ Simpson defense lawyers and legal commentators have accused Detective Philip Vannatter of two separate acts of presenting false testimony in connection with searches of O.J. Simpson's estate. See DERSHOWITZ, *REASONABLE DOUBTS*, *supra* note 33, at 49. At a suppression hearing, Vannatter testified that when he went to the Simpson estate hours after the murder, he did so to notify Simpson of the death of his former wife and to make arrangements for Simpson's children. See *id.* He testified that at that time Simpson was "no

Prior to the Simpson case, I had taught criminal procedure for ten years at three different law schools with hardly any mention of police lying. Now, my classroom hypotheticals involving illegal police conduct are frequently interrupted with statements such as, "What if the police just lie about what happened?" Law students have figured out that the complex edifice of constitutional criminal procedure law means nothing if the police can simply make up the facts to fit that law.

A. *The Violated Fourth Amendment*

Commentators generally agree that police falsification is most common in connection with search and seizure activity, particularly the post hoc manufacturing of probable cause.⁴⁸ More extensive study of police corruption is sorely needed, but inherently difficult for obvious reasons. However, the evidence that does exist, both empirical and anecdotal, strongly suggests that police lying in Fourth Amendment matters is widespread.

Lying about search and seizure matters "was part of everyday police work" according to a former New York City police officer interviewed for an article announcing that cops in New York must

more of a suspect" than Simpson defense lawyer Robert Shapiro. *See id.*

The motivation of Vannatter and the other detectives was important because they defended their subsequent entry onto the premises on the basis of exigent circumstances; specifically, their alleged concern was that someone might be in danger or injured inside Simpson's home. *See Cloud, Dirty Little Secret, supra* note 45, at 1325. They denied that the entry was to gather evidence against Simpson. *See DERSHOWITZ, REASONABLE DOUBTS, supra* note 33, at 49. Dershowitz characterized Vannatter's testimony regarding Simpson's status as a non-suspect as a cover story. *See id.* Lawyer and writer Scott Turow commented that "[i]f veteran police detectives did not arrive at the gate of Mr. Simpson's house thinking he might have committed those murders, then they should have been fired." Scott Turow, *Simpson Prosecutors Pay for Their Blunders*, N.Y. TIMES, Oct. 4, 1995, at A21. Even L.A. District Attorney Gil Garcetti later said the testimony "was terrible" and that he "couldn't believe Vannatter would say what he did." *See DERSHOWITZ, REASONABLE DOUBTS, supra* note 33, at 49 (quoting Garcetti's comments to Harvard law students).

Vannatter was also attacked for his insinuation in a search warrant application that Simpson's flight to Chicago the night of the murders was a sudden, unplanned event, when, in fact, the police knew the trip had been planned for months. *See Slobogin, supra* note 25, at 1037. Judge Lance Ito later found that Vannatter had shown a "reckless disregard for the truth" in the warrant application. *See id.*

⁴⁸ *See, e.g.,* Chin & Wells, *supra* note 27, at 248 (stating that most common form of police perjury is in suppression hearings); Morgan Cloud, *Judges, 'Testilying' and the Constitution*, 69 S. CAL. L. REV. 1341, 1355-56 (1996) (citing empirical studies that suggest police perjury is common, especially in drug prosecutions, and occurs most often to avoid suppression of evidence); Slobogin, *supra* note 25, at 1043 (stating that testilying is most common in suppression hearings and that most common form of perjury is post hoc fabrication of probable cause).

now go to school to learn to tell the truth.⁴⁹ The Mollen Commission cataloged a "litany" of manufactured search and seizure tales uncovered by its investigation:

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 after responding to the premises on a radio run. 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.⁵⁰

In a seminal article written thirty years ago, the late Professor and Judge Irving Younger attributed police lying in search and seizure litigation to the U.S. Supreme Court's 1961 decision in *Mapp v. Ohio*.⁵¹ *Mapp* incorporated the Fourth Amendment exclusionary rule as part of due process of law under the Fourteenth Amendment and made it binding on state courts.⁵²

Analyzing narcotics arrests, Younger observed that before *Mapp*, police officers generally testified honestly about stopping and searching defendants without probable cause because no consequences attached to their illegal conduct.⁵³ No matter how blatant

⁴⁹ See Tom Hays, *NYPD Battling Cops' Testilying; Some Say It Helps Balance a System that Favors Crooks*, ROCKY MOUNTAIN NEWS, Mar. 24, 1996, at 3A (quoting officer's statement that falsifying testimony is part of everyday police work).

⁵⁰ MOLLEN COMMISSION REPORT, *supra* note 2, at 38.

⁵¹ See Irving Younger, *The Perjury Routine*, THE NATION, May 8, 1967, at 596-97 (suggesting that *Mapp v. Ohio*, 367 U.S. 643 (1961), caused prevalence of police lying on stand in search and seizure cases).

⁵² See *Mapp v. Ohio*, 367 U.S. 643, 657-58 (1961) (stating that same standard regarding seized evidence need be applied in state and federal courts); see also Younger, *supra* note 51, at 596-97 (commenting on impact of *Mapp*).

⁵³ See Younger, *supra* note 51, at 596-97.

the illegality, the evidence was still admissible. When *Mapp* was first decided, the police continued to testify truthfully until it became evident that, if they did so, the evidence would be suppressed.⁵⁴

With this discovery came a flood of so-called “dropsy” testimony, where the police officer manufactures some variation of this story: the defendant dropped the drugs as the officer approached, thereby giving the officer probable cause to arrest and search.⁵⁵ Examining the pattern of dropsy cases, Younger concluded it “becomes apparent that policemen are committing perjury at least in some of them, and perhaps in nearly all of them.”⁵⁶

More recently, a former New York Assistant District Attorney described his experiences, as a young prosecutor, with dropsy:

[W]e ran up against “dropsy.” In dropsy cases, officers justify a search by the oldest of means: they lie about the facts. *As I was coming around the corner I saw the defendant drop the drugs on the sidewalk, so I arrested him.* It was an old line known to everyone in the justice system. One renowned federal judge many years ago complained that he had read the same testimony in too many cases for it to be believed any longer as a matter of law. I thought that after His Honor’s scathing public condemnation dropsy had died out.

[Author then recounts an episode of serial dropsy testimony in the aftermath of a drug sweep.] There must have been plenty of good arrests mixed in with cases that fit the dropsy profile, but at times I entertained the bleak notion that some officers just made up better lies than others.⁵⁷

The limited empirical evidence available supports the anecdotal evidence that police officers routinely lie in Fourth Amendment contexts. Sarah Barlow conducted a study of the dropsy phenomenon in the Borough of Manhattan in which she compared dropsy arrests for possession of narcotics during a six-month period before *Mapp* with a six-month period after the case was decided.⁵⁸

⁵⁴ See *id.* at 597.

⁵⁵ See *id.*

⁵⁶ *Id.* at 596.

⁵⁷ DAVID HEILBRONER, *ROUGH JUSTICE, DAYS AND NIGHTS OF A YOUNG D.A.* 29 (1990).

⁵⁸ See Sarah Barlow, *Patterns of Arrests for Misdemeanor Narcotics Possession: Manhattan Police*

Barlow studied sworn arrest complaint forms submitted by three separate groups of New York City police officers: the Narcotics Squad, plainclothes officers, and uniformed officers.⁵⁹ For the Narcotics Squad, the percentage of complaints in which officers swore the suspect dropped the narcotics jumped 45.4% immediately after *Mapp*.⁶⁰ The percentage of dropsy complaints sworn to by plainclothes officers increased 71.9%.⁶¹ Dropsy complaints filed by uniformed officers increased 85.5%.⁶²

Another oft-cited study of police falsification, conducted by Myron Orfield, surveyed judges, prosecutors, and public defenders about police lying in the Chicago criminal court system.⁶³ The *Orfield Study* showed that, while prosecutors have more faith in the credibility of police than do judges or public defenders, all three groups believe police lying is extensive in arrest reports, search warrant affidavits, and testimony at suppression hearings.⁶⁴

Regarding arrest reports, 86% of Orfield's respondents believe fabrication occurs at least "some of the time."⁶⁵ Thirty-three percent believe the police manufacture evidence of probable cause either "half of the time" or "most of the time."⁶⁶ Only 11% of the respondents said fabrication in arrest reports never or almost never occurs.⁶⁷

Examining search warrants, Orfield randomly selected 269 warrants supported by unidentified "reliable informant" affidavits and found their content disturbingly similar.⁶⁸ Asked how often police officers use the "same warrant or set of facts improperly for differ-

Practices 1960-62, 4 CRIM. L. BULL. 549, 549-50 (1968). *Mapp* was decided on June 19, 1961. See *id.* at 549. Barlow selected the period from September 15, 1960 through March 15, 1961 as the pre-*Mapp* period, and the period from September 15, 1961 through March 15, 1962 as the post-*Mapp* period. See *id.* at 550. The total number of arrests studied was 3971, with 2291 of those predating *Mapp* and 1680 made after the decision. See *id.*

⁵⁹ See *id.* at 550.

⁶⁰ See *id.* at 556 (stating that Narcotics Squad dropsy arrests increased in number from 205 to 298).

⁶¹ See *id.* (stating that number of plainclothes dropsy arrests increased from 32 to 55).

⁶² See *id.* (stating that number of uniformed officer dropsy arrests increased from 69 to 128).

⁶³ See Myron W. Orfield, Jr., *Deterrence, Perjury, and the Heater Factor: An Exclusionary Rule in the Chicago Criminal Courts*, 63 U. COLO. L. REV. 75 (1992) [hereinafter *Orfield Study*].

⁶⁴ See *id.* at 107. But see Kevin R. Reitz, *Testifying as a Problem of Crime Control: A Reply to Professor Slobogin*, 67 U. COLO. L. REV. 1061, 1062 (1996) (explaining that *Orfield Study* is based on opinions of only 27 to 41 interview subjects).

⁶⁵ See *Orfield Study*, *supra* note 63, at 100.

⁶⁶ See *id.*

⁶⁷ See *id.*

⁶⁸ See *id.* at 102-04.

ent searches," 59% of Orfield's respondents (including 40% of the prosecutors) said this occurred more than 20% of the time.⁶⁹ One prosecutor stated: "If you take a thousand search warrants issued by OCD [Organized Crime Division of the Chicago Police Department], nine hundred and fifty say the same thing. In terms of the scenario in them, they are the same scenario."⁷⁰

Orfield found eight warrant affidavits submitted by one officer, dubbed "Officer Blue," to be virtually identical:

Each of Blue's warrant affidavits stated that he had known the informant for 12 months. Each stated that the informant had provided information to Blue on two prior occasions, that this information had twice lead [sic] to the seizure of narcotics and twice to an arrest, that the substance obtained had been twice tested and found to be narcotics, and that there were two cases pending based on the information provided by the informant. In all eight warrant affidavits, the informant bought drugs there. In every affidavit, Blue stated that the informant had been using drugs for thirty-six months. Finally, all the affidavits state the informant tried the drug and got a high feeling like he got before.⁷¹

Orfield's survey also asked questions about lying under oath at suppression hearings. The survey showed that judges disbelieve police testimony 18% of the time, public defenders disbelieve police testimony 21% of the time, and prosecutors disbelieve police testimony 19% of the time.⁷² Ninety-two percent of the respondents believe the police lie at least "some of the time" to avoid the suppression of evidence and 22% believe the police lie more than half of the time on Fourth Amendment issues.⁷³

Pervasive police lying in search warrant affidavits and at suppression hearings makes a mockery of the rule of law under the Fourth Amendment. The body of legal rules that has evolved from the

⁶⁹ See *id.* at 105.

⁷⁰ *Id.*

⁷¹ *Id.* at 104; see also Maurice Possley & Gary Marx, *Drug Busts Only as Good as Cop's Word; Austin Case Raises Police Perjury Issue*, CHI. TRIB., Feb. 4, 1997, at 1 (describing reversal of drug conviction based on discovery that officer used almost identical language in different search warrant affidavits, including different affidavits stating, respectively: (1) "Come over anytime I always have a real good supply on hand"; (2) "Come anytime I always have a supply either here or upstairs"; and (3) "Stop by any time, I always have some on hand").

⁷² See Orfield Study, *supra* note 63, at 107.

⁷³ See *id.*

Fourth Amendment is staggering in its complexity and volume. As of this writing, federal and state courts have issued 54,178 judicial opinions involving the Fourth Amendment (96.4% of which were decided after *Mapp*).⁷⁴ Professor Wayne LaFave's five-volume search and seizure treatise requires 3537 pages to explain Fourth Amendment rules.⁷⁵ A majority of my course in constitutional criminal procedure is devoted to the study of the Fourth Amendment. However, in the post-O.J. era, with my students now raising questions about the veracity of the police in almost every Fourth Amendment context, I have begun wondering whether the rule of law under the Fourth Amendment has become a myth.⁷⁶

B. *The Tainted Judiciary*

Police lying threatens not only the integrity of the police, but the integrity and independence of the judiciary. Irving Younger laid out the problem judges face in search and seizure cases with stark simplicity:

[Suppression hearings] usually follow a standard pattern. The policemen testify to their version of the circumstances of the search or of the interrogation, always reflecting perfect legality. The defendant testifies to his version, always reflecting egregious illegality. The judge must choose between two statements, and, not surprisingly, he almost always accepts the policeman's word.⁷⁷

1. Why Judges Choose to Believe Cops

Why do judges "almost always" accept the officer's word? It is not necessarily because the officer's word is more credible. Judges know about police lying. The *Orfield Study* showed judges

⁷⁴ A search of WESTLAW Allcases and Allcases-old libraries (July 28, 1998) listed a total of 54,178 opinions mentioning the Fourth Amendment. Of those, 52,206 were decided after June 19, 1961, the day the Court decided *Mapp v. Ohio*, applying the exclusionary rule to the states.

⁷⁵ WAYNE R. LAFAVE, SEARCH AND SEIZURE, A TREATISE ON THE FOURTH AMENDMENT (3d ed. 1996).

⁷⁶ See Dripps, *supra* note 26, at 693. Dripps made the following observation: "Police perjury, if accepted, can defeat any constitutional rule. Thus, the debates about stop-and-frisk, automobile searches, and police interrogation have a scholastic quality; no matter what rule appellate courts adopt, police may circumvent that rule by persuading trial courts to accept an incorrect account of the facts." *Id.*

⁷⁷ Younger, *supra* note 51, at 596.

frequently disbelieve police testimony.⁷⁸ Judge Alex Kozinski of the United States Court of Appeals for the Ninth Circuit stated publicly: "It is an open secret long shared by prosecutors, defense lawyers and judges that perjury is widespread among law enforcement officers."⁷⁹

One practical explanation is that, while judges know as a general matter that police officers lie, they may find it difficult to make that determination in a particular case. Younger, a former criminal courts judge, noted this difficulty.⁸⁰ This problem is accentuated by the fact that police officers become experienced witnesses who are comfortable in court and practiced at handling hostile cross-examination.⁸¹ One need only recollect the initial glowing reaction to Detective Mark Fuhrman's perjured testimony in the Simpson case for an example of this phenomenon.⁸² Moreover, despite concerns about their credibility, police officers carry an aura of respectability because of their position.⁸³ To the contrary, any testimony that contradicts the officer's comes from a probably-guilty criminal defendant who is presumed to be untrustworthy and possesses a strong incentive to prevaricate.⁸⁴ Thus, it is understandable that, absent objective evidence of police lying, judges tend to believe police officers over criminal suspects. Calls for the adoption of procedural mechanisms that would level the playing field by taking into account the possibility of police perjury have failed to garner support.⁸⁵

⁷⁸ See *supra* notes 63-73 and accompanying text.

⁷⁹ Stuart Taylor, Jr., *For the Record*, AM. LAW., Oct. 1995, at 72 (quoting Judge Kozinski).

⁸⁰ See Younger, *supra* note 51, at 597 (stating that "[t]he judge has no reason to disbelieve it in any particular case, and of course the judge must decide each case on its own evidence"); see also *Orfield Study*, *supra* note 63, at 119 (quoting Chicago judge: "Many times, I feel the police are lying, but I can't make a finding on a hunch. I've got to have some facts. If the defense can't show anything, that the police officer is telling a lie, then I have to find for the policeman.").

⁸¹ See Cloud, *Dirty Little Secret*, *supra* note 45, at 1322 (expressing difficulty of handling police officer as witness).

⁸² See, e.g., DERSHOWITZ, *REASONABLE DOUBTS*, *supra* note 33, at 65 (quoting *Boston Globe's* laudatory description of Mark Fuhrman's testimony, which turned out to be perjured, in response to cross-examination by F. Lee Bailey: "Fuhrman not only withstood Bailey's onslaught, but turned out to be the prosecution's best witness to date.").

⁸³ See *Orfield Study*, *supra* note 63, at 119 (quoting Chicago judge: "You walk into a case and as a rule you believe the police officer — you've got to believe police more than the defendant.").

⁸⁴ See Cloud, *Dirty Little Secret*, *supra* note 45, at 1323 (discussing assumption that criminal will commit perjury while testifying).

⁸⁵ See *People v. Berrios*, 270 N.E.2d 709, 712-13 (N.Y. Ct. App. 1971). Defendants in five "dropsy" cases involving heroin possession called on the New York Court of Appeals to shift

Commentators have offered several other reasons why judges accept police perjury: (1) the judge believes the defendant to be guilty and adopts the police officer's "end justifies the means" rationale for violating the Constitution and lying under oath to avoid setting a criminal free;⁸⁶ (2) judges do not like to call other government officials liars, especially those who regularly appear in their courts;⁸⁷ (3) judges do not want to generate adverse publicity that portrays them as being "soft on crime;"⁸⁸ and (4) related to number three, elected judges are afraid of jeopardizing their chances of reelection.⁸⁹

As conservatives intensify their intimidation campaigns against judges who issue unpopular decisions,⁹⁰ reasons number three and four perhaps assume preeminence as explanations for why judges tolerate police lying. Stephen Bright has documented several crusades to destroy judges whom conservatives perceive to be soft on

the burden of proof to the state in cases involving warrantless searches. *See id.* Amazingly, New York County District Attorney Frank Hogan joined in their argument, stating in a brief:

"For the last ten years participants in the system of justice — judges, prosecutors, defense attorneys and police officials — have privately and publicly expressed the belief that in some substantial but indeterminable percentage of dropsy cases, the testimony . . . is tailored to meet the requirements of search-and-seizure" and "it is very difficult in many (such) cases to distinguish fact and fiction."

Id. at 714 (Fuld, C.J., dissenting). The court rejected the argument. *See id.* at 713-14. However, Chief Judge Fuld wrote in dissent that

[w]hen so able and dedicated a prosecutor as District Attorney Frank Hogan believes that there is basis for questioning the truthfulness of the testimony in a "substantial . . . percentage of dropsy cases," the conclusion seems to me inescapable . . . that the integrity of the judicial process demands that there be a reallocation of the burden of proof."

Id. at 714 (Fuld, C.J., dissenting); *see also* *Bush v. United States*, 375 F.2d 602, 604 (D.C. Cir. 1967) (rejecting argument that juries should be instructed to view uncorroborated police testimony in narcotics case with suspicion).

⁸⁶ *See* Cloud, *Dirty Little Secret*, *supra* note 45, at 1322 (asserting that judges do not favor excluding probative evidence if it means setting guilty person free); *Orfield Study*, *supra* note 63, at 121 (suggesting suppression of evidence would offend judge's sense of justice).

⁸⁷ *See* Cloud, *Dirty Little Secret*, *supra* note 45, at 1323-24 (explaining judge's relationship to government officials who testify).

⁸⁸ *See* *Orfield Study*, *supra* note 63, at 121 (citing judge's fear of adverse publicity as factor for accepting police perjury).

⁸⁹ *See id.* (stating concern over judicial election as additional factor in allowing police perjury).

⁹⁰ *See* Harvey Berkman, *Spiking Judges for Rulings*, NAT'L L.J., June 30, 1997, at A1 (discussing Republican threats to impeach federal judges who render decisions with which they disagree).

crime.⁹¹ Reading Bright's article, one can easily comprehend why judges are afraid to officially disbelieve police officers even when the judge subjectively believes the officer is lying, particularly in search and seizure cases involving clearly guilty defendants.

2. Find the Cost of Freedom: *United States v. Bayless*

An insidious example of this destructive force on the integrity and independence of the judiciary occurred in 1996 when presidential candidate Bob Dole and one hundred other Republican members of Congress threatened federal district court judge Harold Baer, Jr. with impeachment⁹² for suppressing evidence in a drug case called *United States v. Bayless*.⁹³ Baer's crime? He disbelieved a police officer's testimony at a suppression hearing and commented in a written opinion that black residents of a New York neighborhood had reason to fear the police.⁹⁴ *Bayless* demonstrates that the judiciary cannot be counted on as the solution to the problem of police falsification. Debated nationwide on talk radio in a fog of sound-bites and misinformation, the complete story warrants telling.

Judge Baer suppressed eighty pounds of cocaine seized by two New York City police officers from a car driven by a middle-aged black woman named Carol Bayless.⁹⁵ Baer ruled that the officers lacked "reasonable suspicion" justifying the auto stop.⁹⁶ Officer

⁹¹ See Stephen B. Bright, *Political Attacks on the Judiciary: Can Justice Be Done amid Efforts to Remove Judges from Office for Unpopular Decisions?*, 72 N.Y.U. L. REV. 308, 312-13, 315-17, 319 (1997) (discussing former U.S. Senate candidate Michael Huffington's newspaper advertisement attack on Senator Dianne Feinstein). Feinstein voted to confirm Rosemary Barkett, a former Florida Supreme Court justice, for a seat on the U.S. Court of Appeals for the Eleventh Circuit. Huffington's attack ad described the facts of a murder case that had come before the Florida Supreme Court. Barkett joined a dissenting opinion in the case opposing imposition of the death sentence on the defendant. See *id.* at 315. The ad misleadingly suggested that Barkett let the murderer "off the hook," when in fact a majority of the court voted to uphold the death sentence. See *id.* Huffington's ad concluded by boasting that he "strongly opposes soft-on-crime judges like Rosemary Barkett . . ." *Id.* at 316. Bob Dole later cited the same case when he nominated Barkett for his "judicial Hall of Shame." See *id.* Barkett participated in more than 12,000 cases during her eight-year tenure on the Florida Supreme Court and wrote more than 3000 opinions, yet had her reputation tarnished based on one dissenting opinion she did not write. See *id.* at 319.

⁹² See Don Van Natta, Jr., *Publicity Stuns Woman in Washington Hts. Drug Case*, N.Y. TIMES, Apr. 11, 1996, at B5.

⁹³ 913 F. Supp. 232 (S.D.N.Y.), *vacated*, 921 F. Supp. 211 (S.D.N.Y. 1996).

⁹⁴ See *id.* at 240.

⁹⁵ See *id.* at 243.

⁹⁶ See *id.* at 237 (holding that lawful random automobile stop requires police officer to have objectively based reasonable suspicion that driver or vehicle itself is violating law). See

Richard Carroll testified at the suppression hearing as to the state's version of the facts.⁹⁷ Carol Bayless's version of the events came from a videotaped confession she gave to the police shortly following her arrest.⁹⁸ Because the state's version differed "dramatically" from Bayless's account, the judge found it necessary to recount them separately in his opinion.⁹⁹ He began his recitation of the facts by stating: "I find her [Bayless's] statement to be credible and reject the testimony proffered by Officer Carroll."¹⁰⁰

According to Officer Carroll, the officers stopped Bayless's car because (1) the car had an out-of-state license plate;¹⁰¹ (2) four black men approached the car in single-file after Bayless double-parked the vehicle in front of a building;¹⁰² (3) one man reached in and pushed a button to open the trunk, two of the men loaded large duffel bags into the trunk, and the fourth closed the trunk;¹⁰³ (4) the men did not speak to Bayless while opening the trunk and placing the duffel bags inside;¹⁰⁴ and (5) the men began running when the officers approached in an unmarked car.¹⁰⁵

In her videotaped confession, Mrs. Bayless admitted transporting drugs from New York to Michigan for her son on twenty prior occasions.¹⁰⁶ She also gave an account of the circumstances leading to the stop of her automobile that differed significantly from Officer Carroll's. Officer Carroll testified that when he first observed Bayless, she was driving the automobile slowly until she double-parked it in front of an apartment building.¹⁰⁷ He further testified he did not observe anyone except Bayless in the vehicle.¹⁰⁸ Conversely, Bayless said in her statement that she was a passenger in the car at the time, that the car was driven by a man named Terry, and that Terry parked and exited the vehicle to unload bags of money to

generally *Delaware v. Prouse*, 440 U.S. 648, 655-56 (1979) (explaining requirements for police officer to make investigative stop of motor vehicle).

⁹⁷ See *Bayless*, 913 F. Supp. at 242.

⁹⁸ See *id.* at 234.

⁹⁹ See *id.* at 234-37.

¹⁰⁰ *Id.* at 234.

¹⁰¹ See *id.* at 236.

¹⁰² See *id.* at 235-36.

¹⁰³ See *id.* at 235.

¹⁰⁴ See *id.* at 235-36.

¹⁰⁵ See *id.*

¹⁰⁶ See *id.* at 236 (finding inculpatory nature of statements added to credibility).

¹⁰⁷ See *id.* at 239.

¹⁰⁸ See *id.* at 235.

pay for the drugs.¹⁰⁹ Commenting on Officer Carroll's failure to note these details, Judge Baer said, "If we credit the defendant's statement, and I do, one cannot keep from finding Carroll's story incredible."¹¹⁰ Bayless also testified that the four men did not scatter and run as Carroll testified, but walked away together in the same direction.¹¹¹ Judge Baer also questioned Carroll's credibility on this point.¹¹²

Then Baer added that even if one or more of the men did run from the police, that would not give rise to a reasonable suspicion that crime was afoot because residents of the predominately black neighborhood "tended to regard police officers as corrupt, abusive and violent. . . . [H]ad the men not run when the cops began to stare at them, it would have been unusual."¹¹³ Baer's opinion may have been influenced by his recent service on the Mollen Commission,¹¹⁴ since he mentioned the Commission in the same sentence containing his inflammatory remarks.¹¹⁵ Based on his conclusion that the officers lacked an objectively based reasonable suspicion justifying the stop,¹¹⁶ Judge Baer ordered that the cocaine and Bayless's videotaped confession be excluded as evidence.¹¹⁷

A national furor erupted almost overnight. New York Governor George Pataki said through a spokesperson: "This sadly is . . . what happens when liberal elites in powerful positions treat the criminals as victims and the victims as criminals."¹¹⁸ The state attorney general reprimanded judges for "handcuffing our cops with arcane technicalities."¹¹⁹ Republican presidential candidate Bob Dole, joined by more than one hundred other Republicans, called for Baer's impeachment.¹²⁰ Dole threatened to make Baer an issue in

¹⁰⁹ See *id.* at 239.

¹¹⁰ *Id.* at 239-40.

¹¹¹ See *id.* at 241-42.

¹¹² See *id.* at 242 n.17 (questioning why officers did not stop males or call for back-up assistance in locating males if they were acting evasively).

¹¹³ *Id.* at 242.

¹¹⁴ See Baer & Armao, *supra* note 42, at 73-75 (offering Judge Baer's and co-author's overview of Mollen Commission).

¹¹⁵ See Bayless, 913 F. Supp. at 242 (asserting that neighborhood residents regarded police officers as corrupt, abusive, and violent).

¹¹⁶ See *id.* (concluding that circumstances did not amount to reasonable suspicion, regardless of police officers' testimony).

¹¹⁷ See *id.* at 243.

¹¹⁸ Greg B. Smith & Frank Lombardi, *Rudy, Gov Hit Judge for Axing Drug Case*, DAILY NEWS, Jan. 26, 1996, at 4 (quoting Governor Pataki).

¹¹⁹ See *id.*

¹²⁰ See Van Natta, *supra* note 92, at B5 (discussing political fallout of Judge Baer's

the presidential campaign and criticized a president "who appoints liberal judges who bend the laws to let drug dealers free."¹²¹ A delegation of two hundred and thirty other lawmakers sought Baer's resignation.¹²² Aides to President Clinton, who appointed Baer to the bench in 1994, called the decision "stupid" and "wrong-headed."¹²³ A spokesperson for Clinton, who no doubt saw the potential for the case to "Willie Hortonize"¹²⁴ the election, suggested Baer should resign, although the President later backed off of that statement.¹²⁵

The intimidation apparently worked. Judge Baer, in an extraordinary move, held a second evidentiary hearing on the motion to suppress.¹²⁶ At this second hearing, he listened to the testimony of the second officer involved in the stop and heard evidence that the Washington Heights neighborhood where the arrest occurred is known for drug activity.¹²⁷ He also listened to Carol Bayless tell her story once more.¹²⁸ Then he changed his mind and decided that the police were telling the truth after all,¹²⁹ formally apologizing to the police for his earlier derogatory comments.¹³⁰ He vacated his original order and denied the motion to suppress.¹³¹

Judge Baer showed initial courage in taking the word of a criminal over that of a police officer and in expressing an unflattering but accurate view about how many black citizens view the police. He was not, as charged by Police Commissioner William Bratton, "living in fairyland" in reaching his conclusions.¹³² Baer's views

decision).

¹²¹ See Patricia Hurtado, *Jurists Rally to Judge Baer*, *NEWSDAY* (Queens Edition), Mar. 31, 1996, at A4.

¹²² See *id.*

¹²³ See Greg B. Smith, *Baer Benches Himself in Case*, *DAILY NEWS*, May 17, 1996, at 6.

¹²⁴ See Edward Walsh, *Clinton Charges Bush Uses Crime Issue to Divide*, *WASH. POST*, July 24, 1992, at A16 (explaining that Willie Horton is convicted murderer who escaped from prison in Massachusetts during prison furlough program). Horton later raped a woman. See *id.* The Republicans used Horton's story in repeated negative advertisements during the 1988 presidential campaign to portray Democratic presidential candidate Michael Dukakis, then-governor of Massachusetts, as being weak on law enforcement issues. See Howard Kurtz, *Past Brings Perspective to Negative Ads*, *WASH. POST*, July 28, 1992, at A8.

¹²⁵ See Van Natta, *supra* note 92, at B5.

¹²⁶ See *United States v. Bayless*, 921 F. Supp. 211, 212 (S.D.N.Y. 1996).

¹²⁷ See *id.* at 215.

¹²⁸ See *id.*

¹²⁹ See *id.* at 216 (stating that Sergeant Bentley's credibility bolstered partner's credibility, thus making defendant's testimony less convincing).

¹³⁰ See *id.* at 217.

¹³¹ See *id.*

¹³² See Smith & Lombardi, *supra* note 118, at 4.

were well informed by his experience as a member of the Mollen Commission, which found that “[n]umerous residents and leaders of these communities told us that they often do not know whom to suspect more: the cops or the criminals.”¹³³ The lesson of *Bayless* is that even when judges believe police officers are committing perjury, they should ignore it.

We cannot rely with confidence on external actors or institutions to control police lying. Although one would hope that judges could always muster the fortitude to stand tall in defending the Constitution, they cannot always know when police officers are committing perjury.¹³⁴ Moreover, even when there is reason to suspect perjury, the political pressure on judges to believe police officers rather than criminal defendants is tremendous.

Nor can we rely on other actors in the process to control police lying. One of the most disturbing findings of the Mollen Commission was that both police superiors and prosecutors condoned and even encouraged police perjury.¹³⁵ Finally, other officers cannot be depended on to report police lying or other misconduct because of the “blue wall of silence,” an unwritten code that forbids police officers from informing on one another.¹³⁶

Police lying will be substantially reduced only when more police officers come to view it as an unacceptable practice. Learned Hand once lamented the false hope of relying on laws and courts to maintain liberty.¹³⁷ “Liberty,” he said, “lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it.”¹³⁸ Just as we will never control drug use until we reduce the demand for drugs among consumers, we will not be able to control police lying unless and until we change the attitudes of

¹³³ MOLLEN COMMISSION REPORT, *supra* note 2, at 4.

¹³⁴ *See id.* at 42 (explaining that signs of falsification and perjury are generally subtle).

¹³⁵ *See id.* at 40 (stating that officers believe supervisors know or should know of police lying but continue to allow it). The Report quoted the testimony of one officer whose supervisor offered him a list of various false predicates for arrest from which the officer could choose. *See id.* at 40-41. “[S]everal former and current prosecutors acknowledged — ‘off the record’ — that perjury and falsification are serious problems in law enforcement that, though not condoned, are ignored.” *Id.* at 42.

¹³⁶ *See id.* at 4 (concluding that “[i]ndeed, so powerful is this code of silence . . . police officers admitted that they would not openly report . . . [a corrupt officer] though almost all of them would silently hope that he would be arrested and removed from the Department”); *see also* Chin & Wells, *supra* note 27, at 240 (suggesting that blue wall of silence is largest impediment to discovering and suppressing police falsification).

¹³⁷ *See* Speech of Learned Hand, *The Spirit of Liberty* (delivered May 21, 1944 in New York), in *THE SPIRIT OF LIBERTY* 189-90 (Irving Dillard ed., 2d ed. 1953).

¹³⁸ *Id.* at 190.

the police officers themselves. To do that, we must first explore why so many police officers are willing to lie.

II. WHY HONORABLE, MORAL POLICE OFFICERS LIE: THE END JUSTIFIES THE MEANS

An essential premise of this Article is the assumption that most police officers, even those who lie, are honorable, moral human beings. If this assumption is incorrect — if most police officers are unscrupulous wrongdoers who do not care about doing the right thing — then the thesis of this Article admittedly falls apart. Immoral persons do not experience dissonance from immoral conduct because it causes no conflict within them.¹³⁹ Dissonance theory cannot profitably be employed to adjust the attitudes and behavior of such people.

However, most police officers apparently are moral people, or at least begin their careers that way. The Mollen Commission so found.¹⁴⁰ Even Professor Dershowitz concedes that most police perjury is committed by “decent cops.”¹⁴¹ When applicants are asked why they want to become police officers, the first answer usually given is that they want to do something to help society.¹⁴² Police trainers report that cadets are appalled when confronted with reports of police misconduct.¹⁴³ The question then becomes, assuming most police officers start out as good and decent human beings, what happens to them? How are they able to suppress the psychological dissonance that should naturally arise from committing serious crimes such as lying under oath and falsifying evidence?

¹³⁹ See Aronson, *Dissonance Theory Makes a Comeback*, *supra* note 23, at 306.

¹⁴⁰ See MOLLEN COMMISSION REPORT, *supra* note 2, at 5 (finding that “[m]ost corrupt officers start out as honest and idealistic. The focus must be on *keeping* them honest.”).

¹⁴¹ See DERSHOWITZ, REASONABLE DOUBTS, *supra* note 33, at 68 (stating opinion that most police perjury is committed by good cops who fear guilty defendants will go free unless they lie).

¹⁴² See PHILIP BONIFACIO, THE PSYCHOLOGICAL EFFECTS OF POLICE WORK, A PSYCHODYNAMIC APPROACH 141 (1991) (discussing police officers’ reasons for joining police force).

¹⁴³ See Rick Van Sant, *How Cops Deal with Temptation; Ethics Stressed During Training*, CIN. POST, Mar. 6, 1998, at 1A.

A. *The Temptation of End-Means Reasoning*

Although police undoubtedly lie for a variety of reasons, the most prominent explanation for police lying is a false belief that the end of convicting guilty persons justifies illicit means.¹⁴⁴ Police officers rarely lie to intentionally convict innocent persons. They lie to convict those whom they believe to be guilty. And, in fact, the vast majority of criminal suspects are guilty.¹⁴⁵ This is undeniably true in Fourth Amendment matters, the arena where most police lying occurs.¹⁴⁶ In search and seizure litigation, incriminating evidence has been found in the possession of the suspect. The lying concerns not the factual guilt or innocence of the defendant. Rather, it usually involves the post hoc manufacturing of probable cause intended to justify the seizure of the incriminating evidence.¹⁴⁷

The findings of the *Mollen Commission Report* bear out the conclusion that police falsification in such matters occurs principally because of an end-means rationalization:

What breeds this tolerance [to falsification] 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

¹⁴⁴ See Alan Dershowitz, *Police Commissioner Confirms 'Testilying,'* BUFFALO NEWS, Nov. 25, 1995, at B3 (quoting New York City Police Commissioner William J. Bratton's explanation that police officers who lie at trial forget that ends do not justify means); DERSHOWITZ, *REASONABLE DOUBTS*, *supra* note 33, at 68 (stating that police officers believe that guilty criminals will not be convicted unless they falsify testimony); Slobogin, *supra* note 25, at 1044 (explaining that police officers justify perjury by claiming that it is in interest of justice); Fredric N. Tulskey et al., *Charges of Police Lying Haunt Cases; Whether Officers' False Testimony Is Deliberate or an Innocent Mistake Is Often Difficult to Prove; Officials Contend Such Problems Are Rare*, L.A. TIMES, Dec. 6, 1996, at A1 (quoting law professor Jerome Skolnick, who said society condones police lying to criminal suspects to obtain confessions "ostensibly because the good end of criminal capture and conviction justifies the bad means of 'lying'").

¹⁴⁵ See DERSHOWITZ, *THE BEST DEFENSE*, *supra* note 32, at xxi.

¹⁴⁶ See *supra* notes 48-76 and accompanying text.

¹⁴⁷ See *supra* note 48 and accompanying text.

evidence of perjury, he asked in disbelief, "What's wrong with that? They're guilty."¹⁴⁸

By elevating the importance of factual guilt in an individual case above their moral and ethical responsibilities to themselves and to the public they serve, many police officers have become conditioned to believe they are not acting wrongly when they lie to convict criminals. So deeply ingrained is this "end justifies the means" mentality that 29% of the respondents in the *Orfield Study* did not equate falsification of testimony at a suppression hearing with the crime of perjury.¹⁴⁹

Reading Mark Baker's *Cops*,¹⁵⁰ one can easily understand why police officers develop such an attitude. Baker's book, in which police officers relate on-the-job experiences in their own words, shows the odds are stacked against ethical values surviving on the street. "The job runs against every good impulse you ever had," said one thirty-eight-year-old detective.¹⁵¹ A retired New York City officer offered this profile of the type of persons he spent twenty years dealing with as a narcotics officer:

What people don't understand is that there are street criminals out there now who are irretrievable predators that just get off . . . on people's pain and on people's crying and begging and pleading. They get off on it. They love it.

¹⁴⁸ MOLLEN COMMISSION REPORT, *supra* note 2, at 41.

¹⁴⁹ See *Orfield Study*, *supra* note 63, at 112. Consider this exchange between author Orfield and a judge who participated in the survey:

When I asked whether he equated police fabrications with perjury he [the judge] answered, "Of course it is not perjury. Who would ever think it was perjury? Do you know what perjury is?"

"Sure," I responded, "perjury is any time that you lie in court under oath."

"You're nuts," he declared. "Perjury is when you contradict a prior sworn statement while you are under oath."

"No judge, you're wrong," I replied.

"Let me show you," he said, pulling off the shelf a copy of the Illinois Criminal Code. He turned to the section that defined the substantive crime of perjury and began to read out loud in a confident manner. His voice slowed considerably and he stopped reading. "Shit," he murmured, before looking up and shaking his head, "Then there is sure a hell of a lot of perjury going on in this courtroom."

Id. at 113-14.

¹⁵⁰ MARK BAKER, *COPS, THEIR LIVES IN THEIR OWN WORDS* (1985).

¹⁵¹ *Id.* at 244.

... You've got to defeat them somehow. To talk to them about any sort of sense of morality, they don't have any sense of morality, they don't have any sense of right and wrong.¹⁵²

Baker describes "an erosion process" that begins the day an officer graduates from the police academy in which an officer sees his ideals become tarnished, his heart hardened, and "callouses growing thick and hard over his ability to feel."¹⁵³ Police officers feel let down by the criminal justice system.¹⁵⁴ They see it "as a broken-down machine, spinning its wheels over solipsistic arguments rather than turning out clear-cut decisions based on the elemental concepts of right and wrong."¹⁵⁵ They view legal technicalities as "bullshit"¹⁵⁶ that allow clearly guilty criminals to escape punishment.¹⁵⁷ Some officers come to completely forsake any fidelity to the constitutional principles they are sworn to uphold: "If we're going to catch these guys, fuck the Constitution, fuck the Bill of Rights, fuck them, fuck you, fuck everybody. The only ones I care about are my partners."¹⁵⁸

The Mollen Commission described the same erosion process:

Some of the most notoriously corrupt cops in the Department were ideal recruits on paper: excellent references and employment histories, well respected and liked in their communities, and good scores on their psychological evaluations. Framed as an issue of "nature versus nurture," we found that the latter — the influence of precinct environments and job culture — often controlled. While there is no excuse for succumbing to corruption, regular and constant exposure to certain conditions and opportunities in crime-ridden precincts changes the attitudes and behavior of some officers. This erosion theory of corruption helps explain why so many initially dedicated cops become corrupt.¹⁵⁹

Dissonance theory helps explain why police officers succumb to

¹⁵² *Id.* at 245; *see also* Van Sant, *supra* note 143, at 1A (citing former police trainer's opinion that police officers become cynical due to continuous exposure to societal evils).

¹⁵³ *See* BAKER, *supra* note 150, at 246.

¹⁵⁴ *See id.*

¹⁵⁵ *Id.*

¹⁵⁶ *See id.* at 261.

¹⁵⁷ *See id.* at 252-56 (offering personal accounts of police frustration with legal system).

¹⁵⁸ *Id.* at 247-48.

¹⁵⁹ MOLLEN COMMISSION REPORT, *supra* note 2, at 20.

a belief that the end of convicting criminals justifies illegal and immoral means such as lying. A principal mechanism for resolving a conflict between beliefs and behavior, and thus reducing dissonance, is "self-justification."¹⁶⁰ "The theory of cognitive dissonance," says Elliot Aronson, "does not picture people as rational beings; rather, it pictures them as rationalizing beings."¹⁶¹ People have an internal motivation to justify their actions.¹⁶² When a person acts, she will try to convince herself (and, importantly, others¹⁶³) that the act is a reasonable and logical thing to do.¹⁶⁴ Whenever we act in a way that is inconsistent with our core beliefs, we are motivated to justify our behavior to reduce feelings of dissonance.¹⁶⁵

End-means reasoning is a type of self-justification. By adopting the belief that the end of convicting a criminal justifies the means of lying, police officers are able to rationalize their conduct and minimize the dissonance that would otherwise result from the conflicting cognitions: (1) I am an honorable, moral person; and (2) I lied in the course of my official duties as a public servant sworn to uphold the law. End-means rationalization allows the officer to shift the culpability for his wrongful conduct to the criminal by convincing himself that justice was in fact served and that the criminal got only what he deserved.¹⁶⁶ Consonance in belief and action is created by distorting the morality of the act, so that the resulting cognitions come out more like: (1) I am an honorable, moral person; and (2) I put a criminal in jail. This ego-defensive behavior allows the officer to maintain a positive self-concept, which is crucial to keeping dissonance suppressed.¹⁶⁷

¹⁶⁰ See ELLIOT ARONSON, *THE SOCIAL ANIMAL* 175-245 (7th ed. 1995) [hereinafter ARONSON, *SOCIAL ANIMAL*] (explaining self-justification).

¹⁶¹ *Id.* at 181.

¹⁶² *See id.* at 176.

¹⁶³ *See infra* notes 275-76 and accompanying text.

¹⁶⁴ *See* ARONSON, *SOCIAL ANIMAL*, *supra* note 160, at 176.

¹⁶⁵ *See id.* at 179.

¹⁶⁶ *See id.* at 196 (explaining that dissonance is minimized by focusing on positive aspects of action rather than negative).

¹⁶⁷ *See id.* at 185; *see also infra* notes 227-62 and accompanying text (discussing importance of self-concept to dissonance theory).

B. *The Fallacy of End-Means Reasoning*

While end-means reasoning as a justification for police to lie may be understandable, it is logically fallacious. End-means reasoning is utilitarian in nature.¹⁶⁸ It is essentially an argument that we should trust our government officials to engage in illicit conduct so long as it serves some greater overall good for society. In his classic work on political fallacies, Jeremy Bentham, the utilitarian philosopher, set forth three criteria for a logically valid “end justifies the means” argument:

1. The first is, that the end be good.
2. That the means chosen be either purely good, or, if evil, having less evil in them on a balance than there is of real good in the end.
3. That the means have more of good in them, or less of evil, as the cause may be, than any others which might have been used to attain the end.¹⁶⁹

Police lying as a means to the end of convicting criminals fails Bentham’s test, most notably the first and second criteria.¹⁷⁰ First, the end, viewed at its proper level of abstraction, is bad, not good. Convicting guilty criminals is good, but that is far too narrow an

¹⁶⁸ See JEREMY BENTHAM, *THE HANDBOOK OF POLITICAL FALLACIES* 219-20 (Harold A. Larrabee ed., Harper Torchbooks 1962).

¹⁶⁹ *Id.*

¹⁷⁰ With respect to Bentham’s third criterion, police lying is not better than other means for convicting criminals. The best means — and the only lawful means — is compliance with the constitutional rules that have been carefully crafted by courts over a period of two hundred years.

The cause of most police lying is the Fourth Amendment exclusionary rule. *See supra* notes 74-76 and accompanying text. While violating the Fourth Amendment and lying about it to avoid the exclusionary rule may be a more expedient crime-fighting strategy in many cases, there is no evidence that the exclusionary rule has unduly hampered law enforcement. To the contrary, a study conducted by a special committee of the American Bar Association found strong support for the conclusion that “the exclusionary rule neither causes serious malfunctioning of the criminal justice system nor promotes crime.” RONALD J. ALLEN ET AL., *CONSTITUTIONAL CRIMINAL PROCEDURE* 904-06 (3d ed. 1995) (quoting AMERICAN BAR ASS’N SPECIAL COMM. ON CRIMINAL JUSTICE IN A FREE SOCIETY, *CRIMINAL JUSTICE IN CRISIS* 12-17 (1988)). The committee’s study involved interviews with more than eight hundred defense lawyers, judges, prosecutors, and high ranking administrators. *See id.* at 904 n.102. The committee found that motions to suppress evidence are rarely granted. The number of cases lost because of the exclusionary rule (due to police and prosecutorial screening or court dismissal) is small, in the range of 0.6% to 2.35% of all felony arrests. *See id.* at 905. These are almost always drug cases. *See id.* Violent crime cases are rarely lost because of the exclusionary rule. *See id.*

end to focus upon. Police lying carries many terrible costs, both to individuals and society at large.¹⁷¹

Intertwined with this lack of ultimate good are the treacherous “means chosen,” Bentham’s second criteria. Here, the means — felonies of dishonesty and breach of trust by supremely powerful public servants — are evil, outweighing any “real good in the end” that might result.¹⁷² To appreciate that the evil attendant to the means of police lying outweighs any good that lying might accomplish, one must consider all the consequences that follow police lying. First, some criminals, most frequently narcotics users, are often convicted as a result of the police misconduct.¹⁷³ That consequence, it will be assumed, is a societal good. However, police lying has far greater ramifications, including the danger of wrongly convicting innocent persons and loss of public confidence in the integrity of the system, which, ironically, may lead to the acquittal of guilty persons.¹⁷⁴

1. Danger of Convicting Innocent Persons

Although in most cases of police lying the officer honestly believes the suspect is guilty, we obviously cannot and do not leave it to the police to decide guilt or innocence. We entrust that decision to juries in a process laden with procedural safeguards intended in part to enhance the accurate determination of guilt or innocence.¹⁷⁵ However, the efficacy of these safeguards is substantially diminished if the police are willing to lie.

American law is rife with examples of criminal injustice attributable to police falsification.¹⁷⁶ A staff report prepared for a subcommittee of the U.S. House Judiciary Committee showed that in the past twenty years, forty-eight death row inmates were released

¹⁷¹ See *infra* notes 176-220 and accompanying text.

¹⁷² See *infra* notes 176-220 and accompanying text.

¹⁷³ See BENTHAM, *supra* note 168, at 219-20.

¹⁷⁴ See *supra* notes 77-91 and accompanying text.

¹⁷⁵ See *Duncan v. Louisiana*, 391 U.S. 145, 157-58 (1968) (stating that right to jury trial shows reluctance to entrust powers over life and liberty of citizens to one judge).

¹⁷⁶ See generally C. RONALD HUFF ET AL., *CONVICTED BUT INNOCENT: WRONGFUL CONVICTION AND PUBLIC POLICY* (1996) (discussing wrongful convictions of innocent persons); Daniel Givelber, *Meaningless Acquittals, Meaningful Convictions: Do We Reliably Acquit the Innocent?*, 49 RUTGERS L. REV. 1317 (1997) (arguing that American criminal system poses high risk of convicting innocent people); Ky Henderson, *How Many Innocent Inmates Are Executed?*, HUM. RTS., Fall 1997, at 10, 10 (discussing several death row inmates who were freed because of corruption in Illinois justice system).

based on appellate determinations that they were innocent.¹⁷⁷ "Most of the false convictions were based upon perjured testimony or because prosecutors withheld evidence that indicated the defendant's innocence."¹⁷⁸

A few noteworthy recent examples demonstrate that we cannot rely on the police to lie only in cases involving guilty defendants:

- To lure Olympic Park bombing suspect Richard Jewell in for questioning in a non-confrontational setting so that behavioral experts could analyze his responses, FBI agents in Atlanta lied to him and said the purpose of the interview was to make a training video.¹⁷⁹ Jewell did not receive any Miranda warnings until FBI Director Louis J. Freeh telephoned from Washington and instructed that Jewell be read his Miranda rights, at which time he terminated the interview.¹⁸⁰ The FBI later issued a statement declaring that Jewell was innocent.¹⁸¹

- In a widely publicized case, a federal judge granted the habeas corpus petition of a young woman convicted of murder after an evidentiary hearing revealed no less than twenty-five separate incidents of police and prosecutorial misconduct in her investigation and trial, including perjury by at least six police officers.¹⁸² The trial judge found that the state "almost executed an innocent, abused woman"¹⁸³ and called the case a "grotesque parody of due process."¹⁸⁴

- In Los Angeles, Robert Vanke spent four years in jail for a fire-bombing that killed a woman and her eleven-month-old child before an FBI agent discovered that two crucial minutes of Vanke's taped confession had been erased, "making an innocent man appear guilty."¹⁸⁵ The police asserted the erasures were "inadvertent

¹⁷⁷ See STAFF OF HOUSE JUDICIARY COMM. ON CIVIL AND CONSTITUTIONAL RIGHTS, 103D CONG., 2D SESS., INNOCENCE AND THE DEATH PENALTY: ASSESSING THE DANGER OF MISTAKEN EXECUTIONS I (Comm. Print 1993); see also Charles Levendosky, Editorial, *The Year of Revenge; Supreme Court Fires Up the Engines of Death*, ROCKY MOUNTAIN NEWS, Jan. 19, 1997, at 18 (noting that overzealous police officers, prosecutors, and judges contribute to wrongful convictions).

¹⁷⁸ Levendosky, *supra* note 177, at 35.

¹⁷⁹ See David Johnston, *Report on F.B.I. Interview with Olympics Suspect Criticized Agents in Atlanta*, N.Y. TIMES, July 26, 1997, at A1-A6.

¹⁸⁰ See *id.*

¹⁸¹ See *id.*

¹⁸² See *Lambert v. Blackwell*, 962 F. Supp. 1521 (E.D. Pa. 1997), *vacated*, 134 F.3d 506 (3d Cir. 1997); *supra* note 7 and accompanying text (discussing *Lambert* case).

¹⁸³ *Lambert*, 962 F. Supp. at 1555.

¹⁸⁴ *Id.* at 1552.

¹⁸⁵ See Tulskey et al., *supra* note 144, at A1.

and innocuous."¹⁸⁶ However, the prosecutor expressed serious doubts about Vanke's guilt and dismissed the charges.¹⁸⁷

- Rolando Cruz was twice convicted and sentenced to die for slaying a 10-year-old girl.¹⁸⁸ He spent eleven years in prison until acquitted during a third trial in 1995.¹⁸⁹ The acquittal came when a police officer testified that he had previously lied about hearing a confession from Cruz in which Cruz purportedly revealed details of the crime that came to him in a "vision."¹⁹⁰ A convicted child rapist and killer named Brian Dugan has since claimed responsibility for the killing.¹⁹¹

- Verneal Jimerson and Dennis Williams, two black men, were convicted and sentenced to death for killing a young white couple and dumping their bodies in a Chicago suburb.¹⁹² Almost twenty years later, a group of Northwestern University journalism students obtained a statement from the prosecution's chief witness in which the witness swore police supplied her with details of the murders and rehearsed her trial testimony to make it sound credible.¹⁹³ Media coverage of the case pressured the state to administer DNA tests, which exonerated the men.¹⁹⁴

In each of the above cases, we can assume the police honestly believed the suspects were guilty and were only trying to assure that justice was done. However, the police make mistakes. They cannot be trusted to be the arbiters of guilt or innocence, even if they are usually right.

2. Loss of Public Confidence

A second, greater societal cost of police lying that must be included in any valid end-means calculus is the loss of public confidence in the police and, when judges fail to take action to correct the abuses, in the judiciary as well.¹⁹⁵ This is bad not only for the

¹⁸⁶ See *id.*

¹⁸⁷ See *id.*

¹⁸⁸ See David Protess & Rob Warden, *Nine Lives: The Justice System Sentenced These Men to Death. The Justice System Ultimately Set Them Free. Is that Justice?*, CHI. TRIB. MAG., Aug. 10, 1997, at 20.

¹⁸⁹ See *id.*

¹⁹⁰ See *id.*

¹⁹¹ See *id.*

¹⁹² See *id.*

¹⁹³ See *id.*

¹⁹⁴ See *id.*

¹⁹⁵ See Slobogin, *supra* note 25, at 1039 (arguing that "[p]erhaps most importantly, po-

obvious reason that citizens in a democratic society must to be able to trust the guardians who carry guns and possess the power to deprive them of liberty and even life, but also for practical reasons. Ultimately, police lying for the ostensibly beneficial purpose of convicting the guilty may backfire on the police and society. If jurors begin discrediting the word of police officers, they may take matters into their own hands.¹⁹⁶ Again, the *Mollen Commission Report* is instructive:

Even supposedly well-intended falsification . . . has devastating consequences for the criminal justice system and the public. Rather than insuring that the guilty are convicted, police falsifications often insure the opposite. Unlawful "shortcuts" at times require lying to a grand jury or to a trial jury — and such deception is often transparent to jurors and judges. Many law enforcement officials we interviewed, for example, believe that police falsification has led to a rise in acquittals because juries increasingly suspect and reject police testimony.¹⁹⁷

Some commentators believe that police perjury in the O.J. Simpson criminal case was largely to blame for the adverse verdict to the prosecution.¹⁹⁸ Comments by a New York prosecutor in the aftermath of the Simpson case underscore that the case did much to erode confidence in police credibility: "Our prosecutors now have to begin their cases defending the cops. Prosecutors have to bring the jury around to the opinion that cops aren't lying. That's how much the landscape has changed."¹⁹⁹ In 1980 and again in 1995, 100 Americans were asked to rank twelve professions from "most trusted" to "least trusted."²⁰⁰ In 1980, police officers ranked fifth.²⁰¹

lice lying intended to convict someone, whether thought to be guilty or innocent, is wrong because once it is discovered, it diminishes one of our most crucial 'social goods' — trust in government").

¹⁹⁶ See DERSHOWITZ, *REASONABLE DOUBTS*, *supra* note 33, at 66 (referring to comments by law professor Kathleen Sullivan making this point).

¹⁹⁷ MOLLEN COMMISSION REPORT, *supra* note 2, at 39.

¹⁹⁸ See DERSHOWITZ, *REASONABLE DOUBTS*, *supra* note 33, at 67 (quoting law professor Peter Arenella's statements on *MacNeil/Lehrer NewsHour* that Simpson verdict was attributable to distrust of police based on perjured testimony jurors heard, rather than jury nullification based on racial considerations).

¹⁹⁹ Joe Sexton, *Jurors Question Honesty of Police*, N.Y. TIMES, Sept. 25, 1995, at B3 (quoting Michael F. Vecchione).

²⁰⁰ See Stephen J. Vicchio, *Ethics and Police Integrity*, 66 FBI L. ENFORCEMENT BULL. 8 (1997). Regrettably, lawyers ranked tenth in 1980 and eleventh in 1995. *See id.*

In 1995, they ranked tenth, the most precipitous drop of any of the twelve professions.²⁰² Even pre-Simpson, a national poll of jurors showed that a majority of 800 jurors interviewed did not trust the testimony of police officers.²⁰³

Trust in the police is lowest among those who suffer most from police misconduct: minorities.²⁰⁴ One survey found that 80% of African-Americans do not trust the criminal justice system and that half believe the police in their communities act as "a lawless gang."²⁰⁵ A poll conducted by the *St. Petersburg Times* showed black residents in that city greatly fear the police as compared to white residents.²⁰⁶ Participants were asked whether they would feel "relieved" or "threatened" if their car broke down and a police car pulled up behind them.²⁰⁷ Nine out of ten white respondents stated they would feel relieved, whereas only six out of ten black residents said they would feel relieved.²⁰⁸ While only approximately 4% of whites said they would feel threatened, nearly 25% of blacks said they would feel threatened.²⁰⁹ A statewide poll in Louisiana showed that 27% of whites and 64% of blacks believe the criminal justice system discriminates against blacks.²¹⁰

But it is not only minorities who mistrust police power. In 1996, Congress debated antiterrorism legislation proposed by President Clinton, which, among other provisions, included expanded federal wiretapping powers.²¹¹ This proposed expansion of police power ran into unexpected opposition from a pair of strange bed-

²⁰¹ See *id.*

²⁰² See *id.*

²⁰³ See *Four King Case Cops Guilty, Most Say in Juror Survey; Many Distrust Officers if Testimony Conflicts*, SAN DIEGO UNION-TRIB., Feb. 15, 1993, at A3 (describing results of poll of jurors interviewed between August and September 1992).

²⁰⁴ See Tulskey et al., *supra* note 144, at A1 (quoting Georgetown University law professor Abbe Smith's opinion that poor people and minorities are most frequent victims of police misconduct).

²⁰⁵ See Brent Staples, *Editorial Notebook; The Rodney King 'Soundtrack'*, N.Y. TIMES, Sept. 11, 1995, at A14.

²⁰⁶ See James Harper, *Poll Finds Support for Police Chief*, ST. PETERSBURG TIMES, Dec. 15, 1996, at 1A.

²⁰⁷ See *id.*

²⁰⁸ See *id.*

²⁰⁹ See *id.*

²¹⁰ See Fred Kalmbach, *Half of Participants in Poll Mistrust La. Judges, Juries*, BATON ROUGE ADVOC., Jan. 4, 1996, at 1A.

²¹¹ See Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (codified in scattered sections of 8 U.S.C. and 28 U.S.C. (Supp. 1997)). See generally Jonathan S. Landay, *Efforts to Curb Terrorism Clash with Freedoms*, CHRISTIAN SCI. MONITOR, July 31, 1996, at 1 (discussing proposed legislation).

fellows: the American Civil Liberties Union and the National Rifle Association.²¹² After provisions seen as infringing civil liberties were stripped from the bill, Republican Representative Henry Hyde, who cosponsored the legislation, stated: "It was kind of a sad day for me. Standing back there I heard a dear friend of mine, a great Republican, say: 'I trust Hamas more than I trust my own Government.' . . . What's happened? Why is my Government such a terrible thing?"²¹³

Of course, it is impossible to directly tie the distrust of law enforcement to police lying. However, overall excesses in law enforcement, including police lying, have severely damaged public confidence in police officers among all segments of society, including those who strongly support the aggressive pursuit of criminals. The legitimacy of our criminal justice system is jeopardized when average citizens begin to doubt that the system would treat them fairly should they have the misfortune of becoming embroiled in it.

Ultimately, the gravest cost of police lying may prove to be diminished liberty. Our tacit acceptance of systemic police lying is just one manifestation of our much broader willingness to surrender liberty to wage the war on crime. Although crime rates have been decreasing,²¹⁴ polls show that crime is the number one concern of Americans.²¹⁵ Polling data show that 84% of Americans want to expand police power to use deadly force, 87% want to abolish or limit plea bargaining, and 92% favor the death penalty.²¹⁶ With regard to their Fourth Amendment right to be free from unreasonable searches and seizures, a solid majority of the American public believes the police should be given more power to stop and question citizens and that the exclusionary rule should be re-

²¹² See Landay, *supra* note 211, at 1.

²¹³ Thomas L. Friedman, *Foreign Affairs; House G.O.P. Madness*, N.Y. TIMES, Apr. 3, 1996, at A15. Hyde has himself criticized excesses in law enforcement, characterizing federal forfeiture statutes as "Kafkaesque" and introducing legislation to shift the burden of proof from the property owner to the government. See Linnet Myers, *Forfeiture Laws: Fair or Foul*, CHI. TRIB., Mar. 12, 1996, at 6.

²¹⁴ See Patrick J. McDonnell, *Highly Touted Theory on Age, Crime Disputed Statistics*, L.A. TIMES, June 7, 1997, at B1 (stating that FBI Uniform Crime Report documented 11% drop in murders and 7% drop in violent crime in 1996).

²¹⁵ See Jurek Martin, *The Americas: Voters Unmoved by Whitewater*, FIN. TIMES, June 6, 1996, at 4 (citing *New York Times/CBS* survey).

²¹⁶ See Bob Dart, *Safety Beats Freedom in Public Survey; Americans Ready to Give Up Rights to Help Cut Crime*, ATLANTA CONST., Sept. 11, 1994, at A7 (interviewing five thousand people in four polls).

laxed.²¹⁷ These attitudes are no doubt reinforced by inflammatory political rhetoric about the need to get “tough” with criminals and which disparage judges who are “soft on crime.”²¹⁸

The message we send to police is that we are so afraid of criminals we will trust you — our guardians — to do whatever is necessary to make us safer. The result has been a not-so-subtle power creep in which many police officers have grown to believe that they possess a mandate to take justice into their own hands, even if that requires them to employ unethical and illegal means such as lying and falsifying evidence.²¹⁹ Liberty is diminished in a society where police are permitted to believe they are above the law. The Mollen Commission concluded the section of its report addressing police falsification by stating that, while it is crucial to afford police officers discretion in carrying out their duties, “in a democracy, this leeway must be in concert with the law — otherwise we have anarchy.”²²⁰ When police officers intentionally lie to convict criminals, the good end that is achieved is outweighed by the terrible costs that accompany such behavior.

²¹⁷ See *id.* (stating that 54% of participants supported giving police greater power to stop and question suspects; 58% favored loosening restrictions on use of illegally seized evidence).

²¹⁸ See *supra* notes 88-91 and accompanying text.

²¹⁹ In his classic article on the Fourth Amendment written twenty years ago, Amsterdam offered words that bear repeating:

[I]t was Mr. Justice Frankfurter — no watery sentimentalist — who reminded us that “[t]he history of liberty has largely been the history of observance of procedural safeguards.” And the history of the destruction of liberty, one may add, has largely been the history of the relaxation of those safe-guards in the face of plausible-sounding governmental claims of a need to deal with widely frightening and emotion-freighted threats to the good order of society.

Anthony G. Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349, 354 (1974) (citation omitted). More than two hundred years ago, Thomas Paine wrote to similar effect:

[A]n avidity to punish is always dangerous to liberty. It leads men to stretch, to misinterpret, and to misapply even the best of laws. He that would make his own liberty secured must guard even his enemy from oppression; for if he violates his duty, he establishes a precedent that will reach to himself.

James J. West, *More than Winning: Doing Justice*, 19 PA. LAW. 37, 38 (1997) (reviewing WILLIAM C. COSTOPOULOS, *PRINCIPAL SUSPECT* (1996)) (quoting Thomas Paine).

²²⁰ MOLLEN COMMISSION REPORT, *supra* note 2, at 43.

III. COGNITIVE DISSONANCE THEORY

A. *Basic Dissonance Theory*

Dissonance theory was introduced in 1957 by Leon Festinger.²²¹ Festinger posited that human beings strive for consistency in their beliefs and, more importantly for this Article, between their beliefs and behavior.²²² When inconsistency exists, psychological discomfort, or what Festinger labeled "dissonance," arises.²²³ Because psychological dissonance is discomfiting, a power motivation to reduce it is created.²²⁴

Professor Elliot Aronson, a student of Festinger's in the late 1950s, worked closely with Festinger during the formative stages of the theory.²²⁵ Aronson recently summarized dissonance theory as follows:

Basically, cognitive dissonance is a state of tension that occurs whenever an individual simultaneously holds two cognitions (ideas, attitudes, beliefs, opinions) that are psychologically inconsistent. . . . Because the occurrence of cognitive dissonance is unpleasant, people are motivated to reduce it; this is roughly analogous to the processes involved in the induction and reduction of such drives as hunger or thirst — except that, here, the driving force arises from cognitive discomfort rather than physiological needs. To hold two ideas that contradict each other is to flirt with absurdity, and . . . humans are creatures who spend their lives trying to convince themselves that their existence is not absurd.²²⁶

B. *Self-Concept and Hypocrisy Induction*

Three years after the publication of Festinger's master work, Aronson refined dissonance theory by shifting the emphasis to the self-concept.²²⁷ Aronson asserted that dissonance is strongest when

²²¹ See LEON FESTINGER, A THEORY OF COGNITIVE DISSONANCE (1957).

²²² See *id.* at 1.

²²³ See *id.* at 2-3.

²²⁴ See *id.* at 3.

²²⁵ See ARONSON, SOCIAL ANIMAL, *supra* note 160, at 178.

²²⁶ *Id.*

²²⁷ See Aronson, *Dissonance Theory Makes a Comeback*, *supra* note 23, at 305 (tracing history of dissonance theory).

it involves “not just any two cognitions but, rather, a cognition about the self and a piece of our behavior that violates the self-concept.”²²⁸ The self-concept theory rests on the assumption that human beings have a high concept of self and strive to maintain consistency between that concept and their behavior.²²⁹

Of particular relevance here, this includes striving to preserve a morally good sense of self.²³⁰ If a person considers herself to be a moral person and commits an immoral act, she will experience dissonance.²³¹ Reducing this dissonance will require her to rethink or justify her actions to make them more consistent with her self-concept, typically by changing her attitudes or behavior.²³²

Because it directly challenges a person’s image of herself, dissonance-based persuasion is a powerful behavior-altering force likely to be more effective than straightforward persuasive or coercive appeals²³³ and, importantly, more enduring.²³⁴ Aronson and others have empirically demonstrated that positive changes in behavior can be generated by arousing dissonance that challenges a person’s self-concept. Dissonance persuasion has been used successfully to change attitudes and behavior about energy conservation,²³⁵ condom use for AIDS prevention,²³⁶ weight reduction,²³⁷ and adolescent smoking.²³⁸

Most early dissonance experiments used a “counter-attitudinal advocacy” procedure in which subjects were induced to persuade

²²⁸ *Id.*

²²⁹ *See id.*

²³⁰ *See id.* In addition to preserving a morally good sense of self, Aronson posited that persons strive to maintain a “consistent, stable and predictable sense of self” and “a competent sense of self.” *Id.*

²³¹ *See* Chris Ann Dickerson et al., *Using Cognitive Dissonance to Encourage Water Conservation*, 22 J. APPLIED SOC. PSYCHOL. 841, 843 (1992).

²³² *See id.*

²³³ *See id.* at 842-43.

²³⁴ *See id.* at 843.

²³⁵ *See id.* at 842.

²³⁶ *See* Elliot Aronson et al., *Overcoming Denial and Increasing the Intention to Use Condoms Through the Induction of Hypocrisy*, 81 AM. J. PUB. HEALTH 1636, 1637 (1991); Jeff Stone et al., *Inducing Hypocrisy as a Means of Encouraging Young Adults to Use Condoms*, 20 PERSONALITY AND SOC. PSYCHOL. BULL. 116, 117-18 (1994).

²³⁷ *See* Danny Asxom & Joel Cooper, *Reducing Weight by Reducing Dissonance: The Role of Effort Justification in Inducing Weight Loss*, in READINGS ABOUT THE SOCIAL ANIMAL 181 (Elliot Aronson ed., 3d ed. 1981).

²³⁸ *See* Laurie Chassin et al., *Social Psychological Contributions to the Understanding and Prevention of Adolescent Cigarette Smoking*, 16 PERSONALITY AND SOC. PSYCHOL. BULL. 133, 134-35 (1990).

others of something that the subjects themselves did not believe.²³⁹ Advocating contrary to their beliefs created dissonance in the subjects.²⁴⁰ The experiments showed that to reduce their dissonance, the subjects shifted their view to bring it closer to the position they were advocating.²⁴¹ For example, in one experiment researchers induced subjects to compose speeches advocating the legalization of marijuana, even though the subjects did not personally believe in legalization.²⁴² The results showed that a group of subjects who were told their speeches would be delivered to an audience of impressionable high school students experienced dissonance and dealt with that dissonance by realigning their attitudes about legalization to correspond more closely with their speeches.²⁴³

Conversely, the hypocrisy paradigm developed by Aronson and his colleagues is used in proattitudinal situations to alter behavior rather than beliefs.²⁴⁴ Persuasion is accomplished by inducing feelings of hypocrisy in subjects by getting them to commit to something they do believe in and then reminding them that their own behavior is not always consistent with that belief.²⁴⁵ Subjects are made to feel hypocritical by being forced to confront that "they do not always practice what they preach."²⁴⁶ Experiments show that to reduce the dissonance arising from the induction of hypocrisy, subjects will modify their discrepant behavior to bring it in line with their beliefs.

In one experiment, researchers induced a group of college students to make videotaped speeches advocating condom use as an AIDS prevention measure.²⁴⁷ Another group of students simply rehearsed pro-condom speeches without actually making the videos.²⁴⁸ Thus, members of the first group were induced to commit themselves more firmly and openly to the belief that condoms should be used during intercourse. In addition to this commit-

²³⁹ See Dickerson et al., *supra* note 231, at 843.

²⁴⁰ See *id.*

²⁴¹ See *id.*

²⁴² See Elizabeth Nel et al., *Opinion Change in the Advocate as a Function of the Persuasibility of the Audience: A Clarification of the Meaning of Dissonance*, 12 J. PERSONALITY AND SOC. PSYCHOL. 117, 120 (1969).

²⁴³ See *id.* at 121-22.

²⁴⁴ See Dickerson et al., *supra* note 231, at 843-44 (tracing this development).

²⁴⁵ See *id.* at 843-44.

²⁴⁶ *Id.* at 844.

²⁴⁷ See Stone et al., *supra* note 236, at 118-19.

²⁴⁸ See *id.* at 119.

ment manipulation, some of the subjects were manipulated to be mindful of the fact that they had on occasion not used condoms during sex.²⁴⁹ Other subjects were not subject to this mindfulness manipulation.²⁵⁰ Immediately afterwards, all subjects were given the opportunity to purchase condoms while left alone in a room.²⁵¹

As expected, participants subjected to the highest hypocrisy induction (those who committed themselves to condom use on video and were made mindful that they did not always use condoms) were much more likely to purchase the condoms, and to purchase more of them, than subjects in the other groups.²⁵² Moreover, a follow-up survey indicated 92% of the participants subject to the hypocrisy condition reported using condoms after the experiment.²⁵³

In another well-known hypocrisy experiment, researchers sought to induce college students in drought-ridden central California to conserve water while taking showers.²⁵⁴ Female swimmers were intercepted after leaving the pool on the way to the showers.²⁵⁵ As in the condom experiment, Aronson and colleagues varied the conditions of commitment and mindfulness.²⁵⁶ One group of students was asked to sign a flyer encouraging people to conserve water. The students were told the flyers would be attached to colorful water conservation posters and distributed around campus.²⁵⁷ The flyers said: "Take shorter showers. Turn off water while soaping up. If I can do it, so can you!"²⁵⁸ Other participants did not make the public commitment.²⁵⁹

In addition to the commitment manipulation, some of the subjects were asked to respond to a water conservation survey intended

²⁴⁹ *See id.* Told that it would be helpful to have more information as to why people find it difficult to use condoms, the subjects were given a list of reasons commonly offered for not using condoms and asked to supplement the list with circumstances surrounding their own past failure to use condoms. *See id.*

²⁵⁰ *See id.*

²⁵¹ *See id.* at 119-20. Leaving the subjects alone helped ensure that they would not be influenced to purchase the condoms by the presence of the experimenters. *See id.* at 120.

²⁵² *See id.* at 120-21. For example, 83% of the subjects in the high hypocrisy condition purchased condoms compared to only 33% of the subjects who made no videotaped commitment. *See id.*

²⁵³ *See id.* at 124.

²⁵⁴ *See* Dickerson et al., *supra* note 231, at 845.

²⁵⁵ *See id.*

²⁵⁶ *See id.* at 846-47.

²⁵⁷ *See id.* at 847.

²⁵⁸ *Id.*

²⁵⁹ *See id.*

to make them mindful that they did not always conserve water.²⁶⁰ A female student participating in the experiment then unobtrusively timed the showers the students took.²⁶¹ The results were consistent with the condom experiment. Students who committed to publicly advocating shorter showers and who were made mindful that they did not always practice what they preach took very short showers.²⁶²

These experiments demonstrate that dissonance and hypocrisy theory can be employed to effect positive changes in behavior. Specifically, when a person commits to a belief and is then made mindful that her conduct conflicts with that belief, the ensuing feelings of hypocrisy create dissonance. Because most people have a high concept of themselves as moral human beings, they strive to reduce this dissonance. The most direct way to accomplish such reduction is to change the deviant behavior. The next section explores how this research might be employed to construct a police training and mentoring program to combat the social problem of police lying.

IV. APPLYING DISSONANCE THEORY TO DESIGN A POLICE TRAINING AND MENTORING PROGRAM TO REDUCE POLICE LYING

The real world is obviously far more complex than the tightly controlled environment of experimental social psychology. Police lying is a pervasive social ill with a long history. It will be eradicated only when prevaricating is eliminated in every other context of life: never. However, dissonance theory, as augmented by Professor Aronson's self-concept and hypocrisy induction theories, provides a solid foundation for creating a prevention-oriented police training and mentoring program designed to keep officers from straying from their moral compass in the first instance.²⁶³

Any successful training program aimed at reducing police lying must focus on prevention. The key, in the words of the *Mollen Commission Report*, is "keeping" police officers honest.²⁶⁴ Once a police officer develops the attitude that lying is a defensible and

²⁶⁰ See *id.* at 846.

²⁶¹ See *id.* at 847-48.

²⁶² See *id.* at 848-51.

²⁶³ The principles upon which the dissonance-based training/mentoring program described in this Article is based could readily be adapted to develop integrity training designed to fight police corruption in all forms. This Article specifically addresses only police lying and other forms of official falsification.

²⁶⁴ See MOLLEN COMMISSION REPORT, *supra* note 2, at 5.

perhaps even essential aspect of the job, dissonant feelings of hypocrisy no longer arise.²⁶⁵ To the extent such feelings exist, they are submerged under a layer of self-justification.²⁶⁶ The officer learns to rationalize lying as a moral act or at least as not an immoral act. Thus, his self-concept as a decent, moral person is not substantially compromised.²⁶⁷ When a police officer reaches this stage, he may be unsalvageable in terms of a recommitment to truth-telling.

This dismal prognosis can be explained by the fact that dissonance reduction is a double-edged sword.²⁶⁸ Whatever a person does, he will try to justify.²⁶⁹ The more difficult the initial decision, the greater will be the need to justify it.²⁷⁰ Once the justification cycle sets in after a difficult decision, it is very hard to reverse.²⁷¹ Thus, once an officer starts lying, it is difficult to bring him back around to believing lying is wrong.²⁷² We can analogize to a car stuck in the mud, spinning its wheels, only to get stuck more deeply. A tow truck might get the car out, but not easily.²⁷³ It is unlikely that the cop who told Mark Baker, "If we're going to catch these guys, fuck the Constitution,"²⁷⁴ can be persuaded to change his beliefs and rededicate himself to life as an honest, law-abiding, rights-respecting officer.

Because a prime means of self-justification is proselytizing, losing one officer to the temptation of believing that falsification is a justifiable means to an end carries with it the amplified threat of polluting other officers.²⁷⁵ Once a good cop turns bad, he will try to convince others to follow the same path to further reduce any dissonance he might experience from his wrongful conduct.²⁷⁶ The more officers who behave like he does, the less culpable the of-

²⁶⁵ See *supra* note 139 and accompanying text.

²⁶⁶ See *supra* notes 160-67 and accompanying text.

²⁶⁷ See *supra* notes 21-23 and accompanying text.

²⁶⁸ See E-mail letter from Elliot Aronson, Professor, University of California, Santa Cruz, to author (June 2, 1998, No. 1) (on file with author) [hereinafter Aronson e-mail (June 2, 1998, No. 1)].

²⁶⁹ See *id.*

²⁷⁰ See *id.*

²⁷¹ See *id.*

²⁷² See *id.*

²⁷³ See *id.*

²⁷⁴ See *supra* note 158 and accompanying text.

²⁷⁵ See Aronson e-mail (June 2, 1998, No. 1), *supra* note 268.

²⁷⁶ See *id.*

fending officer will feel.²⁷⁷ New officers are thus at extreme risk because they are thrown directly from the ivory tower world of the police academy into a poisoned value system where their teachers — some callous veteran officers — have a psychological incentive to tarnish their ideals.

Thus, it is critical to keep officers faithful to the ideals of honesty and integrity with which they emerge from the academy. In the language of dissonance theory, the goal of an effective police integrity training program must be hypocrisy avoidance rather than hypocrisy induction. Stated another way, the goal must be to keep the officer in a “pre-hypocrisy” situation.²⁷⁸ Hypocrisy induction theory as a means of changing behavior usually comes into play after one has engaged in hypocritical behavior. However, for the reasons stated above, by that time it may be too late to recover lost officers.²⁷⁹ Their honesty codes have been trumped by competing moral codes such as “you don’t rat on a fellow officer” and “in the real world, the only sure way to get a conviction is to fudge the truth.”²⁸⁰

The object of dissonance-based integrity training would be a system in which police officers would be deterred from yielding to the temptation to lie because the threat to their self-concept as decent, moral persons would create an unacceptable amount of psychological discomfort. One could describe it as an “honesty maintenance” program.

Such a program would require two stages.²⁸¹ The first stage would occur at the police academy where efforts must be made to instill in cadets a firm commitment to truth-telling and doing the right thing.²⁸² The second stage, without which the first would be doomed to disappointment, would be to establish a mentoring program pairing rookie police officers with academy cadets.²⁸³ The mentoring program would be vital to keeping the honesty com-

²⁷⁷ See *id.*

²⁷⁸ See E-mail letter from Elliot Aronson, Professor, University of California, Santa Cruz, to author (May 28, 1998) (on file with author) [hereinafter Aronson e-mail (May 28, 1998)].

²⁷⁹ See E-mail letter from Elliot Aronson, Professor, University of California, Santa Cruz, to author (June 2, 1998, No. 2) (on file with author) [hereinafter Aronson e-mail (June 2, 1998, No. 2)].

²⁸⁰ *Id.*

²⁸¹ See E-mail letter from Elliot Aronson, Professor, University of California, Santa Cruz, to author (May 27, 1998) (on file with author) [hereinafter Aronson e-mail (May 27, 1998)]; Aronson e-mail (June 2, 1998, No. 2), *supra* note 279 (outlining two-stage structure).

²⁸² See Aronson e-mail (June 2, 1998, No. 2), *supra* note 279.

²⁸³ See *id.*

mitment alive once the officers leave the police academy. A successful model for this mentoring relationship is the sponsorship tradition of Alcoholics Anonymous, a program that for many decades has proven highly effective as a way of maintaining sobriety in recovering alcoholics.

A. Initial Integrity Training

Although police officers have long received training in ethics at the police academy, it has not been nearly enough. In New York City, officers receive only one evening of integrity training intended to cover the entire range of ethical dilemmas an officer may face.²⁸⁴ In Atlanta, officers receive only two hours in ethics education, the same amount of training they receive in "media relations" and only half as much as they receive in "courtroom demeanor."²⁸⁵ One encouraging sign is that recent police scandals and declining public confidence in the police have brought calls for more extensive ethics training, which are being heeded in some places.²⁸⁶

If police departments are serious about turning out honest officers, specific training in that area is needed. Can honesty be taught? Probably not in the sense of creating moral beliefs where none exist. If rotten apples make it into the police academy, they are most likely going to stay rotten. The only solution to that problem is better screening of recruits.²⁸⁷ In controlled dissonance ex-

²⁸⁴ See RACHLIN, *supra* note 1, at 190-206 (discussing one-night "Integrity Workshop" for recruits in New York Police Department).

²⁸⁵ See Jack Warner, *The Making of a Cop*, ATLANTA CONST., May 3, 1998, at D5 (listing police academy curriculum, including number of hours allotted to each topic).

²⁸⁶ See, e.g., Brent LaBlonde, *Police Re-Emphasizing Ethics Training*, COLUMBUS DISPATCH, Apr. 10, 1996, at 1B (discussing increased emphasis on ethics training in Columbus, Ohio, police academy); Brian MacQuarrie, *Police in N.E., See Strides, Admit that Corruption Lingers*, BOSTON GLOBE, Sept. 9, 1997, at A1 (discussing six-month review of police ethics training in Boston); Andrew Martin & Steve Mills, *FOP Challenges Task Force's Report*, CHI. TRIB., Nov. 7, 1998, available in 1997 WL 3607617 (describing task force report criticizing lack of continuing ethics training for Chicago police officers after graduating from academy); Roberto Suro, *Law Enforcement Ethics: A New Code for Agents; FBI Trainees Lectured on Integrity, Deception*, WASH. POST, Aug. 21, 1997, at A17 (describing new ethics training instituted for FBI agents).

²⁸⁷ See Quentin Collin Faust, *Integrity Tests: Do They Have Any Integrity?*, 6 CORNELL J.L. & PUB. POLY 211, 213 (1996) (stating that approximately five to six thousand U.S. companies use honesty and personality tests to screen employees); see also 29 U.S.C. § 2006 (1994) (banning employee polygraph testing except for law enforcement officers and other government employees in Polygraph Act of 1988). While I oppose personality and polygraph testing for most employees on privacy grounds, I believe the tremendous power and high position of trust bestowed on police officers warrants their use in the screening of police

periments, beliefs can be manipulated artificially, as demonstrated by the counterattitudinal advocacy experiment involving the legalization of marijuana.²⁸⁸ However, artificially manipulated beliefs in truth-telling are not likely to survive long in the real world.

The good news is that, as the Mollen Commission found, most police officers begin their careers honest and idealistic.²⁸⁹ Police applicants list helping society as the primary reason for wanting to be police officers.²⁹⁰ Police cadets are dismayed when they hear about incidents of police misconduct.²⁹¹ A principal goal of integrity training at the police academy should be to bolster the cadet's already developed value system by extracting an earnest commitment to remaining an honest "good cop."²⁹² Dissonance research demonstrates that the more committed a subject is to a belief, the more likely she will want to behave in conformity with that belief.²⁹³ This is particularly true where the commitment is expressed publicly.²⁹⁴

Role-playing exercises²⁹⁵ would be one effective means for obtaining such a commitment.²⁹⁶ Playing the role of an honest cop resisting a temptation to lie would constitute a powerful public commitment to honesty.²⁹⁷ Experimental studies have shown that role

applicants.

²⁸⁸ See *supra* notes 242-43 and accompanying text.

²⁸⁹ See MOLLEN COMMISSION REPORT, *supra* note 2, at 5.

²⁹⁰ See *supra* note 142 and accompanying text.

²⁹¹ See *supra* note 143 and accompanying text.

²⁹² This Article does not attempt to set forth a comprehensive integrity training plan for police cadets. It concentrates on how dissonance theory can be used to bolster otherwise sound integrity training.

²⁹³ See *supra* notes 237-62 and accompanying text (describing experiments).

²⁹⁴ See *supra* notes 237-62 and accompanying text.

²⁹⁵ Role playing is a direct descendant of the psychodrama techniques developed in Vienna in the 1920s by Dr. Jacob L. Moreno for use in group psychotherapy. See ADAM BLATNER & ALLEE BLATNER, *THE ART OF PLAY: AN ADULT'S GUIDE TO RECLAIMING IMAGINATION AND SPONTANEITY* 11 (1988). Moreno saw a benefit to having clients act out their feelings and conflicts rather than simply talk about them. See *id.* Thorough analysis of role playing as an educational technique is not part of this Article. See generally FANNIE R. SHAFTEL & GEORGE SHAFTEL, *ROLE-PLAYING FOR SOCIAL VALUES: DECISION-MAKING IN SOCIAL STUDIES* (1967); Rich Becker, *Taking the Misery out of Experiential Training (Games and Simulation and Role-Playing Exercises in Training Programs)*, TRAINING, Feb. 1, 1998, available in 1998 WL 10958144 (identifying pitfalls in role playing and simulation exercises and how to avoid them); David F. Swink, *Role-Play Your Way to Learning*, TRAINING & DEVEL., May 1993, at 91 (1993) (offering suggestions for constructing effective role-playing exercises).

²⁹⁶ See ALAN C. ELMS, *ROLE PLAYING, REWARD AND ATTITUDE CHANGE* iii (1969) (stating that "[r]ole playing is one of the great natural persuaders. . . . In many instances this process of self-persuasion appears even more powerful than the direct attempts of others to influence us.").

²⁹⁷ See Aronson e-mail (June 2, 1998, No. 2), *supra* note 279.

playing can help bring an individual's beliefs into alignment with those espoused during the simulation exercise.²⁹⁸ In other words, under certain conditions, "saying is believing."²⁹⁹

Just as important, role playing would prepare cadets for the types of integrity dilemmas they are likely to face in the real world.³⁰⁰ Simulation exercises give participants a chance to practice real-life choice/consequence situations.³⁰¹ They give learners an opportunity to think about problems in advance, rather than being forced to solve them in the excitement or tension of the moment.³⁰² Reactions to the temptations and pressures to behave dishonestly are better thought out in the safe environs of the police academy than out on the street. As one police training expert stated, it is at the academy that "you decide who you are and who you're going to be."³⁰³

Given the pervasiveness of police falsification in search, seizure, and arrest situations,³⁰⁴ particular attention should be given to developing simulation exercises involving those issues. Here is an

²⁹⁸ See Susan Black, "You Be the Judge," EXECUTIVE EDUCATOR, Jan. 1995, at 32-34. This writer questions the overuse of role playing in K-12 education. See Gerald L. Clore & Katharine McMillan Jeffery, *Emotional Role Playing, Attitude Change, and Attraction Toward a Disabled Person*, 23 J. PERSONALITY & SOC. PSYCHOL. 105 (1972) (stating that role playing is effective tool for attitude and behavior change); Robert E. Matefy & Barbara A. Acksen, *The Effect of Role-Playing Discrepant Positions on Change in Moral Judgments and Attitudes*, 128 J. GENETIC PSYCHOL. 189, 189-90 (1976) (citing several studies showing that role playing can effect attitude changes).

²⁹⁹ See Black, *supra* note 298, at 34 (quoting Yale University Professor Alan Elms). Many studies on the effectiveness of role playing on attitude change involve counterattitudinal role playing in which the goal is to induce subjects to adopt a belief they do not personally hold by playing a role in which they advocate the belief. This strategy has been proven effective in accomplishing such attitudinal change. See Gian Sarup, *Role Playing, Issue Importance, and Attitude Change*, 9 SOC. BEHAV. AND PERSONALITY 191, 191 (1981) (asserting that "counterattitudinal role playing has generally come to be accepted as a more efficacious technique of attitude change than passive exposure to discrepant information"). With regard to obtaining a commitment to honest behavior by police cadets, role playing should be even more effective because we are assuming most police cadets do in fact believe in integrity.

³⁰⁰ See Aronson e-mail (May 27, 1998), *supra* note 281 (emphasizing desirability of role playing as means of teaching cadets how to resist temptation to lie); see also RACHLIN, *supra* note 1, at 190-206 (describing role-playing exercises used at training academy for New York City Police Department).

³⁰¹ See BLATNER & BLATNER, *supra* note 295, at 12.

³⁰² See Marc S. Nelson & Michael Eliastam, *Role-Playing for Teaching Ethics in Emergency Medicine*, 9 AM. J. EMERGENCY MED. 370, 371 (1991) (describing aim of role-playing course for teaching ethics in emergency medicine as means "to help physicians consider all aspects of the problem so that whatever the physician decides will have been carefully thought out").

³⁰³ Van Sant, *supra* note 143, at 1A (quoting former police trainer Steve Beck).

³⁰⁴ See *supra* notes 48-76 and accompanying text.

example.³⁰⁵

The facilitator sets up a scene in which a rookie officer (played by a cadet) and a veteran officer (preferably played by a co-trainer³⁰⁶) approach a man standing on the street corner in a high-crime area known for widespread drug use.³⁰⁷ The man looks nervous. The veteran (known in role-playing terminology as the auxiliary³⁰⁸) says, "Hundred bucks says he's carrying." They confront the man and the veteran instructs the rookie (known as the protagonist³⁰⁹) to conduct a protective *Terry* frisk to make sure the man is unarmed.

*Terry v. Ohio*³¹⁰ and its progeny authorize the police to temporarily detain a suspect for questioning based on an objectively based "reasonable suspicion" that the suspect is engaged in or is about to engage in criminal activity and to frisk the suspect if there is a reasonable suspicion he is "armed and dangerous."³¹¹ Standing on the street corner in a high-crime area acting nervous when police officers approach would in all likelihood not constitute a sufficient legal basis for either a stop or a frisk. Thus, the officers' stop and frisk is probably illegal.

During the frisk, the rookie pats down an object in the suspect's pocket that feels like a pack of cigarettes. In *Minnesota v. Dickerson*,³¹² the U.S. Supreme Court expanded the breadth of a *Terry* frisk for weapons to include a "plain feel" doctrine. This doctrine allows officers to remove items other than weapons, but only if a pat down of the suspect's outer clothing gives the officer probable cause to believe the item is contraband.³¹³ Patting down an object that feels like a pack of cigarettes would not give an officer probable cause to believe it is contraband.³¹⁴

³⁰⁵ I do not purport to be an expert in designing role-playing exercises. Police departments would obviously want to hire trained professionals to implement the suggestions in this Article.

³⁰⁶ The advantage of having a trainer play the role as opposed to a cadet is the assurance that the role will be taken more seriously and played more realistically. See Swink, *supra* note 295, at 92.

³⁰⁷ The facilitator is responsible for setting up the scene to replicate a real-life situation as closely as possible. See *id.* at 93. Props may be helpful for increasing realism. See *id.*

³⁰⁸ See *id.* at 92.

³⁰⁹ See *id.*

³¹⁰ 392 U.S. 1 (1968).

³¹¹ See *id.* at 27, 30 (discussing limitation of stop and frisk as openhanded pat down of suspect's outer clothing).

³¹² 508 U.S. 366 (1993).

³¹³ See *id.* at 376-77.

³¹⁴ See *id.* at 376-77 n.4 (citing *Ybarra v. Illinois*, 444 U.S. 85 (1979), holding that discov-

There is a good chance that the role-playing cadet, not understanding the intricacies of the plain feel doctrine, would pull out the cigarette package. If she hesitates, the person playing the role of the veteran officer should instruct her to remove it. When she does, she finds it is indeed a cigarette pack, but that it contains rocks of crack cocaine inside.

At this point, the veteran officer pulls the rookie aside and explains that the stop, frisk, and seizure of the cigarette pack are all probably illegal because the officers lacked a reasonable suspicion for stopping and frisking the suspect and lacked probable cause for removing the cigarette pack from his pocket. However, the veteran role player is undaunted by these technicalities:

"Don't worry about it," the veteran says. "Guy's a fucking"³¹⁵ crackhead. Probably robbed somebody tonight to get the money for the crack. Just write in the arrest report that as we approached the suspect, he got nervous and tossed the cigarette pack. We picked it up and found the crack inside." In other words, the veteran urges the rookie to report the arrest as a classic case of dropsy.³¹⁶

What should the rookie do? The pressure to "go along" would be great. The culture of group loyalty among police officers is a powerful force.³¹⁷ A rookie cop would obviously want to fit in with her veteran partner and the police culture in general. The veteran officer in the exercise has also offered the cadet a tempting, seemingly morally defensible "end justifies the means" rationale for falsifying the arrest report: the suspect is a crackhead who probably robbed someone to get the money to buy the drugs.

The action is frozen after the rookie formulates her response.³¹⁸ The facilitator asks the cadet to critique her own behavior and suggest other possible strategies for handling the situation.³¹⁹ Input is

ery of cigarette pack during pat down does not support reasonable belief suspect was armed and dangerous).

³¹⁵ See *supra* note 295 and accompanying text (emphasizing importance of role-playing exercises simulating real life as closely as possible). Overly sanitized dialogue will come across as phony, making it more likely the cadets will view the exercise as an academic game not relevant to their real lives. See *id.*

³¹⁶ See *supra* notes 55-62 and accompanying text (discussing "dropsy" phenomenon).

³¹⁷ See MOLLEN COMMISSION REPORT, *supra* note 2, at 5; see also Chin & Wells, *supra* note 27, at 237-45, 250-56 (discussing and analyzing seemingly impenetrable "blue wall of silence" among police officers).

³¹⁸ See Swink, *supra* note 295, at 93.

³¹⁹ See *id.* at 93-94.

then solicited from the rest of the class.³²⁰ After the class members have offered their comments, the facilitator offers his input.³²¹ The action is then “unfrozen,” with the veteran officer repeating the proposed dropsy lie and the cadet given an opportunity to apply what has been learned during the discussion to formulate a better response.³²²

The exercise should not end at this juncture because the real-world action is likely to continue. Mustering the courage to stand up to the veteran and refuse to participate in the illegality is a necessary first step, but the veteran officer may not let the matter drop so easily. The rookie’s refusal to participate in the illegal act would raise the stakes considerably in the veteran’s self-concept struggle because it would require him to confront his own shortcomings.³²³ The veteran officer would then have a strong incentive to adopt defensive tactics as part of the justification process.³²⁴

Accordingly, the role playing should continue with the veteran reacting to the rookie in the following predictable ways:

(1) “If we don’t report this as a dropsy case, the judge is going to throw out the evidence and this scum is going to walk. Worse, the crackhead may file a complaint against you for conducting an illegal search or even sue you for violating his civil rights. I’m just trying to help you out.”

(2) “Forget it. I’ll fill out the report myself and I’m reporting it as a dropsy case. And let me warn you about something. You need to learn to go along to get along. If you don’t back up your partner, you’re gonna be a pariah, frozen out. No one’s gonna want to work with you.”

(3) “This is the real world, not some class at the police academy. You think you’re helping society by following some legal bullshit written by a judge who doesn’t have a clue what it’s like out here? You think this crackhead cares about the Constitution? We let him go and he may end up killing someone tonight, might be your own sister. Wise up.”

It is important that new officers not be caught off guard by these

³²⁰ See *id.* at 94.

³²¹ See *id.* (stating that facilitator’s feedback comes last because trainees view instructor’s words as “perfect answer” and are reluctant to disagree with it).

³²² See *id.*

³²³ See Aronson, *Dissonance Theory Makes a Comeback*, *supra* note 23, at 305 (stating that when confronted by their shortcomings, individuals tend to experience dissonance).

³²⁴ See *supra* notes 160-67 and accompanying text (explaining self-justification).

responses, which would naturally greatly increase the pressure to yield to the dishonest act. The facilitator should explore the cadet's emotions and state of mind as she progresses through different stages of the role play. These emotions may include fear or guilt for "betraying" her partner and not being a "team player." The cadet should be made to understand that the partner is the one who betrayed the relationship by asking her to lie and that the team she should be concerned with is the team of noncorrupt officers (of which there are many).

Specific responses to the veteran's remonstrations might include:

First scenario: "I appreciate you trying to help me. I really do. But I just feel more comfortable sticking to the truth."

Second scenario: This one is more difficult to handle. The veteran has now taken it upon himself to commit the illegal act, creating a direct challenge to the rookie to defy him. In a perfect world, the rookie would report the veteran for the illegality. However, realistically, this may very well make the veteran's words prophetic: the rookie probably would be "frozen out" among many other officers for "ratting" on her partner. Perhaps the most we should reasonably hope for in this particular situation is for the rookie to remain true to her own ideals.

She could try to talk the veteran out of the illegality: "Let's not do it that way. You need to know that I'm not going to operate like that. I'll stand behind you in every other way. I swear. You can count on me. But I can't go along with that. Let's just do it by the book. Maybe the judge will find the search legal. Or we can just flush the crack. Now that we know the guy, we'll get him next time around."

Once the veteran realizes the rookie's position is firm, it might persuade him to change course. If the veteran persists in pursuing the illegal act, the rookie could seek to insulate herself from the illegality, which should also cause the veteran to rethink things: "If you report this as a dropsy case, don't put my name down on the arrest report. I'm not going to perjure myself. I'm not trying to work against you. I just can't go along with that."

Third scenario: "I agree with you. This search and seizure stuff doesn't make any sense to me. Those judges should ride with us a few times and see what the real world is like. But the law's the law. I want to follow it. That's just the way I was raised. It's what I believe in."

Note that the suggested responses by the rookie are intentionally

designed to be nonconfrontational. The idea is to defuse the situation, not escalate it. We want the rookie to resist the temptation and pressure to act illegally, but still be able to function as a viable member of the police force. We would not be doing the rookie any favor by teaching her to sacrifice herself as a martyr of morality.

One way to further solidify the "commitment to integrity" effect of these exercises is to build the self-esteem of the cadets with respect to the honorable and important office about to be bestowed upon them. Dissonance experiments based on Aronson's self-concept theory show that persons with heightened self-esteem are less likely to act immorally when given an opportunity to do so. In one experiment, subjects were given personality tests aimed at temporarily either increasing or decreasing their self-esteem.³²⁵ Immediately afterwards, the subjects participated in a card game in which they were given the opportunity to cheat and win money without the possibility of discovery.³²⁶ The results showed that participants who were given uncomplimentary feedback before the game lowering their self-esteem were much more likely to cheat than individuals who received information bolstering their self-esteem.³²⁷

The higher opinion of self that one possesses, the greater the hypocrisy that will result from immoral behavior.³²⁸ The facilitator should bolster the esteem of the cadets to help reinforce their commitment to good conduct:

[The veteran officer] is right. Guy's a crackhead. Maybe he did rob someone to get the money. He might get high on the crack and do worse, maybe kill someone. He doesn't deserve to be out on the streets.

But this isn't about him. It's about you. It's about what kind of cop you want to be. It's about whether you want to be someone your parents and kids will be proud of or someone who has to go home and lie to your family about what you did at work today.

That's what you have to decide. Because the second you fal-

³²⁵ See Elliot Aronson & David R. Mettee, *Dishonest Behavior as a Function of Differential Levels of Induced Self-Esteem*, 9 J. PERSONALITY & SOC. PSYCHOL. 121, 122-23 (1968).

³²⁶ See *id.* at 124-25.

³²⁷ See *id.* at 126.

³²⁸ See *id.*

sify that arrest report, you've tarnished yourself. You've tarnished the badge that lots of good men and women have died for in the line of duty.

There are a zillion crackheads and worse out there. If you're willing to sacrifice your integrity for one of them, you won't last two seconds. It's tempting to take the easy way out and lie, but as long as you keep resisting those temptations, you'll be able to look at yourself in the mirror every morning and feel good about who you are and what you are.

Being a police officer is one of the highest positions of trust we give to anyone in our society. Do yourself and your family proud. Live up to what your badge stands for.

Other high impact challenges to the cadet's self-concept could be used to strengthen an integrity commitment. To maximize dissonance, emotional bonds such as love for children, devotion to parents, loyalty to spouse or friends, and respect for teachers or clergypersons could be played upon. For example, the facilitator, following up on the suggested role play, could pose a scenario involving a child facing similar temptations and peer pressure to lie or cheat:

Your kid comes to you with this dilemma. "Dad," he says, "some of my friends got the answers to Mr. Smith's math test. They're going to use them to cheat on the test. They tried to give me the answers and when I said I didn't want to cheat they called me a wimp. I don't know what to do. I know lots of kids who cheat on tests and never get caught. I wouldn't even think of cheating except that Mr. Smith's tests are always unfair. He tests us on stuff he never even taught us. What should I do?"

Most parents would probably not see this as a morally gray situation. We can predict most cadets would not hesitate before honestly answering they would want their children to do the right thing under such circumstances; that is, to not cheat. After successfully eliciting such a response, the facilitator asks: "How would you explain to your kid why he shouldn't cheat? After all, lots of kids are cheating without getting caught. And Mr. Smith's tests are unfair." Responses would likely endorse precisely the types of simple values we would hope for cadets to honor in themselves: "Peer pressure is never a good reason to do anything." "If the other kids jumped off

a cliff, would you follow them?" "Two wrongs don't make a right." "Feeling good about yourself is more important than a test grade." "Follow your conscience." "You might get caught."

The facilitator should explore the similarities between the two situations, for there are several. Mr. Smith's tests are unfair. One justification police officers rely on to lie is frustration with a criminal justice system they see as unfair and malfunctioning.³²⁹ Other kids cheat without getting caught. One temptation for police lying is that lying cops rarely get sanctioned.³³⁰ The child is feeling peer pressure to cheat. Police officers may face tremendous pressure by corrupt officers to become corrupt.³³¹ If cadets can be made to appreciate these similarities, the anticipation of dissonance that would come from betraying the role modeled for their children would be a powerful integrity-maintenance force.

The purpose of the above discussion is not to write the complete handbook for police integrity training, but to show how police departments can use dissonance theory to obtain an initial honesty commitment from cadets and prepare them for the outside world. However, even if this process is successful, it is only a first step. Once the recruit leaves the academy, the "erosion process" begins to work against any integrity commitment.³³² Remember the Mollen Commission's conclusion that it is nurture, not nature, that corrupts most officers³³³ and the detective who told Mark Baker that "the job runs against every good impulse you ever had."³³⁴

Without continual reinforcement, idealism is going to yield to temptation, pressure and frustration for many officers. New officers will spend day after day and night after night interacting with the very worst that humanity has to offer: all variety of predators acting without the moral restraints we expect from our police officers. Any ethical lawyer who has been matched against an unethical adversary understands the exasperation of dealing with an opponent who has the advantage of not following the rules.

Imagine two kids playing a game of one-on-one basketball.

³²⁹ See *supra* notes 155-57 and accompanying text.

³³⁰ See MOLLEN COMMISSION REPORT, *supra* note 2, at 41 (stating that "[w]e are not aware of a single instance in which a supervisor or commander has been sanctioned for permitting perjury or falsification on their watch"); Chin & Wells, *supra* note 27, at 261 (noting that prosecutors do not deal aggressively with police perjury).

³³¹ See *supra* notes 275-76 and accompanying text.

³³² See *supra* notes 153-59 and accompanying text.

³³³ See *supra* note 159 and accompanying text.

³³⁴ See *supra* note 151 and accompanying text.

Player A has carefully studied all of the rules of the game and faithfully abides by them. Unfortunately, Player B does not follow any of the rules. He carries the ball, steps out of bounds to get to the basket, and fouls Player A every time he touches or reaches for the ball. There is no referee and, thus, no penalty for the rule violations. How long could we reasonably expect Player A to remain faithful to the rules under such circumstances?

B. A Police Mentoring Program Modeled After Alcoholics Anonymous Sponsorship

The key to keeping honest cops honest is continuing to support and reinforce their commitment to integrity after they leave the police academy.³³⁵ Dissonance theory supports establishing a mentoring program to accomplish this goal. The most effective mentoring match would pair rookie police officers as mentors with police cadet mentees. A strong interdependent relationship between the two would both help keep rookie officers on a truth-telling track after leaving the academy and prepare cadets for the temptations and pressures awaiting them in the real world. This mentoring program should borrow from the sponsorship program that has been used successfully in Alcoholics Anonymous for six decades.

Mentoring is a popular modern phenomenon in business and educational contexts,³³⁶ but it is by no means a new concept.³³⁷ Mentoring is currently being used for a variety of training purposes in a wide range of settings.³³⁸ Typically, mentoring relationships

³³⁵ See *supra* notes 264-79 and accompanying text; see also Steve Mills & Andrew Martin, *Task Force Rips Post-Academy Police Training*, CHI. TRIB., Nov. 6, 1997, available in 1997 WL 3607390, at *1 (reporting Chicago police study that found shortcomings in post-academy supervision). Chuck Wexler, executive director of the Police Executive Research Forum, stated that post-academy supervision plays "a vital role in making sure the messages that officers get in the academy are reinforced" and that "many departments fail to stress ethics once their officers leave the academy." *Id.* at *2.

³³⁶ From 1980 to 1990 more than 380 articles concerning mentoring in business and educational contexts appeared in the popular press and academic journals. See *Editors' Notes to MENTORING: NEW STRATEGIES AND CHALLENGES 1* (Michael W. Galbraith & Norman H. Cohen eds., 1995) (citing *Editor's Notes to MENTORING REVISITED: MAKING AN IMPACT ON INDIVIDUALS AND INSTITUTIONS 1* (M.A. Wunsch ed., 1994)).

³³⁷ The word "mentor" can be traced to Homer's *Odyssey*, in which Odysseus, preparing for his epic voyage, entrusts his friend, Mentor, to guide his son from boyhood to manhood. See *id.*

³³⁸ See generally Linda Marie Golian, *Strategies and Resources for Enhancing Mentoring Relationships*, in *MENTORING: NEW STRATEGIES AND CHALLENGES*, *supra* note 336, at 79, 82-88

are intended primarily to benefit mentees through a sharing of the mentor's knowledge and experience.³³⁹ Mentors teach mentees how to "take appropriate risks, deal better with stress and uncertainty, develop more self-confidence, make more informed decisions, and attain immediate and future objectives."³⁴⁰

The mentoring program proposed in this Article — in which rookie cops would serve as mentors to police cadets — differs substantially from the traditional mentoring model both in its objective and structure. First, contrary to the conventional mentoring model, the proposed police mentoring program would be concerned first and foremost with benefitting the mentor rather than the mentee.³⁴¹ As discussed, most rookie police officers (mentors) begin their careers with the right values,³⁴² but are at high risk to lose those values through the "erosion process" that begins working against them the moment they hit the streets.³⁴³ Police cadets (mentees) are less vulnerable initially because they are still living in the sheltered world of the academy.³⁴⁴ Thus, while the mentoring relationship certainly would be concerned with promoting the ethical development of police recruits, the first line of defense in protecting police integrity must be aid for the at-risk rookie officer.

The psychological underpinnings of the benefits to the mentor, in terms of hypocrisy theory, should be self-evident. As in Aronson's experiments with condom use and water conservation,³⁴⁵ when the mentor preaches moral behavior, it makes it more diffi-

(listing extensive bibliography of books and articles on mentoring as applied in different learning environments).

³³⁹ See Norman H. Cohen & Michael W. Galbraith, *Mentoring in the Learning Society*, in MENTORING: NEW STRATEGIES AND CHALLENGES, *supra* note 336, at 5 (stating that "[m]entors contribute their knowledge, proficiency, and experience to assist mentees who are working toward the achievement of their own objectives"); Mary L. Otto, *Mentoring: An Adult Developmental Perspective*, in MENTORING REVISITED: MAKING AN IMPACT ON INDIVIDUALS AND INSTITUTIONS 15, 16 (Marie A. Wunsch ed., 1994) (asserting that "mentor provides practical, here-and-now advice . . . which the protégé can use immediately to increase his or her effectiveness at work").

³⁴⁰ Cohen & Galbraith, *supra* note 339, at 6.

³⁴¹ See E-mail letter from Elliot Aronson, Professor, University of California, Santa Cruz, to author (June 16, 1998, No. 1) (on file with author). Most mentoring relationships are "protégé-centered," meaning the relationship centers on the mentees and their needs. See Geraldine H. Van Gyn & Frances Ricks, *Proteges' Perception of the Characteristics of the Mentoring Relationship and Its Impact*, 32 J. COOP. EDUC. 80, 89 (1997).

³⁴² See *supra* notes 140-43 and accompanying text.

³⁴³ See *supra* notes 155-59 and accompanying text.

³⁴⁴ See *supra* notes 289-94 and accompanying text.

³⁴⁵ See *supra* notes 239-62 and accompanying text.

cult for her to commit an immoral act.³⁴⁶

A second major difference between the proposed mentoring program and traditional mentoring relationships is that new employees — rookie cops — rather than seasoned employees would serve as mentors. Most traditional mentoring programs pair experienced workers with newcomers so that the latter can learn from the experience of the former.³⁴⁷ With respect to the integrity training of police officers, that is exactly what we do not want to happen. We are seeking to protect new officers from the potentially tainted value system of cynical, hardened veterans. A recognized danger of traditional mentoring programs is that they promote an “old boy” network.³⁴⁸ The intent of the mentoring program proposed herein is to prevent young, idealistic officers from becoming part of the old boy network.

An excellent model for a rookie-cadet mentoring relationship is the sponsorship tradition of Alcoholics Anonymous (“A.A.”). A.A. has used the sponsorship relationship with great success since 1935.³⁴⁹ Professor Aronson believes the A.A. sponsorship tradition unwittingly capitalizes on hypocrisy theory³⁵⁰ and that hypocrisy theory helps explain why sponsorship is such a phenomenally powerful force in keeping alcoholics sober.³⁵¹

Alcoholics Anonymous was started in 1935 by a New York stockbroker and an Ohio surgeon.³⁵² The organization is now estab-

³⁴⁶ See *infra* notes 377-83 and accompanying text.

³⁴⁷ See Susan F. Shulz, *The Benefits of Mentoring*, in MENTORING: NEW STRATEGIES AND CHALLENGES, *supra* note 336, at 57, 59 (stating that “[m]entors are often older and more mature than their protégés, having reached middle or senior level in their organizations”).

³⁴⁸ See Matthew J. Zagumny, *Mentoring as a Tool for Change: A Social Learning Perspective*, 11 ORGANIZATIONAL DEVELOPMENT J. 43, 44 (1993).

³⁴⁹ I have substantial familiarity with A.A. because my mother has been a sober member for 47 years.

³⁵⁰ See Aronson e-mail (May 27, 1998), *supra* note 281.

³⁵¹ See Aronson e-mail (June 2, 1998, No. 2), *supra* note 279.

³⁵² See A BRIEF GUIDE TO ALCOHOLICS ANONYMOUS (Alcoholics Anonymous World Services, Inc.), 1972, at 8 [hereinafter A BRIEF GUIDE TO ALCOHOLICS ANONYMOUS]; see also ERNEST KURTZ, NOT-GOD: A HISTORY OF ALCOHOLICS ANONYMOUS 7-33 (1979) (describing how “Bill W.” and “Doctor Bob” began Alcoholics Anonymous). A major tenet of A.A., as reflected in its name, is anonymity. However, the names of A.A.’s co-founders are well known. Bill W. is the late Bill Wilson and Doctor Bob is the late Dr. Bob Smith. See *id.* See generally IRVING PETER GELLMAN, THE SOBER ALCOHOLIC: AN ORGANIZATIONAL ANALYSIS OF ALCOHOLICS ANONYMOUS (1964) (reporting results of two-year field research project providing comprehensive analysis of A.A. organization); KURTZ, *supra* (giving overview of A.A. history and interpreting A.A. organization in context of American history and religion); KLAUS MÄKELÄ ET AL., ALCOHOLICS ANONYMOUS AS A MUTUAL SELF-HELP MOVEMENT: A STUDY IN EIGHT SOCIETIES (1996) (providing overview of A.A. based on international collaborative study); NAN ROBERTSON, GETTING BETTER: INSIDE ALCOHOLICS ANONYMOUS

lished in 146 countries with more than two million members.³⁵³ A.A. helps alcoholics “[t]hrough the example and friendship of the recovered alcoholics”³⁵⁴ by encouraging new members to stay away from drinking “one day at a time.”³⁵⁵ A.A. doctrine holds that to stay sober, members need healthy minds and healthy emotions.³⁵⁶ Members rely on adherence to A.A.’s “Twelve Steps” to attain these objectives.³⁵⁷

The Twelve Steps can be divided into three categories.³⁵⁸ The first three steps, which require one to admit her life has become unmanageable because of alcohol and to put faith in a higher power, are called the decision steps.³⁵⁹ Steps Four through Nine, which call on one to take a personal moral inventory and make amends for harm caused to others, are known as the action steps.³⁶⁰ Steps Ten through Twelve are called the continuing or mainte-

(1988) (analyzing A.A. system through author’s personal experience and providing general information about A.A.).

³⁵³ See A BRIEF GUIDE TO ALCOHOLICS ANONYMOUS, *supra* note 352, at 7-8.

³⁵⁴ *Id.* at 7.

³⁵⁵ *Id.*

³⁵⁶ See *id.*

³⁵⁷ See *id.* The Twelve Steps read as follows:

1. We admitted we were powerless over alcohol — that our lives had become unmanageable.
2. Came to believe that a Power greater than ourselves could restore us to sanity.
3. Made a decision to turn our will and our lives over to the care of God *as we understood Him*.
4. Made a searching and fearless moral inventory of ourselves.
5. Admitted to God, to ourselves and to another human being the exact nature of our wrongs.
6. Were entirely ready to have God remove these defects of character.
7. Humbly asked Him to remove our shortcomings.
8. Made a list of all persons we had harmed, and became willing to make amends to them all.
9. Made direct amends to such people wherever possible, except when to do so would injure them or others.
10. Continued to take personal inventory and when we were wrong promptly admitted it.
11. Sought through prayer and meditation to improve our conscious contact with God, *as we understood Him*, praying only for knowledge of His will for us and the power to carry that out.
12. Having had a spiritual awakening as the result of these steps, we tried to carry this message to alcoholics, and to practice these principles in all our affairs.

Id. at 13.

³⁵⁸ See MÄKELÄ ET AL., *supra* note 352, at 118.

³⁵⁹ See *id.* at 118-19.

³⁶⁰ See *id.* at 119.

nance steps and are the steps intended to help alcoholics stay sober.³⁶¹ It is from Step Twelve, which calls on alcoholics to carry the message of A.A. to other alcoholics, that A.A.'s sponsorship tradition indirectly arose.³⁶²

Unfortunately, little has been written about A.A. sponsorship. This is partially explained by the fact that sponsorship is not an official program of the organization.³⁶³ A.A. does publish a pamphlet containing questions and answers about sponsorship, but the form and content of sponsor relationships are communicated mostly by oral tradition.³⁶⁴ The word "sponsor" does not appear in *The Big Book*, the A.A. "bible" for recovery.³⁶⁵ However, the A.A. pamphlet on sponsorship opens by saying: "Alcoholics Anonymous began with sponsorship."³⁶⁶ The pamphlet is referring to May 11, 1935, the day Bill W., standing outside a hotel bar in Akron, Ohio, trying to resist the urge to go in and get drunk, had the epiphany: "I need another alcoholic."³⁶⁷

The pamphlet defines the sponsorship tradition: "Essentially, the process of sponsorship is this: An alcoholic who has made some progress in the recovery program shares that experience on a continuous, individual basis with another alcoholic who is attempting to attain or maintain sobriety through A.A."³⁶⁸ Sponsors serve as role models for new members.³⁶⁹

They are used as a sounding board, to bounce off ideas with, and to turn to for encouragement, discipline, praise, and guidance in working for the program. . . . In some cases sponsorship becomes intense, and the sponsor may spend hours and nights with the sponsee struggling with the problems of early sobriety or later

³⁶¹ See *id.*

³⁶² See QUESTIONS AND ANSWERS ON SPONSORSHIP (Alcoholics Anonymous World Services, Inc.), 1983, at 9 [hereinafter QUESTIONS AND ANSWERS ON SPONSORSHIP] (discussing sponsorship as twelfth step).

³⁶³ See MÄKELÄ ET AL., *supra* note 352, at 120-21.

³⁶⁴ See QUESTIONS AND ANSWERS ON SPONSORSHIP, *supra* note 362, at 9.

³⁶⁵ See ALCOHOLICS ANONYMOUS, ALCOHOLICS ANONYMOUS: THE STORY OF HOW MANY THOUSANDS OF MEN AND WOMEN HAVE RECOVERED FROM ALCOHOLISM (2d ed. 1955).

³⁶⁶ QUESTIONS AND ANSWERS ON SPONSORSHIP, *supra* note 362, at 7.

³⁶⁷ See KURTZ, *supra* note 352, at 26-27. The A.A. pamphlet explains the incident in slightly less detail: "When Bill W., only a few months sober, was stricken with a powerful urge to drink, this thought came to him: 'You need another alcoholic to talk to. You need another alcoholic just as much as he needs you!'" QUESTIONS AND ANSWERS ON SPONSORSHIP, *supra* note 362, at 7.

³⁶⁸ QUESTIONS AND ANSWERS ON SPONSORSHIP, *supra* note 362, at 7.

³⁶⁹ See MÄKELÄ ET AL., *supra* note 352, at 166.

crises.³⁷⁰

Part of the unusual intensity of this relationship is explained by the fact that many secrets and personal details are exchanged.³⁷¹ Thus, the sponsorship relationship requires the placement and creation of a great degree of mutual trust.³⁷² The essence of sponsorship is found in "the shared honesty of mutual vulnerability openly acknowledged."³⁷³

It is the reciprocity of the sponsor-sponsee relationship in A.A. that distinguishes it from other mentoring relationships.³⁷⁴ The sponsor is there to help the sponsee, but the relationship benefits the sponsor just as much, perhaps even more. Unlike most mentoring relationships where the mentor is the dominant party, "[i]n A.A., the sponsor and sponsored meet as equals."³⁷⁵ Bill W., cofounder of A.A., recognized that a sponsor may gain more from the relationship than the person being sponsored.³⁷⁶ The A.A. pamphlet explains: "Sponsorship strengthens the older member's sobriety. The act of sharing sobriety makes it easier for a member to live without alcohol. By helping others, alcoholics find that they help themselves."³⁷⁷

All of this is critically important to the mentoring program proposed herein, which has as its primary goal maintaining integrity in

³⁷⁰ *Id.*; see also BILL W., THE A.A. WAY OF LIFE 195 (1967) [hereinafter BILL W., THE A.A. WAY OF LIFE] (discussing intensity of relationship). Bill W. wrote:

From the beginning, communication in A.A. has been no ordinary transmission of helpful ideas and attitudes. Because of our kinship in suffering, and because our common means of deliverance are effective for ourselves only when constantly carried to others, our channels of contact have always been charged with the language of the heart.

Id.

³⁷¹ See MÄKELÄ ET AL., *supra* note 352, at 247.

³⁷² See *id.*

³⁷³ Lucinda A. Alibrandi, *The Fellowship of Alcoholics Anonymous*, in ENCYCLOPEDIA HANDBOOK OF ALCOHOLISM 979, 985 (E. Mansell Pattison & Edward Kaufman eds., 1982) (quoting ERNEST KURTZ, NOT-GOD: A HISTORY OF ALCOHOLICS ANONYMOUS (1979)).

³⁷⁴ See MÄKELÄ ET AL., *supra* note 352, at 168.

³⁷⁵ QUESTIONS AND ANSWERS ON SPONSORSHIP, *supra* note 362, at 7.

³⁷⁶ See BILL W., THE A.A. WAY OF LIFE, *supra* note 370, at 21. "Each of us in turn — that is, the member who gets the most out of the program — spends a very large amount of time on Twelfth-Step work in the early years. That was my case, and perhaps I should not have stayed sober with less work." *Id.* "It is important for [a new prospect] to realize that your attempt to pass this on to him plays a vital part in your own recovery. Actually, he may be helping you more than you are helping him." *Id.* at 275.

³⁷⁷ QUESTIONS AND ANSWERS ON SPONSORSHIP, *supra* note 362, at 13.

the mentor rookie officers. How does sponsorship help the sponsor stay sober and, by extension, potentially help a cop stay honest? The phenomenon can be explained by dissonance theory. Sponsorship is a symbiotic relationship that creates strong loyalty and trust on both sides.³⁷⁸ A sponsor has a potent incentive not to let down her sponsee. Betraying the trust of a sponsee would present a terrible threat to one's self-concept as a good human being and provide a powerful motivation to "stay clean."³⁷⁹ As explained by Professor Aronson: "[I]f you are serving as a mentor and role model for someone else in a powerful, face-to-face relationship, it makes falling off the wagon incredibly noxious because not only are you letting yourself down, you are also modeling terrible behavior for your mentee."³⁸⁰

Similar benefits to mentors have been identified in other mentoring relationships. All mentoring relationships put pressure on the mentor to live up to the expectations of the mentee.³⁸¹ Answering questions for mentees and trying to help mentees solve problems requires mentors to think critically about themselves and examine their own behavior.³⁸² Any person in a position of modeling behavior would experience dissonance from failing to live up to that behavior.³⁸³ However, the mutual dependency of the A.A. sponsorship tradition enhances that effect.

To promote the maintenance of honest behavior among police officers, departments should institute a mentoring program patterned after the A.A. sponsorship tradition. Structurally, Professor Aronson suggests a three-generational mentoring program.³⁸⁴ De-

³⁷⁸ See MÄKELÄ ET AL., *supra* note 352, at 247.

³⁷⁹ See *id.*

³⁸⁰ Aronson e-mail (May 27, 1998), *supra* note 281.

³⁸¹ As one writer states:

[M]entors assume the responsibility to behave in a manner that will benefit the mentee. The element of friendship involved in the mentoring relationship is crucial to fulfilling this responsibility. The mentor and mentee must have some emotional connection that centers on trust in one another. The mentee must trust the mentor to demonstrate effective behavior while the mentor must trust the mentee to follow his example. . . . If the mentee does something wrong, it looks bad for the mentor and visa versa.

Zagumny, *supra* note 348, at 44-45.

³⁸² See Schulz, *supra* note 347, at 59 (explaining that mentor will learn and grow through self-examination).

³⁸³ See *id.* (discussing mentor's realization of own integrity to principles through teaching).

³⁸⁴ See Aronson e-mail (May 27, 1998), *supra* note 281 (setting forth three-generation

signing the program to include three generations is another twist on the traditional mentoring scheme, which typically includes only one mentor and one mentee. By including an extra party, the program would provide an extra bulwark of support in the network and the means for continual renewal of the mentoring relationships.

Rookie police officers — recruited for mentoring duty before they have become contaminated by exposure to hardened veterans, heartless criminals and what they may see as a malfunctioning criminal justice system — would serve as mentors and role models to cadets enrolled at the police academy. When the mentee cadet graduates from the academy, the relationship would continue. After between six months and one year on the job (again, before being poisoned by the system), the cadet-turned-rookie officer would adopt his own mentee from the academy. This three-way relationship would continue until such time as the original mentor leaves the top of the chain to be replaced by a new cadet at the bottom so that the cycle is continually renewed.

Professor Aronson explains the continuation process as follows: Sam, a mentee cadet, graduates from the academy and becomes a rookie cop. He is still being sponsored by Harry, an older rookie, who is now becoming a veteran. As Sam gains more experience and begins to see the temptations to which young cops are subjected, he is in a good position to serve as a sponsor for Jason, a new cadet in the academy. Within a few years, Harry may not be needed as Jason graduates and begins to sponsor Peter, a new cadet. Each person begins as a mentee, gradually becomes both a mentor and a mentee, then becomes only a mentor, and finally steps aside and makes room for others.³⁸⁵

The timing in all of this is critical.³⁸⁶ It would be essential to recruit mentors after they have spent sufficient time on the force to recognize a discrepancy between the ideals they learned at the academy and the reality of what happens in their precincts, but before they have engaged in any wrongful conduct or, if they have engaged in wrongful conduct, before they have become committed

structure).

³⁸⁵ See E-mail letter from Elliot Aronson, Professor, University of California, Santa Cruz, to author (June 19, 1998) (on file with author) (setting forth explanation that mentors must review themselves critically).

³⁸⁶ See Aronson e-mail (May 28, 1998), *supra* note 278.

to it as a way of police life.³⁸⁷ Once that stage is reached, the process of self-justification sets in, which is difficult to reverse.³⁸⁸ As Aronson puts it: "Ideally, we want the rookie to be not naive, but, hopefully, to still be a 'virgin' with regard to dishonorable behavior."³⁸⁹

As for the nature of the relationship, in the A.A. tradition, the aim should be to foster a close, mutually dependent relationship between the rookie officer and the cadet. The relationship must be one built on trust. Open exchange between the parties should be encouraged and protected. The closer the relationship, the greater the threat to self-concept that would result from a betrayal of the relationship.

When feasible, the program should pair persons of similar backgrounds and interests to increase the likelihood that they will "click" together.³⁹⁰ Preferably, men should mentor men and women should mentor women to reduce the likelihood of emotional or sexual entanglements that could interfere with the purpose of the relationship.³⁹¹ Of course, this will not always be possible due to inadequate numbers of women officers.³⁹² Departments may wish to promulgate rules prohibiting romantic liaisons between mentors and mentees. The ultimate three-party relationship should help reduce the problems of pairing officers of different gender.

The department must be involved in actively promoting and, to some extent, monitoring the mentoring program.³⁹³ If the department does not treat the program as important, the parties are not likely to do so either. Police departments should establish basic guidelines setting forth minimum expectations for both mentors and mentees. For example, mentors and mentees should be expected to meet on a regular basis, probably at least once a

³⁸⁷ See *id.*

³⁸⁸ See *supra* notes 160-67, 264-76 and accompanying text.

³⁸⁹ Aronson e-mail (May 28, 1998), *supra* note 278.

³⁹⁰ See QUESTIONS AND ANSWERS ON SPONSORSHIP, *supra* note 362, at 9-10 (stating that sponsees often feel most comfortable when matched with sponsors of similar backgrounds and interests but that similarity is not prerequisite to successful relationship).

³⁹¹ See *id.* at 10.

³⁹² See *id.* at 13 (stating that having sponsors of same sex is possible only if group is large enough to allow choice).

³⁹³ The program would differ significantly from Alcoholics Anonymous because A.A. does not "check up" on its members, but leaves them largely to their own devices. It helps alcoholics who want to help themselves. See A BRIEF GUIDE TO ALCOHOLICS ANONYMOUS, *supra* note 352, at 10.

month. The department could offer incentives, particularly in the developmental stages of the relationship, to help foster its growth. Mentors and mentees should be allowed to meet on paid time. The department might agree to reimburse the parties for one dinner or other social activity a month. Any reasonable step that would promote the development of a close bond between mentor and mentee should be considered. However, the long-term success of the program will depend on the parties finding their own benefit in the relationship and, thus, their own incentive to carry it on without department intervention.

In terms of the content of the relationship, the focus should be on honesty and integrity — on staying a “good cop.” The mentor and mentee would agree at the beginning of the relationship to abide by an “Integrity Code.” They should be encouraged to enter into a written contract setting forth each party’s expectations of and obligations to the other. These obligations would include an agreement to remain honest and moral on the job and to provide each other with support and encouragement off the job. Dissonance theory would predict that entering into such a contract would bolster the parties’ commitment to honesty and to their relationship.³⁹⁴ Although the department could furnish guidelines for the mentor and mentee to consider in drafting the agreement, they should be left to draft it on their own rather than simply signing onto a form prepared by the department. This would also deepen their commitment.

Discussions between mentors and mentees should focus on the constant threat to integrity one faces on the job: all the pressures, temptations, and frustrations to abandon one’s moral code and sink to a lower level. Rookie officer mentors should write down situations they encounter that put a strain on their moral code and also write down how they responded to the situations.³⁹⁵ The concrete, specific examples would be important to both parties.³⁹⁶ Discussing these situations would help the mentor reaffirm his commitment to honesty and would greatly help the mentee cadet by preparing her for the real world.

³⁹⁴ See ROBERT A. WICKLUND & JACK W. BREHM, PERSPECTIVES ON COGNITIVE DISSONANCE 239-40 (1976) (discussing how commitment can affect change); see also *supra* notes 381-85 and accompanying text.

³⁹⁵ See E-mail letter from Elliot Aronson, Professor, University of California, Santa Cruz, to author (June 16, 1998, No. 2) (on file with author).

³⁹⁶ See *id.*

The rookie and cadet would meet to discuss these instances, with the rookie explaining how and why he reacted the way he did. There may very well be instances where a well-intentioned mentor slips in his behavior and gives in to a temptation to bend the rules. This would not be fatal to the success of the relationship. To the contrary, so long as the rookie is able to confess the mistake and vow not to repeat it, it could prove to be a learning experience for both mentor and mentee.³⁹⁷ To encourage this open exchange, rules of confidentiality should be adopted by the department for communications between mentors and mentees. The department cannot use the mentor-mentee relationship to ferret out police corruption. The relationship, so long as there is no evidence it is being used to further illegal activities, should be considered sacrosanct. Such a confidentiality provision should be included in the parties' Integrity Code as a way to enhance their confidence in one another.

One of the most attractive aspects of this solution to police lying is that the powerful psychological force that would make it all work comes cost free, courtesy of the human psyche's need to eliminate the discomfort that arises from conflicting beliefs and actions.

The monetary costs of a mentoring program would be the administrative costs of organizing and promoting the program. The primary cost would be hiring a program coordinator, whose comprehensive job would be to develop, implement, and monitor a master plan.³⁹⁸ Implementing the plan would require such tasks as training mentors and matching mentors with mentees.³⁹⁹ Other expenditures that might arise include additional support staff in large police departments, printed materials, and promotional costs.⁴⁰⁰ These costs would be minimal compared to the potential benefits: fewer lying cops, fewer innocent persons wrongly convicted, and restored confidence in the criminal justice system. One of the greatest benefits would be to police officers themselves, who could begin and end each day with the satisfaction that they have stayed true, against the odds, to the ideal of being a "good cop."

³⁹⁷ See *id.*

³⁹⁸ See Marie A. Wunsch, *Developing Mentoring Programs: Major Themes and Issues*, in MENTORING PROGRAMS: MAKING AN IMPACT ON INDIVIDUALS AND INSTITUTIONS, *supra* note 339, at 27, 31 (stating that program coordinator is most critical resource to mentoring program).

³⁹⁹ See *id.*

⁴⁰⁰ See *id.* at 32.

CONCLUSION

This Article began by setting forth two conflicting propositions: (1) most police officers are honorable, moral people; and (2) many of these same officers lie in the course of their official duties. We have now seen why this is so. Most police officers begin their careers as honest and idealistic persons, but these values wither under the pressures, temptations, and frustrations of life on the streets.

The result is that many officers come to believe in an "end justifies the means" rationalization for official falsification. They learn to believe that lying is not wrong if the motivation behind it is convicting a guilty criminal. However, lying by public servants sworn to uphold the law is a treacherous means to this end. Moreover, this rationalization fails to take account of other consequences of police falsification: an increased risk of convicting the innocent, declining public trust in the police, and diminished liberty.

When police officers turn dishonest, there is little likelihood of reclaiming them. Once a police officer concludes that lying is an acceptable, perhaps even necessary part of the job, a psychological process of self-justification begins working to reinforce that belief. This process may be impossible to reverse. The justification process also gives dishonest officers a psychological incentive to corrupt other officers to reduce their own dissonance.

Pervasive police lying is perhaps the most corrosive force in our criminal justice system. "Who will protect the public when the police violate the law?" asked Ramsey Clark, former Attorney General of the United States.⁴⁰¹ The answer is no one. In our zeal to fight crime, too many of us have lost sight of this simple truth. Prosecutors, judges, police administrators — none of these actors has demonstrated a serious interest in controlling dishonest cops. But even if they did, their efforts would be doomed to fail, for all the coercive and persuasive appeals in the world cannot purify a corrupt heart.

The solution lies in the officers themselves. The only hope of substantially reducing police lying is a preventative approach aimed at keeping good cops from turning bad. The good news is that within cognitive dissonance theory we have a potent,

⁴⁰¹ Ramsey Clark, *quoted in* THE QUOTABLE LAWYER 182 (David S. Shrager & Elizabeth Frost eds., 1986).

inexpensive, and inexhaustible tool for accomplishing this goal: the officer's own self-concept.

