

Saint Xavier University

From the Selected Works of Christopher C. Cooper Dr.

Spring March 1, 2009

**YES VIRGINIA, THERE IS A POLICE CODE
OF SILENCE: PROSECUTING POLICE
OFFICERS AND THE POLICE SUBCULTURE**

Christopher C. Cooper, *Saint Xavier University*



Available at: https://works.bepress.com/christopher_cooper/1/

By Dr. Christopher Cooper, ESQ., J.D., Ph.D.
Saint Xavier University
3700 West 103rd Street, Chicago, IL 60655
Tel 312 371 6752 or 773 298 3555 cooper@sxu.edu

COPYRIGHT © 2007, ALL RIGHTS RESERVED TO AUTHOR until time of publication

YES VIRGINIA, THERE IS A POLICE CODE OF SILENCE
PROSECUTING POLICE OFFICERS AND THE POLICE SUBCULTURE
Submitted for Publication

ABSTRACT

Successfully prosecuting police officers for police malfeasance represents formidable challenges. These challenges are not impenetrable. Prosecutor attention to the secrets of the Code of Silence, many of which are on public display, thanks to generous leaks, is an absolute necessity. This author has encountered and interacted with prosecutors as a Police Officer (in particular as a policeman in Washington D.C. [Metropolitan Police]) and as a Plaintiff's attorney. The one thing that he noticed as a cop and continues to notice (now as a practicing civil rights attorney) about attorneys who defend or prosecute police officers is that most attorneys have no inkling whatsoever about the workings of the police subculture. Many attorneys do not know the enormous influence and role that the police subculture plays in an event for which a prosecutor or defense attorney is called to analyze. The absence of extensive knowledge of the police subculture represents an impediment to a lawyer successfully prosecuting a police officer or defending a police officer. Having a conceptual understanding of the policing subculture, enables for reasonably deducing what really happened on many scenes. Code of Silence knowledge generates needed suspicion. There is something very wrong with automatic acceptance of the [police] authoritative report without concern for a wealth of evidence and common sense that show how police reports can be—and often are—molded by officers to mitigate malfeasance under color of law; to hide intentional

constitutional violations under color of law; and to protect a fellow officer who broke the law. This article is concerned with what embellishing what is inside of the prosecutor's toolbox should she/he decide to prosecute a police officer for malfeasance under color of law.

Introduction

The author of this article begins with a notion that police narratives (authoritative accounts often called reports) are often suspect.¹ Case and point, Emmanuel Lopez was shot and killed by Chicago police on September 16, 2005. The shooting happened in an alley. It was there that the 23-year-old, unarmed food company janitor was shot 16 times by police. One of shooters wrote that Lopez nearly got into a car accident with an off-duty officer causing on duty officers to pursue him.² The officer's narrative continued: Lopez's car came to a stop; When officers exited their vehicle, Lopez backed into a female officer, and then went forward, running over her partner, pinning him under the vehicle (operated by Lopez). (Id.). A forensic's expert soon discovered that the pants of the officer allegedly run over, had indeed been run over by a vehicle; however, when they were run over, they were empty—without a leg inside. (Id). Additionally, the tire marks on the pants were not those from Lopez's car.³ This report led Lopez's attorney to exclaim that the officers' killed Lopez without provocation then fabricated evidence to make it look like an officer had been pinned.⁴

¹Compare D. Troutt, Screws, Koon, and routine aberrations: *The use of fictional narratives in federal police brutality prosecutions*. *New York University Law Review*, 74, (1) 18-122 (1998).

²Attorney: *Police Faked Evidence To Justify Killing*. Attorney Terry Ekl Says Police Rolled Tire Over Pants To Make It Look Like Officer Was Pinned Under Car, March 22, 2007. Retrieved from the World Wide Web:http://cbs2chicago.com/top_stories/local_story_081151006.html, Mar 22, 2007.

³ Id.

⁴ Id.

In another incident in Chicago, a 2004 arrest report filed by two Chicago Police officers, claimed that the officers searched Raymundo Martinez outside of a Southwest Side bar because he threw a bottle of beer onto the sidewalk when he saw the officers approaching.⁵ A video tape linked to the camera's on the bar's ceiling contradicts the authoritative version.⁶ The film footage shows that instead of only two officers, there were more than a dozen officers. And there is more. The officers were not outside, rather inside of a bar, raiding the bar without legal justification, illegally searching every person in the bar to include arresting Martinez inside of the bar.⁷ Consider that the video tape was available in 2004. The officers involved were not suspended until 2007.

Significance of the Narrative

On a daily basis, somewhere in America, there is a prosecutor tasked with reading the narrative of a police report and deciding whether or not to file formal charges against an alleged offender. In some of these situations, the actions of a police officer are subject to a determination (by a prosecutor) of whether the officer violated a citizen's rights under Color of Law (e.g., 42 USC 1983, 1985 & 1986). The prosecutor's evaluation may give way to a decision to prosecute a police officer. This article is concerned with what is inside of the prosecutor's tool box should she/he decide to prosecute a police officer for malfeasance under color of law.

In this regard, for some legal professionals, their library might include a book entitled, *How to Handle Unreasonable Force Litigation: Prosecution and Defense Strategies in Police*

⁵ David Heinzmann, *Bar tape refutes cops: Video of '04 raid casts new doubts on city's elite police unit*. Chicago Tribune, September 28, 2007. Retrieved from the World Wide Web: www.chicagotribune.com/news/local/chi-caballo28sep28,0,1660281.story?coll=chi.

⁶ Ibid.

⁷ Id.

Misconduct Cases.⁸ Updated annually, the book is described by its publisher as an educational supplement and a lawyer's "handbook." One can effectively argue that this Handbook and others like it emphasize procedural strategy. This means that the book is only marginally helpful to the prosecutor who prosecutes police malfeasance cases. The book's shortcoming is that it does not address the phenomenon of the police subculture, specifically, the infamous Code of Silence. This is a subculture documented by a plethora of scientific research.⁹ The author of this paper takes the position that a firm conceptual understanding [by a prosecutor] of the police literature and police subculture enables the prosecutor to adequately investigate allegations of police misconduct and to successfully prosecute such matters.

⁸Practising Law Institute. *How to handle unreasonable force litigation: prosecution and defense strategies in police misconduct cases*. (2000).

⁹Nicholas Alex. *New York cops talk back: A study of a beleaguered minority*. John Wiley & Sons. (1976) Dan Barry & Amy Waldman, *Erecting a blue wall of silence*. *New York Times*, Feb. 22, 2000 at B1. Egon Bittner, *The functions of the police in modern society*. [US] National Institute of Mental Health. (1970); Egon Bittner. *Aspects of police work*. Northeastern University Press. (1990). Donald Black, *The manners and customs of the police*. Academic Press. (1980); M. Brown, *Working the street: Police discretion and the dilemmas of reform*. Russell Sage Foundation-Cambridge University Press. (1981). G. Chandler, *The policeman's art as taught in the New York State School for Police*. AMS Press. (1974); P. Chevigny, *Police power: Police abuses in New York City*. Vintage. (1969). W. Christopher, Report of the Independent Commission on the Los Angeles Police Department. Los Angeles: The Christopher Commission. (1991); Christopher C. Cooper, *Entrenched subculture is at root of police brutality and bias cases*. *Philadelphia Inquirer*, July 21, 2000 at A27; J. Crank, *Understanding police culture*. Anderson Publishing. (1998); J. Crank, B. Payne & S. Jackson, *Police belief-systems and attitudes regarding persistent police problems*. *Criminal Justice and Behavior*, 20-2, 199-221 (1993). R. Fogelson, *Big-city police*. Harvard University Press. (1977). V. Kappeler, R. Slader, & G. Alpert, *Forces of deviance*. (2nd ed.). Waveland Press. (1998). *The Knapp Commission Report on Police Corruption*. (1973); W. Muir, *Police: Streetcorner politicians*. University of Chicago Press. (1977); Mollen Commission, New York City (1994). Commission Report: Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department. City of New York; Arthur Niederhoffer, *Behind the shield: The police in urban society*. NY: Doubleday. (1969); Elizabeth Reuss-Ianni, *Two cultures of policing*. Transaction. (1982). E. Stoddard, *The informal "Code" of police deviancy: A group approach to "Blue Coat Crime"*. *The Journal of Criminal Law, Criminology and Police Science*, 59 (2), 201-213 (1968); R. Worden, *The causes of police brutality: Theory and evidence on police use of force*. In W. Gellar & H. Toch (Eds.). *And justice for all: Understanding and controlling police abuse of force* at 31-60, Washington, DC: Police Executive Research Forum (1995).

Ignorance of the police subculture by attorneys inhibits successful prosecutions and defenses of police officers. This article presents and implies recommendations and solutions to this phenomenon (ignorance) for the attorney who realizes the tremendous influence of the police subculture on the day-to-day conduct of most police officers in the United States, in particular, police officers who work for big city police departments.¹⁰

When armed with knowledge of the police subculture, a prosecutor is able to figure out what “really” happened on a “*scene*.” In order to be able to ask the proper questions and to know when to be suspicious of the authoritative narrative, the prosecutor must be endowed with moderate knowledge of the police subculture. Otherwise, prosecutors are hampered by their own naiveté as well as left with being told, by police officers, that an officer’s action was a “split second decision” that can’t be judged unless “you were there” (police parlance) in that officer’s body.

This author has encountered and interacted with prosecutors as a Police Officer (in particular as a policeman in Washington D.C. [Metropolitan Police]) and as a Plaintiff’s attorney. The one thing that he noticed as a cop and continues to notice (now as a practicing civil rights attorney) about attorneys who defend or prosecute police officers is that most attorneys have no inkling whatsoever about the workings of the police subculture. Many attorneys do not know the enormous influence and role that the police subculture plays in an event for which a prosecutor or defense attorney is called to analyze. The absence of extensive knowledge of the police subculture represents an impediment to a lawyer successfully prosecuting a police officer or defending a police officer. Case and point, the author watched and listened to the closing statements in *Klipfel v. Miedzianowski* (2007).¹¹

¹⁰ Jonathan Rubenstein, *City Police*, Farrar Straus (1973).

¹¹Unpublished Case 94C 6415, decided February 22, 2007 in the United States District Court for the Northern District of Illinois.

The circumstances involved two Alcohol, Tobacco and Firearms (ATF) agents suing the City of Chicago and Chicago Police Officer Joseph Miedzianowski for the officer having arranged to have them murdered because they had [rightly] “snitched” as to Miedzianowski’s illegal behavior.¹² Agents Klipfel and Caseli were initially confident that their complaint about Miedzianowski to officials in Chicago Police Department would prompt officials to order Miedzianowski arrested. The ATF agents were shocked to learn that instead, Chicago Police Department’s officials retaliated against them including engaging in acts that encouraged Miedzianowski to arrange for them to be murdered. Miedzianowski has never been prosecuted for arranging the failed murders; however the jury in the 2007 civil trial held that Miedzianowski did attempt to have the federal agents killed.¹³ Worth noting, at the time of the civil trial, Miedzianowski had earned the title “Chicago’s Dirtiest Cop” upon his conviction for the most horrific crimes committed under color law for more than 20 years. In other words, the CPD knew that Miedzianowski was “gangster cop” but it did nothing. His attempts to murder one of the prosecuting attorneys in his criminal trial and his attempts to murder the two ATF agents with the Chicago Police Department’s encouragement, have never been prosecuted.¹⁴ Today, Miedzianowski is imprisoned for life. His testimony in *Klipfel* was via videotape from a penitentiary. Not surprisingly, none of the police department officials who encouraged and protected the corrupt Miedzianowski were ever prosecuted. In fact many of the officers have retired or are retiring and embarking on second careers in law enforcement.

At the Klipfel trial, in which Miedzianowski was defended by an army of lawyers paid for by City taxpayers, the author observed Corporation’s Counsel Sarah Ellis deliver the City of Chicago’s closing argument. She was confident and defiant as she told the jury that the

¹² Id.

¹³ Id.

¹⁴ Steve Warmbir, *Cop’s threats took toll on prosecutor; He testifies for ATF agents against corrupt officer*, *Chicago Sun Times*, Feb. 7, 2007 at 39.

Plaintiffs claim of the existence of a “[Blue] Code of Silence” was “outrageous”¹⁵ -- that no such Code existed.

“...And that's their claim. It's not police corruption generally. Their claim is there's a code of silence that's widespread that permits retaliation and permits threats to occur when citizens use their First Amendment rights. They haven't proved any of that. And when you look at the evidence, the only evidence there is of essentially this code of silence or officers looking the other way is when Brian Netols testified about (at 2914) those two cases, Olivares and Placencio. And they were prosecuted. That's two. That's two. It's not a widespread custom and practice. That's two. Moreover, they were prosecuted for turning the other way when officers are committing drug activity. They were not prosecuted for turning the other way when police officers were retaliating against citizens who exercised their First Amendment rights or when police officers were threatening citizens who exercised their First Amendment rights. And when you look at it that way, the evidence is zero. There's nothing. And when you heard the deposition of Superintendent Rodriguez, he told you that people who believe in the code of silence are in jail. They go to jail. He didn't say the code of silence exists. He said, 'Those people that are dumb enough to believe that it does, they end up in jail, because we'll catch them and we'll find them.’” (At 2915)

What a shock to Ms. Ellis when the jury members did look at the evidence as she had instructed them and their verdict in favor of the plaintiffs told the story of how they know that there is a Blue Code of Silence--- it is real. The jury awarded the plaintiffs 3.2 million dollars. What struck this author as “incredible”—literally—was the naiveté and confidence of Ms. Ellis as she presented the ill fated and beyond reason closing argument. In spite of what this authors denies as common sense, Ms. Ellis appeared to believe that that there is no such thing as the Blue code of Silence. This assertion by Ms. Ellis flies in face of not only common sense but as

well, the scholarly literature. A literature compromised of a plethora of data showing the existence of a Code of Silence in American Police work.¹⁶ Yet, in this Court, the position of the corporation's counsel (a person without a PhD in Police Science, hence little credibility to even talk about the sociological phenomenon known by scientists as the Code of Silence), through implication, was that the scientific literature was false. No surprise that the corporation counsel did not present competing scientific data that would have supported Ms. Ellis' premise. After all, she and her colleagues never, not for a fleeting second, considered the veracity and credibility of rigorous science that shows, without a doubt, there is a police subculture in the United States marked by a Code of Silence.

Subcultures

Within a larger culture, subcultures will form. Lawyers have their own subculture. Within lawyer culture, there are "sub" sub-cultures. For example, sub-cultures comprised of prosecutors, another for defense attorneys. No surprise that police officers would form their own.¹⁷

The formation of subcultures is seldom the result of conscious decisions or pre-planned endeavors.¹⁸ Rather, shared values, norms, living space, etc. all contribute to the formation of subcultures. Many theorists have argued that the "shared sense of danger" perceived by many police officers as occupational reality of policing, causes solidarity among police officers.¹⁹ With solidarity in place, police officers establish ways of handling phenomena. The Blue Code of Silence defines the solidarity and the nature of it.

¹⁶e.g., Id., Bittner 1968, 1991; Id., Ruess-Ianni, 1982; Id., Rubenstein, 1979.

¹⁷Id., Ruess-Ianni, 1982.

¹⁸Bittner, 1980; also see Culture and subcultures: an analysis of organizational knowledge. *Administrative Science Quarterly*, 01-MAR-92; Dick Hebdige, *Subculture: The Meaning of Style*, Methuen. (1979).

¹⁹Id, Bittner.

Considering that the average juror is knowledgeable of subcultures, especially the existence of subcultures, it is remarkable that a lawyer would attempt to convince jurors that the occupation known as police work is unlike others in society. Perhaps, it is an attorney attempting to dupe jurors. Alternatively, naiveté. Worse, a lawyer sub-culture so far removed from the reality of life on the planet.

Author's Literature Review

Police Solidarity as an Impediment to Prosecution

The police subculture, or what Ruess-Ianni (1982) defined as the “Cop Code” and what many people know as the “Blue Wall of Silence,” is worthy of concern. A barrage of seminal scientific research of a Blue Wall of Silence dates back to the 1960's.²⁰ Significant scientific literature regarding the Blue Wall of Silence was created and published in the 1970's and 1980's.²¹ The fact that little has been written since is not a message of waning significance, rather a [scientific] message that the existence of the Blue Wall/Code of Science has been scientifically documented.

²⁰ Arthur Niederhoffer, *Behind the shield: The police in urban society*. NY: Doubleday. (1969); P. Chevigny, *Police power: Police abuses in New York City*. Vintage. (1969) E. Stoddard, The informal “Code” of police deviancy: A group approach to “Blue Coat Crime.” *The Journal of Criminal Law, Criminology and Police Science*, 59 (2), 201-213 (1968).

²¹ Nicholas Alex, *New York cops talk back: A study of a beleaguered minority*. John Wiley & Sons. (1976) D. Barry & A. Waldman, Erecting a blue wall of silence. *New York Times*, Feb. 22, 2000 at B1. Egon Bittner, *The functions of the police in modern society*. [US] National Institute of Mental Health. (1970); E. Bittner. *Aspects of police work*. Northeastern University Press. (1990). D. Black, *The manners and customs of the police*, Academic Press. (1980); M. Brown, *Working the street: Police discretion and the dilemmas of reform*. Russell Sage Foundation-Cambridge University Press. (1981). G. Chandler, *The policeman's art as taught in the New York State School for Police*. AMS Press. (1974); *The Knapp Commission Report on Police Corruption*. (1973); W. Muir, *Police: Streetcorner politicians*. University of Chicago Press. (1977); Mollen Commission, *New York City (1994). Commission Report: Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department*. City of New York; Elizabeth Ruess-Ianni, *Two cultures of policing*, NJ: Transaction. (1982).

The norms of the police subculture are somewhat distinguishable from those of other professions. Ruess-Ianni (1982) in her scholarly analysis of policing, documented the existence of a police subculture as a culture in which cops look out for cops, or said another way, that cops protect cops. This fundamental, foundational norm of the police subculture relates to prosecution of police officers for police malfeasance (especially brutality) in three primary ways. First, the norms or “Cop Code” require that all officers on a scene (police parlance for a *situation*) or having knowledge of the scene, must, if called upon, regurgitate an identical police version of what happened on the scene. (Compare Barker, 1978²²; Crank, 1997²³; Ruess-Ianni, 1982²⁴). For example, officers who adhere to the Code are not to be truthful about what they saw on a scene. Stoddard (1968)²⁵ defined this as “the sanction of the code which demands that fellow officers lie to provide an alibi for fellow officers apprehended in unlawful activity covered by the code.” Crank (1997) concisely asserts that support for perjury in police ranks is a “pervasive [police] cultural phenomenon” (p. 243).

Compare Barker’s (1978) findings of the pervasiveness of police perjury based on self-reports of police officers. If the officer witnessed police malfeasance by another officer, he/she is expected to support the authoritative version of events that contends that no brutality occurred. For an officer to assert contrary to the authoritative report is to violate the norms of the police subculture, specifically the norm: “Don’t give up another cop” (Ruess-Ianni, 1982, p.14; Crank, 1998, p. 148). In the prosecution of New York City police officer Michael Kelly for murdering an arrestee, seven of Kelly’s colleagues testified against him after being threatened with prosecution if they continued to hamper the prosecutorial effort. (Ruess-Ianni,

²² T. Barker, *An Empirical study of Police Deviance other than corruption*. Journal of Police Science and Administration, 6(3), 264-272 (1978).

²³ J. Crank. *Understanding Police Culture* at 14 and 243. Anderson Publishing (1997).

²⁴ At 14

²⁵ Stoddard at 203

at 48). Kelly's fellow officers admitted that they had lied during the initial grand jury investigation to protect Kelly, explaining that it was accepted practice to commit perjury to help a fellow officer. (Ruess-Ianni, p.48; testimony by police officers before the Mollen Commission (Id., 1993)²⁶ and a recent scandal in Milwaukee, 2006²⁷).

The second way the norm "cops look out for cops" relates to prosecution of police officers for police malfeasance is evident in the role of internal investigations. The internal police department investigative body (i.e., Internal Affairs [division], or IA unit) is typically comprised of police officers. For prosecutors to make out a case against a police officer for brutality, the cooperation of IA unit officers is needed. Internal Affairs units are not only suppose to inform prosecutors of situations appearing to warrant prosecution, but IA units often conduct investigations for prosecutors as well. There is problem: IA-type units often adhere to the Code and will not, therefore, always address a report of an occurrence of police malfeasance.²⁸ This is a phenomenon that demonstrates a need for neutral investigators to investigate police brutality. To wit: the murder arranged by a New Orleans police officer. The New Orleans Police Department IA unit notified Officer Len Davis that Kim Groves filed a complaint against him, in order that he could administer Code justice. (Nossiter, 1994). Davis

²⁶The Mollen Commission investigated police corruption in New York City. NYPD Officer Bernard Cawley testified, "Cops don't tell on cops. And if they did tell on them, just say if a cop decided to tell on me, his careers ruined. He's going to be labeled as a rat. So if he's got 15 more years to go on the job, he's going to be miserable because it follows you wherever you go. And he could be in a precinct--he's going to have nobody to work with. And chances are if it comes down to it, they're going to let him get hurt." Mollen Commission, New York City, *Commission Report: Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department*. City of New York. (1994).

²⁷*Milwaukee Police Scandal...Off the Record Information about the Badge*. April 11, 2005. Retrieved from the World Wide Web:<http://www.courttv.com/talk/chat transcripts/2006/0411jude-casarez.html>; Dinesh Ramde, *Milwaukee Cop charged with homicide, perjury*. *Chicago Sun-Times*, May 31, 2005 <http://www.highbeam.com/doc/1P2-1627972.html>.

²⁸Kappeler, Sluder and Alpert (1998) made an argument that implies they would agree with this position. V. Kappeler, R. Slader, & G. Alpert, *Forces of deviance*. (2nd ed.). Waveland Press. (1998).

phoned a hit man and within 90 minutes Kim Groves lay in a pool of blood. Officer Davis was convicted of murder and is on death row. (Id.)

If an investigation is commenced by an IA unit, it is likely to be done in such a way to protect the officer as in to not give up another cop. After all, IA staff are fellow cops. Kappeler, Sluder and Alpert (1998) findings are that “traditionally” citizen complaints are dismissed by IA units.²⁹ By illustration, the IA unit officers assert that a complaint is unsubstantiated (not sustained). For example, in an investigation of the New York State Police, it was revealed “more than one of every three complaints citizens made against troopers in 1994 were [held to be] unsubstantiated.”³⁰ The State Police held that it could not determine whether a misdeed occurred although there was almost always overwhelming evidence that the misdeed in question did occur. The findings by LaKamp indicate complaints were unsubstantiated because it was the trooper’s word against the citizen’s.” (Id.). LaKamp found that when a complaint against a trooper hinges on the officer’s word against the civilian’s word, the investigating officer often accepts his colleague’s version and closes the case without further inquiry.” (Id at A8).

In Chicago, between 2002 and 2006, more than 1,200 complaints were filed against 57 Chicago Police officers. Only four of those complaints led to discipline.³¹ The discipline was minor, a 15-day suspension and three reprimands, according to statistics obtained by the Chicago Sun-Times.³² Over the same period from 2001 to 2006, more than a dozen members

²⁹Samuel Walker, *The New World of Police Accountability*, Sage. (2005). Samuel Walker, *Police Accountability: The Role of Citizen Oversight*, Wadsworth. (2000). Michael Quinn, *Walking With the Devil: The Police Code of Silence*, Quinn& Assoc. (2004). Norm Stamper, *Breaking Rank: A Top Cop's Expose of the Dark Side of American Policing*, Nations. (2006).

³⁰Lakamp, P. (1995, March 1). *Troopers Un-policed*. *The Post Standard*, March 1, 1995 at A-1, 8, 9.

³¹ Frank Main, Fran Spielman, *They thought they could run completely amok-- CHICAGO POLICE-- Only 4 complaints out of 1,200 led to officers being disciplined*, *Chicago Sun Times*, July 19, 2007 Retrieved from the World Wide Web: www.Chicagosuntimes.com.

³² Id.

of the citywide Special Operations Section robbed drug dealers, planted evidence and harassed honest citizens alike. Those officers now face criminal charges. The statistics on the Special Operations Section are part of a list of 662 officers with 10 or more complaints against them over the last five years. The *Chicago Sun-Times* obtained a copy of the list with the officers' names blacked out.³³ Four officers in the Special Operations Section had more than 50 complaints in the last five years according to the list. The Newspaper obtained another document showing that rather than discipline, 127 of the 662 officers on the list were referred to counseling or other "early intervention" programs run by the police department.³⁴

The Christopher Commission's investigation of the Los Angeles Police Department (LAPD),³⁵ formed in response to rioting following the state trial acquittal of the officers who beat Rodney King, found that not only did the LAPD condone police brutality but presented obstacles to people reporting it. (Id.). Further, where reports were made, the Commission found that almost all were held to be "unsubstantiated." (Id.). And there's more of an indictment of the workings of IA units in U.S. police departments. (Id.). The Human Rights Watch [organization] 1998 publication, *Shielded from Justice*,³⁶ exposed the ineffectiveness of police department internal affairs units when it reported that each of the 14 cities examined for its report, "... conducted substandard investigations, sustained few allegations of excessive force, and failed to identify or deal appropriately with problem officers against whom repeated complaints had been filed" (p. 63). The American Friends Service Committee (AFSC) writes of one IA-type unit, "Complaints appear to be routinely swept under the carpet...and the U.S. Attorney's Office does no better. Of the 63 AFSC-assisted complaints filed at different times

³³ Id.

³⁴ Id.

³⁵ Warren Christopher, *Report of the Independent Commission on the Los Angeles Police Department*. Los Angeles: The Christopher Commission. (1991).

³⁶ Human Rights Watch. *Shielded from justice. Police brutality and accountability in the United States*. New York: Human Rights Watch. (1998).

over the 1995-97 period, all received back identical letters...” regarding the status of investigations (1999 at 28).³⁷

The circumstances surrounding the gruesome shooting death of Kim Groves in New Orleans illustrate the dual role of many police department internal investigative offices entrusted with responsibility for investigating police criminal conduct (Cooper, 1995).³⁸ The first of which (Role 1) is their function as seekers of police officers who violate the law. Contrast this with their second role of gatekeepers for the norms of the police subculture. It is the attention to the second role that impedes prosecutorial intervention in many cases of police malfeasance. Consider that New Orleans police officer Len Davis arranged to have Kim Groves killed. He was not caught because of aggressive law enforcement by New Orleans IA officers---remember, an officer from IA contacted Davis; rather, he was caught by federal law enforcement officers who were investigating him in connection with another matter (Perlstein, 1998).³⁹ An accomplice who subsequently turned state’s evidence” testified that Davis was indeed a participant in a cocaine ring investigated by federal agents during the same time period. The witness’s testimony further revealed that Davis was the police officer who ordered the execution of Groves that was carried out within 48 hours of her complaint of police brutality to the New Orleans police department (Dvorak, 1997).⁴⁰

To whom does an honest cop report police malfeasance? Granted, police department policy instructs an officer to notify officials and or an internal affairs unit. Typically, however,

³⁷ American Friends Service Committee. (1999). Retrieved from the World Wide Web: <http://www.afsc>.

³⁸Christopher C. Cooper, *The O.J. Simpson trial and rotten apples: Academics are to blame for the neglect of police racism unmasked by the O.J. Simpson trial*. Times Higher Education Supplement, October 6, 1995 at 12.

³⁹M. Perlstein, *Ex-cop sentenced for cocaine ring: His testimony helped convict others*. *The Times-Picayune*, Aug., 27 1998 at B1.

⁴⁰P. Dvorak, *NOPD Cop held as accessory to woman’s murder, woman’s body found after 3 weeks*. *The Times-Picayune*, Feb. 1, 1997 at A1.

the vanguard for the norms of the police subculture -- the internal affairs unit -- labels the reporting officer as a “snitch” or “rat” (again, police parlance). Knowledge by officers that their police department IA unit punishes officers who violate the Code discourages officers from coming forward, in turn makes it less likely that prosecutors will learn of police malfeasance. Nashville Police officer Reggie Miller remembers what happened to him when he dared report being attacked and beaten by fellow officers.

Miller was on duty in 1992, in plain clothes in an unmarked vehicle conducting surveillance when he was assumed by other officers to be a criminal. They dragged him from his unmarked police vehicle and beat him savagely (Smothers, 1992).⁴¹ The beating stopped only after the officers realized that there were onlookers and that Miller’s fellow officers, who had been sitting in other unmarked vehicles, were running to the beating scene shouting that Miller was a cop. Miller made it known to IA that he wanted the officers charged criminally.⁴² For daring to “snitch” the internal affairs unit instead punished Miller, making him the target of a criminal investigation. The unit accused Miller of not identifying himself as a police officer and worst of all, said that his account of what happened was not truthful. He was accused of lying under oath (Cooper, 1995).⁴³

Miller’s experience is indicative of how officers who come forward to report police corruption are accused of perjury or making a false statement. These accusations have replaced many of the physically gruesome methods once used by police to handle fellow officers labeled snitches and rats (e.g., there is ample evidence that Frank Serpico, the New York City

⁴¹Smothers, R. (December 18, 1992). *2 Nashville officers dismissed in beating. The New York Times*, at A7.

⁴²Police officer Reggie Miller was the victim of a beating by five of his colleagues on the Nashville Police Department. A grand jury failed to indict the despite the internal investigation that revealed two of the officers used excessive force. E. Harrison, *2 white policemen fired in beating of black colleague; Race relations: The clash continues to heat up tensions in Nashville. Some say such incidents are the norm. Los Angeles Times*, Dec., 19, 1992 at part A, 31.

⁴³Author Christopher C. Cooper, Interviews of Reginald Miller, April 2000.

police officer who spoke out about police corruption, was shot in the face at the request and by arrangement of some of his fellow New York City police officers; surprisingly, Serpico survived). Still, death of an officer who breaks the Code is still a real threat for breaching the Police Code of Silence. Consider that in 2007, Chicago Policeman Jerome Finnegan attempted to arrange the murder of a fellow officer who is slated to testify against him in an upcoming trial.⁴⁴

Among the most tragic examples of intimidation was the threat by IA officers to charge New York City police officer Daisy Boria with perjury when she turned in a fellow cop for murder. One writer referred to Daisy Boria's experiences as "prompting a fiery debate on police brutality and the role that the "Blue Wall" of silence plays in ensuring that officers are not held accountable for in-custody deaths or other actions."⁴⁵ Boria was on a scene with fellow Officer Francis Livoti as well as other officers. Livoti became upset when a football that Anthony Baez and others tossed in a touch football game struck Livoti's patrol car. Livoti responded by choking Baez to death. As he stood over the dead man, Livoti conspired with officers to say, among other falsities, that a fictitious black man had killed Baez. Boria refused to partake in the conspiracy and reported the crime to internal affairs. Instead of being praised, she was not only accused of lying by the authorities but received continuous death threats. Ultimately Boria had to resign from the police force. (Id.). Livoti was acquitted of criminally negligent homicide in a state trial but convicted of violating Baez's civil rights in a federal trial

⁴⁴ Dave Heinzmann & Todd Lighty, *Cop held in murder plot, U.S. says fellow officer wore wire*, *Chicago Tribune*, September 26, 2007, Retrieved from the World Wide Web, http://www.chicagotribune.com/news/local/chi-finnegan_websep27,0,7297701.story?coll=cs-hs-football-print.

⁴⁵ *Sounds of Silence: Cop's federal trial in choke-hold death puts spotlight on blue wall*, *Law Enforcement News*, Sep., 15 1998 at 7.

for which he was sentenced and went to federal prison. But for Boria, Livoti would likely still be a New York City Police officer.

Internal Affairs units in complicity with prosecutors threatening an officer with perjury and false statement charges not only cause the officer great concern as to whether prosecutors will actually try to indict him/her but has other detrimental affects. These include that the officer is sent to a police department psychologist or psychiatrist. It is then that the officer's career is in jeopardy, due to a naive notion by the examiner that the reports by the officer of police brutality, conspiracies and frame-ups are products of a "wild imagination." Often, the result is the "black hole" or "Rubber Gun Squad" which is police parlance for reducing the job responsibilities of a police officer to non-law enforcement duties (e.g., duties similar to those of civilian clerical personnel). For illustrative purposes, consider Brookline, Massachusetts Police Officer John Dirrane who reported police misconduct to the Brookline Police Department chief. *Dirrane v. Brookline Police Department, et. al.*, 315 F.3d 65 (1st Cir. 2002).

Dirrane refused to compromise his integrity by following orders of supervisors to commit perjury and to falsify and destroy official documents. Dirrane had achieved homicide detective status; however, immediately after he reported lawless misconduct by other officers to the department chief, Dirrane was remanded to inside duties of call taker, computer operator and dispatcher. In the civil lawsuit filed on Dirrane's behalf, his attorney said, "the insults and ridicule from other Officers began immediately." The remarks by other officers that Dirrane was assigned to 'the rubber gun squad' and 'bow and arrow squad' were said to have had an embarrassing impact on Dirrane" (*Dirrane v. Brookline, Commonwealth of Massachusetts, Norfolk County, Case no. 99-00484*).

Another way that the norms of the police subculture relate to prosecution of police officers for police malfeasance is linked to investigations. The Code dictates that when an investigation is underway, whether by the internal affairs unit or prosecutor's office, officers who are perceived as witnesses should adhere to the Code by not saying anything that is contrary to the position taken by the officer or officers under investigation. Not surprisingly then, other officers proffer false testimony.⁴⁶ The testimony is usually that the officer (witness) knows nothing when he/she does have information. In this regard, the 1991 report of the Christopher Commission, (Id.) regarding the investigation into the Los Angeles Police Department, states that "perhaps the greatest single barrier to the effective investigation and adjudication of complaints is the officers' unwritten code of silence, [which] consists of one simple rule: an officer does not provide adverse information against a fellow officer" (Id. at 168).

In 1995, many New York City Police Department (NYPD) police officers traveled to Washington D.C. for the annual Law Enforcement Memorial event. In a rampage that covered two D.C. hotels, New York City officers fired their service revolvers, slid down escalator railings naked, battered citizens, as well as engaged in thefts.⁴⁷ A criminal investigation by the NYPD ensued in New York City shortly thereafter, but most NYPD officers who were there would not assist the investigation in any manner (Id.). Within days after the incidents, then police commissioner William Bratton was asked by the press if any officers had come forward. He responded: "That has not occurred and being quite frank with you, I doubt very much it will occur... I am disappointed by that, but let's be realistic. The reality is that's not the way that it

⁴⁶Two former New York State troopers provide a detailed account of how they were forced to resign from their department for telling the truth in court about an improperly obtained search warrant. They see their case as vividly showing the strength of negative aspects of the police subculture (LaKamp, 1995).

⁴⁷R. Gearty, J. Siegel. *Wall of silence too high: Bratton*. *New York Daily News*, May 23, 1995 at 15.

works” (Id. at 15). A newspaper editorial entitled, “They saw no evil” said of the situation, “...the Blue Wall of Silence stands firm. Impervious to threats, appeals, shame, or conscience, many in the NYPD rank and file take the conformity as a compliment.”⁴⁸ After a series of threats by the New York City Police Department hierarchy that officers who were found to be withholding information could be terminated or prosecuted, some officers came forward. The Commissioner remarked of the slight turn in events: “The wall [Blue Wall of Silence or Code] is tumbling down.”⁴⁹

Investigations & a Weakening Subculture

Certainly, the strength of the police subculture/Code has been dissipating. (Ruess-Ianni, 1982). Keeping the Code of Silence in tact relies on shared attitudes, values, and interests among other phenomena. It can be assumed that as the ethos “cops stick to together” loses support from police officers, prosecution of police officers accused of police malfeasance is much more likely, since more officers are likely to testify against other officers.

The dissipation of the Code’s strength is in part connected to a new influx of officers.⁵⁰ Police ranks are losing their homogenous character. They are becoming more integrated with visible minorities and women, for example (Id. at 6). The fact that some newcomers are not welcomed with open arms (because of their sex, race, etc.) by the police subculture (and that some officers choose not to participate) means that many officers will function outside of the police subculture.⁵¹ This has enabled for deterioration of adverse police sub-cultural norms

⁴⁸ *They saw no evil*, *New York Daily News*, May 23, 1995 at 28.

⁴⁹ G. Pierre-Pierre, *He contends officers are speaking out*. *New York Times*, Jun 10, 1995 at L23.

⁵⁰ Ruess-Ianni, 1982 at 6-7.

⁵¹ Marvin Dulaney, *Black police in America* at 73-74. Indiana University Press. (1996).

(namely: The Code of Silence) such as those, which impede a prosecution effort of another officer.⁵²

More recent findings show that in some police departments, more educated people are hired as police officers (e.g., more college-educated officers). It is plausible that a more educated officer, by virtue of his/her education, is less likely to participate in the norms of the police subculture including the Code of Silence.⁵³ Perhaps, educated officers are more likely to ignore peer pressure and, unlike many of his/her predecessors, to build social relationships outside of the police subculture. This assumption may be contrary to a finding by Crank, Payne and Jackson (1993)⁵⁴ that officers with a more “professional outlook” were just as likely to support police violence mandated by the Code.

Reuss-Ianni (1982) found that there are actually two cultures of policing, one “management” and the other “line officers.” Presently, this phenomenon has meant, “in fighting” and as would be expected, in fighting is contributing to the deterioration of the police subculture. (Id. at 11). Moreover, large-scale investigations of the police (e.g., A 2006 report by a tax-payer appointed former Appellate Judge Edward Egan to investigate 148 cases in which defendants claimed they were tortured by Chicago Police Department Commander Burge and his men into giving false confessions; 1992 Mollen Commission in New York City; 1991 Christopher Commission in Los Angeles) disrupt the “organic relationships and

⁵²The officers who are not welcomed into traditional police groups/networks are subject to threats and punishment by the members of the those groups (the true representatives of negative police subculture norms) should they assist with the prosecution of a police officer.

⁵³Cascio (1977) found that college educated officers are not as likely as non-college educated officers to receive citizen complaints. W. Cascio. *Formal Education and Police Officers Performance. Journal of Police Science & Administration*, Vol. 5(1) at 89-96 (1977).

⁵⁴J. Crank, B. Payne & S. Jackson, *Police belief-systems and attitudes regarding persistent police problems. Criminal Justice and Behavior*, 20-2, 199-221 (1993).

allegiances” required by the Code. Relying on Reuss-Ianni’s findings in part, the author of this article asserts that there really are more officers, than in the past, who are willing to testify against other police officers (compare Reuss-Ianni, 1982). This enables for an inference that the increase of police officers testifying against fellow officers in the late 1990’s and presently, is indicative of a weakening of the Code of Silence.

It is safe to say that the chaos in the police subculture caused by Code violators helped enable for prosecution and conviction of Officer Kelly (mentioned earlier, see Reuss-Ianni, 1982 at 47). One can infer that Code chaos, with similar causes, helped win the conviction of two of the officers who beat Rodney King, after all a fellow officer testified that the force used on King was unauthorized, among other testimony.⁵⁵

And there is more. The star witness in the trial of NYPD Officer Justin Volpe for penetrating Abner Louima’s rectum with a splintered broken broomstick was another police officer. Officer Eric Turetzky’s testimony, as well as that of a second officer, appears to have played a large part in why Volpe eventually admitted his guilt (Fried, 1999)⁵⁶ and is now in prison. Eric Turetzky paid a price: he was ostracized by many fellow officers. Granted, in many cases in which officers assist prosecutors, there are valid concerns that the testimony is not the result of an officer’s moral conscience, rather the officer’s fear of being charged as an accomplice or charged with omitting to perform a police duty. Notwithstanding, the protective shield of police solidarity appears to be damaged and the ensuing pandemonium that has resulted will surely encourage officers to give up other cops.

⁵⁵*United States of America vs. Stacey C. Koon, Laurence M. Powell, Timothy E. Wind and Theodore J. Briseno*, 833 F.Supp. 769 (1993).

⁵⁶J. Fried, *Prosecutors finish case against remaining officers in torture trial. The New York Times*, May 28, 199 at A14.

Addressing Why Officers Adhere to the Code of Silence

Many police officers opt not to assist prosecutors in prosecuting other cops out of allegiance to the police subculture. Other officers do not assist investigators or prosecutors although they do not adhere to the Code. The latter fear that Code punishment will be imposed upon them-- that they would be branded a “snitch” (compare Cohen, 2000).⁵⁷ The fear can be divided into two categories: (1) that which is meted out by fellow rank and file officers; (2) that which is meted out by a police department administration (sometimes in collaboration with a prosecutors office).

Beginning with the former, we can go back to Frank Serpico’s experiences when he exposed rampant corruption in the New York City Police Department (Maas, 1973).⁵⁸ He testified before the Knapp Commission about the resistance and retaliation that honest cops experience when they try to report police malfeasance (Id., Knapp, 1973). Violating rules of the police subculture will mean social criticism and sanctions because “you’re not behaving like one of us” (Reuss-Ianni, 1982, p. 13). The officer who is willing to buck the sub-cultural norms runs the risk of receiving limited “back-up” since only the officers who are not adherents of the Code of Silence will assist him on calls-for-service. In other cases, the violating officer runs the risk of being “keyed out” when calling for assistance on the radio;⁵⁹ to

⁵⁷A. Cohen, *Gangsta cops: As the LAPD scandal keeps growing, a city asks itself, how could the police have gone so bad?* *Time Magazine*, Mar., 6, 2000 at 30–34.

⁵⁸P. Mass. *Serpico*. Viking. (1973).

⁵⁹I remember as a new patrolman witnessing the affects and effects of an officer “keyed out.” In this case, the many officers who were keying out the officer trying to make a radio transmission did not realize that she was trying to radio an ambulance. We were in the Southeast section of Washington D.C. I was one of several foot patrol officers running after a suspect on foot. For a moment, the officer closest to the suspect lost sight of him. Officers in cars, on foot and on motorcycles came to halt and stood in place waiting for another radio transmission. When the pursuing officer’s voice was heard shouting into the radio we realized that the suspect had changed direction. One of the patrol cars was quickly thrown into reverse to make a U-turn and mistakenly ran over the motorcycle and its officer

having drugs or weapons tossed into his unit car when he is on an assignment away from the vehicle.⁶⁰ In this regard, note that two Milwaukee police officers sued the Milwaukee police chief over a job transfer and won. The officers had to bring a new lawsuit, since on six separate occasions drugs, drug paraphernalia, and a pistol were either planted, or an attempt made to plant, in one of the officer's police car. The officers' accuse the police chief of ordering the planting and appear to have overwhelming evidence to show that the chief is responsible (Kertscher, 2000).⁶¹

Officer Frank Serpico had to flee the country following his testimony before the Knapp Commission. He had to go into hiding to avoid fellow police officers who vowed to kill him (Maas, 311).⁶² It is accepted that Serpico lived in the vicinity of Switzerland, in hiding, for more than 20 years.

Renee Rodriguez, the Riverside, California police officer who reported how officers who killed Tyisha Miller, shouted racial epithets and "high-fived" each other after shooting her; and Cynthia Boria, the officer who reported that Officer Francis Livotti murdered a man because the man's football struck a police car, did not have to flee the country (O'Connor, 1999)⁶³ however, one officer had to resign and other continues to deal with having been

directly behind it. As the officer lay on the ground in excruciating pain with his mangled bike on top of him, the officer who tried to radio for an ambulance was prevented access to the "air." She had a bad reputation, not for being honest but for being perceived as an annoying supervisor.

⁶⁰Speaking from experience, but not as the planter, I can attest that the intent is for the officer(s) relieving you to inspect the car after you have left for home, to find a gun, etc. stolen from the "property room" and/or that the property could be linked to a crime. The relieving officer(s) has a duty to turn in the property (e.g., to record on the property book). The targeted officer now must explain how a weapon used in a crime ended up in his auto or why glassine packages of "crack cocaine" are in between the seats of the patrol car.

⁶¹Kertscher, T. (2000, November 2). *Jones abused power, suit alleges: Officers say he ordered drugs planted in retaliation.* *Journal Sentinel.* Retrieved, June 12, 2001 from the World Wide Web: <http://www.jsonline.com>

⁶²P. Mass, *Serpico.* Viking Press (1973)

⁶³A. O'Connor, *Riverside force rife with racism, black officer says; Police: Complaint to state says he is on leave because of post-traumatic street. Chief avows 'no tolerance' for bigotry.* *Los Angeles Times,* Sep., 2, 199 at Part A, 1.

labeled a snitch. Still, in the 21st century, although not as common as once was in the Serpico era, disgruntled cops are still likely to try to kill a fellow officer. On September 27, 2007, Chicago Policeman Jerome Finnegan was arrested and charged with attempting to hire a hit man to kill the officer who would testify against him in corruption trial.⁶⁴

The experiences of Boria and Rodriguez demonstrate the conditional aspects of receiving benefits of the Code. While traditions of loyalty and silence are expected to extend to all officers, those who violate the Code by offering truthful information about police malfeasance are excluded from receiving Code benefits. Obtaining support by police officers in prosecuting police officers necessitates a police chief, internal affairs unit, and prosecutor's office committed to hearing complaints by officers about other officers who engage in police malfeasance. An environment should exist in which an officer's safety or career is not jeopardized should he/she come forward and that he/she is made to feel comfortable in coming forward.

Prosecutors' knowledge base as an impediment

Prosecuting police officers for police malfeasance presents formidable challenges. For example, getting around what the officer says was his state of mind at the time of a use of force incident could require time consuming investigation. In a Code of Silence environment, a prosecutor is often faced with false statements and perjury by police and witnesses fearful of police and criminals. This phenomenon contributes to a position or rather a prosecutor interpretation of the malfeasance allegation as "unmakeable" as in to say that it is an allegation plagued by insufficient evidence and lacking in prosecutorial merit. For example, this position is translated to mean that it is questionable whether the police officers who battered Rodney

⁶⁴Mike Robinson, *Chicago police again mired in scandal*, *Associated Press*, September 30, 2007, Retrieved from the World Wide Web, www.yahoo.com/s/ap/20070930/ap_on_re_us/police_scandals).

King would have been prosecuted had the beating not been “video-taped.” King’s beating could have been described as “unmakeable” but for the videotape. After all, as discussed earlier, police officers are not known for assisting prosecutors in the investigation or prosecution of a fellow officer. Hence in a trial, prosecution witness and victim testimony is likely to be doubted by the fact finder due to an entourage of police officers who present identical, supportive testimony for the officer(s) involved.

Having named many of the obstacles that prosecutors either encounter or that they claim they encounter in investigating and prosecuting police malfeasance, let us consider how prosecutors can navigate their way around real or perceived roadblocks. The author begins by posing the question: Is there something other than the “black letter law” that a prosecutor must know in order to achieve a successful police malfeasance prosecution? The author answers “Yes.” Prosecuting police officers for police malfeasance requires a conceptual understanding of police work’s nuances and protective subculture, specifically the Code of Silence that Sara Ellis says does not exist.

Let us use police brutality to make the point. Granted, the facts of every police brutality case are different, but the explanations given by officers are almost identical: (1) “you (the prosecutor or fact finder) weren’t there”; (2) “there was still a threat—if there is a video tape, you can’t see it, but he [suspect] was still resisting”; (3) “I feared for my life”; (4) “you aren’t a police officer, hence you don’t know what I experienced”; and (5) “police work is dangerous and you [prosecutor] should not second guess an officer’s split second decisions.”

A lawyer who undertakes prosecuting police officers (esp., allegations of brutality) or a lawyer who undertakes defending police officers must have more than a passing or general interest in police subculture if he/she is to adequately handle and rebut this type of testimony. Simply knowing that cops stand up for cops is not enough. Rather, lawyers must become

knowledgeable of the police subculture, in large part, via the scholarly policing literature as well as by reading reports documented in the media among other sources. Although, the literature has its biases and problems as noted earlier, the policing literature has documented a great deal about the way that day-to-day police duties are performed and actions occur (i.e., see Reuss-Ianni, Rubenstein; and Folgelson). Specifically, the literature has documented the inner workings of the police subculture. Take for instance the sub-cultural norm that “*If you run from the ‘poe-lice’ [sic] you get fucked-up.*”⁶⁵ When a prosecutor is faced with a case in which the victim/defendant says that he was kicked in the face as he lay prone on the ground; by a police officer after he saw a police car; and ran, out of fear of having interaction with the

⁶⁵As a rookie (in the FTO program), the author remembers witnessing these violent attacks. These were vicious attacks that were almost always followed by a false arrest for disorderly conduct. It was not long before I began pulling officers off of people. In one incident, I was in the process of handcuffing a teenager. As the boy lay prone on the ground on his stomach, an officer who is now a high ranking official in the Washington DC Metropolitan Police Department asked the boy if he knew what happened when people ran from the “Poe-lice.” The officer was wearing combat boots. The officer cocked his right leg backward and forward kicking the boy in the face, breaking his nose and causing blood to splatter over the my uniform. The boy spent the next hour (approximately) in and out of consciousness. The author reported the incident to the station Sergeant (responsible for the cellblock) and was told to shut the [expletive] up... Realizing how much the boy was bleeding and that he was semi conscious, the station Sergeant ordered us to get the boy out the cellblock. “That Fucker better not die in my Goddamn cellblock!” shouted the Sergeant. He and the offending policeman refused to call an ambulance. I was still drenched in blood. I called a taxi and paid for the taxi to take the ailing boy to a hospital. The boy, unable to walk was carried by his mother and others who had come to the station upon learning of the incident. The officer was never investigated or prosecuted.

See *Cop acquitted in maiming: Verdict stuns kin of man who can never father kids*. *New York Daily News*, March 11, 1998 by M. Kriegel. Retrieved from World Wide Web: <http://www.nydailynews.com>. The article is printed alongside of a picture of a father in tears and in rage after learning that the officer who maimed his son was acquitted by a judge in a bench trial. The victim had been in an automobile stopped by NYC Police officers. Witness testimony indicates that without provocation, one of the officers kicked the man in groin so hard that the victim ultimately lost a testicle. As a result, the man cannot father children. A police department judge, in an administrative hearing ruled that the officer was guilty of physical abuse. (see D. Halfinger, *Officer cleared in kicking incident*. *The New York Times*, March 12, 1998 at B4). Unfortunately, the administrative judge can only make recommendations. Regarding the judge in the criminal trial, he either did not know that kicking people in the testicles, as they lay on the ground is a common police action if the suspect does something that is considered an affront in the police subculture (e.g., asking questions); or the judge knew of the subcultural norm, but chose to favor the police version of events.

officer, the prosecutor should possess a willingness to investigate further. The reason: a police officer in a big city learns early in his tenure that people who run from the police are to be abused says the “Code” (Cooper, 2000)⁶⁶. For a prosecutor to accept at face value, the officer’s account that the victim is lying, in the face of overwhelming documentation that there is a sub-cultural norm which calls for street justice when you run from the police, is to commit a more serious injustice and to demonstrate utter indifference coupled with ignorance.

Other sub-cultural norms include that “dead men tell no tales,” hence once you have shot a man who lies wounded, you are supposed “to put a cap in him” otherwise he will sue you [the officer] in a complaint littered with falsities. This norm is relevant to a prosecutor’s toolbox, since a common problem with prosecuting police officers for “bad shootings” (police jargon) is effectively rebutting the officer’s explanation as to why he shot a person. In this regard, the police sub culture has scripts--“Police Shooting Report Checklist”--, already prepared, to handle bad shootings. It includes, first and foremost, asserting that you feared for your life or something to that effect. It is followed by one of the primary three following assertions: (1) he tried to run me over [with his car] (see the previously mentioned Hood case and murder of Leon Grimitt); (2) he pointed a gun at me; (3) he lunged at me [with a knife]. There is a cartoon that is passed out in police locker rooms that is referred to as the “Police Shooting Report Checklist” which includes the aforementioned choices.

It is not by accident or simply rehearsal for trial, that the officers’ testimony in their trial for killing Amadou Diallo was virtually identical (whether you believe that the officers acted properly or improperly in the shooting). *New York Times* writers Dan Barry and Amy Waldman (2000)⁶⁷ said of the identical trial testimony: “... prosecutors have...encountered a

⁶⁶ Christopher C. Cooper. Entrenched subculture is at root of police brutality and bias cases, *Philadelphia Inquirer*, at A27. Christopher C. Cooper, *Zero-Tolerance Policing*, *Economist Magazine*, Apr. 11, 1999 at 8.

⁶⁷ Dan Barry & Amy Waldman, *Erecting a blue wall of Silence*. *New York Times*, Feb. 22, 2000 at B1.

blue wall... [in] which officers used almost identical language to defend their actions” (p. B1). The Code information, transferred to a new police officer in the sub-culture socialization process should alert the prosecutor not just to what the defendant officer is going to say at trial, but what may have really happened at the scene.

Police officers realize that most of the public, including most prosecutors are ignorant as to the dynamics of police shooting situations.⁶⁸ [WE] police officer know from information passed down, from old cop to young cop, that most prosecutors will not ask further questions—most significant: most lawyers don’t know what questions to ask! Rather, many civilians and prosecutors accept police versions/authoritative narratives of events such as “we fired upon individuals who pointed guns at us,” for example. Yet, in reality, there are far more situations in which a person is holding a gun and does not know of an officer’s presence, hence would not point a weapon at the officer.⁶⁹ The author knows personally from being in a uniform and having guns fired at me, pointed at him, the suspect did not know the author was watching him. It is not the norm that bad guys point guns at cops.

It is taught in the police subculture: “shoot first and ask questions later.” Note the following radio transmission taped by the Christopher Commission (1991) investigating police brutality in Los Angeles following the Rodney King riots: “If you encounter these Negroes shoot first and ask questions later.” The Commission goes on to say that “...Officers also used

⁶⁸The author of this chapter notes that there are two types of shootings in police work. First, a shooting that takes courage. The second type of shooting is one that can be accomplished with absolute cowardice on the part of the officer. The former involves a suspect actually confronting you (the officer) with a gun and that he raises it and tries to shoot you. In this regard, a physical battle for the gun and/or a gun battle super tests an officer’s courage. The latter situation can involve cowardice or show that an officer does not have the courage to handle fear. The case is usually an unarmed victim or person holding a weapon who is never given a chance to discard it.

⁶⁹In almost all cases, when you as a police officer pursue an individual with a gun, he is running away from you and he “tosses it.” Granted, in chasing suspects I have been fired upon, but it is rare. We spend more time searching “dumpsters” for example, among other places looking for the gun that the suspect tossed in the foot chase.

the communications system to express eagerness to be involved in a shooting incident” (Id. at 4-5).

It should come of no surprise to prosecutors, when they take some time to become knowledgeable of the police subculture that many officers shoot people who do not pose a threat, but that the officers write an authoritative narrative of the shooting incident that indicates that the suspect pointed a weapon at the officer. (compare Trout, 1999).⁷⁰ That is, the officer knows that his life is not in danger, but fires anyway because he knows that most prosecutors, among others, will not second guess his decision or look with suspicion upon the situation. Providence police officer Cornel Young, in plain clothes, was shot and killed by two fellow Providence Police officers as he attempted to apprehend a gunman, the officers stated that they had repeatedly warned their fellow officer to drop his gun and-- they say that he refused—they described a standoff between the police and the police (Davis, 2000).⁷¹ For many police officers, this version of what happened is preposterous and offensive. So, the issue in the Young case and many cases is officers: (1) who dispense with protocol as in not shouting commands (e.g., “Police, Don’t Move”),⁷² but they lie and say that they did make their presence known to the victim; or (2) that officers shouted commands contemporaneous with initiating gun fire.

The officers who killed Officer Cornel Young asserted the same things that other police officers who have killed police officers (and people in general) have asserted (i.e., “I told him

⁷⁰D. Troutt, *Screws, Koon, and routine aberrations: The use of fictional narratives in federal police brutality prosecutions*. *New York University Law Review*, 74, (1) 18-122 (1998).

⁷¹K. Davis, Board chosen to explore police-minority relations: Almond picks URI scholar to lead panel. *May 4, 2000, Providence Journal*, at A1. John Rockoff, *Grand jury clears officers in Young's shooting death*, *Providence Journal*, Apr. 19, 2000 at 1A. John Rockoff, *How it all happened: A diner fight escalates, an officer is killed*. *Providence Journal*, Feb. 3, 2000 at 1A. K. Mingis, Off-duty Providence police officer shot, killed by 2 other officers. *Providence Journal*, January 28, 2000 at 1A. M. Davis, Friendly fire victims haunt fellow police *Providence Journal*, Jan., 30, 2000 at A1.

⁷² This raises the issue of many police officers who dispense with proper protocol when interacting with people of color whom they believe to be armed, etc.

to drop the gun and he disobeyed my command”) from New York City to Los Angeles to Washington D.C (See, news article regarding the death of D.C. Officer McGee by Officer Baker [Duggan, p. E1]).⁷³ All of the authoritative (police) reports read almost identically regardless of the venue. These practically identical reports coupled with overwhelming evidence from what constitutes the norms of the police subculture, generate reasonable suspicion for which prosecutors should be concerned.⁷⁴ This is to say that in presenting a case to a grand jury for indictment, prosecutors would need to inform grand jurors about the norms of the police sub culture. In particular, the norm (Code rule) that holds that a police officer should dispense with protocol (e.g., drop the gun) via shooting first and then asking questions later when confronting the socially powerless, perceived to be suspects. Granted, grand jury proceedings are secret, but one can be almost certain that few, if any, grand juries investigating police brutality are educated by prosecutors about how the norms of the police subculture may have influenced the events for which the grand jury is investigating. For this reason, one can understand how many people who sit on grand juries and trial juries will vote not to indict or not to convict a rogue policeman. These individuals are working with the information provided to them. For example, in the infamous Diallo case, you cannot say that that the black jurors did

⁷³ P. Duggan, *Praise and tears for officer slain in the line of duty: DC leaders laud dedication of policeman shot by colleague*. *Washington Post*, Feb. 14, 1995 at E1.

⁷⁴In Claremont, California in December 1998, a black male was said to have pointed a gun at two white officers who shot and killed him. The officers added that the suspect had shot at them. The Sheriff’s Department investigation and subsequent report revealed that not only had the gun never been fired, but that it bore no fingerprints and was last registered to a deceased police chief in a nearby town. Note that to date, the officers have not been prosecuted. (J Mazingo, J. *New Claremont chief had role in LAPD spying case*. *Los Angeles Times*, Feb. 6, 2000 at B1. One of the most glaring examples of how many officers adhere to the Code is likely the 1998 San Francisco case in which John Smart Jr. was killed by police. (J Zamora & T. Hendricks, *Witness account assert that officers ‘shot even when safe*. *San Francisco Chronicle*, Oct. 1, 1998 at A1.

not find that the officers acted in a racially discriminatory manner, since race was never made an issue in the trial of the officers, raised by either the defense or prosecution. The fact is that stringent, limiting instructions to a grand jury or jury as to how they are to determine if an officer is to be indicted or convicted explain how jurors sometimes vote.

The Code provides trial preparation long before the officer acts. Using police brutality as an example again, because many prosecutors know little to nothing about the premeditation for police brutality that the police sub-culture provides and the Code of Silence keeps silent, the prosecutor will not know or understand the need to be suspicious [unless of course he\she understands and believes in the Code of Silence]. There are those prosecutors who know about and accept the premeditation perversion, yet do nothing, while others refuse to believe that it exists. The result of which in either situation is that egregious malfeasance under color of law remains unchecked.

Many cops talk with each other about how they take the legal use of force right to the edge. As a cop you learn how to create situations that are legally indecipherable (Crank, 1997,⁷⁵ Cooper in the *Hartford Current*⁷⁶) such as by intentionally placing yourself in front of automobile, so to enable a fear of life claim (e.g., Desmond Rudolph case, 1999, in Louisville, Kentucky⁷⁷; Emanuel Lopez case, 2005⁷⁸).

⁷⁵J. Crank, *Understanding police culture*. Anderson Publishing (1997).

⁷⁶ Christopher C. Cooper in T. Puleo, T. *Different incidents, but same question*. *The Hartford Courant*, Feb. 17 2007 at A15.

⁷⁷The nine-page police investigation noted numerous instances in which the officers who killed Rudolph committed tactical errors. When asked if the shooting could have been avoided, the lead investigator said, "One could come to that conclusion." A grand jury was convened and voted along racial lines. Since there were fewer blacks than whites, the grand jury voted not to indict. Even with the incriminating report, the officers were given medals of valor for shooting and killing Rudolph J. Zambroski, S. Shafer & S. Tangonani, *Louisville police chief fired*, *The Courier Journal*, Mar., 3, 2000 at A1.; J. Zamora, J. & T. Hendricks, *Witness account assert that officers 'shot even when safe*. *San Francisco Chronicle*, Oct., 1, 1998 at A1.

⁷⁸ Attorney: Police Faked Evidence To Justify Killing. Attorney Terry Ekl Says Police Rolled Tire Over Pants To Make It Look Like Officer Was Pinned Under Car, March 22, 2007. Retrieved from the World Wide Web: http://cbs2chicago.com/topstories/local_story_081151006.html, Mar 22, 2007.

Recall the aforementioned shooting death of Emanuel Lopez. Shot fatally shot 16 times without provocation, then the officers presented tire tracks on a pair of slacks to make it look like an officer had been run over by Lopez's car. Forensic expert William Bozdiak concluded that the evidence that the unarmed Lopez was pinned the officer, is suspect.⁷⁹ The tire tracks on Officer Rovano's pants don't match the tires on the Lopez car. "Both (tire) impressions are characteristic of the type of impression that is obtained when taking a tire and rolling that tire by hand across a surface, in this case pants legs."⁸⁰

For prosecutors to get a sense of what happened at scenes where an officer said that the victim tried to run him over, they would need to know about how some officers will place themselves in front of an automobile. (Compare the aforementioned Lopez case and the Police Shooting Checklist that "we" as police officers joke among ourselves about). It is the pattern that a prosecutor will be able to see if he/she looks at other cases along with examining police sub-cultural norms. Once having discovered the pattern, he/she can see if the Code dictated when and in what manner force was likely employed in the situation under investigation. No doubt, no two scenes are alike; however, pattern and practice (based on what the officer did on previous scenes and what is a common practice by officers in the department) enables for knowing what questions to ask and what suspicions to maintain. Only then can a decision to prosecute be solidly made.

One of the Los Angeles officers convicted and sent to prison for violating Rodney King's rights, Sergeant Koon, remarked of his upcoming federal trial prior to its start, "Piece of Cake, ...It's just a matter of educating the jury" (Stewart, 1993c, p.2A). Fortunately, the jurors had the recent riot caused by the state court acquittal and the cores of dead etched in the minds.

⁷⁹ Id.

⁸⁰ Id.

Furthermore, it is plausible that as a result of the riots, prosecutors had a better sense of what they were up against—a daunting sub-culture of norms that can kill a prosecution effort.

The Subjective State of Mind as An Impediment in Use of Force Cases

“Of course, in assessing the credibility of an officer's account of the circumstances that prompted the use of force, a fact finder may consider, along with other factors, evidence that the officer may have harbored ill-will toward the citizen” (*Scott v. United States*, 1978).⁸¹

In a February 10, 1999, *New York Times* article, writer Benjamin Weiser wrote “in several cases where officers’ perceptions of danger have been an issue, state prosecutors have failed to bring charges against officers involved in shootings of unarmed civilians.”⁸² This phenomenon calls attention to the issue of the subjective state of mind of the officer at the time of use of the force.

In determining the legality of use of force by police, a legal standard by which an officer’s actions are to be judged is that of a reasonable police officer. Asked in two ways: (1) Was the officer’s action (force) reasonable? (2) Did the officer act in a manner that a reasonable officer would have acted under the circumstances? Determining reasonableness has its challenges. The first of which is a defense strategy that seeks to control the fact finder’s definition of reasonableness (e.g., the defense influence on the jury in the Amadou Diallo trial as well as on the judge as was showed by the judge’s charging instructions to the jury⁸³ⁱ). The

⁸¹*Scott v. United States*, 436 U.S. 128; 98 S. Ct. 1717; 56 L. Ed. 2d 168; 1978 U.S. LEXIS 89. (1978).

⁸² Benjamin Weiser, *Some favor federal role in police shooting inquiry*. *New York Times*, Feb., 10, 1999 at B6

⁸³There was stern criticism of the prosecutor’s handling of the trial of the New York City Police officers who killed Amadou Diallo. The author’s findings do not reveal that the prosecution intended to blunder, rather that the prosecutors did not educate themselves on the norms of the police subculture (the Code). One critic of the prosecutors stated that he thought “... the prosecutors should have asked that the judge say in his instructions to the jury that, even if the use of deadly force is necessary at first, it can

defense intentionally tries to show the fact finder (in particular juries) that police work is so unique that only people with police experience can evaluate police actions. For example, the defense argues: “that you [the jury] don’t know what it’s like to be cop and having to make a ‘split second decision’ as a cop.” Such defense arguments make it very difficult for jurors, for example, to measure reasonableness. The fact finder acceptance of the defense interpretation of reasonableness coupled with fact finder naiveté, sometimes awe, or even intimidation, means that it is highly unlikely that the officer could possibly be found to have acted in an unreasonable (brutal) fashion.

Officers learn very early on in their police tenure that they will be exonerated when they state that their subjective state of mind was that they feared for their lives (or something to that effect). Officers are just as aware as are civilians that police officers are seldom if ever prosecuted for police malfeasance and if prosecuted, seldom convicted. Officers know that prosecutor’s investigations into use of deadly force rarely second guess what the officer says was his state of mind at the time.⁸⁴

There is strong likelihood that a prosecutor’s decision not to pursue a matter (e.g., not to present the case to a grand jury “for indictment”) or a grand jury’s decision not to indict a police officer accused of police brutality; or a fact finder decision not to assign guilt is the result of acceptance of the officer’s version of what his or her subjective state of mind was at the time of the brutality occurrence. Such automatic acceptance by prosecutors is to ignore

become unjustified later.” Amy Waldman, *The Diallo case: The trial; Too many in the court of public opinion, the prosecution is now the accused*, *New York Times*. Feb., 28, 200 at B5.

⁸⁴Having been a police officer, the author of this article posits that it is likely that there are officers who intentionally become involved in illegal shootings, all the while knowing that they may be indicted; but are not deterred by the threat of judicial intervention, since they know that they will eventually be exonerated. It comes down to accepting that there will be several months of discomfort, but eventually things will work out.

abuse of use of deadly force policy. This avoidance reduces the number of cases presented to grand juries and successfully prosecuted.

Police officers are in numerous situations in which they did not shoot although the rules of deadly force allowed them to shoot. Instead, some officers shoot according to the lowest—the minimum—criteria allowed for use of deadly force. Said another way, an officer shoots when he knows that he does not have to shoot, but does so anyway because he knows that the shooting will be ruled justified. By illustration, consider some calls-for-service that involve domestic violence. A cop with more than a month on the street knows that a woman who is abused by her boyfriend, husband, etc., may grab a knife to defend herself from her attacker. When the police arrive, sometimes, she is holding the knife (or some other weapon) —she will drop it if you give her a chance—you don't shoot her! But many officers do. Decisions to prosecute usually fail to consider that the officer did not have to shoot. Rather, decisions to prosecute more often than not are based on ballistics tests, photographs and a volley of other scientific evidence.

Officers who are prone to abuse use of deadly force policy latitude know that the norms of the police sub cultural mean that his fellow police officers are not supposed to “sell him out.” So some officers shoot at the mere flicker of a green light from the deadly force policy. In many cases, this is abuse of the furtive gesture rule—a slight harmless movement by a citizen is known to be harmless by the officer, but the officer shoots since he knows that he can describe the movement as threatening. Prosecutors should remember that officers are trained to say that they feared for their lives.

There are legitimate concerns that some officers use force, and especially deadly force, on citizens as a result of the officer's racial bias. In the 21st century, it is less likely that the close-minded police officer will accompany his blows or shots with epithets. His or her caution

is the result of knowing the consequences. These include discovery of having committed a hate crime as well as coming under the purview of federal prosecutors for having violated a citizen's rights under color of law. For this reason, prosecutorial investigations must not leave out a much needed analysis of the sociological and psychological phenomena, which explain why, in some cases, the officer shot according the minimum threshold requirement for engaging deadly force. To not ask questions about what was in the officer's sociological baggage at the time of the use force means that many police brutality victims will never receive justice.

Police officers have discretion. They are tasked with using their common sense and good judgment in determining how much force is necessary. Prosecutors must contend with a situation in which the officer states that his or her subjective state of mind told him or her that they needed to use the amount of force employed. Since no two physical encounters are alike and that we are not mind readers it is can be difficult to investigate the officer's actions; however, there are ways techniques available to help prosecutors determine if the officer is not being truthful about having feared for his life. Eventually, hopefully, many police agencies will add restrictions to use of deadly force policies. Such restrictions will contribute to a reduction in acts of police brutality.

Diallo Defense Team Used Norms

One spectrum of the Code demands that civilians must have sympathy for police officers and be in awe of police profession. The author calls this use of "The Danger Card." An effective and often successful strategy for beating prosecutors in police brutality cases.

The idea is to have civilians assume that police work is a thankless job and that officers put their lives on the line each day and that Mr. or Ms Civilian lacks the courage to do what

police officers do. In reality, policing is a very rewarding profession. Many would not give it up even with an opportunity to participate in another profession. Driving a taxi is far more dangerous than police work. Many police officers work in administrative capacities as in preparing the payroll. Most work in jurisdictions in which violent crime is rare (U.S. Department of Justice, Bureau of Justice Statistics LEMAS, 1999⁸⁵). It is not that many civilians couldn't do what some police officers do, it is that many have chosen other occupations. One does not lack the courage expected of a police officer because he chooses to become a medical doctor, etc. Tying this into prosecution of police officers for police brutality, the defense team in the prosecution of the officers who killed Amadou Diallo built its case around the dangers of police work.⁸⁶ It conveyed to jurors and lay people in general that if you were not a cop, you could not conceptualize danger, hence you would be unable to understand why the officers killed Amadou Diallo. Rather, you should have sympathy for police officers because of dangerous situations that police officers sometimes encounter. This defense strategy is arrogance that engenders the notion that police officers have a sole right and claim to “masculinity” or “courage.” In other words, this line of thinking means that firefighters, football players, soldiers, and people growing up in urban areas, are seen by many male police officers as not being entitled to claim dangerous and difficult duties or experiences.

To make a point that police officers encounter danger like no other person, the defense team in the Diallo case put a well-known police scholar (Ph.D.), Dr. James Fyfe, on the witness stand who spoke to the dangers of police work and how lay people would not be able to understand. In other words, the defense endowed itself with knowledge of policing, then used it

⁸⁵U.S. Department of Justice, Bureau of Justice Statistics Law Enforcement Management and Administrative. Statistics, 1999: Data for Individual State and Local Agencies with 100 or More Officers. Washington D.C. Government Printing Office.

⁸⁶ *People of the State of New York v. Kenneth Boss, Sean Carroll, Edward McMellon and Richard Murphy*; State of New York Bronx Supreme Court.

in a manner that was helpful to it. One would expect that the prosecution would have endowed itself with knowledge of policing as I called for in a previous section of this chapter—but it did not. The defense expert, Fyfe, was never rebutted, the prosecution did not present a policing expert. From media reports, we know that jurors walked away believing what the defense expert, Dr. Fyfe, had told them (Waldman, 2000, p. 5).⁸⁷ The jurors reconciled that since they were not and had never been police officers, they were not qualified to second-guess a police officer's split-second actions.⁸⁸ Additionally, media reports also revealed that some jurors expressed dismay at Dr. Fyfe's testimony not being rebutted (Id.). Obviously, many jurors are reluctant to second-guess police officers. This is a [societal] impediment to the prosecution of police officers for police brutality. But it is a problem that prosecutors can get around via presentation of experts to rebut defense testimony.

Conclusion

While this article presents an argument that a prosecutor's toolbox is often without the proper tools to prosecute rogue cops, there is no doubt that some prosecutorial mishandling (or inattention) of police malfeasance is intentional.⁸⁹ By example, a prosecutor's sociological baggage may cause him/her a disconnect of the understanding and perceptions held by those who often encounter the police in negative situations.⁹⁰ These phenomena may lead to a

⁸⁷ Amy Waldman, The Diallo case: The trial; Too many in the court of public opinion, the prosecution is now the accused, *New York Times*. Feb., 28, 2000 at B5).

⁸⁸ Compare S.A Stewart, Defense's turn in King case: "Educating the jury" is key for police officers on trial. *USA Today*, March 16, 1993 at 2A.

⁸⁹ K. Armstrong & M. Possley, *How prosecutors sacrifice justice to win: The verdict: Dishonor. The Chicago Tribune*, January 10, 1999 at 1, 8.

Additionally, compare Todd Purdum's *Prosecuting officers: False-arrest case shows it can take time and publicity to redress wrongs. The New York Times*, March 16, 1989 at B3.

⁹⁰ Compare a similar phenomenon that could occur on the bench. See D. Nugent, *Judicial Bias. Cleveland. State Law Review* 42, 1, 20 (1994).

prosecutor marginalizing complainants against the police because of the complainant's social status, past interaction with the criminal justice system, race or ethnicity, etc.

By other example, the growing controversy surrounding a band of Chicago Police (CPD) officers led by a former CPD Commander John Burge. Burge and his officers (many of whom are still police officers) operated a torture chamber in a Chicago Police station. This reality is an indictment of county's State's Attorney, Richard Devine and a slew of prosecutors, all of who oversaw prosecutions of Burge's victims, many of whom repeatedly told judges and prosecutors—deaf ears-- that they had confessed to crimes they did not commit. The confessions were given to escape the pain of electric cords connected to their testicals; pain from suffocation techniques and beatings among other torture methods.⁹¹ Worse, the prosecutors and the City's Law Department presently in 2007 are challenging efforts to expose the gruesome and unconstitutional methods of former Commander John Burge and his cadre of rogue cops.⁹²

In 2006, a Special Prosecutor released a report holding that over several years, widespread torture did occur.⁹³ At the time of the barbaric behavior, the present State's Attorney, Richard Devine, was an underling to then State's Attorney, the City's current Mayor, Richard M. Daley. Both men argue that punishing active and former officers is not possible due to the statute of limitations having run.⁹⁴ Their position is perceived by critics as way to escape punishment for their having looked the other way. Defense attorneys hold hope

⁹¹John Conroy, *Deaf to the Screams, The next state's attorney to investigate police torture in Chicago will be the first. The Reader*, Aug. 1, 2003. Retrieved from the World Wide Web: <http://www.chicagoreader.com/policetorture/030801/print.html>.

⁹²Abdon Pallasch, *Daley faces torture query; Judge orders him questioned; Suit says he ignored claims of cop abuse, Chicago Sun-Times*, Feb. 23, 2007. Retrieved from the World Wide Web, <http://www.suntimes.com/news/politics/269812,CST-NWS-daley23.article>

⁹³*Alleged Police Torture Cannot be Prosecuted*, July 19, 2006. Retrieved from the World Wide Web: <http://cbs2chicago.com/topstories/Chicago.Police.Jon.2.330398.html>.

⁹⁴Id.

that prosecutions will ensue for perjury by former and active prosecutors and police officers, all of whom claim that torture never occurred and or that they never knew about it.⁹⁵

Successfully prosecuting police officers for police malfeasance represents formidable challenges. These challenges are not impenetrable. To borrow the words of an attorney commenting on whether a federal prosecution of the officers who killed Amadou Diallo would be successful, he stated “I think that if you prosecute this case in the right way,” convictions will be obtained (Smith & Saltonstall, p.5⁹⁶). Although the attorney was not calling attention to the Code of Silence, his remarks personify the Code’s significance in prosecution of police malfeasance cases. Prosecutor attention to the secrets of the Code of Silence, many of which are on public display, thanks to generous leaks, is an absolute necessity. Having a conceptual understanding of the policing subculture, enables for reasonably deducing what really happened on many scenes. Code of Silence knowledge generates needed suspicion.

There is something very wrong with automatic acceptance of the authoritative report without concern for a wealth of evidence and common sense that show how police reports can be—and often are—molded by officers to mitigate malfeasance under color of law; to hide intentional constitutional violations under color of law; and to protect a fellow officer who broke the law.

⁹⁵Id.

⁹⁶G. Smith & D. Saltonstall, *Federal rights prosecution possible, suit is likely*. *New York Daily News*, Feb., 27, 2007. Retrieved from the World Wide Web: <http://www.nydailynews.com>

