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"TRUTH OR CONSEQUENCES" REVISITED

Notes on Police Character for Truth, Honesty, Veracity and Integrity

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FORWARD

In 1998, we wrote the original paper called "Truth Or Consequences? The Path To Career Destruction." It was our effort to come to grips with what many observers considered an "integrity crisis" in police work.¹ We endeavored to remind our readers that perceived dishonesty is almost always fatal to police careers. We pointed out how police personnel records which contain sustained findings of dishonesty, false reports, evidence-planting and perjury, for example, can constitute "Brady material" requiring that it be turned over by prosecutors to criminal defendants and their attorneys, and that may be used at trial to impeach the testifying officer's credibility. Prosecutors may

thereafter refuse to file cases where that officer is a material witness. The agency may remove the officer from field duty and public contact. It can happen any time – one day you are progressing well in your police career – and on the next, you find yourself "benched" while your employer investigates you on an ethics or integrity issue. If it is sustained and you manage to hang onto the job, you may nevertheless see your future tossed into the police career deep-freeze; a sort of employment Siberia: you won't promote; you won't be eligible for coveted assignments; you can't advance in any direction; and you won't be able to "lateral" over to another agency to start your career anew, even if you are careful not to make the same mistake again. With the stakes so high and the consequences so harsh and unforgiving, you might expect that breaches of ethical and integrity standards are rare. Unfortunately, they are not. We continue to see an alarming number of so-called "dishonesty" charges brought against

¹ See: "Truth Or Consequences? The Path To Career Destruction," later published in our Training Bulletins at Vol. II, Issue 7 (July 1999).

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officers, deputies, agents and supervisors. If the agencies decide to uphold such charges, even by a mere preponderance of the evidence, the penalty is almost always removal.

Recent scandals have rocked law enforcement institutions and no doubt, are largely responsible for the decline in community trust and public confidence. Ever-wider segments of the community are distrustful of police testimony, as the notion of the "code of silence" has become common parlance in our justice system. So, the profession needs to reassess its approach to integrity. Merely reciting that dishonesty won't be tolerated and threatening to take employees' livelihoods away for good for perceived acts of dishonesty is not very helpful, as the following discussion demonstrates. We need to make honesty and truthfulness automatic responses, as discussed at length in the original "Truth Or Consequences?"

"Going Along To Get Along"

We selected two recent cases to highlight in this paper. The first is *Kolender v. San Diego County Civil Service Commission (Berry)* 2005 WL 2008659 (Cal.App. 4 Dist., August 22, 2005), where the Court utilized strong language to support its decision to uphold the termination of a deputy sheriff for one sustained instance of lying to investigators. This opinion also reinforces the notion that management can impose removal upon the first sustained instance of dishonesty. There is no rule that similar violations require identical penalties; i.e., just because one officer took a suspension for lying does not guarantee that another won't be fired. Lastly, as we shall see, this case underscores the foolishness in attempting to cover-up for

the misdeeds of a fellow officer, or participating in the so-called "code of silence."

According to the opinion, in September 2002, Berry was a freshly-sworn deputy sheriff with the San Diego County Sheriff's Department assigned to the George Bailey Detention Center. Berry was assigned to a team of deputies known as the "Angry Team" because of their aggressive physical enforcement of institutional rules and procedures. As part of his indoctrination by senior members of the "Angry Team," Berry was told to "forget" what he had learned at the Academy and that in order to survive in the facility he would have to "go along to get along." Berry clearly understood the message being sent by the senior deputies and he wanted to be loyal to his team to avoid being ostracized and potentially losing his teammates' protection should conflicts arise between inmates and deputies.

While Berry was supervising a group of inmates on laundry detail, one inmate became disorderly and belligerent towards fellow - Deputy Padilla. Padilla determined that the inmate needed to be removed from the housing module due to his unruly behavior. Padilla requested that Berry accompany him in removing the inmate.

En route, Berry witnessed Padilla yell profanities at the inmate and forcefully abuse him without provocation or

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necessity. Upon reaching the medical housing area, Padilla told Berry that he no longer needed Berry's cover. After Berry left, Padilla, while escorting the inmate through the recreation yard, repeatedly bumped the inmate's head against a wall, resulting in serious injuries requiring medical care. The inmate filed a complaint regarding the incident and an investigation ensued.

According to the Court of Appeal, Padilla asked Berry to cover for him and tell investigators that Padilla escorted the inmate to the medical housing area without incident. Upon being questioned, Berry complied with Padilla's request by stating that the inmate was taken to the medical housing area without incident; *he did not say that he observed Padilla abuse the inmate nor did he admit that Padilla continued to escort the inmate through the yard.*

Approximately one week after being questioned by his sergeant, Berry was interviewed a second time by investigators who confronted him with additional information that contradicted his initial account of Padilla's actions. Berry admitted that he lied during his first interview in order to protect Padilla. Berry then told the investigators about his observations regarding Padilla's handling of the inmate.

The Sheriff terminated Berry for dishonesty and acts incompatible with and/or inimical

to the public service. Berry appealed to the Civil Service Commission, which, after conducting an evidentiary hearing, reinstated Berry subject to a ninety-day suspension. In mitigation, the Commission found that Berry, a new probationary deputy, was truly "sorry" for his actions and that he was heavily-influenced by peer pressure prevalent in the jail.

The Sheriff filed a petition for writ of mandamus in the superior court, which upheld the Commission's decision to impose a ninety-day suspension rather than a termination. The Sheriff then appealed the trial court's decision to the Court of Appeal, which reversed the lower court's ruling and re-imposed the termination of Berry.

In so doing, the Court of Appeal stated: "Berry's wrongdoing implicated important values essential to the orderly operation of the office. He lied regarding a grave matter, and thereby forfeited the trust of his office and the public. . . . No requirement exists that the San Diego Sheriff's Office retain officers who lie and protect deputies who harm inmates; rather, the Sheriff was entitled to discharge Berry in the first instance, especially in light of the Commission's findings regarding the existence of the 'code of silence,' the physical abuse of inmates, and the 'rogue team' within the office. . . ." The Court further stated that ". . . we know of no rule of law holding every deputy sheriff is

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entitled to [tell one lie] before he or she can be discharged."

The second case, *Kolender v. San Diego County Civil Service Commission (Salenko)* 2005 WL 2002283, (August 22, 2005) involves Sergeant Edward Salenko who was assigned to conduct an internal investigation into allegations that a deputy had abused the Sheriff's sick leave policy. Upon review of Salenko's investigative report, a commander found several areas that required clarification and returned the report to Salenko for further investigation. In particular, the commander wanted information concerning possible approval of the deputy's actions by a lieutenant.

In his revised report Salenko stated, "I asked [the lieutenant] if he approved the use of sick time, and he replied 'yeah.'" Evidence introduced at the Commission hearing established that Salenko never asked the lieutenant whether he approved the sick leave nor did he even attempt to reinterview the lieutenant for the revised report.

Salenko's report contained an additional discrepancy relating to the specific time, date, place and circumstances of an interview he allegedly conducted with a sergeant who was a percipient witness in the investigation. Evidence introduced at the Commission hearing further established that Salenko did not interview the sergeant according to the circumstances described in his report. More troubling is the assertion

in Salenko's report that the sergeant forgot the details of a conversation with the deputy under investigation when, in fact, the sergeant had not.

The Sheriff concluded that Salenko's report contained dishonest statements, fell below Department standards, and that Salenko's overall acts were incompatible with and/or inimical to the public service. Salenko was terminated.

Salenko appealed his termination to the Civil Service Commission, which, after conducting an evidentiary hearing, reinstated him subject to a ninety-day suspension and demotion to deputy. The Sheriff sought review in superior court, which upheld the Commission's decision. The Sheriff appealed the trial court's decision to the Court of Appeal, which upheld the ruling.

In so doing, the Court noted that there was significant mitigation in support of the decision to impose suspension and demotion rather than termination.

- Salenko was a 17-year veteran of the Department and his work history included "mostly positive reviews";
- There appeared to be *no motive* for the allegedly untruthful statements contained in Salenko's report and the inaccuracies pertained to immaterial issues;

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- Salenko had not received proper training regarding documenting his reports; and
- Salenko credibly testified that although he was disorganized and careless in preparing his report, he did not intentionally lie and had not intended to deceive his superiors.

Apparently, the Court of Appeal was satisfied that Salenko's report, although "admittedly abysmal," was not the result of deliberate dishonesty and therefore did not warrant termination.

The Rules For You

1. Recognize that breaches of truth, honesty, veracity and integrity will almost certainly cost you your job.
2. Don't permit yourself to even consider whether you can deceive or misrepresent in official matters, regardless of the seemingly innocuous nature of the false representations.
3. Remember that *today's lie is tomorrow's perjury*; if you make a false statement, or write a false report, and are required to testify about the substance, it is perjury, that is, unless you *admit* you lied initially – which isn't very likely, because like Deputy Berry, you will still be fired.
4. Never "go along to get along." Make sure your peers and supervisors can depend upon you to do the *right* thing – even if they want you to do the wrong thing.

5. Recognize that the process of corruption begins with the first deception or false statement.
6. Remember that *inaccurate or inconsistent statements may be regarded as something more than innocent misrecollection or failed recollection*. Make sure your statements, testimony and writings are as accurate and consistent as possible. *See: "In Any Investigation or Testimony, Always Take Time to Review Your Prior Statements," Training Bulletin, Vol. VI, Issue 2 (February 2003).*
7. Finally, sustained dishonesty findings in your personnel records are *Brady* material, and can result in you being indexed in a prosecutor's "*Brady* Alert System," and in your potential impeachment when you testify.
8. **EMPLOYERS:** Don't charge dishonesty unless it is provable by *clear and convincing evidence* – a preponderance of the evidence standard is too loose for charges that end police careers.

Stay Safe!

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