

**The Bill Blackwood
Law Enforcement Management Institute of Texas**

A Duty of Public Trust

**A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**

**By
L. C. Dodson**

**Allen Police Department
Allen, Texas
September 2011**

ABSTRACT

Police agencies throughout the United States often retain and employ police officers who are unfit for duty because of ethical issues. Police officers who are found to have participated in intentional, dishonest, and malicious conduct, such as lying, are still patrolling the streets of many communities. These police officers are often identified as “Brady cops,” a term reflective from the 1963 Supreme Court case, *Brady v. Maryland* (1963). The Supreme Court ruled in *Brady v. Maryland* (1963) that the accused has the right to discover exculpatory evidence possessed by the government through constitutional due process, including the veracity of police officers. This often results in government prosecutors being unable to have these “Brady cops” testify because of credibility issues. Therefore, police administrators, in order to maintain high standards and the public trust, have a responsibility to terminate employees who are untruthful or engage in intentionally dishonest or malicious conduct. Many articles, journals, internet sites, and established case law were reviewed for this paper, and they reflect that professional police officers and the citizenry demands that the powers entrusted upon the police should not be compromised or shattered. Loopholes must be closed and dishonest police officers must understand that there is no “wobble room” for them to maintain their job if found to be unethical.

TABLE OF CONTENTS

	Page
Abstract	
Introduction	1
Position	2
Counter Position	5
Conclusion/.	12
References	15

INTRODUCTION

Law enforcement is charged with the fundamental duty to fairly and impartially serve and protect the public. With this responsibility and public trust, tremendous power has been entrusted in the police. The public has provided the police the power to restrict freedoms, seize property, and under certain circumstances, take the lives of citizens. However, the laws and Constitution of the United States has never authorized the police to have the ability to circumvent the due process of law, which serves as a pillar of an orderly society.

At no time in recorded history has law enforcement been under more scrutiny than today, with the advent of 24-hour television, instant news coverage, the ever-present video camera and the internet. In this high-speed digital age, with immediate oversight, the public has demanded more transparency in dealing with official misconduct of officers. No longer can the police spin their version of events when pictures and documentation tell another story. Police officers who are found to have participated in intentional, dishonest, and malicious conduct, such as lying, should not be retained by a law enforcement agency.

Throughout history, the evolution and interpretation of the legal system has taken strident efforts to protect the rights afforded to citizens, while attempting to interpret the vision of the United States' founding fathers. This vision includes that no one will be convicted of a crime without the due process of law. This has resulted in copious amounts of case law intended to protect our citizens and promote the spirit of the law.

In the 1963 *Brady v. Maryland* decision, the Supreme Court ruled that the accused has the right to discover exculpatory evidence possessed by the government

through constitutional due process. When this exculpatory evidence involves the veracity of a police officer, it is referred to as “Brady Material.” Rothlein (2007) defined material as evidence possessed by the government that can prove to be favorable to an accused person and capable of impacting guilt/innocence or punishment, including evidence that may impact the credibility of a witness. In *Giglio v. United States* (1972), the Supreme Court clarified that due process included the disclosure to the accused any information regarding the credibility of a government witness prior to trial. This is inclusive of government witnesses who are police officers.

Often, when a police officer’s credibility is discussed pertaining to Brady Material, it is the result of lying in their official capacity, such as the filing of a police report or the result of an internal investigation. Officers who are identified as having “Brady Material” in their personnel files are unfit for duty as they do not meet one of the minimum and critical qualifications of the law enforcement profession: the ability to provide credible testimony in a court of law. Imagine the community’s reaction when they realize a police officer is employed who could not provide credible testimony on a child abduction or the murder of a loved one. When citizens have provided the police with the power to serve and protect them, this is unacceptable. The police have a duty to protect public trust. Therefore, police administrators, in order to maintain high standards and the public trust, have a responsibility to terminate employees who are untruthful or engage in intentionally dishonest or malicious conduct.

POSITION

Police face many challenges when investigating criminal offenses. They must be creative and proactive in their approach. Alpert and Noble (2009) asserted, “Police

officers often tell lies; they act in ways that are deceptive, they manipulative people and situations, they coerce citizens, and are dishonest” (p. 237). However, Alpert and Noble were referring to a police officer’s sanctioned activity, such as lying about their true identity to a suspect during a drug transaction or to a suspect about witnesses and evidence. Although deceitful, the officer is attempting to learn about criminal activity and those actions are legal and expected. Undercover officers will purport themselves as drug offenders or other types of criminals in the course of an investigation, even advising in the negative if asked directly about their affiliation with law enforcement. Police will often advise suspects that they possess evidence or witnesses that they do not have, like a video of a criminal episode. The police may even be deceptive to the media or citizenry to prevent a public panic or to provide a suspect a false sense of security.

Police departments are not concerned about creative police officers who lie in the course of an investigation, when that deception is within lawful expectations, within policies and procedures, and supported by accurate and truthful reporting. The concern arises when police officers lie in an unlawful, malicious manner, where the intent is not to seek truth or a better good, but to merely deceive. Lying on police reports or internal investigations is unacceptable. This type of deception is generally self-serving or to protect unethical, illegal, and malicious conduct. Police officers who are untruthful or engage in intentionally dishonest or malicious conduct should not have employment with any law enforcement agency. Police departments should establish a zero-tolerance on this conduct for the betterment of the department, the profession, and the community because these types of officers no longer meet one of the minimum

requirements of law enforcement employment: the ability to provide credible testimony in a court of law.

As civil servants, police officers take an oath of office, under God, to perform their duties in a lawful manner acceptable of the public served. The public demands police officers of high moral standards, to which credibility is essential. The citizens want to know that police officers have integrity, are truthful, and are honest beyond question. The Law Enforcement Code of Ethics sets the tone of the acceptable standards expected of the police from not only the public, but professional police officers. As Spector (2008) stated, "Every person involved in the criminal justice system relies on police honesty" (para. 12). Every facet of the criminal justice system relies on the honesty of police officers, from information relayed from one officer to another resulting in an arrest to jurors who attempt to render a fair verdict against an accused. Police administrators and supervisors make decisions based on statements from officers. They often rely on the officer's honesty when approving reports or authorizing overtime. Government attorneys rely on honest and accurate reporting, truthful affidavits, accurate photo line-ups, and un-coerced statements when prosecuting an individual. Magistrates and judges expect honesty from officers when reviewing probable cause affidavits for search or arrest warrants. The public demands that police officers conduct themselves in a manner of high ethical standards for it is not only a police department that suffers the disgrace and financial burden when dishonest police officers are identified, it is an entire community. A community these "cops" swore to protect and serve.

Brady v. Maryland (1963) directed the government to provide all exculpatory evidence to the accused, including any evidence impacting the credibility of a witness. Noble (2003) noted that under *Brady v. Maryland* (1963), "Evidence affecting the credibility of the police officer as a witness may be exculpatory evidence and should be given to the defense during discovery" (para. 1). A finding of untruthfulness by an officer in a personnel file is clearly exculpatory in nature. A prosecuting attorney is not able to put a police officer with "Brady Material" in his personnel file on the stand as a witness. *Brady v. Maryland* (1963) and other such cases involving the disclosure of exculpatory evidence have impacted this decision. The United States Attorney's Office has developed a formal policy to conduct investigations to determine if police officers about to testify in cases have a record of dishonesty or untruthfulness (Spector, 2008).

Officers identified as "Brady cops" are no longer fully effective as police officers and become a tremendous liability. The discovery of a "Brady cop" on the police force has far reaching impact on communities. Numerous convicted criminals could have grounds for appeals in cases that this officer previously testified in. Defendants awaiting trial may be released from custody and never face trial if this officer was involved in their arrest. This could possibly expose the department and community to liability and contempt. The public trust that the community has invested into the police department has been compromised and shattered.

COUNTER POSITION

If the police profession subscribes to the Law Enforcement Code of Ethics, then collective wisdom is that there is no place in law enforcement for police officers who are untruthful or who engage in intentionally dishonest or malicious conduct, such as lying.

Terminating police officers for sustained complaints of lying or dishonesty can be a controversial and difficult to prove. Police departments must use great care since the sustained untruthfulness complaint results in an officer being placed on a no-testifying list by government attorneys and should be a career-ender. Sergeant Rich O'Neill, president of the Seattle Police Officers Guild, was quoted in a Seattle Times article saying, "the bar for placing an officer on the list should be very high; a rare disciplinary finding of dishonesty against an officer" (Carter, 2007, para. 33).

Brady v. Maryland (1963) is one court decision that requires the government to provide the defense with any information pertaining to the credibility of a witness. These decisions include pertinent information on any government witnesses that testify, including any sustained complaint of a police officer's veracity. A police officer's inability to testify impacts the overall effectiveness of a police officer and the criminal justice system.

In a 2008 report by the Chesterfield, Virginia County Police Department, pertaining to police employee retention, the report cited that it costs the agency approximately \$122,000.00 to recruit, hire, equip, and train a police officer (Chesterfield, VA, n.d.). The value of an officer only rises from that point forward, as experience and job skills increase. A police officer, who should return tremendous dividends over the course of a career, is an investment by the community. The public does not generally know what time an officer commits to testifying in court. The officer can always be reassigned to a position where his contact with the criminal element or likelihood of affecting an arrest is diminished.

The officer could be assigned to a DARE program or similar type community related program, where the majority of his contact is with children and not criminals. The officer will instruct children about the evils of drugs and that the children should live their lives in an honorable and lawful way. The instruction will be provided by this same officer, who may have sustained complaints in their personnel file for dishonest and malicious conduct, which model children should not emulate. A police department cannot predict accurately where crime will occur or when this officer will have to act. Therefore, it cannot be predicted when this officer would be in a position where they might need to testify, yet were unable to, thus allowing a felon to walk free. The community's investment is no longer worth what it was.

The community employs a police officer who cannot do all of his or hers duties or the ability to work every assignment that may be required. Therefore, other officers will have to work overtime or schedules will be reduced to meet these requirements. With the current economy, most communities have tight budgets and police departments work understaffed, yet this officer would be isolated. The officer is being protected from doing his job instead of protecting the community he should be serving.

Policing is an honorable profession, and officers rise to the occasion when covering resource shortcomings, such as when an officer is injured. Police officers step up in support of fellow officers, cover shifts, are there in times of need, and even provide blood when needed. Yet, professional police officers will not respond favorably if ordered to cover for an unfit officer who has disgraced the police profession.

Many times, untruthfulness by officers is identified in the course of investigating some other type of police misconduct or allegation. Even when untruthfulness is

identified, police administrators may only discipline the officer for the initial complaint and forego addressing the untruthfulness. Doing this allows the sustained complaint to show no untruthfulness and the administrator is then able to keep the officer on duty. However, if the misconduct or allegation is investigated and documented properly, the existence of untruthfulness will be a part of the official investigation document, regardless of what the discipline order reflects. This has the capability to impact agency morale.

When these types of police misconduct become public, they bring shock to the community. It has the capability of impacting numerous criminal cases, which exposes the department and community to potential liability and shatters the public trust. Although identifying or dealing with the misdeeds of this officer brings embarrassment to the police agency and community, not dealing with it brings public contempt. Riots, causing millions of dollars in property damage, have been the result in cities across the United States when the public has a perception of police misconduct and that misconduct is not dealt with appropriately. The department has a duty to police its own.

Civil service arbitration or lawsuits often result in the termination of a police officer. These actions can often be complex, confrontational, and costly for the department and community. Recently, a case in the State of Washington dealt with these issues. In *Kitsap County Deputy Sheriff's Guild v. Kitsap County* (2009), the Supreme Court of Washington overturned the decision of the Court of Appeals of Washington in *Kitsap County Deputy Sheriff's Guild v. Kitsap County* (2007). The case involved the termination of Deputy Brian LaFrance for 29 documented incidents of misconduct, including untruthfulness. The termination relied primarily on the sheriff's

conclusion that LaFrance was not fit for duty due to *Brady v. Maryland* (1963) concerns about his ability to testify. An arbitrator heard LaFrance's case pursuant to a collective bargaining agreement and reported that the charges against LaFrance did not merit termination, even though the arbitrator believed the charges were accurate. This arbitration decision was appealed by Kitsap County to the Court of Appeals, and the arbitrator's ruling was overturned by the court for being contrary to public policy. The Kitsap County Deputy Sheriff's Guild appealed the court's decision because they contended that the Court of Appeals failed to identify the specific public policy that was violated by the arbitrator's decision.

The Supreme Court of Washington reversed the Court of Appeals decision, thus agreeing with the Kitsap County Deputy Sheriff's Guild contention that to vacate an arbitrator's decision as contrary to public policy, the public policy must be identified and well defined. LaFrance was returned to duty. Justice James M. Johnson, in *Kitsap County Deputy Sheriff's Guild v. Kitsap County* (2009), authored the dissent in this case, stating, "It is especially important that law enforcement agencies must be free from corruption and employ persons of integrity if they are to function effectively" (p. 9). Justice Johnson argued that public policy, as it deals with law enforcement, is about the public's trust and should not be viewed narrowly. He concluded, "That the courts would enforce an order requiring employment of a deputy sheriff who committed numerous acts of misconduct, including dishonesty, mishandling evidence, and disobeying direct orders, greatly offends the public policies of this state" (*Kitsap County Deputy Sheriff's Guild v. Kitsap County*, 2009, p. 9).

The many appeals associated with this particular case point towards further appeals by Kitsap County. The public policy is one of the main issues of the case; however, the defining issue is the integrity of law enforcement professionals as pointed out by Justice Johnson. This case was reversed on a technicality, the definition of public policy, yet the larger underlying aspect that all the justices acknowledged is that an unfit officer will be policing the streets of Kitsap County.

In 2005, the Massachusetts Supreme Judicial Court, in *City of Boston v. Boston Police Officer Benevolent Association*, overturned an arbitrator's ruling of returning an officer back to the force. In overturning the arbitrator's ruling and determining that the officer should be terminated, the court cited the public policy at issue occurs when an officer's integrity is compromised. The court asserted, "It is extremely important for the police to gain and preserve public trust, maintain public confidence, and avoid an abuse of power by law enforcement officials" (Ryan, 2009, para. 4). When a police officer who holds a position of authority that is based on the public's trust is allowed to make false arrests and then shrouds this misconduct through lies and subsequent perjured testimony, this is unacceptable and corrodes the public's confidence in the police mission (Ryan, 2009).

Recently, the Seattle Times reported that the City of Seattle, Washington has been involved in litigation with Eric Werner, a fired Seattle police officer (Carter & Miletich, 2010). Werner's misdeeds were discovered when he sought employment with the Snohomish County Sheriff's Office (Washington). During his hiring process, he confessed to investigators that he once lied to Seattle police internal affairs investigators when he denied punching a combative suspect in 2007. Werner was not

hired by the Snohomish County Sheriff's Office, which alerted Seattle police to his admission, leading to the internal Seattle police investigation. Werner was subsequently fired in May of 2009 and appealed the termination to the Public Safety Civil Service Commission, citing that his firing was disproportionately harsh when compared with discipline handed down to other officers. During the appeal hearing, Interim Police Chief John Diaz told the three board members that police officers' word is the most important thing possessed by police officers.

Although unanimously concluding that Werner had acted dishonestly, the Public Safety Civil Service Commission ruled that the termination was too harsh; they put Werner back to work on the force with back pay and reduced the termination to a 30-day suspension without pay (Carter & Miletich, 2010). Although extremely rare, the City of Seattle's City Attorney's Office appealed the civil service commission ruling to a King County, Washington superior court. In March of 2010, Superior Court Judge Paris Kallas overturned the civil service commission ruling and sent the case back to the civil service commission, citing that the civil service commission had erred when it ruled Werner's termination was disproportionately harsh when compared with discipline handed down to other officers. The judge noted that none of those cases involved a sustained finding of dishonesty, let alone a finding of dishonesty regarding the use of force. It is likely that this ruling will be appealed further (Carter & Miletich, 2010).

In 2008, the Supreme Court of Texas reversed a decision by the Court of Appeals for the Fifth District of Texas in *City of Desoto v. White, 07-1031 (2008)*, which involved the termination of Justin White from the Desoto Police Department for allegations that included untruthfulness. White's termination was upheld by the Civil

Service Commission and he appealed to the Court of Appeals, which overturned the ruling primarily because of the exclusion of proper wording required by the Texas Local Government Code, Chapter 143, which is known as the Fire Fighter and Police Officer Civil Service Act and thus returning him to work. The City of Desoto appealed this decision to the Supreme Court of Texas. Although agreeing that the City of Desoto failed to have proper wording according to Chapter 143 of the Texas Local Government Code, the Supreme Court of Texas in its opinion cited that the statute's purpose of seeking "efficient" and "capable" personnel was not served by dismissing the case and permitting potentially unfit officers to return to the force (*City of Desoto v. White* 2008).

These types of cases have become flashpoints for many police agencies and are becoming prominent on the judicial landscape. As with most controversial issues in law enforcement, this issue could eventually find its way to the United States Supreme Court. The restrictions placed upon a police administrator to remove an unethical officer because of civil service, the cost of civil litigation, or a definition of a word should not prevent an administrator from attempting to remove the officer. The termination of a police employee for untruthfulness impacts the department and community. The lost investment of trained and experienced officers, bad publicity for the department, and potential litigation should not be the defining reason to not do the right thing. The retention of any police officer should be based on promoting honesty and integrity of police employees, thus encouraging public trust in law enforcement.

CONCLUSION

In 1836, it is historically suggested that Colonel William B. Travis drew a line in the sand with his sword at the Alamo, asking those who would stay and fight for the

independence of Texas to step across the line. Over 180 men crossed this line, knowing that death was most likely the result. Strong convictions influenced these men's decision to stay and fight for what they believed in. Although the Alamo fell with the death of every man, the Alamo became the rallying call that led to independence for Texas. The Alamo is still synonymous with making a last stand, regardless of how desperate, for what is deemed a righteous cause. Police administrators must draw a line in the sand and make this last stand, making issues of integrity and dishonesty uncompromised. The honor and integrity of the police profession must be held at all cost, for the sake of the public trust.

The men and women in American law enforcement perform admirably on a daily basis across the nation. These officers are ethical, professional, and dedicate themselves to serving and protecting the public. They investigate crime, arrest offenders, and provide credible testimony resulting in convictions of those unlawful members of society. Nevertheless, the few officers who intentionally violate the honor of the police profession and the public's trust must be dealt with harshly. They will be investigated by the same professional officers and will not be branded as "Brady cops," unless the evidence supports the findings. The law enforcement community understands that the designation of dishonesty by a police officer should be a career ender; therefore, these internal investigations will be thorough and just. Communities also understand that the retention of officers who are untruthful or engage in intentionally dishonest or malicious conduct is unacceptable.

The Law Enforcement Code of Ethics is the foundation of the ideas of modern policing in the United States. It specifically addresses service to mankind on which the

public's trust is built on. It addresses honesty in an officer's personal and official life, and police officers take an oath of office under God. To allow the employment and retention of dishonest and untruthful officers on the force compromises the Law Enforcement Code of Ethics and disgraces the police profession.

Having police officers on the force who are unable to testify credibly in a court of law violates one of the most important fundamental responsibilities of a police officer's duties. In *City of Boston v. Boston Police Officer Benevolent Association* (2005), the court concluded that the criminal justice system must "appear legitimate to the people it serves. People will not trust the police - on the street or in court - unless they are confident that police officers are genuine in their determination to uphold the law" (as cited in Ryan, 2009, para. 5).

Police administrators and communities, regardless of the cost or time, must deal with the issue of unfit police officers on the force. This can be accomplished by addressing the matter of retention of unfit police officers in collective bargaining agreements, civil service rules, city charters, and departmental policies. Many police and legal experts recognize this. Means (2008) stated, "Today, these matters should be the subject of written policy in a law enforcement agency" (para. 2). Loopholes must be closed and dishonest officers must understand that there is no "wobble room" for them to maintain their job if found to be unethical. The only thing worse than police misconduct is those who tolerate it.

REFERENCES

Alpert, G. & Noble, J.E. (2009). Lies, True Lies, and Conscious Deception. *Police Quarterly* , 237-254.

Brady v. Maryland, 373 U.S. 83 (1963).

Carter, M. (2007, June 24). Prosecutors keep list of problem officers. *Seattle Times*.

Retrieved from

http://seattletimes.nwsourc.com/html/localnews/2003760490_bradycops24m.html

Carter, M. & Miletich, S. (2010, June 4). Judge rules Seattle cop, fired for dishonesty, shouldn't get job back. *Seattle Times*. Retrieved from

http://seattletimes.nwsourc.com/html/localnews/2012032344_werner05m.html

Chesterfield, VA. (n.d.). *Police 2007/2008 police employee retention team leadership report*. Retrieved from

<http://media.gatewayva.com/photos/rtd/20080417/chesreport.pdf>

City of Boston v. Boston Police Officer Benevolent Association, 443 Mass. 813 (2005).

City of Desoto v. White, 07-1031 Texas

Giglio v. United States, 405 U.S. 150 (1972).

Kitsap County Deputy Sheriff's Guild v. Kitsap County, 140 Wn. App 516; 165 P.3d 1266 (2007).

Kitsap County Deputy Sheriff's Guild v. Kitsap County, 2009 Wash Lexis 979 (2009).

Means, R. (2008, February). Brady policy and officer credibility. *Law and Order*.

Retrieved from

<http://www.hendonpub.com/resources/articlearchive/details.aspx?ID=204797>

- Noble, J. (2003, October). Police officer truthfulness and the Brady decision. *The Police Chief*. Retrieved from http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=118&issue_id=102003
- Rothlein, S. (2007). Brady v. Maryland: Do you understand your obligations? *Legal & Liability Risk Management Institute*. Retrieved from www.llrmi.com:
http://www.llrmi.com/articles/legal_update/bradyvmaryland.shtml
- Ryan, J. (2009). Dishonesty by officer requires termination. *PoliceLink*. Retrieved from <http://policelink.monster.com/training/articles/1894-dishonesty-by-officer-requires-termination->
- Spector, E. (2008, April). Chief's counsel: Should police officers who lie be terminated as a matter of public policy? *The Police Chief*. Retrieved from http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1458&issue_id=42008