

# FEAR AND SILENCE

HOW CULTURE, POLICY, AND THE "WIN AT ALL COSTS" MENTALITY ALLOWS POLICE TESTIFYING TO THRIVE

## EXECUTIVE SUMMARY

### BACKGROUND

Chicago Appleseed Center for Fair Courts is a research and advocacy organization with the mission to interrupt cycles of poverty, mass incarceration, and racial injustice perpetrated by all aspects of the legal system through advocating for equity, accessibility, and transparency of the courts. The Chicago Council of Lawyers is a bar association focused on creating a fair and efficient administration of justice for all people. Together, the two organizations seek evidence-based solutions to social injustices.

**In early 2022, we began researching the issue of false reporting and police perjury – “testilying” – in Circuit Court of Cook County.**

**Our final report, *Fear and Silence: How Culture, Policy, and the “Win At All Costs” Mentality Allows Police Testilying to Thrive*, has now been published.**

Unfortunately, scholarship routinely demonstrates that police officers frequently misstate facts or lie in court proceedings. Whenever a law enforcement official deliberately chooses to misrepresent facts that are known to them, they create unnecessary barriers to justice that deeply harm individuals, families, and whole communities.

“Police perjury” refers to the specific act of an officer lying in court, whereas “false reporting” refers to any time an officer lies in their official capacity as law enforcement. Although there are numerous protections in place (such as the Chicago Police Department’s Rule 14) that are meant to prevent police perjury, these protections are often ineffective or compromised. While the frequency of police perjury and false reports are difficult to quantify, most experts believe that it is a very common occurrence.

***Police perjury...[is] a systemic thing...a cultural thing, and...the reality is that lying, not being forthright, not being honest... are all different shades of the same gray...[and] at the end of the day, their misdeeds are leading to injustice...they are thwarting justice.***

Police officers are present at crime scenes and investigations when attorneys, judges, and juries are not, and as a result, the public must rely on officers’ stories when arbitrating questions of guilt or innocence in court. The willingness to accurately recount events that occur outside the courtroom is essential to ensuring fair outcomes for people affected by injustice and police officers are widely seen as credible informants on these events. When police perjury and false reporting

occurs, it creates cycles of injustice that make court outcomes unfair for individuals (accused people, victims of harm, and their families), make the legal system inaccessible for communities, and reverberate consequences to society at large.

The discussion of topics in this report covers issues in Cook County and throughout the state of Illinois, but primarily focuses on policing in Chicago. Our report, *Fear and Silence: How Culture, Policy, and the "Win At All Costs" Mentality Allows Police Testilying to Thrive*, examines personal narratives and hard data to understand how and when opportunities for police to misstate the truth or outright lie arise; what perpetuates these opportunities; and what can be done by institutions and the community to reduce the court's reliance on inaccurate testimony.

***The Chicago Police Department encourages [officers] to falsify reports and encourages them to lie, it encourages this whole notion of a "blue wall of silence."***

## METHODS

This project focused on the impact of police perjury within a single court system: the Circuit Court of Cook County. The goal of this project was to gain an understanding of how police perjury occurs and consider ways that it can be countered. Our team conducted 14 semi-structured interviews with attorneys, researchers, journalists, community organizers, and personally-impacted people who work in and outside of the criminal legal system to varying degrees. The interview data is supplemented by quantitative secondary data from various sources.

## FINDINGS

Generally, our findings describe perjury and false reports as an entrenched feature of local policing. We found police perjury to be an "open secret" within the Circuit Court of Cook County and larger legal system that has devastating consequences for its victims and undermines court legitimacy. Although court actors were very aware of its existence, they felt powerless to change it. The five major themes we identified are as follows:

### **POLICE EXERT CONTROL OVER A "COLLECTIVE CULTURE" IN THE COURTS THAT PREVENT THEM FROM FACING CONSEQUENCES FOR LYING.**

Everyone we interviewed for this project indicated the "collective culture" as the strongest enabling reason for police perjury and false reporting in Chicago and throughout the Cook County Circuit Court system. Our interviews and reviews of literature revealed how the culture cultivated through interactions between law enforcement, prosecutors, and judges allows for – and sometimes even encourages – police to lie.

**This "collective culture" fosters "a teammate effect" between the police and court actors – such as prosecutors and judges – who, in theory, have the power to hold police accountable but minimal incentive to do so.**

### **THE "CODE OF SILENCE" IS ENDEMIC TO THE CULTURE OF THE CHICAGO POLICE DEPARTMENT, WHICH ENCOURAGES COPS TO LIE.**

The "code of silence" is an endemic feature of the culture of policing that disincentivizes police

officers from reporting their peers who may have abused their power or committed a crime such as perjury. The Chicago Police Department, specifically, has a deeply-entrenched “code of silence” that has been abused their power or committed a crime such as perjury. This “code of silence” has been around for decades but seems to have been escalating within recent years.

**The law enforcement “code of silence” encourages cops to lie to prevent scrutiny and protect themselves and fellow officers and is upheld by institutional practices.**

**BODY-WORN CAMERAS ARE A TOOL TO BETTER HOLD POLICE ACCOUNTABLE, BUT THEY'RE NOT ALWAYS USED CORRECTLY.**

Much of academic literature seems to primarily view police body-worn cameras (BWCs) as having a positive impact on policing and exposing police misconduct. Yet, there are many issues that arise in terms of how well police officers utilize BWCs, the consequences cops may face when they fail to use the technology properly, and how, if at all, that footage is exposed to and accessed by the public.

**The increased use of BWCs has provided a tool to better hold police accountable for their actions, but the recordings are not always properly utilized or made public.**

**“DO NOT CALL” LISTS ARE IMPORTANT TO AVOID RELYING ON TESTIMONY OF COPS WHO LIE, BUT THESE LISTS ARE UNDERUTILIZED.**

Brady lists and “Do Not Call” lists are an imperfect but important tool in combating police perjury.

Brady lists, which are usually compiled by a prosecutor’s office, contain names of cops that have been dishonest in the past and should no longer be trusted, are very rare. “Do Not Call” lists go slightly further than Brady lists: As opposed to just disclosing previous instances of police perjury, these lists include names of officers that prosecutors will no longer call to testify because of past misconduct, which alleviates the defenses’ burden of discrediting the officer on the stand.

**Brady lists and “Do Not Call” lists are underutilized by prosecutors, and in Cook County specifically, there is a clear lack of accountability and public transparency with respect to their use.**

“***They all know each other...and it's a whole, you know, old boys' club, even though there are lots of women who are part of it now.***”

**COPS WHO LIE RARELY FACE CONSEQUENCES, BUT THE PEOPLE IMPACTED BY THESE LIES ARE PUNISHED SEVERELY.**

While there are rarely punishments for officers who lie, there are devastating consequences for others when perjury occurs: People are wrongfully involved in the legal system or convicted, whistleblowers are ostracized or fired, and judges may even be pushed from power.

**Police who lie and file false reports rarely face consequences at all comparable to the consequences experienced by those directly impacted by these lies.**

# POLICY RECOMMENDATIONS

Our research shows that police perjury and false reporting are deeply-rooted features of policing in Cook County—especially in Chicago. Police officers have enormous incentives to lie and will continue to do so until the punishments for their actions outweigh the social, financial, and career rewards. We hold that there are five broad areas of reform where the system should intervene to prevent these lies; our specific policy recommendations focus on these areas:

## LIMITED OPPORTUNITIES FOR POLICE OFFICERS TO LIE.

These recommendations focus increasing warrant requirement criteria and preventing law enforcement officials from “judge shopping” or choosing judges that they think will be amenable when seeking warrant approval.

***All of this happened because of these police officers who go on a witness stand and lie and lie and lie.***

## BETTER MONITORING OF LAW ENFORCEMENT OFFICIALS WHEN THEY ARE IN THE FIELD.

To prevent police officers from lying, it is important to use body-worn cameras to monitor their actions in the field. We recommend that body-worn and dashboard camera footage be made more accessible and that a legal requirement is created for Cook County State’s Attorneys to review police body and dashboard camera footage before charging a person with a crime.

## ENFORCEMENT OF CONSEQUENCES FOR POLICE OFFICERS WHO MAKE FALSE STATEMENTS.

Police officers that lie must receive consequences for their actions. We therefore recommend that the Cook County State’s Attorney’s Office creates, enforces, and releases a “Do Not Call” list and create an internal reporting system. In addition, we recommend that the Office of the Inspector General be given authority to overrule the Chicago Police Department’s Bureau of Internal Affairs’ findings who rarely punish officers for these acts.

## IMPROVED TRANSPARENCY.

In order to address the “win at all costs” culture in the Cook County State’s Attorney’s Office, which discourages ASAs from addressing police lies, we recommend that the CCSAO improve transparency around performance measures, promotion criteria, and their false report protocols. The State’s Attorney should work to create promotion criteria that do not emphasize winning cases, but rather prosecutorial integrity and justice.

## PROMOTING LONG-TERM CULTURAL CHANGE.

Given the ingrained nature of police perjury and false reports within the Circuit Court of Cook County, in order to uproot it, cultural change must take place. We recommend that prosecutors and judges receive comprehensive training on what to do when police lying is suspected. In addition, we call for the Cook County Circuit Court to create a commission to encourage accurate testimony, provide accountability, and increase trust in the system. The commission should involve all relevant court stakeholders in order to ensure that meaningful change can occur.