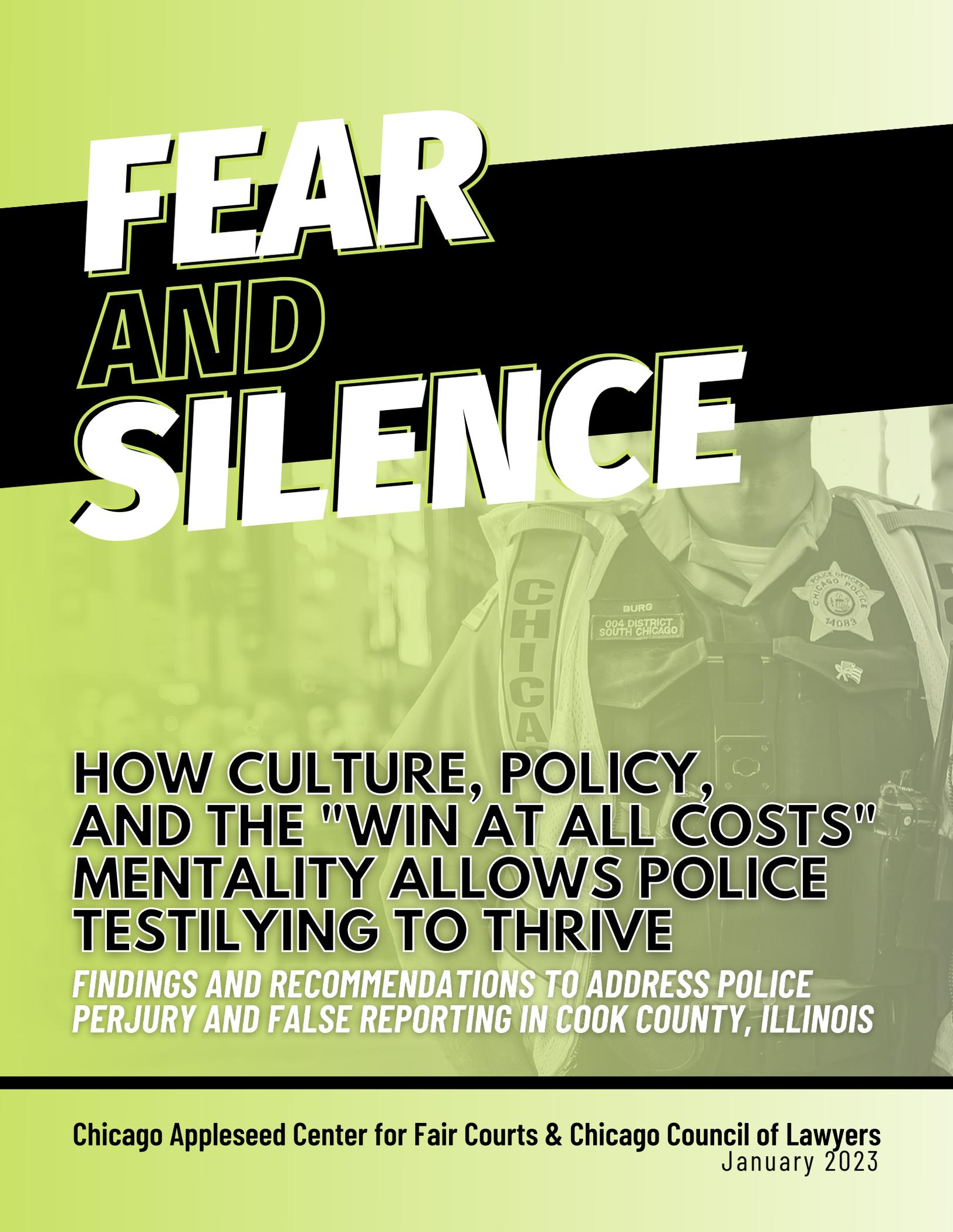


FEAR AND SILENCE



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

***FINDINGS AND RECOMMENDATIONS TO ADDRESS POLICE
PERJURY AND FALSE REPORTING IN COOK COUNTY, ILLINOIS***



Chicago Appleseed Center for Fair Courts is a volunteer-led, collaborative 501(c)(3) non-profit organization advocating for fair, accessible, and anti-racist courts in Chicago, Cook County, and across the state of Illinois.



The Chicago Council of Lawyers is Chicago's first public interest bar association, working toward the fair and effective administration of justice for all people since 1969.

ABSTRACT

Police who lie, perjure themselves in court, and/or file false reports are pervasive throughout the United States. Perjury and false reporting prevents courts from operating as designed and poses enormous barriers to justice.

While the issue of police perjury – or “testilying” – has been discussed as a broad phenomenon and in relation to specific cases, there have been few attempts to examine the issue within a single court system. For this report, Chicago Appleseed Center for Fair Courts and the Chicago Council of Lawyers interviewed attorneys, researchers, journalists, community organizers, and directly impacted people to identify how false reports and police perjury impact the Circuit Court of Cook County and the people it serves. We have reviewed secondary data in order to understand the

scope and impact of police perjury and false reporting on Cook County community members, while paying particular attention to issues relating directly to the Chicago Police Department.

Through this research, we have identified several themes that indicate that systemic factors allow police to lie, submit false reports, and perjure themselves. We have also identified the roles of court actors – including law enforcement, prosecutors, and judges – in allowing or encouraging false reporting to exist and go unaddressed in the Circuit Court of Cook County. Based on our findings, we provide nine recommendations to limit opportunities and enforce consequences for lying, better monitor officers in the field, improve transparency, and create long-term cultural change in attempt to limit the police perjury and false reporting that harms communities.

ACRONYMS

ASA

- Assistant State's Attorney

BIA

- Bureau of Internal Affairs

BWC

- Body-Worn Cameras

CCSAO

- Cook County State's Attorney's Office

CIU

- Conviction Integrity Unit

COPA

- Civilian Office of Police Accountability

CPCA

- Coalition for Police Contracts Accountability

CPD

- Chicago Police Department

CPDP

- Citizen's Police Data Project

IPRA

- Independent Police Review Authority

FBI

- Federal Bureau of Investigation

FOIA

- Freedom of Information Act

OIG

- Office of the Inspector General

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INTRODUCTION

Police officers are present at crime scenes and investigations when attorneys, judges, and juries are not. As a result, the public must rely on officers' stories when arbitrating questions of guilt and innocence in court. The ability to accurately recount events that occur outside courtrooms is essential to ensuring fair outcomes for individuals, families, and communities affected by injustice, and police officers are widely seen as credible informants on these events. **But what happens when police lie?**

Police perjury and false testimony create 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 frequency of police perjury is almost impossible to measure because officers are rarely caught or disciplined. According to the Pulitzer Center, from 2000 to 2020, most cops in Illinois "kept their badges even if they engaged in domestic abuse, sexual harassment, racism, perjury, most misdemeanors, and other offenses unbecoming of a police officer," with decertifications of only 347 officers in that time (an average of fewer than 17 per year).¹

When police officers are caught perjuring themselves or lying in investigations, the

whistleblower is regularly punished both socially and formally. This past July, for example, former Chicago Police Department (CPD) detective and plaintiff in the 2017 lawsuit *Svec v. City of Chicago*, Beth Svec, was awarded \$4.3 million in damages because the City of Chicago violated the Illinois Whistleblower Act at her expense.² Svec was a CPD detective who was responsible for investigating gun cases on the South Side. In 2016, Svec was assigned to investigate a case wherein two officers, Brandon Ternand and Robert Caulfield, arrested two men, one for unlawful gun possession and the other for assaulting an officer. In investigating the incident, Svec found evidence that the police officers were lying in their reports. Based on the evidence – which included matching stories from the two arrested men, eyewitness accounts, and video from both an eyewitness and an arrested person's phone – Svec determined that the two officers had lied. In fact, the gun at the scene was not illegal and was registered to a third person who lived at the residence; neither officer was assaulted at the scene, contrary to their testimony, and officer Ternand actually "slapped an iPad out of one of the arrestee's hands, causing it to smash on the porch floor."³

Upon confrontation, the two officers accused of lying elevated the issue to their supervisors, including Sergeant Dawn Love and Lieutenant Adnardo Gutierrez. Within days of Svec reporting

¹ Cox, K. & Freivogel, W. (2021). "Records Show Illinois Fails to Hold Police Accountable for Misconduct" for The Pulitzer Center, available at <https://pulitzercenter.org/stories/records-show-illinois-fails-hold-police-accountable-misconduct>

² Norkol, M. (2022). "Jury Awards CPD Whistleblower More Than \$4 Million In Suit Against City" for *Chicago Sun Times*: <https://chicago.suntimes.com/city-hall/2022/7/23/23275529/chicago-police-whistleblower-lawsuit-svec-4-million-award>

³ See Circuit Court of Cook County Case Number 2020L010535, *Beth Svec v. City of Chicago* (2022). See also Crowley, K. (2022). "Jury Decides in Favor of Whistleblower in Lawsuit Against Chicago Police Department" for *Chicago Tribune*: <https://www.chicagotribune.com/news/breaking/ct-whistleblower-case-verdict-20220722-2pqvlg6tfjhjpdw2pgkglj7ggu-story.html>

her findings, she was transferred and informed that she could no longer investigate cases of unlawful gun possession. According to the lawsuit, Svec “lost wages and other benefits, has suffered severe emotional distress, embarrassment and humiliation, and her career and reputation have been damaged.”⁴

Svec contacted the Cook County State’s Attorney’s Office’s (CCSAO) felony review unit to inform them of the results of her investigation and, thanks to her efforts, the State’s Attorney declined to prosecute the two accused men. The Cook County State’s Attorney’s Office then contacted the CPD Bureau of Internal Affairs (BIA), which started its own investigation. After hearing of her cooperation in the investigation, her commanding officer, Lieutenant Wodnicki, “became angry and ordered Svec to stop.” She was later transferred to the midnight shift (much more difficult hours usually reserved for new detectives).⁵ Multiple actors—from police lieutenants to the CCSAO—were involved in this case and could have intervened to prevent this retaliation against

Svec, but they chose not to. This systemic failure to hold CPD officers accountable cost Svec her career and, ultimately, cost the City of Chicago millions of dollars. Svec’s case demonstrates that police lying *can be stopped*; however, the consequences that whistleblowers face for bringing the truth to light may hardly feel worth it.

This report 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 discussion of topics in this report covers issues in Cook County and throughout the state of Illinois, but primarily focuses on policing in Chicago.

BACKGROUND

DEFINING POLICE PERJURY & FALSE REPORTS

In this report, “police perjury” and “false reports” are conceptualized together as a systemic issue that occurs during every step of policing.

Both perjury and false reporting occur when police officers deliberately choose to misrepresent facts that are known to them, perpetuate lies⁶ that are told by their colleagues, or fail to tell the whole truth when under oath. The surreptitious nature of police perjury and false reports makes it difficult to estimate the frequency with which it occurs.⁷ By most accounts, however, it is a common

⁴ *Id.*

⁵ *Supra* note 3.

⁶ Orfield, M. (1992). Deterrence, Perjury, and the Heater Factor: An Exclusionary Rule in the Chicago Criminal Courts. *University of Colorado Law Review* 63(75).

⁷ Sevilla, C. (1974). The Exclusionary Rule and Police Perjury. *San Diego Law Review* 839.

occurrence throughout the United States.⁸ One survey of prosecutors, defense attorneys, and judges from 1992 found that, on average, “perjury occurs 20% of the time, with defense attorneys estimating it occurs 53% of the time in connection with Fourth Amendment issues.”⁹ Another survey (from 1986) found that 57% of 277 attorneys “believe police perjury takes place very often or often.”¹⁰ Police perjury and false reports are so sufficiently widespread and embedded in our justice system that one legal scholar, Julia Simon-Kerr, has described¹¹ the issue as “systemic lying,” as it (1) involves the cooperation of multiple actors within the system; (2) is done repeatedly and for a reason that is linked to the participants’ conception of justice; and (3) is accepted within the system to the degree that it has become an open secret.

Perjury is a subset of false reports, narrowly defined as deliberately giving false testimony in a court proceeding. According to the Office of Justice Programs, the official federal definition of perjury includes that “the declarant took an oath to testify truthfully” and “willfully made a false statement contrary to that oath,” that “the declarant believed the statement to be untrue,”

and “that the statement related to a material fact.”¹² False reports, however, do not only occur during trial; an officer can make a false report at any stage in policing and criminal legal processes by recording untruths or failing to report events that affect legal processes. For example, officers may write reports that misstate material facts, fail to disclose important occurrences, corroborate other officers’ stories which they did not witness, and invent facts on the stand.

HISTORY

Historic studies on police perjury¹³ demonstrate that today’s police perjury problem is part of a historic pattern.¹⁴ Myron Orfield’s 1987 study of Chicago police and the Mollen Commission’s 1994 report regarding New York City¹⁵ are two of the most famous studies on police perjury. Orfield’s study found that 76% of participating officers felt that “police do ‘shade the facts a little (or a lot) to establish probable cause when there may not have been probable cause in fact.’”¹⁶ The Mollen Commission report found that police perjury was common and especially associated with drug-related cases. Officers perjured themselves often during suppression hearings to fabricate

⁸ Slobogin, C. (1996). Testilying: Police Perjury and What To Do About It. *University of Colorado Law Review* 67, 1037. Accessible at <https://scholarship.law.vanderbilt.edu/faculty-publications/279/>

⁹ *Supra* note 6.

¹⁰ Kittel, N. (1986). Police Perjury: Criminal Defense Attorneys’ Perspective. *American Journal of Criminal Justice* 11. Accessible at <https://link.springer.com/article/10.1007/BF02889818>

¹¹ Simon-Kerr, J. (2014). Systemic Lying. *William & Mary Law Review* 56, 2175.

¹² Kehoe, T. (1980). Perjury. *American Criminal Law Review* 18(2), 263-273. Accessible at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/perjury#:~:text=The%20elements%20of%20perjury%20are,related%20to%20a%20material%20fact>

¹³ The Knapp Commission Report on Police Corruption (1973) by the New York City Commission to Investigate Allegations of Police Corruption, accessible at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/knapp-commission-report-police-corruption>

¹⁴ Report of the Independent Commission on the Los Angeles Police Department (1991) accessible at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/report-independent-commission-los-angeles-police-department-0>

¹⁵ Mollen Commission Report (1994) by The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, accessible at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/report-independent-commission-los-angeles-police-department-0>

¹⁶ *Supra* note 6.

probable cause,¹⁷ both by falsifying documents and perjuring themselves during suppression hearings, creating a “tangled web” that concealed wrongdoing.

Several Supreme Court rulings have established practices related to police perjury and evidence. Most notably, Supreme Court case *Brady v. Maryland* (1963) requires that the prosecution turn over exculpatory evidence (i.e., evidence that is favorable to the defendant). A common key piece of exculpatory evidence can be the fact that a police officer who is a witness in a case has a history of lying in other cases. Other Supreme Court cases helped codify this responsibility, including *United States v. Giglio* (1972), *United States v. Bagley* (1985), *Kyles v. Whitney* (1995), and *Strickler v. Greene* (1999). These cases established that “the government has a constitutionally mandated, affirmative duty to disclose exculpatory evidence to the defendant to help ensure the defendant’s right to a fair trial under the Fifth and Fourteenth Amendments.”¹⁸ Out of these rulings came the terms “Brady material” and “Giglio material,” meaning exculpatory evidence or evidence related to the defendant.

Likewise, the term “Brady lists” refers to a list held by prosecutors with the names of police officers who have engaged in misconduct - often specifically lying - in their jurisdiction. Despite the importance of Brady lists in ensuring that police officers that have lied in the past are not relied

upon for testimony, these lists are underutilized. In 2019, *USA Today*¹⁹ conducted a survey of prosecutors’ offices around the country regarding their Brady list policies. Of 443 prosecutors’ offices surveyed nationwide, 316 (71.3%) said they do not keep a Brady list, 27 denied comment, 48 reported no disclosable officers, and 52 provided their list.

The advent of police body-worn cameras and dashboard cameras, as well as widespread use of smartphones, has made exposure of police perjury and general misconduct more common than ever.²⁰ While this technology has led to justice for some people abused by police, it falls short of rooting out the systemic nature of police perjury.

POLICE PERJURY & FALSE REPORTS IN CHICAGO

While false reports from police in Chicago are considered commonplace, many people believe that the vast majority of police misconduct in Chicago is never reported due to the distrust of the system. A 1992 survey of judges, public defenders, and State’s Attorneys in Chicago found that 55% of respondents felt that police officers “fabricate additional or different facts to create sufficient probable cause” at suppression hearings at least “some of the time.”²¹ **In addition, the Invisible Institute’s “Citizen’s Police Data Project” (CPDP) found that in Chicago between 1988 and 2018,**

¹⁷ *Supra* note 15.

¹⁸ Hooper, L., Marsh, J., & Yeh, B. (2004). “Treatment of *Brady v. Maryland* Material in United States District and State Courts’ Rules, Orders, and Policies” in the Report to the Advisory Committee on Criminal Rules of the Judicial Conference of the United States for the Federal Judicial Center, accessible at https://www.uscourts.gov/sites/default/files/bradymat_1.pdf

¹⁹ Reilly, S. & Nichols, M. (2019). “Hundreds of Police Officers Have Been Labeled Liars. Some Still Help Send People to Prison” for *USA Today*: <https://www.usatoday.com/in-depth/news/investigations/2019/10/14/brady-lists-police-officers-dishonest-corrupt-still-testify-investigation-database/2233386001/>

²⁰ Nunes, I. (2015). Hands Up, Don’t Shoot: Police Misconduct and the Need for Body Cameras. *Florida Law Review* 67, 1811.

²¹ *Supra* note 6 at Appendix Q46.

there have been 247,161 citizen allegations of police misconduct and only 7% of the officers have been disciplined.²² Furthermore, there were 7,119 complaints related to writing of police reports; 961 were sustained (13.5%) and 732 were disciplined (10.3%).²³

The most notorious example of police perjury in recent years is the police murder of teenager Laquan McDonald. Former CPD officer Jason Van Dyke shot the Black 17-year-old boy sixteen times after initially claiming McDonald “had lunged at officers with a knife when they opened fire.”²⁴ Fellow Chicago police officers Joseph Walsh, Thomas Gaffney, and detective David March filed false reports in support of Van Dyke’s version of events.²⁵ However, over a year later, the dashboard camera video was released by the City of Chicago under a court order and proved that McDonald was walking away from the police when he was shot and killed—not lunging at them as the officers stated.²⁶ Officer Jason Van Dyke was subsequently charged with first degree murder,²⁷ found guilty of second-degree murder and 16 counts of aggravated battery, and was sentenced to

roughly seven years in prison (of which he served about half of his term).²⁸ However, the three police officers accused of covering-up Van Dyke’s shooting of McDonald with false reports were acquitted.²⁹ Not only were they found not guilty, but the judge “offered a staunch hourlong defense of the Police Department’s actions that night.”³⁰ The murder of Laquan McDonald reignited Chicagoans’ outrage about issues of police misconduct and lying.

CURRENT POLICIES IN CHICAGO, COOK COUNTY, AND ILLINOIS

Generally, most police departments have explicit rules that govern the conduct of their officers. The Chicago Police Department explicitly prohibits officers from “[m]aking a false report, written or oral” in Rule 14 of their Rules of Conduct.³¹ More broadly, the Rules of Conduct prohibit CPD officers from “violat[ing] of any law or ordinance” (such as perjuring themselves in court) and prohibit “any

²² Citizen’s Police Data Project, Invisible Institute: <https://cpdp.co/>

²³ *Id.*

²⁴ Levine, S. (2015). “Chicago Police Really Didn’t Want to Release Video of a Cop Shooting Laquan McDonald 16 Times” for *HuffPost*: https://www.huffpost.com/entry/chicago-laquan-mcdonald-video_n_565603e0e4b079b2818a06f6

²⁵ Lockhart, P. (2019). “Did Chicago Police Cover Up the Laquan McDonald Shooting? A Judge is About to Decide.” for *Vox*: <https://www.vox.com/2019/1/17/18184158/chicago-police-conspiracy-trial-verdict-mcdonald-van-dyke>

²⁶ *Supra* note 24.

²⁷ Sawney, A. (2015). “Chicago Police Officer Jason Van Dyke Charged with 1st Degree Murder in Laquan McDonald Shooting” for *ABC 7 San Francisco*: <https://abc7news.com/jason-van-dyke-vandyke-chicago-cop-charged-laquan-mcdonald/1098446/>

²⁸ According to an analysis of court data by *Injustice Watch*, the sentence given to Jason Van Dyke was “unusually light for the judge and more lenient than the average sentences that other Cook County judges have given for second-degree murder.” The average sentence given by this judge for this conviction was 14 years and three months, around twice what was given to Van Dyke. See Dukmasova, M. (2022). “Data Highlights Leniency of Ex-Officer Jason Van Dyke’s Murder Sentence” for *Injustice Watch*: <https://www.injusticewatch.org/news/2022/jason-van-dyke-murder-sentence-laquan-mcdonald-case/>

²⁹ Crepeau, M., Gutowski, C., Meisner, J. & St. Clair, S. (2019). “Rulings In Laquan McDonald Cases Leave Police Reformers Questioning If Progress Has Been Made” for *Chicago Tribune*: <https://www.chicagotribune.com/news/breaking/ct-met-laquan-mcdonald-jason-van-dyke-legacy-20190118-story.html>

³⁰ *Id.*

³¹ Rules and Regulations of the Chicago Police Department. (2015). “Rules of Conduct” (Article V), Rule 14. Accessible at <http://directives.chicagopolice.org/#directive/public/6412>

action or conduct which...brings discredit upon the Department" (such as lying or making a false report, for example).

The Cook County State's Attorney's Office has a long history of failing to hold officers accountable for perjury and false reporting.

The previous Cook County State's Attorney, Anita Alvarez (in office from 2008 to 2016), for instance, came under nationwide scrutiny in 2015 for failing to prosecute a CPD officer who admitted lying under oath:

On July 24, 2012, Chicago Police Officer Allyson Bogdalek broke down and cried as she admitted to prosecutors the obvious: She had lied under oath in the case of a man accused of robbing a Back of the Yards liquor store and shooting the owner in the leg... Prosecutors opened an investigation, and recommend[ed] indicting Bogdalek for perjury and other felonies...In February 2014, however, the process came to a screeching halt: State's Attorney Anita Alvarez overruled her subordinates and instructed them that no charges would be filed.³²

Despite the new administration of Cook County State's Attorney Kim Foxx (who took office in 2017), the CCSAO has remained noncompliant with the nationwide standard for a public-facing Brady list or the Brady doctrine.³³ Instead of maintaining a

public list, emails dated from 2009 to 2017³⁴ show that Cook County prosecutors are advised by email from their superiors of police officers that should not be permitted to testify. It is unknown if the practice has changed with the new administration because, despite numerous requests for information, we were unable to obtain the Cook County State's Attorney's policies related to Brady material or police false reports.

The Cook County State's Attorney does have a Conviction Integrity Unit (CIU) that was set up under Anita Alvarez in 2012.³⁵ While the CIU works to overturn convictions that may have relied on police false statements as evidence, the CIU does not work to *prevent* police perjury or false statements from happening in the first place.

Recently, there have been some statewide interventions to improve oversight of the police and improve jurisdictions' ability to hold officers accountable for misconduct. The Safety, Accountability, Fairness, and Equity - Today (SAFE-T) Act,³⁶ which became law in 2021, includes several provisions that affect policing in the state—including a decertification process for cops. In Illinois, officers must be certified by the Law Enforcement Training and Standards Board; the SAFE-T Act includes language that expands eligibility for decertification to include excessive force, perjury, video tampering, and "unprofessional, unethical, deceptive, or deleterious"

³² Denvir, D. (2015). "Disturbing New Twist in Chicago's Police Crisis: Embattled State's Attorney Refused to Prosecute Cop Who Admitted to Perjury" for *Salon*: https://www.salon.com/2015/12/15/disturbing_new_twist_in_chicagos_police_crisis_embattled_states_attorney_refused_to_prosecute_cops_who_admitted_to_perjury_obstruction_of_justice/

³³ "Brady List" from the Cook County State Attorney's Brady List & Giglio List, accessible at <https://giglio-bradylis.com/index.php/illinois/cook-county-state-attorney>

³⁴ Kelley, J. (n.d.). "Cook County Prosecutor Brady Memos" for *USA Today*: <https://www.usatoday.com/documents/6470127-Cook-County-prosecutor-Brady-Memos/>

³⁵ Hussain, R. (2012). "Prosecutor Alvarez Creates Team to Probe Wrong Conviction Claims" for *Chicago Sun-Times*: https://chicago.suntimes.com/news/2012/2/6/18532567/prosecutor-alvarez-creates-team-to-probe-wrongful-conviction-claims?_amp=true

³⁶ See Illinois Public Act 101-0652 at <https://www.ilga.gov/legislation/publicacts/101/PDF/101-0652.pdf>

conduct.³⁷ Before the SAFE-T Act, the Law Enforcement Training and Standards Board could only decertify a police officer convicted of a felony or of certain misdemeanors (e.g., sexual misconduct, theft, gambling, sex work, or drugs). Now, the Board can file its own charges for decertification if it concludes the officer engaged in behavior "that would

constitute a felony or misdemeanor which could serve as basis for automatic decertification." These cases are overseen by an administrative law judge who makes a recommendation to a Certification Review Panel (created by the SAFE-T Act solely to decide decertification cases).³⁸

METHODOLOGY

DATA COLLECTION

This research utilizes primary and secondary data to inform a holistic picture of the scope of police perjury and false reporting from the perspective of court actors and impacted community members. Our primary data includes 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. Interview questions were developed after careful consideration of the existing academic literature on police perjury and false reporting, public information on instances of police misconduct, and subsequent disciplinary records.

The individuals interviewed herein are primarily affiliated with the few organizations in Chicago that have had some involvement with cases involving police perjury in Cook County. To compile

the initial list, we first relied on institutional knowledge of Chicago Appleseed Center for Fair Courts and the Chicago Council of Lawyers of community organizations in the area. To ensure we captured all of the relevant community partners, we utilized snowball sampling – a process through which we asked each respondent who else they would consider knowledgeable or able to speak to police perjury and/or misconduct in Cook County. We then contacted every organization referred to us.³⁹ We interviewed these connections until we reached data saturation⁴⁰ and were no longer being referred to new organizations.⁴¹ In total, we contacted 17 organizations; two individuals declined to be interviewed because they felt that they were not able to speak about police perjury at the time, and nine organizations did not respond after repeated contact attempts. In total, we interviewed 14 individuals from 13 law firms, Cook County offices, community organizations, and research institutions who had interacted with police perjury or false reporting in some way,

³⁷ Strecklow, S. (2021). "Illinois' Criminal Justice Overhaul Makes it Easier to Decertify Bad Cops. But it Could Be Harder for the Public to Learn About Them." for *Injustice Watch*: <https://www.injusticewatch.org/news/2021/illinois-criminal-justice-overhaul-decertify-bad-cops-transparency/>

³⁸ *Id.*

³⁹ Small, M. (2009). 'How Many Cases Do I Need?' On Science and the Logic of Case Selection in Field-Based Research. *Ethnography*, 10(1), 5-38. Accessible at <https://journals.sagepub.com/doi/10.1177/1466138108099586>

⁴⁰ O'Reilly, M. & Parker, N. (2013). 'Unsatisfactory Saturation': A Critical Exploration of the Notion of Saturated Sample Sizes in Qualitative Research. *Qualitative Research*, 13(2), 190-197.

⁴¹ Green, J. & Thorogood, N. (2006). Qualitative Methods for Health Research. *Forum: Qualitative Social Research* 7(2).

and had enough interaction to speak about it in detail. The interviews were intentionally semi-structured in nature to allow for comparison between interviews, yet flexible enough to allow for new ideas and themes to emerge based on the individuals' unique experiences.

Some secondary data was collected from the Civilian Office of Police Accountability (COPA), Invisible Institute's Citizens Police Data Project, the *Chicago Reporter's* Settlement Database, and the National Registry of Exonerations. These data show relevant records of police misconduct, perjury, and testimony between 1989 and the present. We were specifically interested in identifying cases that occurred in Chicago and Cook County to contextualize qualitative interviews with documentation of police perjury, subsequent disciplinary action, and its impact on cases heard in Cook County.

DATA ANALYSIS

Interviews were transcribed and coded according to theme and question. Qualitative data analysis involved comparing coded interviews thematically, drawing conclusions from responses, and contextualizing qualitative data with quantitative evidence. We conducted two rounds of coding using the flexible coding method, a method of analysis well-suited to this study, in which we entered with questions informed by the existing literature and our prior knowledge about false reporting, perjury, and policing at large. Our first round of coding established a series of index codes, drawing on the interview protocol to divide the interviews into easily manageable sections and allow for a first reading of the transcripts.

The purpose of index coding is to use broad codes that establish an "anchor" to the interview protocol, and to provide an opportunity to explore initial themes and findings. During this phase, researchers did not code transcripts of interviews which they had conducted themselves or had been otherwise involved in, allowing for a fresh perspective on each set of responses. We then collectively generated a series of analytic codes, identifying emergent findings and themes well-suited for further analysis. The purpose of this phase was to identify specific themes or concepts that offered responses to the stated research questions. Within each index code, we reviewed interviewee responses through the specific lens of the research question, then re-categorized these notes into a series of analytic codes (for instance, "collective culture" to describe the culture that often prevents cops from facing consequences for lying). Throughout the interview process, we maintained observational and impressionistic notes to contribute to an audit trail and returned to these documents during the analytic phase to assess the validity of our codes. Through this second round of coding and discussion of these themes, we identified the findings that follow.

ETHICAL CONSIDERATIONS

This research was carried out according to social science research principles, as guided by the Chicago Appleseed Center for Fair Courts' research standards.⁴² Across all research projects, our methodological approach is rooted in the protection of human subjects, mitigation of risk, and reduction of any harm the study may cause participants during or following the research process. Consent

⁴² "Guiding Principles for Ethical, Rigorous Research" (October 2021), Chicago Appleseed Center for Fair Courts: www.chicagoappleseed.org/wp-content/uploads/2021/10/2021-Research-Standards-Framework-2.pdf

was given by all community organizations and individuals to utilize interview data in the development for this report and the option for anonymity was given to each participant. Due to the relatively small number of organizations working on police accountability work in Chicago, Cook County, and Illinois, we have anonymized all organizational names, individual participants' names, and identity markers such as gender. Due to COVID-19 restrictions, all interviews were conducted virtually via video conference call or over the phone. This may have caused limitations in our ability to communicate clearly with participants or gather non-verbal cues; however, we mitigated this concern by asking follow-up questions where miscommunications could have occurred and by including multiple team members to check the clarity and quality of each transcript. Multiple staff members from Chicago Appleseed and the Council attended these interviews in an effort to ensure we captured respondents' experiences as clearly and objectively as possible.

The main limitations of this report include missing perspectives and limited data availability. While Chicago Appleseed Center for Fair Courts and the Chicago Council of Lawyers attempted to contact current Cook County State's Attorneys, we were unable to interview said individuals. These missing perspectives are a significant limitation of this report. Similarly, we requested data from COPA and the Cook County State's Attorney's Office that they chose not to provide. We contacted COPA directly in hopes they would provide data related to Rule 14 violations and examples of police reports, but they did not respond to our request. Chicago Appleseed and the Council also submitted a Freedom of Information Act (FOIA) request to the Cook County State's Attorney's Office asking for all policies related to police perjury and Brady lists, which went unanswered as of the publication of this report. These missing data sources are significant limitations of this report.

FINDINGS & DISCUSSION

The findings we discuss in this section are derived, primarily, from the interviews we conducted with court actors, community organizations, and people impacted by police misconduct and lying. Our research, including interview data, uncovered five main themes specific to the issue of police perjury and false reporting in Cook County and specifically with respect to the Chicago Police Department, which include:

(1) A **"collective culture"** in the court system, which 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.

(2) The law enforcement **"code of silence,"** which is an endemic feature of the culture of policing that encourages cops to lie to prevent scrutiny and protect themselves and fellow officers and is upheld by institutional practices.

(3) Increased use of **body-worn cameras** provide a tool to better hold police accountable for their actions but are not always properly utilized.

(4) The underutilization of both **Brady lists** and **“Do Not Call” lists** by prosecutors and the lack of public accountability and transparency with respect to their use.

(5) The **lack of consequences** for police who lie, file false reports, and perjure themselves in court in comparison to the individuals and communities who are impacted by these lies.

Since police perjury is so under-reported and difficult to measure, diverse sets of quantitative data were likewise reviewed to triangulate the extent of the problem in Cook County. We consider interviewee experiences alongside scholarship to discuss these themes.

FINDING 1.

POLICE EXERT CONTROL OVER A “COLLECTIVE CULTURE” IN THE COURTS THAT PREVENT THEM FROM FACING CONSEQUENCES FOR LYING.

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

This “collective culture” in the court system 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 few incentives to do so.

THE TEAMMATE EFFECT

Interviewees suggest that this “culture of tolerance” is rooted in State’s Attorneys’ and judges’ perceived dependence on police for success in their careers, which fosters a feeling that they are all on the same “team.” Prosecutors, especially, may feel they have the same motives as police and see themselves as both part of the greater law enforcement “team.”⁴³ One interviewee aptly stated that “cops run the courtrooms,” which perpetuates a collective understanding that there will not be consequences for officers who lie. State’s Attorneys are perhaps the most important actor – with the most decision-making discretion – within the court system behind the police themselves. As stated by Dr. Samuel Walker, a criminologist from the University of Nebraska Omaha: “Prosecutors work with police day in, day out, and typically they’re reluctant to criticize them or investigate them.”⁴⁴

Assistant State’s Attorneys (ASAs) have a complicated and intertwined relationship with police in which they rely on police resources and goodwill to win cases. Some interviewees described prosecutors as being “stuck” with the police officers they have as witnesses:

I had a case once [where] the officer, like... hated defense attorneys, hated me, [and]

⁴³ Zeidman, S. (2019). From Dropsy to Testilying: Prosecutorial Apathy, Ennui, or Complicity. *Ohio State Journal of Criminal Law* 16(423), accessible at <https://core.ac.uk/download/pdf/223239994.pdf>

⁴⁴ “Ties That Bind: Conflicts of Interest in Police Killings” (2015) for *The Guardian*: <https://www.theguardian.com/us-news/2015/dec/31/ties-that-bind-conflicts-of-interest-police-killings>

just made himself look [like] a fool. And afterwards, I talked with the State's Attorney, I said, "why didn't you prep your officer differently?" And he's like, "I did. It's just that I can't get these guys to do this thing sometimes." And they're stuck with the witnesses they have.

Other interviewees stated that ASAs enable and cover for perjurious police officers in order to win their cases. A judge we interviewed recalled (what they perceived as) an intimidation tactic by Cook County State's Attorneys who would bring cops into the courtroom before the judge ruled on motions dealing with non-credible testimony by an officer, "as if to say, 'go ahead, call them liars to their faces.'" One scholar noted recorded instances of prosecutors leaving case files open on a table to give officers time to align their narrative with the information in the file.⁴⁵ This type of support for their "teammate" allows police perjury to thrive. As one defense attorney explained:

Judges...[coddle] them, turn a blind eye, play dumb—act like things that are physically impossible actually happen just because the cop says so.

As another set of experts explained it, "police misconduct needs prosecutors to enable it,"⁴⁶ as without their cooperation, perjured testimony would not be presented in court and perjurers would face prosecution. One interviewee went as far as to say the State's Attorneys and the police

officers "are true partners; they work hand in hand." One interviewee explained how cops and prosecutors do not even need to know each other personally to develop a sense of camaraderie:

[Officers] hang out in the jury room...and they're back there with the [prosecutor] the whole time, and they all know each other—and if they don't know each other, they're introduced by another police officer, and they all vouch for 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.

This collective culture often prevents police from facing consequences for lying. Interviewees stated that police cultivate a "culture of fear," which often manifests in threats of violence.

The "teammate effect" also appears in who judges choose to believe and what evidence they choose to include as relevant. Many judges are wary of questioning the police⁴⁷ and rarely intervene when an officer lies in court or makes a false report—even when these lies are blatant and on display. An experienced defense attorney we interviewed claimed most judges and State's Attorneys find the stories of police officers believable. They said if an officer says something that contradicts something stated by a defendant, the judge will often believe the police officer unless the lie is blatant. According to one study, "even when they have every reason to disbelieve officers, judges routinely admit evidence that, from a legal perspective, clearly should be excluded."⁴⁸

⁴⁵ Trivedi, S. & Gonzalez Van Cleve, N. (2020). To Serve and Protect Each Other: How Police-Prosecutor Codependence Enables Police Misconduct. *Boston University Law Review* 100, 895. Accessible at <https://www.bu.edu/bulawreview/files/2020/05/05-TRIVEDI-VAN-CLEVE.pdf>

⁴⁶ *Id.*

⁴⁷ Dripps, D. (1996). Police, Plus Perjury, Equals Polygraphy. *Journal of Criminal Law and Criminology* 693. Accessible at <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6875&context=jclc>

⁴⁸ *Supra* note 11.

Like many prosecutors and police officers, judges often side with police officers in court conflicts⁴⁹ and “are sometimes willing to bend the rules” to avoid excluding probative evidence.⁵⁰

Another interviewee discussed a “culture of tolerance” of police perjury and false reporting in Cook County. Often, no action is taken against perjury because, as one interviewee explained, lying is so ingrained in the culture of policing that there are no avenues to address it—or that it might do more harm than good to address police perjury. Unfortunately, some court actors continue to deny that police perjury occurs at all. In her 2016 book, *Crook County: Racism and Injustice in America's Largest Criminal Court*, Nicole Gonzalez Van Cleve interviewed⁵¹ Cook County public defenders, judges, and prosecutors and found that generally, most believed that police perjury occurs. All twenty-four public defenders Gonzalez Van Cleve interviewed and 74% (twenty of twenty-seven) judges responded that perjury occurred; only one judge said it does not occur in Cook County and six did not directly respond to the question. Of the Cook County State’s Attorneys, though, only 44% (twelve of twenty-seven) said police perjury “sometimes occurred,” eight said that it did not, and seven did not directly respond.

One person we interviewed specifically highlighted the practice of prosecutors working out of police

stationhouses, including examples where tortured people complained to such prosecutors, but were sent in for more torture by CPD officers until they confessed.⁵² They highlighted the fact that these prosecutors were very inexperienced and likely would not feel like they were in a position to speak out, explaining:

Those prosecutors...were generally inexperienced and that was one of the first places they'd get assigned to, where even if they have some pang of conscience about what they were doing, [they] certainly would not feel like they were in a position to break the code of silence. So they became the cooperating witnesses for the detectives.

Deep-rooted connections between the Cook County State’s Attorney’s Office, Cook County Circuit Court judges, and law enforcement make it extremely difficult to hold officers accountable for their misconduct.

INCENTIVE STRUCTURES

Multiple interviewees mentioned that the current incentive structures – especially in the Cook County State’s Attorney’s Office – in some ways favor perjury. Police perjury can lead to a conviction, and in many prosecutor’s offices,

⁴⁹ Chin, G. & Wells, S. (1998). The “Blue Wall of Silence” as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury. *University of Pittsburgh Law Review* 59. Accessible at <https://philpapers.org/rec/CHITBW>

⁵⁰ Walkingshaw, P. (2013). Judicial Findings of Police Perjury: When Hearsay Presented as Character Evidence Might Not Be Such a Bad Thing. *Columbia Journal of Law & Social Problems*, 47(1). Accessible at <https://heinonline.org/HOL/LandingPage?handle=hein.journals/collsp47&div=4&id=&page=>

⁵¹ Gonzalez Van Cleve, N. (2016). *Crook County: Racism and Injustice in America's Largest Criminal Court*. Stanford, CA: Stanford University Press. ISBN 978-0-80479-043-7.

⁵² Under Police Commander Jon Burge, the Chicago Police Department tortured at least 100 Black men to get them to confess for over two decades, starting in 1972. Many of Burge’s victims spent decades in prison, where some of these people still remain. See e.g., <https://chicagoreader.com/news-politics/police-torture-in-chicago/> & <https://blockclubchicago.org/2021/02/05/chicago-police-torture-archive-documents-decades-of-abuse-from-jon-burge-and-his-midnight-crew/>

convictions lead to promotions⁵³ and satisfactory performance reviews.⁵⁴ Several interviewees mentioned that they believe Assistant State’s Attorneys in Cook County are rewarded for securing convictions, so it is personally advantageous that the police narrative is believed. **Historically, the CCSAO has operated with a “win at all costs” mentality,⁵⁵ where prosecutors have been rewarded solely for winning cases. Therefore, maintaining a strong, non-combative relationship with police officers is critical to prosecutors’ careers.⁵⁶**

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.

A recent example of law enforcement’s power to influence the narratives that prosecutors perpetuate in court was evident in the recent police killing of Adam Toledo. Adam Toledo, a 13-year-old Latino boy, was shot and killed by a CPD officer on March 29, 2021, after a brief foot chase.⁵⁷ The young boy was running from police officers who believed he had a gun; when the boy turned around with both hands up, he was not armed but was fatally shot by the officer.

In court, at the proffer reading of the adult who was arrested at the scene of Toledo’s death, a Cook County Assistant State’s Attorney incorrectly stated that Adam Toledo was holding a gun at the time that he was shot. Because the ASA read the incorrect statement, which was provided by the police, in court without first reviewing the video evidence, the CCSAO added a charge of child endangerment in the few hours before the hearing. On May 5, 2021, the ASA’s supervisor was asked to resign because she had failed to review the evidence in the case before it was presented to the court.⁵⁸

Two people we interviewed suggested that the lack of resources at the CSSAO and the Public Defender’s Office prevent perjury from being sufficiently monitored. One mentioned that State’s Attorneys do not always feel like they have the resources and support to go against police perjury. Additionally, many prosecutors rely on the police departments’ investigatory capacities to prosecute cases. Many prosecutor’s offices have very small—even nonexistent—investigative staff and depend on the police department’s investigative capacity as a result.⁵⁹ While the CCSAO has its own investigative capacity, the majority of investigation in cases is done by the police department. Leveling accusations at police officers could jeopardize the prosecutors’ relationships with the entire department, preventing them from successfully

⁵³ *Supra* note 45.

⁵⁴ *Supra* note 43.

⁵⁵ See e.g., “Creating A Culture of Fairness and Accountability: Defense Attorneys Report on Kim Foxx’s Progress Towards Transforming the Priorities of Her Office” (2019) from Chicago Appleseed Center for Fair Courts, Chicago Council of Lawyers, The People’s Lobby, & Reclaim Chicago: http://www.chicagoappleseed.org/wp-content/uploads/2019/10/2019-10-Report-Kim-Foxx_ForPrint_FINAL.pdf

⁵⁶ *Supra* note 45.

⁵⁷ Triesman, R., Romo, V., & Campbell, B. (2021). “Chicago Releases Video Showing Fatal Police Shooting Of 13-Year-Old Adam Toledo” for *WBEZ Chicago*: <https://www.npr.org/2021/04/15/987718420/chicago-releases-video-showing-fatal-police-shooting-of-13-year-old-adam-toledo>

⁵⁸ Hendrickson, M. (2021). “First Assistant State’s Attorney Forced Out Following Investigation on Proffer Involving Adam Toledo Shooting” for *Chicago Sun-Times*: <https://chicago.suntimes.com/news/2021/5/5/22419822/adam-toledo-shooting-statements-hearing-assistant-states-attorney-resigns-police-gun-murphy-coleman>

⁵⁹ *Supra* note 49.

prosecuting cases.⁶⁰ Police officers may even respond to perceived questioning of their practices by retaliation, both through ruining cases⁶¹ and prosecutor reputations.⁶²

One interviewee reported that if a State's Attorney sees issues with evidence or with police lying, they may simply dismiss the case entirely because "it is not worth it to them" to address the lying; if a judge makes a finding that a police officer is untrustworthy, then the CCSAO has to keep track of potential Brady material. The interviewee went on to say that in cases when it is unclear if police false reports are taking place, they may offer a plea – this could be extremely enticing to defendants (both guilty and not guilty) who do not want to be ensnared in long legal battles with unclear outcomes.

Judges, on the other hand, may have different incentives to avoid bringing police perjury to light. For instance, they may not call out perjury because of fear that the Fraternal Order of Police (the rank-and-file police union) could retaliate against them in the next election. "Everybody's worried about holding on to their job, everybody's worried about making a name for themselves," said one of the interviewees. Similarly, as explained by one defense attorney practicing in North Carolina, elected State's Attorneys "are disincentivized

from [exposing police perjury because it] could harm law enforcement officers," so they "protect officers...because they're elected officials and find it in their interest to do that."⁶³

Interviewees also highlighted the power of different subcultures within the Cook County judiciary, contrasting between former State's Attorneys who may always find police officers credible and other judges who have worked to hold lying officers accountable in some way. Research shows judges' professional backgrounds may influence their decisions on the bench and some interviewees highlighted the prosecutorial backgrounds of many judges in Cook County, indicating that some judges are more concerned with punishing people than pursuing justice. A 2021 study⁶⁴ of federal judges by Emory University School of Law professor, Joanna Shepherd, found that professional experience "will inevitably exert some influence' on how a judge determines which arguments that they find convincing, or which witnesses they find credible."⁶⁵ At least 13 of the 61 sitting judges who ran for retention in Cook County in 2022⁶⁶ are former prosecutors; in 2021, almost 64% (fourteen of twenty-two) of newly-appointed Associate Judges were former prosecutors and just two were public defenders.⁶⁷ One person we interviewed mentioned the need for more diverse voices on the bench; they suggested

⁶⁰ *Supra* note 43.

⁶¹ *Supra* note 45.

⁶² *Supra* note 43.

⁶³ NC Watchdog Reporting Network. (2021). "Some Police Officers Are Too Untrustworthy To Testify; Local Prosecutors Won't Reveal Who They Are." for *North Carolina Public Radio*: <https://www.wunc.org/news/2021-06-03/police-officers-untrustworthy-testify-local-prosecutors-reveal-who-north-carolina>

⁶⁴ Shepherd, J. (2021). *Jobs, Judges, and Justice: The Relationship between Professional Diversity and Judicial Decisions*. Demand Justice: <https://demandjustice.org/wp-content/uploads/2021/03/Jobs-Judges-and-Justice-Shepherd-3-08-21.pdf>

⁶⁵ Waldman, A., Ballesteros, C., & McGhee, J. (2021). "New Class of Cook County Associate Judges more Racially Diverse than Past Years" for *Injustice Watch*: <https://www.injusticewatch.org/news/judicial-elections/2021/new-associate-judges-selected/#:~:text=Prosecutor%2Dto%2Djudge%20pipeline,two%20are%20former%20public%20defenders>

⁶⁶ See e.g., <https://www.injusticewatch.org/interactives/judicial-election-guide/2022-general/en/>

⁶⁷ *Supra* note 65.

that more diverse racial and professional backgrounds could lead to different attitudes around punishing police perjury and lying.

WHY BOTHER?

Many interviewees complained that judges and prosecutors are aware of the officers who commit, at least, the most blatant perjury but that they tend to do nothing to address it whenever possible. According to academic literature, many prosecutors believe it is the role of the jury, not the prosecutor, to assess the credibility of witnesses and determine whether the witness is telling the truth.⁶⁸ Still, others believe that most defendants are guilty, and thus subscribe to the same view as many police officers—that they are serving the interests of justice.⁶⁹ Even Chicago’s Mayor Lori Lightfoot, a former federal prosecutor, echoed this perspective in June 2022, stating:

“Given the exacting standards that the State’s Attorney has for charging a case, which is proof beyond a reasonable doubt, when those charges are brought, these people are guilty.”⁷⁰

Data shows how untrue this is: Over a quarter (27%) of the felony cases filed in Cook County are dismissed entirely.⁷¹ Our interviewees did not express these sentiments, but did highlight a

perception that prosecutors believe police perjury will inevitably continue regardless of their actions.

Convictions of cops for lying on the stand or submitting false reports are extremely rare, given the ingrained “collective culture” of acceptance of police perjury, a deeply-rooted tradition of racism, and cultural attitudes to “win at all costs.” Many activists cited in our interviews a feeling of hopelessness for the potential of changing the system. As one person we interviewed communicated:

The police perjury problem isn't necessarily just sort of this, like, oh, one bad apple going out there and lying [about] things. It really is sort of a systemic thing...a cultural thing. And...saying, like, “every single cop lies all the time” oversimplifies it and doesn't do it justice. The reality is that lying, not being forthright, not being honest...are all different shades of the same gray, but they're still the same thing...At the end of the day, their misdeeds are leading to injustice somewhere along the way, like they are thwarting justice.

Available data suggests that although many official complaints about police dishonesty do result in recommended discipline, substantial percentages of these complaints do not. The Civilian Office of Police Accountability (COPA),⁷² which acts as the civilian oversight agency of the CPD, releases data

⁶⁸ *Supra* note 43.

⁶⁹ *Supra* note 43.

⁷⁰ Pratt, G. (2022). “Chicago Mayor Lori Lightfoot Says People Charged with Violent Crimes ‘Are Guilty’ and Shouldn’t Be Released on Bail Pending Trial” for *Chicago Tribune*: <https://www.chicagotribune.com/politics/ct-lightfoot-chicago-bail-violent-offenders-reform-20220606-ljwmmndjrzhc7lyjewxis46sf4-story.html>

⁷¹ Staudt, S. (2021). “Waiting For Justice: An Examination of the Cook County Criminal Court Backlog in the Age of Covid-19” for Chicago Appleseed Center for Fair Courts: <https://www.chicagoappleseed.org/2021/01/28/long-waits-for-justice-cook-county-criminal-court-backlog/>

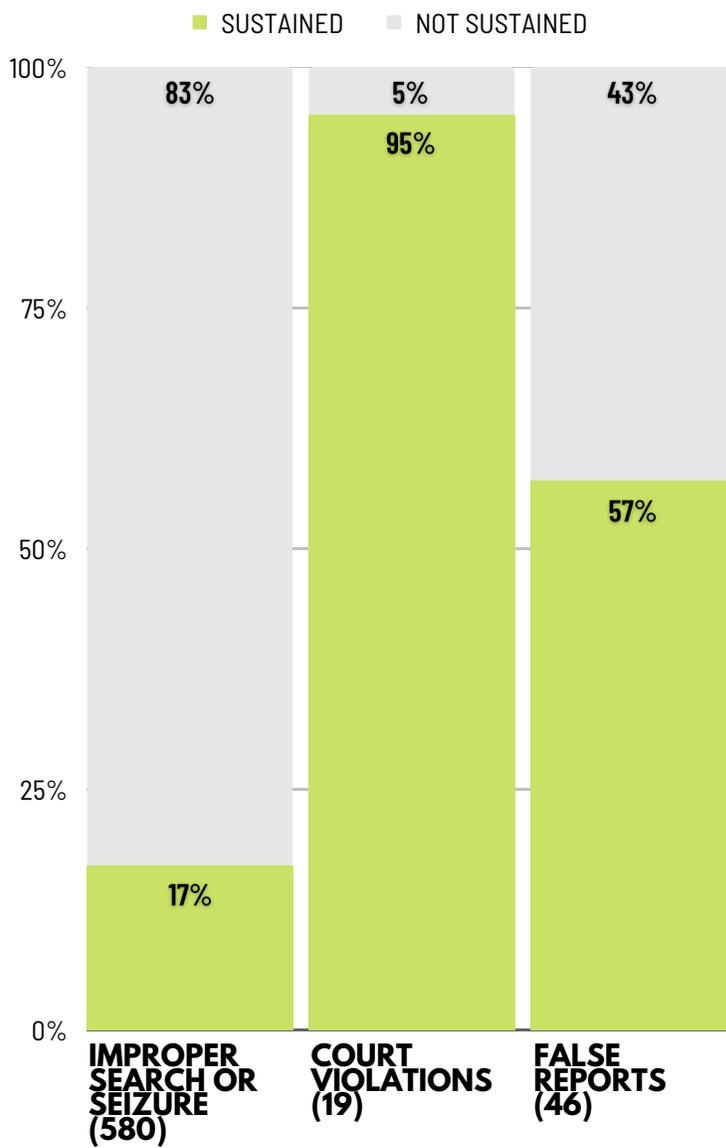
⁷² COPA investigations reach three possible findings: “sustained” meaning that the allegation was supported by a preponderance of the evidence; “not sustained” meaning that the allegation can neither be proven nor disproven by a preponderance of the evidence; “unfounded”, meaning that the allegation “was not supported based on facts revealed through investigation, or the reported incident did not occur, as shown by ‘Clear and Convincing Evidence;’” and “exonerated” meaning the officer’s action was shown to be proper by clear and convincing evidence.

on the number of allegations against police officers that are “sustained.” In 2021, 98 of 580 (16.9%) of closed cases related to allegations of improper searches or seizures; 18 of 19 (94.7%) were allegations of court violations; and 36 of 46 (78.3%) allegations of false reports were sustained.⁷³

The Invisible Institute’s Citizens Police Data Project (CPDP) collects data on police complaints and discipline released in litigation or in response to FOIA requests in Chicago. The database includes 247,161 allegations spanning from 1988 to 2018; of these, only 7% of allegations resulted in any discipline.⁷⁴ Just nine reports mention “perjury” in the context of one or more officers being accused of perjury, of which six were sustained or resulted in recommended consequences for the officer.⁷⁵ A search of the CPDP database for “false testimony” yields 590 reports; thirty-seven out of the first fifty reports to appear in the results list were sustained or resulted in recommended consequences for the officer.⁷⁶

Interviewees reported judges turning a blind eye and generally tolerating police perjury. Worse, some reported that some judges will seemingly always side with police. One person we interviewed mentioned that it is extremely rare for a judge to find an officer not credible because they have no incentive to do so and may actually face negative social and professional consequences.

FIGURE 1:
CIVILIAN OFFICE OF POLICE ACCOUNTABILITY (COPA) FINDINGS IN 2021



Data for Figure 1 comes from the Chicago Civilian Office of Police Accountability (COPA) Annual Report from 2021 (see Footnote 73).

⁷³ Civilian Office of Police Accountability (COPA) Annual Report 2021: <https://www.chicagocopa.org/wp-content/uploads/2022/02/2021-Annual-Report-Final.pdf>

⁷⁴ *Supra* note 22. Numbers and examples used across databases, sources, and searches may include some overlap; this is impossible to evaluate because some databases only give statistics, while others only give anonymized data and reports.

⁷⁵ Note that many of the findings in CPDP database other than “sustained” are recorded as or are the result of “no affidavit,” a reference to the requirement under Illinois law that citizens making a complaint include a sworn affidavit under penalty of perjury. Complaints filed without an affidavit are supposed to receive a limited investigation, and, if evidence is found to support the complaint, the agency is supposed to seek to “override” the lack of an affidavit. In practice, however, COPA and the CPD’s Internal Affairs Division (IAD) exceedingly rarely seek such overrides (see <https://chicagojustice.org/2021/01/18/affidavit-overrule-in-cpd-disciplinary-investigations/>). Additionally, some cases in which COPA, IPRA, or the Police Board recommended discipline were later overturned in later stages of the disciplinary process. No attempt was made here to determine whether such findings were upheld (see e.g., complaints 1034754, 300268, 281326, 1044797, 1066371, 1043853, 1004297, 1015760, 1002203).

⁷⁶ See e.g., complaints: 1042532, 1034754, 306910, 1004181, 1066371, 313468, 1075931, 1014039, 1074613, 1016210, 106973, 1017317, 1023965, 1069065, 1037918, 1065787, 1004297, 1082169, 300268, 303265, 1036768, 1021114, 1017101, 1039650, 1025073, 1007365, 1044797, 1063648, 1032042, 1081229, 1049286, 1005307, 1067424, 304744, 1048001, 1016302, 1040688, 1033096, 1043853, 313961, 315627, 1008346, 1010320, 1044128, 1001354, 1042833, 022600, 314617, 1032584.

One person mentioned that State’s Attorneys do not always feel like they have the social or the professional capital to go against police perjury. Another interviewee mentioned that Cook County Sheriff’s Deputies had to escort from the courthouse a judge who received death threats after calling out a police officer for lying on the stand. Some people we interviewed said that judges will find police officers non-credible without explicitly finding that they made false statements. As stated by interviewee:

A judge in Cook County will do just about anything to not find an officer lying in open court. Unless it is just black and white right in front of them.

These judges may, instead, just find the defendants not guilty because of the cops’ adverse credibility. Several interviewees stated that they wished more action was taken to punish police officers that lie as opposed to allowing them to continue their misconduct. In the emails obtained by *USA Today*, between 2009 and 2017, CCSAO leadership identified just 13 cases where judges had found officers not credible, as well as one where an officer was actually convicted of perjury. Two-thirds of the adverse credibility findings were from two judges, one who found officers not credible in four cases and one who found officers not credible in five cases. From just 2011 to 2017, more than 275,000 felony cases were filed in Cook County and there were over 15,000 trials – including over 7,000 where a judge found a defendant not guilty.⁷⁷ Given the staunch evidence of the pervasiveness of police perjury,

it strains credulity that judges thought police were lying in only fourteen cases. It is also telling that just two judges were responsible for such a large share of the adverse credibility findings. This suggests that some judges are more comfortable than others finding officers incredible. Still, one person we interviewed claimed that judges use various excuses to deny people release from incarceration following perjured testimony:

Unfortunately, you know, if a...[defendant] says one thing [and] the cops say a different thing, the judge is always going to side [with] the police officer.

Some interviewees highlighted the prosecution backgrounds of many judges in Cook County, indicating that judges were more concerned with punishing people than pursuing justice.

FINDING 2. **THE "CODE OF SILENCE" IS AN ENDEMIC FEATURE OF THE CULTURE OF THE CHICAGO POLICE DEPARTMENT, WHICH ENCOURAGES COPS TO LIE TO PREVENT SCRUTINY AND PROTECT THEMSELVES AND FELLOW OFFICERS.**

The “code of silence” is an endemic feature of the culture of policing that disincentivizes police officers from reporting peers that may have abused their power or committed a crime such as perjury.⁷⁸ The City of Chicago, specifically, has

⁷⁷ Data from the Cook County State’s Attorney’s Office on adult felony cases is available here: <https://datacatalog.cookcountyil.gov/browse?category=Courts>

⁷⁸ Trivedi, S. & Gonzalez Van Cleve, N. (2020). To Serve and Protect Each Other: How Police-Prosecutor Codependence Enables Police Misconduct. *Boston University Law Review* 100 (895-933), accessible at <https://www.bu.edu/bulawreview/files/2020/05/05-TRIVEDI-VAN-CLEVE.pdf>; Chin, G. & Wells, S. (1998). The “Blue Wall of Silence” as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury. *University of Pittsburgh Law Review* 233, accessible at <https://philpapers.org/rec/CHITBW>

a deeply-entrenched “code of silence” that, according to the *New York Times*, “has been around for decades, bubbling up in recent years.”⁷⁹ Eight of 14 interviewees mentioned that the CPD’s “code of silence” perpetuates police lying.

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.

BROTHERHOOD OVER TRUTH

Loyalty to the police “brotherhood” is apparent, as interviewees reported that many officers appear to adhere to the “code of silence” their entire careers. One person we interviewed expressed just how rare it was for officers to speak out against their colleagues—even when they witnessed horrific scenes:

They kept silent until they retired [when]... we actually got [statements] from them... which was very strong cooperation. And there was one Black detective who walked in on a torture scene early on, during when Burge was only a detective, back in the 70s, and he saw a man being tortured.

The adherence to the code is not just out of concern for one’s career, but also due to loyalty to their peers. Peer pressure is a significant reason police perjury and false reporting

flourishes in police departments across the United States. Among peers, there are “draconian consequences” for officers who report misconduct—they are often “ostracized and harassed, become targets for complaints and even physical threats, and are made to fear that they will be left alone on the streets in a time of crisis.”⁸⁰

“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.”

The “code of silence” was a topic of former Chicago Mayor Rahm Emanuel’s 2015 speech⁸¹ following the murder of Laquan McDonald by a Chicago Police officer, in which he apologized for police failings and promised systemic reform. In his speech, Emmanuel blamed the incident, in part, on the police “code of silence,” describing it as “this tendency to ignore...to deny...[and] in some cases to cover-up the bad actions of a colleague or colleagues,” which is ultimately “at the very heart of the policing profession.” Following the murder of Laquan McDonald, the United States Department of Justice issued a report in 2017 that found that the “code of silence” led to the concealing of misconduct in CPD.⁸²

⁷⁹ Davey, M. (2018). “Police ‘Code of Silence’ is On Trial After Murder by Chicago Officer” for *New York Times*: <https://www.nytimes.com/2018/12/03/us/chicago-police-code-of-silence.html>

⁸⁰ *Supra* note 49.

⁸¹ Mayor Rahm Emmanuel’s Chicago City Council Address (December 9, 2015), accessible at <https://www.americanrhetoric.com/speeches/rahmemmanuelcitycouncil9december2015.htm>

⁸² “Investigation of the Chicago Police Department” (75-77) by the United States Department of Justice Civil Rights Division and Northern District of Illinois United States Attorney’s Office (2017), accessible at <https://www.justice.gov/crt/case-document/file/925771/download>

The *New York Times*⁸³ gives some other recent examples, such as:

- A lawsuit, brought by Lorenzo Davis, a former supervisor for Independent Police Review Authority (IPRA), who was awarded \$2.8 million in 2018 after “he was fired for refusing to change his findings in police shootings he considered unjustified.”⁸⁴
- The 2017 settlement in a “civil trial into whether a police ‘code of silence’ allowed a Chicago cop to drive drunk without fear of consequences when he killed two young men in a fiery crash on the Dan Ryan Expressway.”⁸⁵
- The case of a CPD officer who, in 2007, “was off-duty when he kicked and punched [a female bartender] in a drunken rage,” and “felt his status as a cop gave him impunity to act however he wanted [then]...used his connections on the force to try to avoid arrest.”⁸⁶

One person we interviewed claimed that police “perjury has been getting worse since 2014 [or] 2015” and that the “code of silence” has been heightened since the summer of 2020, when the protests against police violence were ongoing after the police murders of Breonna Taylor in Kentucky and George Floyd in Minnesota:

Police perjury has gotten more brazen recently. The code of silence – police

never calling out each other – has been enhanced since the summer of 2020.

CONSEQUENCES FOR WHISTLEBLOWERS

The “code of silence” is an unwritten system of “loyalty and brotherhood”⁸⁷ that encourages cops to protect each other from being held accountable for misconduct by fostering formal and informal punishments for officers who are perceived as failing to uphold the “code.”

Beyond the social punishments for reporting misconduct, the consequences for officers who break the “code of silence” are upheld on an institutional level. Police officers’ lies often climb up the chain of the command because the narrative of one officer is adopted, not only by their field partner, but also by the assigned sergeant and additional officers who arrive on the scene. One interviewee noted:

It won't just be the arresting officer who lies—he will have his narrative adopted by his partner, he will have that narrative adopted by the sergeant assigned to his case, he will have it adopted by any other assisting officers who arrive on scene. And oftentimes you'll see the assisting officers [who] really know or saw very little, but they will get in lockstep with whatever the lie is. And they will copy and paste that narrative onto their reports, swear to those reports

⁸³ *Supra* note 79.

⁸⁴ Gorner, J. (2018). “Jury Awards \$2.8M to Former IPRA Supervisor Who Sued City” for *Chicago Tribune*: <https://www.chicagotribune.com/news/breaking/ct-met-ex-ipra-supervisor-jury-award-20180621-story.html>

⁸⁵ Meisner, J. (2017). “City Abruptly Settles ‘Code of Silence’ Lawsuit During Closing Arguments after Lawyers Admit Disclosure Failure” for *Chicago Tribune*: <https://www.chicagotribune.com/news/ct-xpm-2012-10-30-ct-met-abbate-bar-beating-trial-1030-20121030-story.html>

⁸⁶ “No Pension for CPD Officer Fired for Beating of Bartender Caught on Video, Court Rules” (2022) for *NBC Chicago*: <https://www.nbcchicago.com/news/local/no-pension-for-cpd-officer-fired-for-beating-of-bartender-caught-on-video-court-rules/2753673/>

⁸⁷ Skolnick, J. (2002). Corruption and the Blue Code of Silence. *Police Practice and Research* 3(1), 7-19. Accessible at <https://www.tandfonline.com/doi/abs/10.1080/15614260290011309?journalCode=gppr20>

and testify to those reports, even if they did not see or were not present for what actually took place.

This creates a network of cops complicit in these lies that can reach high levels of law enforcement.

One of the more harrowing instances of the “code of silence” at work in Chicago is the infamous case of Sergeant Ronald Watts and his gang of CPD officers who, “in exchange for a ‘tax’...protected drug dealers from interference by law enforcement, targeted their competition, and...routinely framed those who did not cooperate” for over a decade.⁸⁸ Although some CPD officers tried to investigate and speak out against Watts’ corruption, according to Jamie Kalven in *The Intercept*:

Over the course of Watts’s career, he and his team were investigated by multiple agencies – CPD’s Internal Affairs, the FBI, the Drug Enforcement Agency, and the States Attorney’s Office. For several years, two Chicago police officers, Shannon Spalding and Danny Echeverria, participated in a joint FBI-Internal Affairs investigation, which they claim was ultimately derailed by senior CPD officials. Among other things, they allege that deputy superintendent Ernest Brown, long rumored to be an ally and protector of Watts, made it known within the department that they were engaged in an internal investigation, prompting other CPD brass to order

officers under their commands to retaliate against them as “Internal Affairs rats.”⁸⁹

Since Cook County State’s Attorney Kim Foxx took office in 2016, at least 220 cases related to Watts have been vacated (26 cases in 2017, 38 in 2018, 17 in 2019, 19 in 2020, 14 in 2021, and 106 as of October 3, 2022).⁹⁰

When uncovering cases of police misconduct, whistleblowers have been afraid of exposure and will often not give their names. One person we interviewed expressed how CPD officers are afraid of retaliation:

The first time we got any information from inside was from an anonymous police source, who...was definitely afraid of being exposed, would not give up his or her name, and said that she or he did not want to be treated like Frank Laverty.

Frank Laverty was an CPD officer who was demoted from detective after “standing up for an African-American teenager the state wanted to put to death” and “[shaking] loose a secret of police record keeping,” where “in violation of the law, detectives maintained ‘street files’— documents that weren’t turned over to defense lawyers because they contained inconvenient truths that could hamper the prosecution of the men or women the police had decided were perpetrators.”⁹¹ Similarly to Beth Svec (discussed in the introduction of this report), officers are afraid they will be reprimanded

⁸⁸ Kalven, J. (2016). “Code of Silence’ Revisited: An Update on the Watts Investigation” for *The Intercept*: <https://theintercept.com/2016/12/30/code-of-silence-revisited-an-update-on-the-watts-investigation/>

⁸⁹ *Id.*

⁹⁰ “Judge Tosses Eight More Convictions Linked to Disgraced Former CPD Sgt. Ronald Watts” (2022) for *CBS Chicago*: <https://www.cbsnews.com/chicago/news/chicago-police-sergeant-ronald-watts-convictions-overtured-corruption-framed/>

⁹¹ Conroy, J. (2007). “The Good Cop” for *Chicago Reader*: <https://chicagoreader.com/news-politics/the-good-cop/>

for reporting an instance of police lying by being transferred to another station or to the midnight shift.⁹²

INSTITUTIONAL PRESSURES TO UPHOLD PRETRIAL LYING

While there is police perjury in the courtroom, one interviewee explains how pervasive lying is in the larger context of Chicago policing:

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” to back...and protect them.

Pretrial lying occurs often while officers are in communities. One person interviewed claimed that while she was interacting with an arresting officer, he was calling over to his partner saying things like “she’s still talking about fighting me,” which was completely untrue; this lie was captured on his body camera.

Institutional pressures can manifest in pressures for police to produce results such as closing cases or arresting a certain number of people. This pressure can lead police to

cut corners or shade the truth to ensure convictions.⁹³ In many police departments, supervisors stress quotas, creating an immense pressure to fill them.⁹⁴ Although police quotas are illegal in Illinois,⁹⁵ in a 2021 lawsuit against CPD officers and the City of Chicago, lieutenant Franklin Paz claimed that on a “community safety team” created in 2020, Deputy Chief Michael Barz essentially enforced quotas requiring more traffic stops, arrests, and citations. After Paz complained, he was reassigned to a midnight shift in a likely form of retaliation.⁹⁶

Plea bargaining also enables pretrial police perjury because evidence is not reviewed. Defendants accept plea bargains in over 90% of cases that result in conviction.⁹⁷ Therefore, judges have very weak incentives to find police officers have lied in a pretrial setting, since the majority of their rulings will not be reviewed by a superior court.⁹⁸ The plea-bargaining process “virtually forecloses the defendant’s ability to challenge misconduct” through such mechanisms as appeal waivers.⁹⁹

Police perjury and false reporting is often believed to result from “narrative construction,” rather than from the construction of a set of discrete lies. Ten of fourteen people interviewed for this project mentioned “narrative construction” as an

⁹² See Circuit Court of Cook County Case Number 2020L010535, *Beth Svec v. City of Chicago* (2022). See also Crowley, K. (2022). “Jury Decides in Favor of Whistleblower in Lawsuit Against Chicago Police Department” for *Chicago Tribune*: <https://www.chicagotribune.com/news/breaking/ct-whistleblower-case-verdict-20220722-2pqvlg6tfjhjpdw2pgkqj7ggu-story.html>

⁹³ Slobogin, C. (1996). Testilying: Police Perjury and What To Do About It. *University of Colorado Law Review* 67, accessible at <https://scholarship.law.vanderbilt.edu/faculty-publications/279/>; Foley, M. (2000). Police Perjury: A Factorial Survey (City University of New York), accessible at <https://www.ojp.gov/njcrs/virtual-library/abstracts/police-perjury-factorial-survey>

⁹⁴ *Supra* note 8.

⁹⁵ See 65 ILCS 5/11-1-12: <https://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=006500050K11-1-12>

⁹⁶ See Circuit Court of Cook County Case Number 2021L000514, *Stephan Julian v. Sgt. Franklin D. Paz, Maurice Anderson, and the City Of Chicago* (2021), accessible at <https://www.scribd.com/document/491271193/Paz-Complaint>

⁹⁷ *Supra* note 45.

⁹⁸ Wilson, M. (2010). Improbable Cause: A Case for Judging Police by A More Majestic Standard. *Berkeley Journal of Criminal Law* 15, accessible at https://www.bjcl.org/assets/files/15_2-Wilson-259-330.pdf

⁹⁹ *Supra* notes 43 and 45.

element of police perjury. Interviewees recounted that police officers are often in a position to construct narratives to best serve their interests, appearing to stretch or alter the truth in the interest of creating a coherent, uniform narrative. Some scholars believe that police lie because they believe that they are helping the larger community¹⁰⁰ by ensuring those perceived as guilty are punished.¹⁰¹ According to Simon-Kerr:

*[Police perjury] is understood to be done for a rationale that is intertwined with the goals of the justice system—to ensure that the truth of the underlying criminal conduct is revealed by evidence that might otherwise be suppressed.*¹⁰²

Perjury, therefore, can be seen by officers as an action taken for the “greater good.” Police officers may even go as far as to construct narratives to protect their own conscience or sense of ethics. One interviewee believes that officers see themselves differently as officers than as people, stating, “it’s not Joe who is lying, it is Officer Jones.” Another interviewee cited search warrants as a major source of pretrial lying and perjury:

The greatest frequency I’ve seen of this occurrence is usually in search warrants, where police officers will put in false information in order to support a search warrant on one of these cases.

Many false police reports in Chicago are tied to illegal searches. For example, Officer William Prunte perjured himself when testifying about the traffic stop of Joseph Sperling.¹⁰³ Squad car footage blatantly contradicted Prunte’s testimony, showing that Sperling was illegally arrested before his car was searched.¹⁰⁴ The charges against Sperling were dismissed and charges of perjury were brought against Prunte and the two other officers involved. Prunte was found guilty and sentenced to two-and-a-half years of probation and 250 hours of community service; the other officers involved were acquitted.¹⁰⁵ Similarly, in 2006, Jonathan Hadnott, a local art teacher, was walking down a street when an unmarked police car pulled up and officers asked him for identification. The officers never identified themselves, but put Hadnott in the back of the police car, drove him to his parents’ house, and illegally searched the house. Having no probable cause and finding nothing illegal, they left no record of the search and stated that they had no memory of the encounter at all.¹⁰⁶ Fabricating precedent for a search is a way that police officers routinely construct narratives that conceal their misconduct.

Officers commonly consult one another to get their stories straight after an incident. One arresting officer’s narrative may be adopted by their partner, the officers who subsequently arrive

¹⁰⁰ *Supra* note 8.

¹⁰¹ *Supra* note 87.

¹⁰² *Supra* note 11.

¹⁰³ Hussain, R. (2016). “Two Cleared, One Convicted in Police Perjury Case” for *Chicago Sun-Times*: <https://chicago.suntimes.com/2016/12/7/18344370/two-cleared-one-convicted-in-police-perjury-case>

¹⁰⁴ *Id.*

¹⁰⁵ *Supra* note 103.

¹⁰⁶ Denvir, D. (2015). “Chicago’s Epidemic of Police Lying: One Man’s Case Shows Why Windy City’s Cops are Rarely Held Accountable” for *Salon*: https://www.salon.com/2015/12/23/inside_chicagos_epidemic_of_police_lying_one_mans_case_shows_why_windy_citys_cops_are_rarely_held_accountable/

on the scene, and the supervisors at the station. Before 2017, cops involved in or witnesses to shootings were allowed a 24-hour grace period before being required to submit statements to the Independent Police Review Authority, which allowed officers time to construct their narratives accordingly. Historically, many of the collective bargaining agreements for Chicago Police Department employees have included specific “limitations on transparency and protections that inhibit accountable government”¹⁰⁷ by enabling officers to lie about misconduct. In 2019, the Coalition for Police Contracts Accountability (CPCA), of which Chicago Appleseed Center for Fair Courts and the Chicago Council of Lawyers are members, provided recommendations to the City Council and Mayor of Chicago to eliminate the police contract provisions “that discourage people from filing complaints, make it easy for officers to conceal the truth, and obstruct investigations into claims of misconduct.” The CPCA stated that until the harmful provisions in police contracts are changed, CPD officers will continue to operate under a separate – and ultimately unequal – system of justice:

For decades, the Chicago Police Department has had a “code of silence” that allows officers to hide misconduct. The Fraternal Order of Police (FOP) Lodge 7 and the Illinois Policemen’s Benevolent and Protective Association (PBPA) union contracts with the City of Chicago effectively make this “code of silence” official policy, making it too hard to identify police misconduct and too easy for police officers to lie about it and hide it.¹⁰⁸

Sometimes this results in officers attesting to stories about events to which they were not privy. This strategy can be effective, as one experienced defense attorney expressed to during our interviews, since it is very hard to counter the police narrative unless multiple officers are telling different stories. They may use the statement “I do not recall” to get around inconsistencies or things that do not add up in cases.

“**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.”**”

In reviewing Chicago Police Board decisions over the last eight years related to Rule 14 violations – cases where officers make written or oral false reports – we found several cases where officers appeared to consult each other before constructing false statements. For example, in a July 25, 2013, incident, Officers Robert Lobianco and Kevin Fry responded to a call related to a woman screaming for help. A “Mr. Vasquez” was charged with domestic battery and resisting arrest; Fry and Lobianco both made reports that Vasquez was lying on top of a woman at the scene and that they had to pull him off of the woman, when in fact, video evidence showed that he was standing and preparing to open the door before officers kicked it down.¹⁰⁹ Both Lobianco and Fry committed perjury in a criminal trial and were fired for Rule 14 violations.¹¹⁰ Without this video

¹⁰⁷ See <https://www.cpcachicago.org/the-recommendations>

¹⁰⁸ Agnew, S. (2019). “Ending Code of Silence Policies in the Chicago Police Department’s Collective Bargaining Agreements” for Chicago Appleseed Center for Fair Courts: <https://www.chicagoappleseed.org/2019/12/06/ending-code-of-silence-policies-in-the-chicago-police-departments-collective-bargaining-agreements/#:~:text=For%20decades%2C%20the%20Chicago%20Police,allows%20officers%20to%20hide%20misconduct>

¹⁰⁹ Chicago Police Board Case No. 17 PB 2933 (2018), accessible at <https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/17PB2933.pdf>

¹¹⁰ *Id.*

evidence, it is unlikely that corresponding police reports by the partners would have been uncovered as lies.

Another observable narrative phenomenon is the repetition of certain stories. For example, in driving under the influence cases, officers testify in front of the same Cook County judge frequently. A defense attorney who has watched many of these trials noticed that facts are repeated almost as if they were rote, even when cases occur in different locations and at different times. Our interviewees also noted that stories sometimes seem pre-planned or fabricated in order to establish probable cause. By establishing probable cause, police officers are rarely punished for activities like unlawful searches.

FINDING 3.

THE INCREASED USE OF BODY-WORN CAMERAS HAS PROVIDED A TOOL TO BETTER HOLD POLICE ACCOUNTABLE FOR THEIR ACTIONS, BUT OFTENTIMES, THESE CAMERAS ARE NOT ACTIVATED.

Much of academic literature seems to primarily view police body-worn cameras (BWCs) as having a positive impact on policing and exposing police misconduct.¹¹¹ Yet, there are many issues that arise in terms of how well police officers utilize these body-worn cameras, the consequences cops may

face when they fail to utilize the technology properly, and how, if at all, that footage is exposed to and accessed by the public.¹¹²

The increased use of body-worn cameras has provided a tool to better hold police accountable for their actions but are not always properly utilized or made public.

A TOOL TO EXPOSE LYING

Most of our interviewees agreed that body-worn cameras are helpful – at least in some ways – to identify police perjury. Assessing the accuracy of a police narrative, as compared to a witness or defendant narrative, is very difficult given the nuances of the situation—and may occasionally be an objective versus subjective problem. When considering if an officer is telling the truth, one must consider, according to one interviewee: “what, from an objective perspective, was the officer privy to in the context of what he is talking about? What was subjective to the officer?” **The frequency of discrepancies between filmed encounters and the official police story call into question the complex phenomenon of what is subjective to officers and what is objective.**

One interviewee mentioned difficulties in assessing what information an officer is actually privy to and what they miss in their experience of a confrontation. One person stated that video footage made it harder for judges to avoid calling

¹¹¹ See e.g., *supra* note 20; Maskaly, J., Donner, C., Jennings, W. G., Ariel, B., & Sutherland, A. (2017). The Effects of Body-Worn Cameras (BWCs) On Police and Citizen Outcomes: A State-of-the-Art Review. *Policing: An International Journal of Police Strategies & Management* 40(4), accessible at https://www.researchgate.net/publication/321127770_The_effects_of_body-worn_cameras_BWCs_on_police_and_citizen_outcomes_A_state-of-the-art_review; White, M., Gaub, J., & Padilla, K. (2021). “Impact of BWCs on Citizen Complaints: Directory of Outcomes,” accessible at <https://bwctta.com/impact-bwccs-citizen-complaints-directory-outcomes>

¹¹² See e.g., Letourneau, D. (2015). Police Body Cameras: Implementation with Caution, Forethought, and Policy. *University of Richmond Law Student Publications* 50, accessible at <https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1118&context=law-student-publications>; Thomas, E. (2016). The Privacy Case for Body Cameras: The Need for a Privacy-Centric Approach To Body Camera Policymaking. *Columbia Journal of Law and Social Problems* 50(2), accessible at <http://jlsplaw.columbia.edu/wp-content/uploads/sites/8/2017/03/50-Thomas.pdf>

out lies, but that some judges continue to do so. Others highlighted the importance of proof of perjury beyond just evaluating credibility, with one person saying that video makes it much harder to ignore misconduct:

It's easy with the videos because it's literally...the jury, the judge, and I...all looking at the [same] screen [and] what the officer says is not depicted on the screen [but] he's on the stand swearing that we should see things differently.

Much has been written about the case of Jason Van Dyke (the former CPD officer who murdered teenager Laquan McDonald while on the job) where video evidence completely contradicted previous police accounts, resulting in charges against Van Dyke for first degree murder the day the video was released.¹¹³ Importantly, the City of Chicago tried to cover up this evidence by approving a \$5 million settlement with Laquan McDonald's family, which included an agreement that the video not be released.¹¹⁴ Some of our interviewees specifically mentioned this case, stating that the ruling that the footage be released ensured a just outcome for Laquan McDonald's family.

MANIPULATION & LOW QUALITY FOOTAGE

Several people we interviewed instead believed that body-worn cameras have little effect on

alleviating police perjury—particularly citing grainy or dark footage and the possibility for manipulation. One person explained that, while body-worn cameras are “more helpful than not,” the footage is “really not as clear as the public seems to think.” An interviewee stated that body camera footage can be manipulated in various ways including because of the way that sound is captured (when an officer activates their camera, it saves the prior thirty seconds of video, as well as everything going forward, but only saves audio going forward)¹¹⁵ or the manipulating of body positions. Several interviewees focused on the quality and clarity of the footage, which ranges from acceptable to poor.

Body-worn cameras are, at times, not activated at all, even though, in many circumstances, it is a violation of the Chicago Police Department's rules for an officer to fail to do so. For example, on November 28, 2019, Officer Mark Johnson failed to activate his body camera in an incident with Bernard Kersh and proceeded to make false reports after the event. During the incident, Johnson grossly abused Kersh and dragged him into the police vehicle when he was unconscious. It was only thanks to bystander video that the truth of the event came out and the officers involved were discharged.¹¹⁶

Another concern mentioned by interviewees is that the CPD does not follow best practices with respect to body camera footage, nor does it use the information effectively. **People specifically**

¹¹³ *Supra* notes 24 and 27.

¹¹⁴ See “Jason Van Dyke Trial, Laquan McDonald Shooting Timeline” for *ABC-7 Chicago*: <https://abc7.com/van-dyke-trial-laquan-mcdonald-jason-case/4147086/>

¹¹⁵ See e.g., Malagon, E. (2018). “Why There Was No Audio and Other Questions Answered about Chicago Police Video Taken Before Harith Augustus Killed” for *Chicago Tribune*: <https://www.chicagotribune.com/news/ct-met-why-no-audio-police-shooting-20180719-story.html>; Chiarito, B. (2021) “Why Were Police Told to Turn Off Body Cameras Minutes After Adam Toledo Shooting? It's Standard Policy, Department Says” for *Block Club Chicago*: <https://blockclubchicago.org/2021/04/12/why-were-police-told-to-turn-off-body-cameras-minutes-after-shooting-adam-toledo-its-standard-policy-police-sergeant-says>

¹¹⁶ See <https://www.actioninjurylawgroup.com/cases/bernard-keresh>

cited failures to turn on body cameras, inadequate record-keeping of footage, and failures to release the footage to the public.

FINDING 4.

BRADY LISTS AND "DO NOT CALL" LISTS ARE IMPORTANT TOOLS FOR PROSECUTORS TO ENSURE THEY AVOID RELYING ON TESTIMONY OF COPS WHO ARE KNOWN TO LIE, BUT THESE LISTS ARE UNDERUTILIZED—ESPECIALLY COOK COUNTY.

Literature and data from our interviews indicate that Brady lists and "Do Not Call" lists are an imperfect but important tool in combating police perjury. Brady lists (that 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. These lists are not technically reforms, as they collect and impart information that the Constitution requires to be disclosed anyways, but they are rare.¹¹⁷ "Do Not Call" lists, however, go slightly further in that: 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.¹¹⁸

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.

EXTREME UNDERUTILIZATION

Unfortunately, our research found that Brady lists and "Do Not Call" are deeply underutilized in the Cook County Circuit Court. One defense attorney we interviewed mentioned that in decades of practice, they had only been given perjury-related Brady material twice:

Only two times ever did the State's Attorney give me something in writing, saying, "hey, this cop got busted for falsifying reports."

The case of former Chicago Police Sergeant Ronald Watts is one of the few instances where a Brady or "Do Not Call" list is known to have been created. As explained prior, Watts led a police unit that framed people for crimes and stole money from drug dealers at the Ida B. Wells public housing community on the South Side of Chicago. Watts and his crew made hundreds of false arrests and he was eventually arrested for stealing money from an FBI informant in 2012. Exposure of Watts' scheme led to the largest mass exoneration in Cook County.¹¹⁹ In response, State's Attorney Kim Foxx's office created a list of 10 Watts' associates who would no longer be called for testimony, and the Chicago Police Department put many of these officers on desk duty (although most returned to regular duty at some point and at least nine remain employed by the CPD today).¹²⁰

¹¹⁷ *Supra* note 45.

¹¹⁸ *Supra* note 45.

¹¹⁹ Mitchell, C. (2022). "In Cook County's Largest Mass exoneration, A Judge Tosses 44 Convictions Tied to a Corrupt Cop" for *WBEZ Chicago*: <https://www.wbez.org/stories/judge-tosses-44-more-convictions-tied-to-corrupt-chicago-cop/d9ede2d7-2f63-49b5-aa65-d250ec072cc5>

¹²⁰ *Id.*

“Do Not Call” lists may exist in some informal capacity in the CCSAO. Although the Cook County State’s Attorney’s Office is the most transparent it has ever been, in terms of public data access, under Kim Foxx, it lacks transparency to the public in its practices related to Brady material. For this report, we sent a FOIA request for these policies and did not receive a response.

It is unclear if an official policy exists or if individual Assistant State’s Attorneys decide how to deal with Brady issues independently.

Emails obtained by *USA Today*¹²¹ in 2019 through a FOIA request present a picture of a non-systematic practice for alerting Assistant State’s Attorneys of police officers who may have credibility issues. Although there is no written description of the policy, a review of the emails suggests that the practice is as follows:

- (1) An email is sent to the CCSAO if it is discovered that an officer has engaged in misconduct or has been found incredible by a judge, and a search is done of any open cases where the officer is a witness.
- (2) Prosecutors are instructed to try and proceed on the case without the testimony of the officer who has engaged in misconduct or has been found to have lied; if they *must* use them as a witness, ASAs present the defense with a short statement communicating the fact that the officer has been found to have testified falsely or lied in a previous case.
- (3) A ‘flag’ is created in the CCSAO’s internal database to signal that a notice of disclosure to the defense is required in the future.

It is not clear what the policy is for determining that an officer has lied or been found not credible. *USA Today* found there were a total of 51 such emails. The majority involved disclosing that officers had been charged with a crime unrelated to perjury. In 13 cases, the notices were generated after a judge specifically found an officer not to be credible on the witness stand.

FLAWS & NON-UNIFORMITY

A common criticism of “Do Not Call” lists is that they can be bypassed and are not generally public. “Clean” officers can put their names on the paperwork, or a partner can provide testimony instead of an officer who has been flagged. And further, the lists are not uniform with respect to what information is to be included, how long the list will be effective, and the circumstances under which the information is disclosed to the defense.¹²² Our interviews echoed these criticisms.

Two interviewees mentioned that there are individual prosecutors that keep their own “Do Not Call” lists. Some stated that ASAs know which police officers use the same narratives and stories over and over again. One interviewee commented that for several years, there have been rumors that there is a fairly extensive “Do Not Call” list at the CCASO with the names of police officers that will not be called to testify in court.

While interviewees believed “Do Not Call” lists could be helpful, they lamented that they should be made public and that they should contain more information. Interviewees, ranging from activists to judges, expressed a desire for

¹²¹ *Supra* note 34.

¹²² *Supra* note 45.

greater access to “Do Not Call” lists. Almost all of the interviewees who addressed Brady lists were of the belief that if they are going to be used, they need to be public, and scholars agree that the best practices for keeping these lists include public accessibility.¹²³ One interviewee focused on the importance of greater accountability for police officers that land on these lists, and said that if there are prosecutors who use “Do Not Call” lists, they should be required to submit those lists to COPA and explain the basis for which each officer is included on that list. While not perfect, the literature and our interviews indicate that these lists are a “signal to both law enforcement and the community that prosecutors will not be bullied into burying police misconduct.”¹²⁴

FINDING 5.

POLICE WHO LIE, FILE FALSE REPORTS, AND PERJURE THEMSELVES IN COURT RARELY FACE SOCIAL OR CAREER CONSEQUENCES, BUT THE PEOPLE WHO ARE IMPACTED BY THESE LIES ARE PUNISHED IMMENSELY.

While there are rarely consequences for officers who lie, there are huge 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 out of power.

Police who lie and file false reports rarely face consequences *at all* comparable to

the consequences experienced by the individuals and communities directly impacted by these lies.

IMPACT ON INDIVIDUALS

Police lying and perjury can lead to the wrongful incarceration of innocent people; people face the loss of their freedom and livelihood if convicted of certain charges, as well as a host of other collateral consequences, including impacts to their careers and their social relationships. The ripple effect of police perjury affects more than just those convicted—in many cases families lose their breadwinner, children lose their parent (and those children are ultimately more likely to live in poverty, become involved in the system, and suffer from depression), and the community suffers from having to fill the holes left by wrongfully-convicted people and from the idea that perhaps the wrong person was punished.¹²⁵

Even if perjury does not lead to a conviction or the charges are ultimately dismissed, the fact that allegations were levied in the first place can follow a person for the rest of their life.¹²⁶ One person interviewed spoke about their client who had spent seven years in prison based on police perjury. Yet another interviewee shared an experience they had where, had information on the police perjury been available, no one would have gone to jail. A mother we interviewed discussed how her son was harmed when the

¹²³ *Supra* note 45.

¹²⁴ *Supra* note 45.

¹²⁵ Johnson, V. (2017). Bias in Blue: Instructing Jurors to Consider the Testimony of Police Officer Witnesses with Caution. *Pepperdine Law Review* 44(2). Accessible at <https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=2431&context=plr>

¹²⁶ *Supra* note 43.

cops lied about him:

All of this happened because of these police officers who go on a witness stand and lie and lie and lie and lie about how they picked them up, what time, what they did to them. My son was beat up—they were all beat up and threatened.

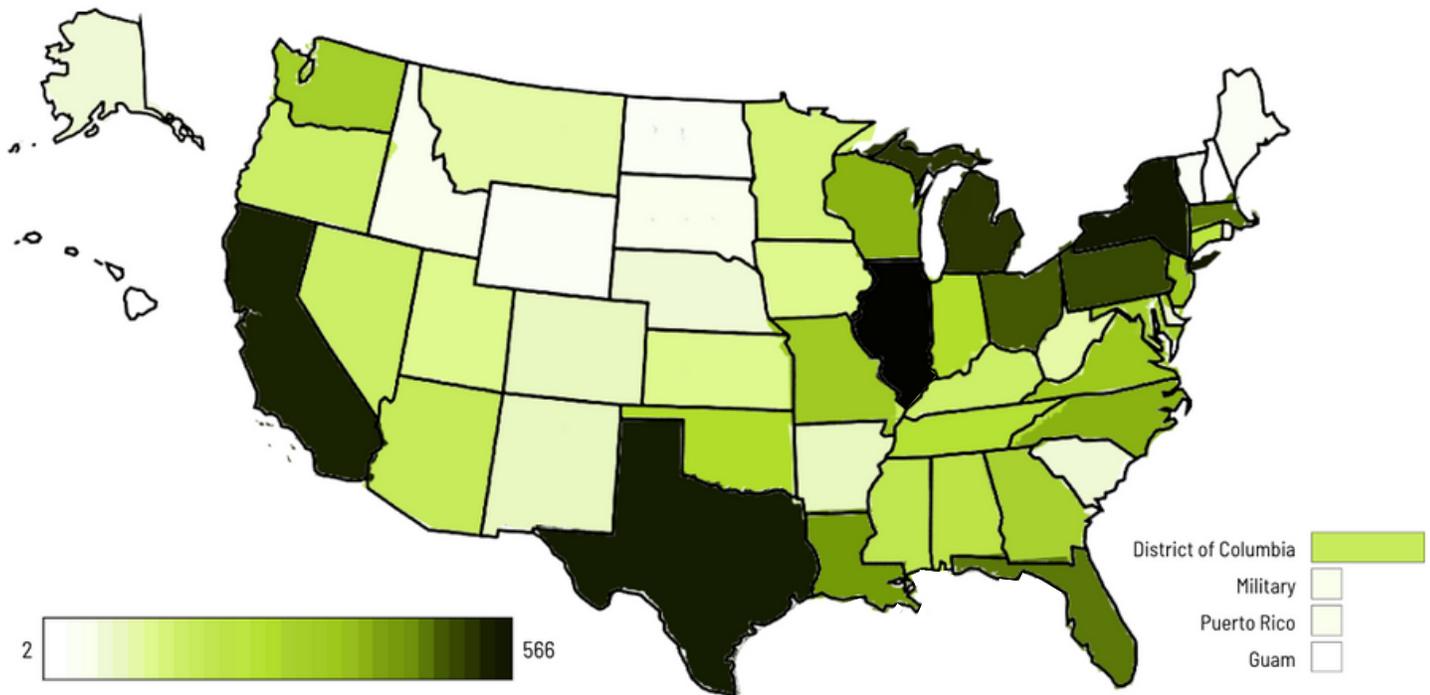
IMPACT ON COMMUNITIES

Beyond the impact on individuals, police perjury affects whole communities' perceptions of "justice." Interviewees highlighted the societal implications of police perjury: It undermines faith in the court system. For example, a government lawyer, like a State's Attorney, "isn't just another lawyer, they are serving the public interest," as one interviewee said.

An experienced attorney noted a "credibility gap" wherein those most directly impacted by the criminal legal system stop believing officers are serving their interests. Literature shows that the public is less trustful of the criminal legal system when it refuses to hold its employees accountable for their actions.¹²⁷ Police perjury risks "eroding the public's confidence in law enforcement officials."¹²⁸ Public trust is perhaps the most important social good we have, and police perjury diminishes it.¹²⁹

The extremely high rate of exonerations in Cook County is another clear indicator of how rampant police dishonesty is in our community. Cook County leads the country in total number of exonerations, with over 230 since 1989;¹³⁰ according to 2017 census data, per capita, Cook County ranks second nationally in number of exonerations (behind

FIGURE 2:
ALL EXONERATIONS BY STATE SINCE 1989



Data in Figure 2 is from The National Registry on Exonerations and includes all federal and non-federal exonerations as of October 3, 2022. See Footnote 131 for citation details; for the specific exoneration, population, and per capita data from each state and territory, see the Appendix.

¹²⁷ *Supra* note 45.

¹²⁸ *Supra* note 50.

¹²⁹ *Supra* note 8.

¹³⁰ See The National Registry on Exonerations "Top Ten Counties" (2017): <https://www.law.umich.edu/special/exoneration/Pages/Top-Ten-Counties.aspx>

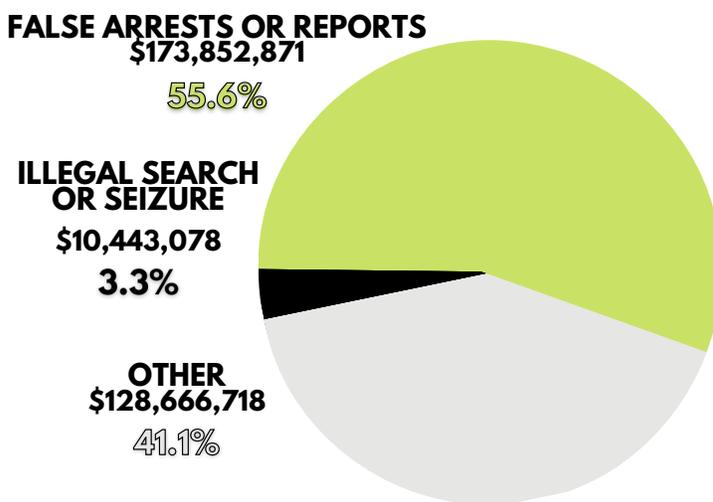
Orleans Parish in Louisiana). **Of 533 exonerations in Illinois since 1989, 78% (418) are labeled with “perjury/false accusation” as a contributing factor.**¹³¹ **In perjury-related cases where the accused was eventually exonerated, 45% of cases are for drugs and 43% are murders.**

In Chicago and Cook County, Black communities are disproportionately harmed by policing and incarceration. According to the Cook County Public Defender’s Postconviction Initiative, at least 93% of exonerations in Cook County are due to police misconduct, and Black people account for 82% of those exonerations.¹³² According to an analysis of Cook County Jail data by *Injustice Watch*, Black people are incarcerated today at 17 times the rate of White people.¹³³ Chicago Appleseed Center for Fair Courts’ own analysis¹³⁴ of 536,000 CPD arrest records from 2014 to 2020 found that the police districts that held arrested people at the station for the longest average amounts of time were located in South and West Sides (District 2 and District 7, about 14.5 Hours; District 4, District 5, and District 12, about 13 Hours; and District 19 and District 25, about 10 Hours). The Chicago communities with the longest arrest holding times overlap with majority Black neighborhoods. This suggests that race, location, and policing patterns may be more influential over whether someone is

held for an excessively long period in a police station than what they are charged with.

Police perjury and lying in Chicago likewise affects the community because of the enormous sums that taxpayers spend on settling police misconduct lawsuits. The City of Chicago spent \$173,852,871 related to false arrests or false reports between 1981 and 2016; from 2003 to 2016, cases related to illegal search and seizure cost \$10,443,078.¹³⁵ From 2017 and 2020 alone, the City of Chicago paid over \$227 million in police misconduct lawsuits¹³⁶ with 21% of cases having

**FIGURE 3:
CHICAGO POLICE
SETTLEMENTS BY CATEGORY**



Data for Figure 3 comes from the *Chicago Reporter*, accessible here: <https://projects.chicagoreporter.com/settlements/search/cases>

¹³¹ See The National Registry on Exonerations “Exonerations in the United States” [Map] (2022): <https://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx>

¹³² See <https://bja.ojp.gov/funding/awards/15pbja-21-gg-03606-wrnrng>

¹³³ McGhee, J. & Rutecki, J. (2021). “Fewer People in Cook County are Being Charged with Crimes. Why are Black People Making Up a Larger Share of Defendants?” for *Injustice Watch*: <https://www.injusticewatch.org/news/courts/2021/the-circuit-racial-disparities-explainer/>

¹³⁴ Chae, J. & Staudt, S. (2020). “We Analyzed 536,000 CPD Arrest Records Spanning A Period from 2014 to 2020. Here’s What We Found.” For Chicago Appleseed Center For Fair Courts: <https://www.chicagoappleseed.org/2020/12/10/cpd-arrest-holding-times/>

¹³⁵ Note that in many of the cases discussed here, from the accounts online, it is not entirely clear when police committed perjury themselves, as opposed to coercing and/or suborning perjury or submitting false reports. See “Settling for Misconduct” [Database] by *Chicago Reporter* (2017): <https://projects.chicagoreporter.com/settlements/search/cases>

¹³⁶ Witzburg, D. & Carlson, M. (2022). “Use of Litigation Data in Risk Management Strategies for the Chicago Police Department” for the City of Chicago Office of Inspector General: <https://igchicago.org/wp-content/uploads/2022/09/Use-of-Litigation-Data-in-Risk-Management-Strategies-for-the-Chicago-Police-Department.pdf>

false arrest as its primary cause category (although only 4% of lawsuit payouts go towards false arrests). This money could have been spent on bettering our public schools, our infrastructure, mental healthcare, or other positive community-based interventions, but instead, it was

required to alleviate the consequences directly caused by police officers' misconduct. Taken together, these sources paint a clear picture of systemic police lying at a significant cost to community members.

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 find that there are five main ways that the system can intervene to prevent these lies and recommend that the legal system work to:

- **Prevent and deter** officers from using false statements to justify police actions, such as search warrants.
- **Monitor** officers when they are in the field,
- **Enforce consequences** when officers lie.
- Improve **transparency**, and
- Promote long-term **cultural change**.

LIMIT OPPORTUNITIES FOR LYING

The culture and nature of policing provides ample opportunity for officers to lie to advance their

personal or departmental agendas. Steps must be taken by various legal system actors to limit officers' opportunities to lie and to deter them from being in communities under false pretenses.

1. OFFICERS SHOULD FACE HIGHER SCRUTINY BEFORE BEING GRANTED SEARCH WARRANTS TO DISCOURAGE FRIVOLOUS WARRANTS.

Although both CPD and the CCSAO have recently updated their search warrant procedures in response to criticism,¹³⁷ Chicago Appleseed and the Council hold that these requirements do not go far enough. Police officers should face further review—particularly with the affidavit application itself, officers should be required to meet a certain minimum word count on their explanation of the circumstance. There should be more questions asked and information required to minimize boilerplate language and vague drafting that can enable lying later. For example, in conflicts that may occur in the presence of children, a search warrant application could require extra information,

¹³⁷ See Masterson, M. & Cherone, H. (2021). "CPD Unveils Revised Search Warrant Policies Following Botched Raids" for WTTW: <https://news.wttw.com/2021/05/14/cpd-unveils-revised-search-warrant-policies-following-botched-raids> & Buckley, M. (2022). "After High-Profile Botched Police Raids, Cook County Prosecutors Implementing New Requirements on Search Warrants" for *Chicago Tribune*: https://www.chicagotribune.com/news/breaking/ct-cook-county-states-attorney-new-warrant-policy-20221209-1s4p42wqvbe7xnazyadey3qyk4-story.html?utm_source=newsletter&utm_medium=email&utm_campaign=Breaking%20News&utm_content=861670638990

minimizing the likelihood of firearm display and usage in front of them.¹³⁸ Increasing the burden on police to justify their searches and provide specific information at the time of warrant-seeking will reduce frivolous and reckless raids as well as reduce the opportunity for false reports.

2. A ROTATION OF JUDGES SHOULD BE ADOPTED IN ORDER TO CURB "JUDGE SHOPPING" FOR SEARCH WARRANT APPROVAL.

Another aid to generic search warrant affidavits is "judge shopping," where officers pick from any of the seventy Cook County judges available to approve warrants and rely those who they believe are most likely to grant warrants without hesitation.¹³⁹ Unlike the Federal system, which uses randomly rotating magistrate judges to approve warrants, the Cook County Circuit Court is prone to gaming.¹⁴⁰ Cook County should employ a rotation system for judges reviewing search warrants to prevent police officers from selecting a judge they believe will be amenable to approving their warrant. Additional steps in this process that could help thwart officers from "judge shopping" include requiring a material change of circumstance to reapply for a warrant on the same person if the first is denied and limiting the time window following an incident or information acquisition to obtain a warrant.

MONITOR OFFICERS IN THE FIELD

Another way to limit opportunities for officers to lie is by providing better oversight and monitoring when they are in the field.

3. BODY-WORN CAMERA POLICIES IN ILLINOIS MUST CHANGE SO FOOTAGE IS PUBLICLY ACCESSIBLE & POLICE DEPARTMENTS MUST ENSURE THAT OFFICERS USE BWCS PROPERLY.

Body-worn cameras are a crucial piece of technology that can (a) deter officers from making false statements because they know their actions are being recorded and (b) catch police officers in lies when they happen. In order to ensure proper community accessibility and that officers are held accountable for their actions, the Illinois General Assembly should consider legislation requiring that (1) BWC footage requests are released within 48 hours and (2) footage for every arrest is kept on file for at least three years, with any incidents involving police violence kept on record for ten years.¹⁴¹ Current Illinois policy states that all recordings must be kept on file for 90 days, and recordings of "flagged encounters" must be kept for two years (encounters are flagged when a complaint is filed, an officer discharged

¹³⁸ "Attorney General Raoul Calls for Further Reforms to the Chicago Police Department's Search Warrant Policy" [Press Release from the Illinois Office of the Attorney General]. (2021). Accessible at https://illinoisattorneygeneral.gov/pressroom/2021_03/20210324.html

¹³⁹ "Chicago Police Raids Rarely Turn Up Drugs. So Why Do Judges Keep Signing Off On Bad Search Warrants?" (2021) for *CBS News*: <https://www.cbsnews.com/chicago/news/chicago-police-raids-rarely-turn-up-drugs-so-why-do-judges-keep-signing-off-on-bad-search-warrants/>

¹⁴⁰ McCabe, P., Hon. Newman, M., & Hon. Gelpi, Jr., G. (2016). A Guide to the Federal Magistrate Judges System: A White Paper Prepared at the Request of the Federal Bar Association. Accessible at <https://www.fedbar.org/minnesota-chapter/wp-content/uploads/sites/54/2021/12/A-Guide-to-the-Federal-Magistrate-Judges-System.pdf>

¹⁴¹ See e.g., <https://igchicago.org/wp-content/uploads/2020/09/OIG-Review-of-Compliance-with-the-City-of-Chicagos-Video-Release-Policy-for-Use-of-Force-Incidents.pdf>; https://www.google.com/url?q=http://www.chicagoappleseed.org/wp-content/uploads/2020/06/3-Gen-Order-G03-02-Use-of-Force-2-29-2020.pdf&sa=D&source=docs&ust=1669669704075460&usq=A0vVaw3YAB_VJQV96zEoplXKsWGO

a firearm during the encounter, death or great bodily harm occurred to a person in the recording, the encounter resulted in a detention or arrest (not including minor traffic or business offenses), the officer is subject to an internal investigation, the recording is deemed to have evidentiary value in a criminal prosecution, or at the officer's request).¹⁴²

The Chicago Police Department and all other police departments in Cook County should create and enforce protocols that penalize officers who fail to turn on their cameras for any interaction or arrest. This protocol should be available to the public in order to promote transparency and community trust. Given that the CPD is one of the most resourced police departments in the country,¹⁴³ the proposed changes will not require additional funding as they do not require more personnel, only a change in procedure.

4. PROSECUTORS SHOULD BE REQUIRED TO REVIEW BWC AND DASHBOARD CAMERA FOOTAGE BEFORE CHARGING.

State's Attorneys should be required to review body-worn camera footage whenever it is available in order to ensure that the footage matches the reports made by officers, to avoid frivolous charges and arrests as much as possible. Reviewing body-worn camera footage would act as an alternate source of information to police reports, reducing reliance on police officers' recounting of

versions of events. This practice places the burden on the State's Attorneys to perform initial, basic due diligence in order to prevent people from being wrongfully incarcerated or charged due to police misconduct.

ENFORCE CONSEQUENCES FOR LYING

Law enforcement officials who lie, make false statements, or file false reports must face legal, social, and/or professional consequences.

5. THE COOK COUNTY STATE'S ATTORNEY'S OFFICE MUST CREATE AND ENFORCE A PUBLIC "DO NOT CALL" LIST & AN ANONYMOUS REPORTING SYSTEM.

This list should contain the names of any law enforcement official in Cook County who has lied during any part of their duty—including those who have perjured themselves in the past or have been found to have made false reports elsewhere. Cops who lie should no longer be able to testify and should have their names published publicly for transparency. Chicago Police officers are paid time-and-a-half while testifying and likely would be pulled from working in communities because of their inability to testify. Furthermore, a procedure must be created that makes it easy for prosecutors to report people to be considered for this list. A system should be created

¹⁴² See Illinois Law Enforcement Officer-Worn Body Camera Act (50 ILCS 706): <https://www.ilga.gov/legislation/ilcs/ilcs4.asp?ActID=3662&ChapterID=11&SeqStart=100000&SeqEnd=1000000>

¹⁴³ Turner, N. (2020). "What Policing Costs: A Look At Spending In America's Biggest Cities" for Vera Institute of Justice: <https://www.vera.org/publications/what-policing-costs-in-americas-biggest-cities>

wherein the onus is not on State's Attorneys and defense attorneys to decide if a police officer should be added to a "Do Not Call" list. A prosecutor or lawyer should be able to report their concerns confidentially through an institutional mechanism – potentially through COPA – which would help determine if the cop should be added to a "Do Not Call" list.

This happened because of these police officers who go on a witness stand and lie and lie and lie.

6. INCREASE POLICE OVERSIGHT BY GIVING THE OFFICE OF THE INSPECTOR GENERAL AUTHORITY TO OVERRULE THE BUREAU OF INTERNAL AFFAIRS' FINDINGS.

The need for police accountability is supported by many scholars¹⁴⁴ and has overwhelming support from community members we interviewed. We recommend that action be taken to give an independent agency, such as the Office of the Inspector General (OIG), oversight over misconduct complaints. The OIG currently has oversight over the CPD's Bureau of Internal Affairs (BIA), but it is unable to overrule BIA investigations. The current arrangement allows a lack of accountability by the BIA. To remedy this, the Inspector General should be given the power to overrule the BIA's findings. This could allow for the prosecution and punishment of more police officers who have been found to have made false reports.

IMPROVE TRANSPARENCY

There are many ways to improve transparency of police actions and departmental protocol, but to combat police perjury, it is also necessary for prosecutors' procedures to be more transparent.

7. THE STATE'S ATTORNEY'S OFFICE SHOULD BE MORE TRANSPARENT WITH ITS PERFORMANCE MEASURES AND PROMOTION CRITERIA & PUBLISH ITS PROTOCOL FOR DEALING WITH POLICE PERJURY AND FALSE REPORTS.

The "win at all costs" approach to prosecuting cases has led to prosecutors' willingness to accept police officer reports with limited questioning. In order to disrupt a "win at all costs" mindset, the CCSAO should immediately release their promotion criteria and work to create criteria that do not emphasize winning cases, but rather prosecutorial integrity and fairness. This new incentive structure should encourage ASAs to ensure that justice is brought to the people in each case. In addition, the Cook County State's Attorney's Office should release any protocols related to police perjury or false reports and publicize their "Do Not Call" lists. Access to this information would help community members hold both police and State's Attorneys responsible for doing their due diligence in instances where perjury or false reports are suspected.

¹⁴⁴ See e.g., *supra* note 45; Bloom, R. & Labovich, N. (2021). The Challenge of Deterring Bad Police Behavior. *Case Western Reserve Law Review* 71(3). Accessible at <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=4918&context=caselrev>

PROMOTE LONG-TERM CULTURAL CHANGE

Culture - including the acceptance of the “code of silence” and the perpetuation of “win at all costs” prosecution - must change in order to effectively limit police false reporting and perjury in the future.

8. TRAIN PROSECUTORS AND JUDGES TO HELP THEM AVOID CASES THAT RELY ON POLICE FALSE REPORTS AS EVIDENCE.

Training is necessary to ensure that prosecutors and judges know how to address issues of false reports. Prosecutor training should focus on teaching prosecutors how to check police and other witness statements for accuracy and procedures for handling cases in which police misconduct occurs. Similarly, judges' training should focus on being attentive to potential false statements in their courtrooms and how to address suspected false statements when they do occur. Both prosecutors' and judges' trainings should focus on explicit conversations about pro-police bias in the legal system and the effect it has on case outcomes and communities with the goal of diminishing the bias. Chicago Appleseed and the Council have decided not to make a recommendation for police training, because there is a strong body of research demonstrating that police training is not effective to alleviate misconduct.¹⁴⁵

RECOMMENDATIONS SUMMARY

LIMIT OPPORTUNITIES

- Police officers should face higher scrutiny before being granted search warrants in order to discourage frivolous warrants.
- A rotation of judges should be adopted in order to curb “judge shopping” for search warrant approval.

MONITOR OFFICERS

- Illinois body camera policy must be changed to make footage more publicly accessible and police departments must ensure that police officers use their cameras properly.
- State's Attorneys should be required to review any body-worn and dashboard camera footage before charging.

ENFORCE CONSEQUENCES

- The Cook County State's Attorney's Office must create and enforce a publicly accessible “Do Not Call” list and create an anonymous reporting system.
- Increase police oversight by giving the Office of the Inspector General more authority to overrule the Chicago Police Department's Bureau of Internal Affairs' findings.

IMPROVE TRANSPARENCY

- The Cook County State's Attorney's Office should provide transparency on prosecutor performance measures and promotion criteria and publish their police perjury and false report protocol.

CULTURE CHANGE

- Prosecutors and judges should be given training to help them avoid trying cases that rely on police false reports as evidence.
- The Chief Judge of the Circuit Court of Cook County should call for the creation of a commission focused on police perjury and false reports to investigate the extent of the issue and provide recommendations for systemic change.

¹⁴⁵ See e.g., Preston, C. (2021). “Police Training is Broken. Can It Be Fixed?” for The Hechinger Report: <https://hechingerreport.org/police-education-is-broken-can-it-be-fixed/>; Mahbubani, R. (2020). “Officers Already Get Training to Deal with Biases They May Not Know They Have, but There's No Evidence It Actually Works” for *Insider*: <https://www.insider.com/police-defensive-deescalation-techniques-implicit-bias-training-2020-6>

9. THE CHIEF JUDGE OF COOK COUNTY SHOULD CREATE A COMMISSION TO INVESTIGATE THE EXTENT OF POLICE PERJURY AND PROVIDE RECOMMENDATIONS FOR SYSTEMIC CHANGE.

A commission should be created that is similar to the late 1980s Special Commission on the Administration of Justice in Cook County,¹⁴⁶ nicknamed the Solovy Commission, which focused on corruption within the Cook County legal system. The mission of this commission should be to encourage accurate testimony in Cook County Courts, provide accountability, and increase trust in the system. It should work to find and implement

solutions to perjury, including the issues raised in this report. The Office of the Chief Judge (OCJ) could collaborate with Chicago's newly formed Community Commission for Public Safety and Accountability to convene this commission. To be successful, this commission would require cooperation from all judicial system players and must be diverse, including primarily people who have been impacted by police perjury, private defense attorneys and Public Defenders, and include judges, Assistant State's Attorneys, members of COPA, the OIG, and law enforcement. The commission should strive to dismantle systems that encourage perjury and false reports and create an environment within the Cook County Courts where truth-telling thrives.

FUTURE RESEARCH

Future research would benefit from greater analysis of the role Franks Hearings may have in curbing police perjury. A Franks Hearing is an evidentiary hearing dealing with defendants' rights to challenge evidence collected on the basis of a search warrant that may have been granted on the basis of false statement.¹⁴⁷ The case of U.S. Supreme Court case of *Franks v. Delaware* (1978) affirmed a person's right to "challenge a warrant seizing their person, papers, or effects and otherwise outlining the case against them" and defined certain circumstances wherein a defendant can "assert that a police officer's

affidavit used to obtain a search warrant that yields incriminating evidence was based on false statements by the police officer."¹⁴⁸ The hearing is granted if a false statement was intentionally included in the affidavit and necessary to the finding of probable cause. It does not automatically result in suppression of evidence, and law enforcement can shield the majority of the information used in an affidavit, but nonetheless, these hearings may be a useful tool to challenge and limit police false reports as officers may be less likely to risk lying if it means evidence will be suppressed. The potential of Franks Hearings is a gap in our research.

¹⁴⁶ Final Report of the Special Commission on the Administration of Justice in Cook County (1988), accessible at <https://jenner.com/system/assets/assets/SpecialCommissionAdminJusticeSolovyReport1988.pdf>

¹⁴⁷ Second District of the Illinois Appellate Court Order No. 2-19-0654, filed September 3, 2021, in *People v. Johnson* (2021 IL App (2d) 190654-U), accessible at [https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/b84354ee-3ee4-4f26-9cf7-7f5eba3716b7/People%20v.%20Johnson,%202021%20IL%20App%20\(2d\)%20190654-U.pdf](https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/b84354ee-3ee4-4f26-9cf7-7f5eba3716b7/People%20v.%20Johnson,%202021%20IL%20App%20(2d)%20190654-U.pdf)

¹⁴⁸ See e.g., <https://definitions.uslegal.com/f/franks-hearing/>

CONCLUSION

Police perjury and false reporting is an endemic aspect of the Cook County legal system.

The Chicago Police Department, especially, has a long and disturbing history of ignoring police misconduct and rewarding cops who act unethically. When system stakeholders or community members call out perjury and false reporting, the CPD has been known to cause harm to whistleblowers.

This kind of dishonorable behavior not only undermines community trust in the court system, but most importantly hurts individuals, families, and communities—and has even condemned people to years of wrongful incarceration. In addition, the issue poses a financial burden on Cook County taxpayers who foot the bill for lawsuit settlements against police.

Unfortunately, despite several attempts at reform and clear codes and laws that perjury is illegal, the collective culture tolerating police misconduct and the fear of retaliation amongst legal system actors prevents cops who lie from being exposed and punished. The “code of silence” in the police department prevents officers from reporting instances of lying and often leads to police to construct narratives in court and before trial that fit their interests.

State’s Attorneys are in a unique position to address the issue of false reports and perjury but regularly lack the incentives and institutional support to do so. Similarly, judges have an important role to play in rooting out perjury by doing more to affirmatively consider credibility and identify false statements when they are evident but have not, historically, risen to the occasion.

The issue of police false reporting is so pervasive that it is seen as an open secret within the legal system and the community, creating a feeling of hopelessness among court actors and advocates alike. While the issue is insidious, it can be rooted out through a dedicated multi-pronged approach with an emphasis on systemic change. Legal system actors must work together to prevent and deter police officers from using false statements to obtain search warrants, monitor them when in the field, enforce consequences when they lie, increase transparency and accountability to the community, and promote long-term cultural change.

While this report has many policy recommendations, prime among them is for the court to create a commission of court actors, advocates, oversight agencies, and community members to encourage accurate testimony in the Cook County Circuit Court. In order to remedy this issue, stakeholders must convene with the goal of ensuring that all people involved in the Cook County justice system are met with just and prudent practices.

This report was researched and written by Izzy V. Laskero, Hannah E. Miller, Naomi Johnson, and Hanna Sharif-Kazemi, with additional research support from Kyle Davis, Max Lupin, Maya Simkin, and Sarah Staudt, and editing by Stephanie Agnew on behalf of Chicago Appleseed Center for Fair Courts and the Chicago Council of Lawyers.

APPENDIX: EXONERATIONS IN THE UNITED STATES SINCE 1989

The number of exonerations for each state or territory is current as October 3, 2022, and includes all known Federal and non-Federal cases in which a person was wrongly convicted and later exonerated. The table is ranked in order of number exonerations per capita for every 100,000 people in each state/territory.

	STATE/TERRITORY	TOTAL POPULATION	TOTAL EXONERATIONS	EXONERATIONS PER CAPITA per 100,000 people
1	Illinois (IL)	12,812,508	566	4.42
2	District of Columbia (DC)	689,545	25	3.63
3	Louisiana (LA)	4,657,757	82	1.76
4	New York (NY)	20,201,249	340	1.68
5	Michigan (MI)	10,077,331	159	1.58
6	Texas (TX)	29,145,505	442	1.52
7	Montana (MT)	1,084,225	16	1.48
8	Guam (GU)	153,836	2	1.30
9	Massachusetts (MA)	7,029,917	87	1.24
10	Wisconsin (WI)	5,893,718	71	1.20
11	Alaska (AK)	733,391	8	1.09
12	Oklahoma (OK)	3,959,353	43	1.09
13	Missouri (MO)	6,154,913	56	0.91
14	Connecticut (CT)	3,605,944	32	0.89
15	Mississippi (MS)	2,961,279	26	0.88
16	Pennsylvania (PA)	13,002,700	113	0.87
17	Ohio (OH)	11,799,448	100	0.85
18	Maryland (MD)	6,177,224	51	0.83
19	Delaware (DE)	989,948	8	0.81
20	Virginia (VA)	8,631,393	69	0.80
21	West Virginia (WV)	1,793,716	14	0.78
22	Nevada (NV)	3,104,614	23	0.74
23	New Jersey (NJ)	9,288,994	67	0.72

Table continued on next page.

This table was updated on January 11, 2023. The raw number of exonerations for each state and territory in this table from The National Registry of Exonerations (accessible at <https://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx>). The population information in the table is based on 2020 U.S. Census data (accessible at <https://state.1keydata.com/state-population.php>).

APPENDIX

Table continued from previous page.

	STATE/TERRITORY	TOTAL POPULATION	TOTAL EXONERATIONS	EXONERATIONS PER CAPITA per 100,000 people
24	California (CA)	39,538,223	280	0.71
25	Wyoming (WY)	576,851	4	0.69
26	North Carolina (NC)	10,439,388	72	0.69
27	Washington (WA)	7,705,281	53	0.69
28	South Dakota (SD)	886,667	6	0.68
29	Indiana (IN)	6,785,528	43	0.63
30	Utah (UT)	3,271,616	19	0.58
31	Kansas (KS)	2,937,880	17	0.58
32	Alabama (AL)	5,024,279	28	0.56
33	Rhode Island (RI)	1,097,379	6	0.55
34	Oregon (OR)	4,237,256	23	0.54
35	Tennessee (TN)	6,910,840	37	0.54
36	Iowa (IA)	3,190,369	17	0.53
37	New Mexico (NM)	2,117,522	11	0.52
38	North Dakota (ND)	779,094	4	0.51
38	Kentucky (KY)	4,505,836	23	0.51
40	Nebraska (NE)	1,961,504	10	0.51
41	Vermont (VT)	643,077	3	0.47
42	Georgia (GA)	10,711,908	47	0.44
43	Arkansas (AR)	3,011,524	13	0.43
44	Florida (FL)	21,538,187	90	0.42
45	Minnesota (MN)	5,706,494	22	0.39
46	Arizona (AZ)	7,151,502	25	0.35
47	Hawaii (HI)	1,455,271	5	0.34
48	Idaho (ID)	1,839,106	6	0.33
49	Maine (ME)	1,362,359	4	0.29
50	Colorado (CO)	5,773,714	11	0.19
51	Puerto Rico	3,285,874	6	0.18
52	South Carolina (SC)	5,118,425	9	0.18
53	New Hampshire (NH)	1,377,529	2	0.15
	Military		6	

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