



TRUTH OR CONSEQUENCES: CHOOSE THE ROAD THAT AVOIDS CAREER DISASTER

By Alison Berry Wilkinson

We all know the old adage: "Honesty is the Best Policy." Now, more than ever, police officers must make that their mantra, as it has become increasingly apparent that there is no quicker road to termination than to tell a lie. The management principle: "You Lie, You Die" is a harsh reality that is routinely invoked, and upheld, in law enforcement dishonesty cases no matter how small or trivial the transgression. In this day and age, no matter how good your lawyer is, or how minor the lie, there is just no real way to avoid a termination sanction once a police officer heads down the untruthfulness path. So, please, just don't go there.

Why Dishonesty Routinely Results in Termination

Very few acts of misconduct are as damaging to a law enforcement officer's career than that of lying. Courts have noted time and again that integrity is a fundamental job requirement. For example, the court stated in *Kolender v. San Diego County Civil Service Commission* (2005) 132 Cal. App. 4th 716:

A deputy sheriff's job is a position of trust and the public has the right to the highest standard of behavior from those they invest with the power and authority of a law enforcement officer. ***Honesty, credibility, and temperament are crucial*** to the performance of an officer's duties. ***Dishonesty is incompatible with the public trust.***

Common sense tells you that to effectively prosecute crimes, officer credibility is critical. Often, the officer's word is taken over that of a civilian, with both judges and juries frequently awarding a "tie," in a "he said, she said," or "swearing contest," to the officer based on the "honesty" and "integrity" that is required to hold the job. Thus, when an officer's integrity is compromised, management understandably concludes that the law enforcement mission may be harmed by the officer's continued service.

Truthfulness is not only an issue of police witness credibility in a court of law; it strikes to the core of the ability to perform essential functions effectively. Police officers complete factual reports based upon their investigations and observations. These reports are relied upon by others to further investigations and are often used as critical evidence in a variety of proceedings. Officers take enforcement action; secure evidence; maintain confidential information; have access to privileged information; handle drugs, money, and guns; process crime scenes; maintain reports of crimes and accidents; and, importantly, they are authorized by law to dispossess others of their constitutional rights and use deadly force when appropriate. Simply put, a law enforcement official's word, and the complete veracity of that word, is the fundamentally necessary to doing the job.

As a result, Police Departments across the state all have some form of a rule requiring that officers be truthful in their reports to supervisors and during official proceedings. Indeed, Lexipol Policy 340 places a heavy emphasis on truthfulness in its section on "conduct which may result in discipline", by restating the obligation in multiple separate subsections that outline dishonesty related offenses:

- "Knowingly making false, misleading or malicious statements that are reasonably calculated to harm or destroy the reputation, authority or official standing of the Department or members thereof."
- "The falsification of any work-related records, the making of misleading entries or statements with the intent to deceive..."
- "Dishonest" or "Disgraceful" conduct.
- "Failure to disclose or misrepresenting material facts, or the making of any false or misleading statement on any application, examination form, or other official document, report or form or during the course of any work-related investigation."

Integrity is so important to the law enforcement profession that a single lie can cost an officer his/her career. As noted in *Kolender, supra* at 722:

While at common law, every dog was entitled to one bite, we know of no rule of law holding every deputy sheriff is entitled to [tell one lie] before he or she can be discharged ...

Judicial pronouncements unequivocally provide that peace officers are held to the highest standards of behavior, with honesty and credibility being crucial to proper performance of their duties. In *Ackerman v. State Personnel Board* (1983) 145 Cal. App. 3d 395, the court found conduct that might not warrant termination for a general civil service employee could still support termination for a peace officer, because "a police officer must be held to a higher standard than other employees. A police officer is expected to tell the truth." The court stated:

The position of a CHP officer by its nature is such that very little direct supervision over the performance can be maintained. The CHP necessarily must totally rely on the accuracy and honesty of the oral and written reports of its officers as to their use of state time and equipment. "Any breach of trust must therefore be looked upon with deep concern. ***Dishonesty in such matters of public trust is intolerable.***" (Italics added; *Wilson v. State Personnel Bd. (1976) 58 Cal.App.3d 865, 882 [130 Cal.Rptr. 292]*; dismissal of fish and game warden upheld for making false reports.)

This standard of conduct is based on the following fundamental principle enunciated in *Christal v. Police Commission of the City and County of San Francisco* (1939) 33 Cal.App.2d 564, 567:

[Peace] officers are the guardians of the peace and security of the community, and the efficiency of our whole system, designed for the purpose of maintaining law and order, depends upon the extent to which such officers perform their duties and are faithful to the trust reposed in them.

With respect to peace officers, cases upholding termination for dishonest conduct are legion:

- *Byrne v. State Personnel Board* (1960) 179 Cal.App.2d 576 (state alcoholic beverage control agent properly dismissed for lying to a police officer and his superiors about his alcoholic consumption during investigation of an automobile accident while in a state vehicle);
- *Wilson v. State Personnel Board* (1976) 58 Cal.App.3d 865 (fish and game warden properly dismissed for dishonesty in falsely reporting overtime);
- *Barber v. State Personnel Board, supra* (California Youth Authority counselor properly dismissed for dishonesty, willful disobedience, and other misconduct involving possession of a watch that had been stolen from a ward under his supervision);

- *Warren v. State Personnel Board* (1979) 94 Cal.App.3d 95 (off-duty highway patrol officer dismissed for attending transvestite party involving prostitution and untruthfully denying full knowledge and participation to police officers and his superiors);
- *Ackerman v. State Personnel Board, supra*, 145 Cal.App.3d 395, 400 (CHP officer dismissed for misappropriation of state-owned motorcycle parts for personal use and subsequently lying to law enforcement officers about it);
- *Flowers v. State Personnel Board* (1985) 174 Cal.App.3d 753 (dismissal of state correctional officer for dishonesty and misuse of state property when he attempted to remove a state-owned amplifier claiming it belonged to him);
- *Paulino v. Civil Service Commission of San Diego County, supra*, 175 Cal.App.3d 962, 972 (deputy sheriff dismissed for making false statements, misrepresentations, and omissions on official reports regarding health and sick leave usage);
- *Nicolini v. County of Tuolumne* (1987) 190 Cal.App.3d 619 (discharge of deputy sheriff for admittedly altering a prescription for Valium and filling the prescription while in uniform);
- *Talmo v. Civil Service Commission of Los Angeles County* (1991) 231 Cal.App.3d 210 (discharge of deputy sheriff for battery on a prisoner and lying about it to superiors);
- *Cummings v. Los Angeles County Civil Service Commission* (1995) 40 Cal.App.4th 1643 (deputy probation officer dismissed for lying to state department of corrections and local law enforcement officials and to his own superiors);
- *Holmes v. Hallinan* (1998) 68 Cal.App.4th 1523 (district attorney investigator properly dismissed for making false statements on a workers' compensation form and being dishonest with his supervisor);
- *Haney v. City of Los Angeles* (2003) 109 Cal.App.4th 1 (police officer discharged for absenting himself from his duty post to attend a barbecue and submitting daily field activities report that contained false information).

The *Brady* Problem

Under *Brady v. Maryland* (1963) 373 U.S. 83, to ensure a fair criminal trial, prosecutors are obligated to notify criminal defendants about exculpatory evidence, which includes evidence that could be used to challenge the credibility of a material prosecution witness. Such disclosures must be made related to any exculpatory information in the possession of

the entire "prosecution team," which includes investigating officers and law-enforcement agencies. Thus, when the employing law enforcement agency sustains an administrative allegation of dishonesty against a peace officer, from the prosecutor's perspective it becomes a *Brady* issue since that information could be used to challenge the officer's credibility in any case where s/he is a material witness. This is especially significant to the ability to effectively prosecute cases because an officer is often the only witness to the charged criminal act or the incriminating statements or conduct, and criminal defendants often dispute the officers' account of evidence.

Thus, dishonesty poses a dilemma for the employing law enforcement agency. If the District Attorney's Office takes the position that it will not prosecute cases where the only witness is a *Brady* officer, then the officer cannot perform one of his/her fundamental job duties. In addition, this can impact other officers as well - as one chief of police put it in a *Skelly* hearing: what happens if an officer proven to be dishonest in one instance is the only witness as to the actions of another officer in the field in, for example, an officer-involved shooting. The harm would not fall on the *Brady* officer, but on his/her colleague because the only available corroborating witness is someone whose credibility has been severely undermined and damaged.

The Definition of "Dishonesty"

"Dishonesty" has been defined as conduct that "connotes a disposition to deceive," and "an absence of integrity; a disposition to cheat, deceive, or defraud." *Gee v. State Personnel Board* (1970) 5 Cal. App. 3d 713, 718-719. Dishonesty "is not an isolated act; it is more a continuing trait of character." *Gee, supra*; *Paulino v. Civil Service Commission of San Diego* (1985) 175 Cal. App. 3d 962

Conclusion

Honesty is the best policy. As a law enforcement administrative defense lawyer, I consider untruthfulness to be an avoidable offense. Tell the truth even when it makes you look bad. The momentary discomfort caused by admitting your mistake is much more tolerable than the long-term pain and devastation caused by termination.

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