

February 17, 2006 - [The Muckraker Report](#) (US Web)

Police Misconduct: A Preponderance of Perjury

By Ed Haas

On December 1, 1998 Harvard Law School Professor, Alan M. Dershowitz testified before the House of Representatives Judiciary Committee regarding the corrosive influences of perjury in the legal system throughout the United States. When considering credentials, there is probably no other person more qualified to speak about perjury in the U.S. legal system than Dershowitz. He has been teaching criminal law at Harvard Law School for 35 years. He has participated in the litigation of hundreds of federal and state cases, many at the appellate level. He has edited a casebook on criminal law, written ten books, and hundreds of articles dealing with perjury in criminal and civil cases. The key points of Mr. Dershowitz's testimony before the Judiciary Committee are as follows^[1]:

- No felony is committed more frequently in the United States than the genre of perjury and false statements
Criminal cases often are decided "according to the preponderance of perjury"
- Police perjury in criminal cases is so pervasive that "hundreds of thousands of law-enforcement officers commit felony perjury every year testifying about drug arrests" alone
- The most heinous brand of lying (perjury by police officers) is the giving of false testimony that results in the imprisonment or execution of an innocent person
- Less egregious, but still quite serious, is false testimony that results in the conviction of a person who committed the criminal conduct, but whose rights were violated in a manner that would preclude conviction if the police were to testify truthfully
- Police Officers are almost taught how to commit perjury when they are in the Police Academy
- Police perjury is not anecdotal. Many commission reports prove rampant abuses in police departments throughout the United States
- Judges and prosecutors tolerate if not encourage police lying in court all in the name of convicting the factually guilty

According to the Mollen Commission ^[2] the practice of police falsification is so common that it has spawned its own word -- testilying

- Officers commit perjury to serve what they perceive to be "legitimate" law enforcement ends
- In the viewpoint of most police officers, regardless of the legality of the arrest, the defendant is in fact guilty and ought to be arrested

- When prosecutors are preparing for a trial, they often arrange "dry runs" as part of the trial preparation procedure. Frequently, prosecutors skirt along the edge of coercing or leading the police witness
- As a result, impressionable young cops learn to tailor their testimony (commit perjury) to the requirements of the law

There are hundreds of thousands of police officers in the United States today that break the law and commit felony perjury as a calculated, premeditated offense designed to undercut the constitutional rights of unpopular defendants

Of all the instances when and where police officers commit perjury, the enforcement of drug laws top the list. And when it comes to discovering illegal drugs in a defendant's vehicle, residence, possessions, or on their person, police have no fear or deterrent against conducting illegal searches and committing felony perjury; first by filing a false sworn affidavit, then by testifying in court.

Examples of this sort of felony perjury are also found in the Mollen Report. Examples are as follows:

- When officers unlawfully stop and search a vehicle because they believe there are drugs in it, officers will falsely claim in police reports and under oath that the car ran a red light or committed some other traffic violation
- Once pulled over, the police officer will search the occupants of the vehicle as well as the vehicle -- with or without consent -- although the police officer will always indicate that they had consent
- If consent is adamantly opposed by the occupants, the police officer will report, under oath, that the contraband was in plain view
- To conceal an unlawful search that does not involve a vehicle, police officers have been taught to report and testify that they saw a bulge in the person's pocket or saw drugs and money changing hands
- To justify unlawfully entering a residence where officers believe drugs or cash can be found, cops commit felony perjury by claiming that they had information from an unidentified civilian informant

It is an interesting fact that the Mollen Report was published in 1994, and the Dershowitz testimony in 1998, yet police misconduct and felony perjury committed by police officers has not been curtailed, even slightly, since these reports became part of the public record. In fact, the situation has gotten worse; not better. One could argue that since 9/11, an already corrupt and criminal police mentality as been catapulted into a full-fledged police state dimension. Today, law enforcement does what it wants, when it wants, to whomever it wants, with absolutely no restraint whatsoever. Such is the state of police misconduct and miscarriages of justice in South Carolina.

South Carolina has a police misconduct crisis on its hands. Blacks make up 29% of the population in South Carolina, but represent 83% of all South Carolina inmates in state custody for drug law violations. The nation witnessed in November 2003, the infamous

Stratford High School drug raid conducted by the Goose Creek Police Department where police pointed loaded guns at approximately 135 unarmed high school students, and threatened the students with police dogs, only to find no drugs. [3] No criminal charges were filed against the officers involved even though it was blatantly obvious to any libertarian-thinking American that what was witnessed on national news was not what the framers of the Constitution for the United States and the Bill of Rights had in mind when they penned, and the states ratified, the Fourth Amendment in particular. Hardly a week goes by in South Carolina without at least one of its cities daily newspapers reporting on instances of police misconduct, which often get "handled" absent criminal charges, prosecution, and incarceration.

In 2005, South Carolina's Governor, Mark Sanford, established a commission made up primarily of law enforcement, to address and report on police misconduct in South Carolina. To date, no official report has been made public. Also in 2005, members of the South Carolina Senate Judiciary Committee, all twenty-three senators, received a libertarian proposal to directly detect and deter police misconduct in South Carolina. (See the POCAA - Police Officer Conduct Accountability Act [4]) The POCAA calls for mandatory lie detector tests for every police officer that has been accused of police misconduct. While a simple proposal, not one state senator has introduced any legislation that mirrors the POCAA or would serve as protection for the residents of South Carolina against the epidemic of overzealous police officers.

The *Muckraker Report* has spoken with three state senators regarding POCAA, and off the record, each indicated that the proposal has merit but politically, would be suicide. Apparently, no state legislator wants to be the lawmaker on record that sponsors a bill that would place restraint on South Carolina law enforcement, even though thousands of police officers in South Carolina commit felony perjury at a minimum, a few times each year. Meanwhile, Americans are being denied their rights, and incarcerated in one of the most dangerous prison systems in the nation.

Are police officers in South Carolina falsifying documents, conducting illegal searches, and lying under oath? Bearing in mind the information contained in the Mollen Report and the testimony of Alan Dershowitz, here are a few examples taken from sworn affidavits made by police officers of the Charleston Police Department and the North Charleston Police Department between September 1, 2005 and January 31, 2006. Each involves an arrest for violating South Carolina drug laws. Only the police department and complaint number will be listed in the following examples, as these are ongoing criminal cases:

Charleston Police Department

Complaint #: 0521531 -- Defendant was observed driving his 1995 Toyota Pickup (SC 587 XXX) in a high drug area, and was approached by an unknown black male, who then appeared to engage the defendant in a hand to hand transaction. The vehicle left the parking lot and was stopped for the suspicious activity, as well as a non-functioning tag light. The defendant voluntarily consented to a search of the vehicle.

Muckraker Comments -- If you live in what police consider a high drug area, shaking hands could be considered suspicious activity -- particularly if you're a black male. Note that the arresting officer included a non-functioning tag light to justify the stop. By all accounts, the defendant had .8 grams of cocaine in his vehicle, and knew it was there, so why would he consent to having his vehicle searched?

Complaint #: 0521634 -- Officer J. XXXXX conducted a traffic stop of a silver Ford Winstar, (SC 759 XXX) in which defendant was a passenger. After asking the defendant to exit the vehicle, and receiving consent to search her purse, Officer XXXXX located a white rock-like substance, which field-tested presumptive for cocaine base substance inside the purse. Officer XXXXX additionally located a crack pipe in side pocket of purse.

Muckraker Comments -- If making a routine traffic stop, why was the passenger even spoken to by the arresting officer? Why was the passenger asked to exit the vehicle, and who in their right mind consents to the search of their purse if they know that they have crack cocaine and a crack pipe in their purse? Nobody consents to such a search.

Complaint #: 0523979 -- In that defendant did have a clear small zip lock style bag protruding from the band of his baseball style hat which contained (5) off white-in-color rock like items which field tested presumptive as cocaine base by Cpl. J. XXXXX with a street value of (\$100).

Muckraker Comments -- Not only is this sworn statement suspicious, but the zip lock bag seems to be defying the exact laws of gravity. The arresting officer would have us to believe that the defendant was walking the street with \$100 worth of crack in plain view as casually as carrying a cigarette behind one's ear.

North Charleston Police Department

Complaint #: 05037505 -- Having received a tip from Crime Stoppers of illegal drug activities from Room 223 of Super 8 Motel, Cpl. D. XXXXXX made contact with the defendant and asked for and received consent to search the defendant's room for illegal drugs. During the consented search, Cpl. XXXXXX located approximately 3.4 grams of off white rock-like substance in a plastic baggie, in the nightstand drawer near the defendant's bed.

Muckraker Comments -- Again, who in their right mind gives consent to such a search if they know that they have 3.4 grams of cocaine in the drawer of their nightstand? There is simply no plausible explanation for such consent.

It's as if the Charleston and North Charleston Police Departments are using the Mollen Report as a how-to training manual! These types of arrest affidavits are repeated thousands of times each year in South Carolina and hundreds and thousands of times across the United States. Each potentially represents felony perjury committed by the

police. The only tool that will stop this corrosive influence of perjury in the criminal justice system is a statewide and nationwide Police Officer Conduct Accountability Act.

If upright and truly desirable public servants, the arresting officers in the aforementioned cases found in Charleston County, South Carolina, should voluntarily submit to a lie detector test in which they would be asked these four important questions.

1. Have you ever knowingly and intentionally caused or allowed exaggerated statements of fact to be inserted into a written incident report or sworn affidavit?
2. Have you ever knowingly and intentionally made exaggerated, embellished or false statements in a written incident report or sworn affidavit for the purpose of procuring or assisting in the criminal prosecution of a fellow citizen?
3. Have you ever knowingly and intentionally made exaggerated statements of fact while testifying under oath in court for the purpose of procuring or assisting in the criminal prosecution of a fellow citizen?
4. Have you ever knowingly and intentionally stopped and detained a fellow citizen under false pretenses and without reasonable suspicion?

If police perjury is as widespread as Dershowitz and others suggest -- there is little chance that the arresting officers involved in the Charleston and North Charleston cases would pass the lie detector test. If administered to all police officers assigned to the CPD and NCPD, at best, only fifty percent of Charleston and North Charleston Police Officers could answer these types of questions successfully while tethered to a lie detector machine.

Furthermore, if South Carolina were to randomly select 500 police officers to take lie detector tests administered by a private, qualified third party -- tests that asked the four simple questions referenced above, it is unlikely that even a measly seventy-five percent, or 375 police officers would pass the lie detector test. More than likely, only half the police officers sworn to protect and serve in South Carolina would pass the test. Similar lie detector results would be found throughout the United States. This absolute fact should greatly alarm every single patriotic American and serve as a battle cry to gain public support for a Police Officer Conduct Accountability Act in South Carolina and the remaining states of this Republic.

Remember, what we are talking about here is "the most heinous brand of lying" -- the type that results in the imprisonment or even execution of innocent people, as well as the "less egregious" according to Alan Dershowitz, "but still quite serious, perjury that results in the conviction of a person who committed the criminal conduct, but whose rights were violated in a manner that would have precluded conviction had the police testified truthfully". If establishing real accountability of police conduct is not important enough to pass a Police Officer Conduct Accountability Act in South Carolina while we have full knowledge that innocent people are presently incarcerated as the direct result of the

arresting officer(s) committing felony perjury, then we the people have officially surrendered what little dignity, respect, and rights we think we have left to the emerging South Carolina and United States Police State.

[1] Testimony of Alan M. Dershowitz, House of Representatives Judiciary Committee, December 1, 1998, http://constitution.org/lrev/dershowitz_test_981201.htm, [Accessed February 7, 2006]

[2] Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Practices of the Police Department, Milton Mollen, Chair, July 7, 1994, at 36 [hereinafter Mollen Report], <http://www.parc.info/reports/pdf/mollenreport.pdf>, [Accessed February 15, 2006]

[3] CBS News, Drug Raid at S.C. High School, November 7, 2003, <http://www.cbsnews.com/stories/2003/11/07/national/main582492.shtml>, [Accessed February 15, 2006]

[4] Muckraker Report, Police Officer Conduct Accountability Act, Ed Haas, August 5, 2005, <http://teamliberty.net/sitebuildercontent/sitebuilderfiles/pocaa.pdf>, [Accessed February 15, 2006]

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