

Doing the Fuhrman Shuffle

Too Many Cops Think They Can Enforce the Law by Breaking It

By Barry Tarlow

THE MARK FUHRMAN tapes could wind up being to the issue of police perjury what the Rodney King video was to police brutality: a glimpse of the sordid underbelly of law enforcement that most would rather ignore.

The tapes describe what those familiar with our criminal justice system have always known—that police perjury, racism, manufacturing of evidence and a code of silence to cover it all up, occur far too often. Although there are a great many honorable law enforcement officers, the widespread havoc wrought by rogue cops is deeply disturbing. In the past when these problems have been raised, the law-enforcement response often has been to circle the wagons and attack the messenger. This time, the tapes in the O.J. Simpson case demonstrate the need for a serious effort to investigate the shocking panoply of police misconduct that they describe and prosecute the law-breakers.

According to court transcripts and news reports, Fuhrman boasts to a screenwriter that police officers lie, fabricate evidence and conspire to protect fellow cops. "They teach you certain things in the [police] academy, but that is not how you are a real police officer," he reportedly says. "You have to get out on the street and learn how to lie, cheat and set people up."

The Simpson prosecutors, desperately backpedaling from Fuhrman, claim that his statements are merely the exaggerated and/or fabricated accounts of a braggart. Fuhrman's lawyer, Robert Tourtelot, who proclaimed for months that his client was not a racist, now says that all the shocking and vile ruminations by Fuhrman (which stretch from 1985 to 1994) are merely the imagined statements of a character in a fictional work.

Fuhrman, who appears on the tapes to be an equal opportunity bigot, makes derisive comments about women, "Mexicans" and "Jews," and describes how he pulled over African Americans driving expensive cars ("a nigger in a Porsche"). He provides grisly details of the "investigation" of an alleged cop shooting in which officers beat

people ("we basically tortured them") until "their faces were just mush." He names other cops involved in such lawless activities. He also outlines a "final solution" for our problems: "All these niggers in L.A. city government" and other people "should be lined up against a wall" and shot.

Is Mark Fuhrman an overimaginative storyteller, an isolated loose cannon or an example of a more pervasive national problem?

Understandably, we would all like to be-

Barry Tarlow is a Los Angeles criminal defense lawyer and former federal prosecutor. He served as chairman of the National Association of Criminal Defense Lawyers' Committee to Free the Innocent Imprisoned.

lieve that police misconduct is an anomaly. Unfortunately, as the late legal scholar Irving Younger, a New York City criminal court judge, observed, "Every lawyer who practices in the criminal courts knows that police perjury is commonplace." Even when such perjury is obvious, Younger noted, the deceitful cop is "as likely to be indicted by his co-worker, the prosecutor, as he is to be struck down by thunderbolts from an avenging heaven."

Police perjury takes many forms, from outright lying and manufacturing evidence to more subtle "shading" of testimony, selective omissions and calculated distortions of the truth. What is known of the Fuhrman tapes discloses that Fuhrman lied when he testified that he had never used the word "nigger" in the last 10 years.

Dishonest "shading" might be illustrated by the testimony of Los Angeles police officers during a pretrial hearing concerning their warrantless search of Simpson's home. They claimed that they were worried about additional victims. Was this the whole truth about their actual motives in scaling the wall? Judge Lance Ito expressly found that Detective Philip Vannatter was "at least reckless" in making selective omissions and distortions in his affi-

davit seeking a search warrant.

The broad scope of this problem is graphically underscored by recent federal prosecutions of approximately 30 corrupt L.A. sheriff's deputies. During these trials, officers testified in detail about cops skimming millions of dollars of seized drug money, lying to get search warrants to seize money so they could steal it, falsifying police reports, planting evidence and lying in court. Eufasio Cortez, a 15-year law-enforcement veteran and "California Narcotics Officer of the Year" award-winner, testified that he had stolen about half a million dollars, committed perjury 30 times, beat suspects on 20 occasions and made false statements in search warrants 100 times. When asked on the witness stand, "Do you believe you were a good cop?" Cortez was emphatic: "I was an excellent cop! Yes."

Police fabrication of evidence is well-documented from coast to coast. The pervasiveness of police perjury in Chicago's criminal courts was thoroughly demonstrated in a recent study by Myron Orfield Jr. in the University of Colorado Law Review. In New York City, the Mollen Commission investigating police misconduct concluded in 1994 that perjury and falsification of evidence are "probably the most common [types] of police corruption facing the [city's] criminal justice system."

One of the rare criminal cases against cops who frame people is the recent New York State trooper scandal, in which five state troopers were convicted for running and/or covering up an evidence-tampering ring which operated from 1984 to 1992. The scheme involved the planting of fingerprints at crime scenes to falsely implicate targets. This scandal is particularly troubling because

it reveals not a few isolated, spontaneous events, but a decade-long conspiracy among some of the best and the brightest in the force.

Many citizens are undisturbed by police perjury because they believe that if it does occur, it affects "them," not "us." However, the fairness and integrity of our criminal justice system should concern everyone. An authoritative 1992 study, "In Spite Of Innocence," documents 400 potential capital cases in which innocent people were wrongfully convicted and later shown not to have committed the crimes. Nearly a quarter of the wrongful convictions resulted from injustices perpetrated by police officers, ranging from frame-ups to coercing false confessions.

The case of my client, Clarence Chance, an innocent man who served more than 17 years in prison after being framed by rogue cops for a murder he did not commit, is a shameful example. In 1975, Chance and a co-defendant were sentenced to life in prison for the murder of a Los Angeles County deputy sheriff based on evidence fabricated by LAPD officers. The police coerced witnesses into manufacturing incriminating evidence. They concealed exculpatory evidence, such as the fact that their star witness had falsely implicated two others and flunked polygraph tests, and that they had generously rewarded the informant for his story. Chance was freed in 1992. In

spite of a firestorm of criticism by the public, politicians and the press, no police officer was ever disciplined in this sordid affair.

Some law-enforcement officers rationalize perjury on the grounds that police work is a tough, dirty business, so "the ends justify the means." They feel that lying to convict a suspect who they believe may be guilty is okay. These perjurers undermine our judicial system by usurping the role of judge and jury. Apologists also claim that officers simply change their testimony to justify the probable cause required for the arrest or search of a suspect in order to discover evidence of a crime that might otherwise go undetected.

The tragic recent death of Malibu resident Donald Scott is a vivid reminder of the fallacy of this rationalization. Scott was shot and killed as law enforcement officers stormed his home with a drug warrant. Ventura County District Attorney Michael Bradbury concluded that the officers had "fabricated" probable cause through "misstatements and omissions" in an attempt to "seize and forfeit [Scott's valuable] ranch." The invalid search warrant, which did not turn up evidence of drug trafficking, "became Donald Scott's death warrant."

In light of the pernicious and tragic effects of law-enforcement manipulation of the facts and evidence, why don't the "good apples" throughout our country—the many officers who are decent people—blow the whistle more often? The answer is what Los

Angeles' Christopher Commission documents pervasive brutality and other unlawful conduct by L.A. police officers. The effect of the code is that the law-enforcement officers who are sincerely troubled by the conduct of their rogue colleagues are under tremendous institutional and internal cultural pressure to look the other way.

Although the glare of publicity may, on rare occasions, compel the filing of criminal charges, officers know that their close relationships with prosecutors will generally protect them from arrest for lying to put someone in prison. Unless the tapes are fantasy, Mark Fuhrman's willingness to brag about his lawless exploits on tape certainly shows something other than stupidity or arrogance. It suggests that he was convinced he was immune from prosecution.

A solution is required beyond merely convening yet another blue-ribbon commission to study the problem. Prosecutors throughout this country are supposed to be independent and regularly should be investigating and charging cops who commit perjury, rather than ignoring the problem.

If more prosecutors had the courage to perform these duties, they would discourage police perjury and the pollution of our criminal justice system—whether the problem is a few bad apples, or an orchard in need of fumigation.

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Mark Fuhrman points to an area on a diagram during his testimony at the preliminary hearing of the O.J. Simpson case.

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