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EDITORIAL: EDITORIALS OPINION

Police perjury: It's called 'testilying'

By THE EDITORIAL BOARD

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Joseph Sperling, with attorney Jon Loevy on April 17, 2014, discuss a lawsuit against Glenview and Chicago police over a traffic stop and arrest of Sperling. (Antonio Perez, Chicago Tribune)

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Joseph Sperling was acting mighty casual for a guy with a pound of marijuana in his car. That's how the arresting officer — and four other cops — described things to a Cook County circuit judge last year.

The weed was in an open backpack in the rear seat when Sperling was pulled over, a few blocks from his home, for changing lanes without a turn signal, Chicago police Officer William Prunte said.

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As he waited for Sperling to hand over his license and proof of insurance, Prunte said, he smelled marijuana. The officer ordered Sperling from the car, searched it, found the pot, and made an arrest.

Video from a police cruiser's dashboard camera told a different story. It showed Prunte approaching the car, reaching in the window to unlock the door and ordering the driver to step out. Sperling was frisked, handcuffed and escorted to a cruiser before his car was searched.

The difference between what the video showed and what the officers described to the judge is the difference between a permissible search and an illegal one. Should it matter? The cops — three from Chicago, two from Glenview — had reason to suspect Sperling had drugs, and they were right.

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But the judge threw out the evidence after the video was played in court. Prosecutors dropped the charges. Sperling not only went free — he filed a federal lawsuit and got a \$195,000 settlement from Chicago and Glenview.

And four of the cops are now charged with perjury, obstruction of justice and official misconduct. They face up to five years in prison if convicted. The fifth is on leave pending an internal investigation.

"There's strong evidence it was conspiracy to lie in this case, for everyone to come up with the same lie," an angry Circuit Judge Catherine Haberkorn said after seeing the video. "Many, many, many, many times they all lied."

Defense attorneys will tell you it happens all the time. So will many police officers. They call it "testilying."

Instead of following the necessary steps to justify a search, they simply swear that they did. And they rationalize. Maybe they're just taking shortcuts. Maybe they couldn't have gotten the evidence otherwise. Hey, he had the pot, didn't he? Sometimes you have to bend the rules to get the bad guys off the street.

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That logic was carried to the extreme in the 1970s and '80s by Chicago police Cmdr. Jon Burge and his crew of rogue officers, who coerced confessions out of suspects by shocking their genitals, putting plastic bags over their heads, hitting them with phone books and other forms of torture.

The results: Dozens of wrongful or questionable convictions, more than \$100 million in attorneys fees and legal settlements paid by Chicago and Cook County, \$5.5 million set aside by Chicago aldermen earlier this year to pay reparations to Burge's

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victims — not to mention the immeasurable damage to the credibility of the police department.

Testilying isn't a Chicago thing. A 1994 report by the Mollen Commission, charged with investigating corruption in the New York Police Department, attributed the term to the New York cops themselves. Two Los Angeles police detectives were accused of lying to justify a search warrant of O.J. Simpson's house following the 1994 murders of his ex-wife and her friend. In New York, hundreds of drug cases were dismissed in 2011 because of widespread police misconduct, often lying under oath.

Researchers trace the rise of "testilying" to a 1961 U.S. Supreme Court ruling that evidence obtained from an illegal search can't be used in court. After that, there was no decline in arrests, but a big increase in "dropsy" testimony — officers swearing they frisked a suspect because they saw him drop a bag of drugs on the sidewalk. Maybe they saw a bulge in a suspect's clothing and thought it was a gun. Maybe they pulled someone over for a minor traffic infraction and the contraband was in plain sight. (For what it's worth, Sperling said he had stashed the backpack full of marijuana under his seat — and that he used his turn signal.)

How common is testilying? No one can say. An oft-cited but not especially scientific survey of prosecutors, judges and defense attorneys in Chicago surmised that cops fib on the witness stand about 20 percent of the time. Almost all of the police officers questioned in another study said some of their fellow officers testified — some said rarely, some said routinely.

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However often it occurs, there should be zero tolerance for testilying. The rules for collecting evidence are meant to protect the rights of suspects, some of whom are innocent and all of whom are presumed so.

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Judge Haberkorn made it clear that she wouldn't stand for it in her courtroom. Cook County State's Attorney Anita Alvarez is absolutely right to pursue criminal charges. Police officers who go about their jobs the right way ought to be outraged, too.

Testilying is yet another argument for body and dashboard video cameras, and for requiring police to tape interrogations.

It's also a reason to be grateful for citizen bystanders and their smart phones.

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