

THE ROLE OF C. S. I. IN POLICE DISCIPLINARY INVESTIGATIONS

CAN A COMMON SENSE (ADVERSE)
INFERENCE BE DRAWN ABOUT
AN OFFICER'S REFUSAL TO PROVIDE
A STATEMENT?

*“No one has to volunteer guilt,
but if accused, must show his
innocence, if he can”*

St. John Chrysostom

(Syrian lawyer and the Archbishop of
Constantinople, 404 A.D.)

Introduction

This discussion will deal with:

- conduct investigations which are solely disciplinary in nature;
 - failure to cooperate only by refusing to provide a statement; and
 - silence at the investigative stage.
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RIGHTS AND DUTIES IN THE DISCIPLINE PROCESS

A. Competing Interests

- The public at large has the right to know.
 - There is a private employment obligation for an employee to explain his or her work actions to his or her employer.
 - The officer has a legitimate personal concern about the use of any provided statement.
 - There is a statutorily imposed administrative process for police discipline.
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RIGHTS AND DUTIES IN THE DISCIPLINE PROCESS

B. Applicability of the *Charter*

- Section 11

- Section 7

RIGHTS AND DUTIES IN THE DISCIPLINE PROCESS

C. Legislated Protections / Duty to Cooperate

- Common law right to silence
- Principle against self-incrimination

“Nemo tenetur seipsum prodere” –
No one is compelled to accuse himself.

12th Century

Adverse Inference in Law

An Adverse Inference is:

- a. a legal inference;
 - b. derived from ordinary logic and experience;
 - c. drawn from silence or the refusal of the concerned person to provide a statement;
 - d. adverse to the person who is silent;
 - e. applied to the person who is silent and not any other person; and
 - f. a “permissive” inference in that it may be drawn but is not required to be drawn by the fact finder.
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How to Use Adverse Inference

i. As a fact finder, when can I draw an adverse inference?

- a. certain facts each must be proven first;
 - b. a chain of proven facts lead to this rational inference; and
 - c. any “evidence to the contrary” or evidence for other rational or reasonable explanations for the refusal to provide or for the silence of the accused (the “apparent” lack of cooperation).
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How to Use Adverse Inference

ii. When is it appropriate to draw an adverse inference?

- a. a fact finder is never compelled or required to draw an adverse inference;
 - b. an adverse inference can only be drawn against the person remaining silent;
 - c. if there is more than one inference that can reasonably and logically be drawn from the silence, then the adverse inference should not be drawn;
 - d. an inference does not operate to shift the burden of proof from the police service
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How to Use Adverse Inference

ii. When is it appropriate to draw an adverse inference? (continued)

- e. Inferences can be given different weight
 - f. an adverse inference has limited evidential value – it amounts to one piece of circumstantial evidence
 - g. as a fact finder it is important to know the exact nature of the inference being drawn
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Scenario #1: Witness Officer Cst. Friend

Cst. Friend refuses to provide a witness statement for the following reasons:

- 1) He is concerned his statement might be taken out of context.
 - 2) He had a bad previous experience with internal affairs.
 - 3) He is trying to protect his friend.
 - 4) He is concerned about “ratting out” a fellow officer.
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Analysis

- Reasons 1 and 2:

No adverse inference can be drawn.

- Reasons 3 and 4:

No adverse inference can be drawn.

Scenario #2: Witness Officer Cst. Green

Cst. Green refuses to provide a witness statement for the following reasons:

- 1) He got advice from his police association that he could be charged.
 - 2) He is trying to protect himself.
 - 3) He is concerned about “ratting out” his partner.
 - 4) He does not understand the discipline process and was told that he has the right to remain silent.
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Analysis

- Reasons 1 and 2:
No adverse inference can be drawn.
 - Reason 3:
No adverse inference can be drawn.
 - Reason 4:
No adverse inference can be drawn.
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Scenario #3: Subject Officer Cst. Unhinged

Cst. Unhinged refuses to provide a witness statement for the following reasons:

- 1) He believes he has the right to remain silent.
 - 2) He has received legal advice not to provide statement.
 - 3) He does not want to provide any details that could make matters worse for himself.
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Analysis

- Reasons 1 and 2:

No adverse inference can be drawn at this time.

- Reason 3:

An adverse inference might be drawn.

Conclusion

