

Deception in the investigative, interrogative, and testimonial processes



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The term deception means the deliberate act of misleading an individual some may refer to deception as “ little white lies. ” Deception has long been used in the criminal justice area by officers in the detecting process of criminal cases, and is one of the most commonly used tools in the investigative process. Investigators use deception in the detecting process. This involves misleading criminals during the investigative and interrogative stages, to gather enough information about the crime that only the suspect would know to arrest the suspect, and then present the case to the court.

There are three stages of deception, the investigation, then interrogation, and finally the testimonial. “ Hard and fast rules limiting police conduct may challenge common sense, while the absence of such rules may invite arbitrary and abusive conduct. This paper discusses one of the most troubling and difficult questions pertaining to the ideal of legality: To what extent, if at all, is it proper for law enforcement officials to employ trickery and deceit as part of their law enforcement practices” (White, 1979)?

“ Whatever the answer to that question if, indeed, an answer be formulated it has to be measured against a hard reality of the criminal justice system. That reality is: Deception is considered by police-and courts as well-to be as natural to detecting as pouncing is to a cat” (Skolnick, 1975). Deception is generally allowed during the investigative stage of detection, as it is to the courts but is less tolerated during interrogation and rarely suitable or accepted during court proceedings. “ Here, police are permitted by the courts to engage in trickery and deception and are trained to do so by the police organization.

The line between acceptable and unacceptable deception is the line between so-called entrapment and acceptable police conduct” (Chevigny, 1969). “Within an adversary system of criminal justice, governed by due process rules for obtaining evidence, officers will deceive suspect to get the truth. The contradiction may be surprising, but it may be inevitable in an adversary system of justice where police perceive procedural due process norms and legal requirements as inconsistent obstacles to truth for the commission of crime” (Skolnick, 1982). Deceptive interrogation strategies present intriguing ethical questions.

While brutal or otherwise physically coercive means are no longer commonly used by police officers to obtain confessions, officers regularly use deception as an interrogation strategy. During interrogations officers will use psychological persuasion and manipulation. Officers are authorized to trick and lie to get a so called voluntary confession. The use of deception in interrogation is a simple “ routine in almost every law enforcement agency and it remains routine because it is effective: When the suspect is talking with police, deception frequently breaks the suspect down and elicits confession” (Obenberger, 1998).

“ Although these tactics have been criticized by the United States Supreme Court (Miranda v. Arizona) nevertheless the Supreme Court has never squarely banned the practice, and it sometimes justifies deceptive practices under the name strategic deception. Miranda forbids coercion in questioning a suspect it does not bar” (Obenberger, 1998) mere strategic deception by taking advantage of a suspect’s misplaced trust in one he supposes to be a

fellow inmate. To better understand how deception works here is an example: “ A burglary is being investigated at a local store.

During an interview of the suspect, he is told that there is a video recording of him inside of the store taking a car stereo and shoving it into his pants. The suspect tells the investigator that not only did he make it out of the store with the stereo he also tells him that he entered the store with the intent to take it in the first place; making the crime felony. What the investigator did not tell the suspect was that the video only showed him concealing the stereo and nothing else” (Obenberger, 2008).

“ Testimonials during court hearings are performed under oath, hence the statements of an individual being examined are assumed to be true and no other statement should be falsified or forged. When the officer does not pronounce the truth in court, he or she is still capable of providing a reason for his deception, based on a substitute arrangement, such as when he or she is operating as a witness to the prosecution and is not considered as the defendant in a court case. However, it is also required that the officer is conscious of the rules of the court system that he or she has sworn to tell the truth during examination” (Chevigny , 1969).

“ It is difficult to prove a causal relationship between permissible investigative and interrogatory deception and testimonial deception. Police freely admit to deceiving suspects and defendants. They do not admit to perjury, much less to the rationalization of perjury. There is evidence, however of the acceptability of perjury as a means to the end of conviction. The evidence is limited and fragmentary and is certainly not dispositive”

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(Skolnick, 1982). “ Deception is nothing more than planting a seed and letting the suspect fill in the blanks.

The most important part of using this technique is that in using it, you do not elicit a confession from an innocent person. One of the greatest examples of deception is Rhode Island v. Innis, 446 U. S. 291(1980). In January of 1975, a taxi driver was shot and killed by a shotgun blast at the base of his head. One week later, another taxi driver reported that a man wielding a shotgun had robbed him. Police prepared a photo lineup of the possible suspect and the second taxi driver identified him. A patrol officer located the suspect later in the morning.

Minutes later, a Sergeant arrived at the scene of the arrest and read the suspect his rights per Miranda. The suspect invoked his rights by saying I want to speak with a lawyer” (Obenberger, 2008). “ The sergeant detailed three officers to transport the suspect to the central station. After leaving the scene, the officers started talking amongst themselves about being worried that the missing shotgun was in the vicinity of a school for handicapped children and that they should continue to search for the weapon. It was also said by one of the officers, “ It would be too bad if a little girl would pick up the gun and maybe kill herself.”

The suspect told the officers that they should turn the car around and he would show them where the gun was. When they arrived back at the scene, the sergeant again advised the suspect of his rights per Miranda. The suspect showed the officers where the shotgun was” (Mike, 2008). “ There was a hearing in order to suppress the shotgun. The suspect’s attorney said

that because the officers were talking in the presence of the suspect, and that he was in custody, the officer's conversation amounted to an interrogation. The court found that it was not an interrogation and the shotgun was allowed.

The suspect was subsequently convicted of murder and the case was appealed. The Supreme Court found that the suspect was not interrogated within the meaning of Miranda. It was undisputed that the first prong of the definition of interrogation was not satisfied, for the conversation between the patrolmen included no express questioning of the suspect. Rather, the conversation was, at least in form, nothing more than a dialogue between the officers to which no response from the suspect was invited. This matter could have been argued either way.

Some would say that the conversation between the officers was intended to reach into the conscience of the suspect in order to get him to tell where the weapon was" (Obenberger, 2008). " Deception is incredibly effective on the criminal because this form of interview can actually reach into the conscience of a suspect because they still have a sense of what is right and wrong. This method also allows the investigator to uncover the motivation behind the crime. The courts, while not necessarily supporting deception, do not inhibit it either. It is a very valuable tool" (Mike, 2008).

" The negative side of deception is that when pitted against a suspect who isn't responding, the investigator might be inclined to go further and further with the method until such a point when getting the confession or evidence becomes more important than how it is obtained. Again, that's where the

line between legality and illegality exists. The most important aspect of using deception in an interview or interrogation is to be honest on the witness stand. There is nothing wrong with deception during an interview of a suspect but when it comes to testifying in court, tell the truth” (Mike, 2008).