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The Use of Trickery and Deceit During Interrogation

During an interrogation, an investigator attempts to persuade a suspect to tell the truth, oftentimes to provide incriminating evidence that will be used in a subsequent prosecution. Further, interrogations are generally conducted in situations where there is insufficient evidence to assure a conviction and, in many cases, the suspect's actual guilt may not be 100% certain. If an investigator was required to be completely truthful with a suspect, the interrogation would sound like this: "Joe, I am not sure you committed this crime and we do not have enough evidence to prosecute you for it. Therefore, I would like you to confess to me so that we can convict you and send you to prison." Obviously, under this circumstance, no suspect would ever confess. Out of necessity, therefore, interrogation relies extensively on duplicity and pretense.

An Investigator may exaggerate his confidence in the suspect's guilt, establish a misleading reason for the interrogation, such as needing to establish the circumstances that led up to the crime, display feelings of sympathy and compassion toward the suspect that are far from genuine, and, in some cases, falsely tell the suspect that evidence exists which links him to the crime. Trickery and deceit during an interrogation, therefore, occurs on a continuum. It is the latter extreme (lying to a suspect about evidence) that raises most questions.

In 1969 the U.S. Supreme Court upheld a confession obtained by the use of trickery where a homicide suspect was falsely told that his accomplice had already confessed (*Frazier v. Cupp*). Since then, numerous other Federal and State courts have similarly upheld confessions obtained through the use of substantial deceit by the investigator. However, courts have also imposed limits on the use of trickery and deceit. For example, an investigator cannot use a tactic that would "shock the conscience of the community," such as the investigator introducing himself as the suspect's court appointed lawyer and obtaining a confession under the pretense of needing to know the truth to best defend the suspect. Similarly, a Federal court ruled that it is improper to manufacture fictitious evidence against the suspect and using the "evidence" during an interrogation. The general guideline is that false verbal assertions are permissible, e.g., "The crime lab identified your DNA on the victim" but creating false evidence (typing up a fictitious crime lab report) is not.¹

Courts recognize that falsely telling a suspect that his fingerprints were found inside the victim's home, for example, would not be apt to cause an innocent suspect to confess.² A person of normal intelligence and mental capacity would certainly not place greater confidence in the investigator's statement than his own knowledge that he was not in the

victim's home. The tactic of falsely telling a suspect that evidence links him to the crime scene has played an instrumental role in persuading many guilty suspects to confess who otherwise may not have done so. It is, however, a risky interrogation practice, and one that should be used with caution.

The inherent danger of lying to a suspect about the existence of fictitious evidence is when the suspect does not believe the investigator's statement. Under this circumstance, the investigator's credibility may be irreparably damaged. This is especially true when the suspect calls the investigator's bluff and demands to see the evidence (as frequently happens with more street-wise suspects). Once the investigator loses the suspect's trust, the suspect may dismiss the investigator's apparent confidence in his guilt, question the investigator's sympathetic demeanor, and challenge the entire pretense for the interrogation. In other words, the suspect may realize that the investigator is only interested in obtaining evidence to be used in an effort to punish him for his crime.

With this in mind, the following recommendation is offered: introduce fictitious evidence during an interrogation only as a last resort effort to stop persistent, but weak, denials or to maintain the attention of a suspect who exhibits clear signs of psychologically withdrawing. Certainly, presenting fictitious evidence against a suspect early during an interrogation should be avoided as it often results in unwanted denials.

Because of the previously mentioned hazard, only rarely does our staff out-right lie to a suspect about the existence of evidence linking him to the crime. Rather, they infer that such evidence exists. Examples of these statements include, "I wouldn't be talking to you this way unless I had proof that you were with her that night!", or, "I've seen the evidence and there's no doubt you were inside that home!" Similarly, the investigator may simply state, "We know that she got into your car right outside the school yard and we know that you drove down University Avenue with her in your car!"

Central to each of these statements, is that the investigator does not identify the specific evidence that links the suspect to the crime scene, e.g., fingerprints, eye witnesses, DNA, etc. Rather, the specific form of evidence is left unsaid. This approach minimizes the inevitable challenge by the suspect of, "Who is your witness?", or "Let me see that crime lab report."

Another approach, that has a similar safeguard, is to refer to the evidence in the future tense. This was used successfully in a case where it was known that the perpetrator left a wad of gum at the crime scene. The investigator stated, "We recovered the gum and are in the process of having the saliva within the gum analyzed for DNA markers. We both know that when we get those results back it's going to show that you were the person who chewed that gum and left it in the basket."

In summary, investigators are legally granted wide latitude with respect to the use trickery and deceit during an interrogation. While out-right lies concerning the existence of evidence that links a suspect to a crime scene or victim can be very persuasive, there is always a risk that the statement may not be believed or that the suspect will insist on seeing proof of the evidence. Therefore, it is often advantageous to merely imply the existence of such evidence, or make reference to the fact that the evidence will shortly establish the suspect's presence at the crime scene.

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