

Ethics: Handling Allegations of Officer Untruthfulness

Mistakes or Malfeasance?

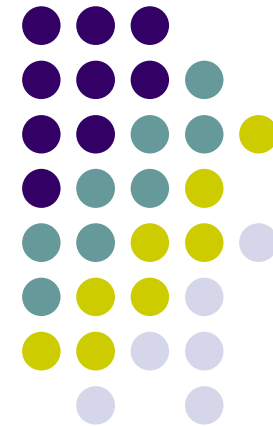
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Karen J. Kruger, Esq.

Jeffery J. Noble, Esq.



Ethics – What is it?



- *Ethics*: Principles of good or right behavior; a system of moral principles or values that govern the members of a profession
- *Ethical Conduct*: Behavior that conforms to the professional moral code
- *Integrity*: Firm adherence to the code; Behavior characterized by honesty and maintenance of the highest ethical and moral standards in both professional & personal life

Ideal Values in Law Enforcement



- *Fairness*: Just to all parties; in accordance with rules, logic or ethics; treating others as individuals, with dignity and respect, and in an unbiased manner
- *Service*: Work done for others as an occupation
- *Character*: Moral or ethical strength derived from emotional, intellectual and individually learned moral standards

Acts of Deception – Undermine These Values



- Acts of deceit and untruthfulness undermine the law enforcement mission
- May compromise officer safety
- Contravene the principles of justice
- Erode the public trust

What is lying?



- A common human behavior
- An intentionally deceptive message communicated verbally, in writing, by omission or by behavior
- *He who says he has never lied is...lying.*
- **Aristotle:** Lying is wrong under every circumstance
- **Plato:** May be acceptable if for the common good

Who Lies When?



- *National Institute of Ethics Study – 1996*
 - Average Age: 32
 - Gender: 93% male, 7% female (of 9.9% total)
 - Education: 70% H.S.; 11% GED; 10 % AA degree; 8% BS degree
 - Average Years Sworn: 7.2
 - Type of Agency: 56% Urban (of 66%); 33% County (of 25%); 11% State (of 8%)

Why Do Officers Lie?



- Arrogance
- Ignorance
- Fear
- Moral Defect
- To close ranks
- Out of self pity
- Immaturity
- For personal gain/greed
- To protect others
- To hide misconduct
- Cowardice
- Self indulgence



- To avoid responsibility & punishment
- To provide internal justification for questionable acts
- The organization may condone it
- Officers are trained to lie and be manipulative

Two General Categories



- **Out of Ignorance**

- Preventable through training
- Deter/correct through progressive discipline
- Can be explained or excused until/unless pattern of untruthfulness develops or if egregious in nature

- **Lack of Integrity**

- Possibly preventable through training
- May result from character flaw, poor decision-making skills, lack of moral courage
- Unacceptable in the profession

Why Does It Matter?



- We are about truth and justice
- Ability to provide credible testimony under oath is an essential job functions
- Legal disclosure requirements implicated
- Affects credibility of entire agency
- Undermines community trust
- Puts officer safety at risk
- Erodes agency's ability to defend civil lawsuits

Legal Implications



- *Evidence that an officer may be biased or not truthful must be disclosed to a criminal defendant in advance of trial, and to a civil plaintiff in discovery.*

Disclosure Obligation to Criminal Defendants



Impeachment Information. All material or information in any form, whether or not admissible, that tends to impeach a State's witness, including:

(A) evidence of prior conduct to show the character of the witness for untruthfulness...

MD Rule 4-263 (b)(6); *Brady v. Maryland*

Ethical Analysis



- Traditional categories of lies:
 - 1) *Jacose* – for amusement
 - 2) *Officious* – lie of excuse or told to benefit someone (“white” lie)
 - 3) *Injurious* – lie that causes harm

When Do Lies Become Impeachment Material? Is a Lie Always a Lie?



*Deception Occurs on a Continuum
In These Categories:*

- Excusable or justified deception
- Conduct intended to deceive but not malicious in nature
- Intentional and malicious deceptive conduct

“I can’t recall”



- Described as being the number one lie in police work
- Classic case of deception by omission
- Does an officer really forget that an incident took place?
- Or just parts of an incident?
- Convenient forgetfulness of one issue that is the critical part of a controversy

Category One: Excusable or Justified Deception - Examples



- During interrogations to coerce a confession
- During undercover operations
- Lies justified by investigative necessity, even if mistaken about the necessity;

Excusable or Justified Deception



- Negligent reporting errors that turn out to be false;
- Negligently providing false or misleading information to a citizen, fellow officer or superior;
- Non-material exaggerations, boasting or embellishments in descriptions of events or behavior of others.

Excusable or Justified Deception



- Inaccurate or false statements based on misinformation or ignorance;
- False statements made in jest, concerning trivial matters, or to spare another's feelings;
- Out of social courtesy.

Ethical Dilemmas



- If you don't know the information you are using or giving is false, are you telling a lie?
- If you *do* think the information is false, but in fact it is true, are you still lying because you *intended* to say something false?

More to think about



- What about “mixed motive” lies – e.g. Deception made in pursuit some worthwhile or utilitarian goal?
- A lie of necessity? What about if it exceeds the necessity?

Category Two: Conduct Intended To Deceive But Not Malicious



- Simple exculpatory “no” or denial;
- Statement made in effort to disguise minor misconduct or errors;
- Off duty statement about private matters;
- Spontaneous, thoughtless statements made under stress;

Conduct Intended To Deceive But Not Malicious



- Dishonest statement promptly acknowledged and corrected;
- Isolated dishonest acts occurring years prior;
- “Administrative deception” about minor employment matters – aimed at preventing some type of employment action rather than related to the exercise of law enforcement powers

Category 3: Intentional & Malicious Conduct



- Lying intentionally in a formal setting such as court, charging document, affidavit, deposition, IA interview, etc.;
- Acts that constitute fabrication of or tampering with evidence;
- “Testilying”
- Deliberate failure to report significant misconduct of other officers;

Intentional & Malicious Conduct



- Willful false statement made to another officer on which he relies;
- Criminal conduct that is fraudulent in nature;
- Repeated acts of deceptions/dishonesty;
- Lies made for personal gain;
- Deceitful acts that demonstrate a disregard for the law or an immoral character.

Agency Obligations



- An agency must prohibit deceptive conduct – even though these underlying complexities make difficulties in recognition, management and enforcement
- Noting the difference between mistakes and intentional abuse of police authority by deception

Proactive Strategies



- *Law Oriented*

- Pre-employment background investigations
- Effective IA process
- Established and known impeachment disclosure policies
- Zero tolerance policy

- *Ethics Oriented*

- Education & Training
- Moral leadership
- Emotional support systems for employees at critical career junctures or in trouble
- Reward ethical conduct

Managing Misconduct - Make Good Choices



- Is this misconduct or something else?
- Establish clear policy statements
- Set an example
- Carefully investigate allegations of untruthfulness, but don't "nit pick"
- Take care using polygraph as an investigative tool

Managing Misconduct - Make Good Choices



- Consider the motive, circumstances & background of the officer
 - *Is the officer remorseful?*
 - *Does the officer recognize the error?*
 - *Does the officer otherwise have a good conduct record?*
 - *Was the underlying issue important enough to potentially cause serious negative consequences? How far-reaching?*

Internal Affairs



- Emphasize advantages of being truthful in interviews
- Use extreme discretion in placing administrative integrity charges
- Consider the end game
- Treat the deliberate, malicious lie as a termination offense
- Be judicious in consulting with the prosecutor's office

Disclosure of IA Files



- Complex subject – generally, prosecutors decide what is exculpatory in criminal cases
- Professional opinions differ by jurisdiction, by state/federal
- Disclosure of all or part of file v. just informing prosecutor
- Do not release info directly to defendant

Non-sustained Allegations



- *May* still be subject to disclosure as exculpatory evidence, but almost certainly *not admissible* against the officer
- May be useful to impeach the complainant/defend the officer in civil suit
- Should they be expunged?

Deceptive Practices Are Good Law Enforcement Tools



Police unlikely to stop using deceptive practices, and no reason to do so –

- Undercover Operations
- Unmarked patrol vehicles
- Creating false impression of safety
- Lying to elicit confessions

To Protect Integrity



The goal must be to insure that officers do not slip down the continuum from acceptable deceptive conduct to intentional, malicious deceptive conduct

Consider Interrogations



- At least some individuals falsely confess to crimes
 - Interrogations intentionally occur in isolation
 - Inappropriate interrogation tactics
 - Threats
 - Promises
 - Intentional or unintentional conveyance of corroborating information

Interrogations



- To resolve concerns consider:
 - “Stem to stern” recordings of all interrogations of serious crimes
 - Benefits
 - Provides transparency
 - Allows detective to focus on interrogation, rather than note taking
 - Provides evidence that detectives acted properly
 - Allows jury to make credibility assessment of suspect

Interrogations



- Fears About Recordings:
 - Reluctance to reveal interrogations techniques (such as lying)
 - A belief that recording will inhibit the suspect's cooperation
 - Concern of costs
 - A belief that detectives may become overly reliant on technology

Training



- Officers should receive training in police induced false confessions
- Officers should receive training in those deceptive actions that are acceptable and those that are not
- Ongoing ethics and ethical decision-making



In the news...

Vowing to bolster his department's legitimacy in the eyes of the public, Boston Police Commissioner Edward F. Davis is finalizing a new policy that allows him to fire any cop caught lying in the line of duty.

*Boston Herald
September 27, 2009*

Another voice...



“It’s a cop-out to suggest that there’s nothing they can do about it but fire people,” said Jim Pasco, executive director of the National Fraternal Order of Police, a union representing 327,000 officers and 2,300 local unions.

Pasco said a solution to lying is to step up screening for new officers. “People don’t become dishonest after they become police officers,” said Pasco, a retired ATF agent. “A lot of the responsibility falls on police management to do a better job in recruiting.”

What advice do we give?



Use of the deception continuum helps police chiefs evaluate cases and make decisions.

- Chiefs must be willing to terminate those who engage in intentional, malicious, and deceptive conduct.
- Chiefs must also be willing to manage human behaviors along the continuum.

Final Thoughts



- *Aristotle*: Lying for whatever reason warps the character of the person and thus diminishes one's capacity to exercise practical wisdom
- The trust necessary for successful relationships is undermined even by well intentioned acts of dishonesty

Prevention is Preferable



*“There is no terror in your threats...;
For I am arm’d so strong with honesty
That they pass by me as the idle wind,
Which I respect not.”*

W. Shakespeare, *Julius Caesar* (1599), act IV, iii, 66

Resources



- *Lies, True Lies and Conscious Deception:*

Police Officers and the Truth

Geoffrey P. Alpert & Jeffery J. Noble

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<http://online.sagepub.com>