

October 13, 2022

SPD Deception (“Ruse”) Policy

Summary

This memo describes the work to date of the OIG and stakeholders around the use of deception in policing by Seattle Police officers. Creating parameters and guidelines for the use of deception is particularly important as SPD works to improve community trust and perceptions of legitimacy. OIG has also worked with Seattle Police Department (SPD) to innovate training around interviewing practices. This work is related to and in support of that effort, specifically addressing issues of deception in patrol. OIG anticipates two additional phases of work related to deception: addressing the use of deception to gain information during investigations,¹ and the use of deception during interrogations to elicit incriminating statements.

Background

Two cases involving SPD officers using deception caused significant concern among the community in recent years.² Although allegations were sustained in both cases, none of the allegations were specifically related to the use of a ruse because SPD did not have a specific policy governing ruses or deception. To address this gap, SPD is in the process of developing a policy with stakeholder review and input, including feedback from OIG and its stakeholder workgroup. The policy aims to create guidelines for using deception during patrol activities and a process for documentation of deception when used. Well-defined policies and procedures relating to deception during patrol are critical, given the impact deception can have on community trust, as well as the potential for false confessions and convictions.³

Whether use of deception by patrol officers is necessary or productive is a matter of debate. Because of the potential for harm to community trust and the questions about whether it achieves a benefit for patrol officers,⁴ policies related to deception in patrol must be narrowly limited. In looking to other jurisdictions and policing models for guidance on any proper role for deception in policing there is an

¹ The work on investigations may also include the use of undercover work to arrest people for low-level drug offenses.

² During the 2020 protests, SPD implemented a ruse to drive people out of the CHOP/CHAZ by sending fake radio dispatches reporting that armed proud boys were gathering downtown, agitating protesters and others (see OPA Case [2020OPA-0749](#)). This case is analyzed in the forthcoming [Sentinel Event Review](#) Wave 3 Report. In 2019 an officer used deception to find the driver responsible for a hit and run fender bender, which contributed in the driver dying by suicide (see OPA Case [2019OPA-0168](#)).

³ Of the 375 DNA exonerations the Innocence Project has documented, false confessions contributed to 29% of wrongful convictions. See shorturl.at/fQW69.

⁴ Deceptive tactics are a rarely discussed practice, by SPD or other jurisdictions. No other department has a policy related to deception used for patrol activities, and deceptive tactics are not included in any of the 24 subsections of Title 16 of the Seattle Police Department manual, which covers patrol operations.

international dearth of instructive policies or other useful material. A notable exception is the United Kingdom, which uses a method called PEACE to interview subjects. The PEACE technique does not include deceptive practices while interviewing a subject and seeks to increase the objectivity of officers.⁵ OIG in collaboration with SPD has worked with Dr. Andy Griffiths to incorporate PEACE techniques into SPD interrogation practices and to develop a PEACE training program for SPD officers. Since OIG was unable to find additional publicly available policies limiting deception in patrol from other jurisdictions, this project seeks to innovate policy development in this area using stakeholder engagement in collaboration with SPD to develop guidelines for use of deception. The goal of this work to support policy development to better define the practice and its use in Seattle and to establish a policy that may be replicated nationally as a best practice in law enforcement.

OIG has collaborated with a variety of stakeholders and subject matter experts to provide feedback and to help develop the SPD deception policy. To provide a foundation for stakeholder discussions, OIG commissioned a white paper⁶ on the broader topic of deception in policing, authored by Professor Anjelica Hendricks of the University of Pennsylvania Carey Law School, a strategist and consultant on community-police relations. OIG held a stakeholder meeting with representatives of local organizations engaged in work related to policing to address key considerations in the development of deception policies and convened two roundtable discussions with these stakeholders and representatives from SPD to discuss the draft policy. This memo aggregates the feedback from these outreaches for SPD consideration.

Stakeholder Meetings

OIG convened stakeholders⁷ in April of 2022, for a series of meetings to discuss deception in policing, and to provide feedback to SPD in the drafting of new policy. Central to the mission of the meetings were the goals of minimizing the risk and negative impacts related to the use of deception and ensuring that SPD internalizes a culture that embraces documentation, transparency, and responsibility in the use of deception. The group discussed possible harms to the community, acceptable uses of deception, documentation of deception, when deception should be prohibited, community trust, and accountability for officers that misuse deception.

Roundtables

OIG convened two roundtables to discuss police deception with panels of governmental and nongovernmental stakeholders. Both meetings were facilitated by Professor Hendricks. The first roundtable took place on June 1, 2022.⁸ Topics covered in the meeting broadly included the accountability and community impact of ruses and deception by SPD. The second roundtable, held on

⁵ [How the UK Police Interview Suspects](#)

⁶ See Appendix 1

⁷ Stakeholders involved in this stage of work included individuals from the ACLU-WA, Innocence Project, King County Department of Public Defense, Seattle Department of Public Defense, and Washington State Criminal Justice Training Center.

⁸ The June 1 roundtable included representatives from SPD, Seattle City Council, and Washington State Criminal Justice Training Commission, ACLU-WA, Washington Innocence Project, The Innocence Project, Public Defender Association, and the Revive Center for Returning Citizens – IDTT.

June 16, 2022,⁹ focused on next steps for developing an SPD deception policy which prioritizes accountability and ethics. The discussions are summarized below.

Accountability:

Both roundtables included discussions of accountability and potential methods to ensure discretion is not abused by SPD officers. Suggestions included the need to require supervisory approval, detailed documentation, and review processes, as well as to ensure the forthcoming policy includes explicit attention to race, to individuals in crisis, and those with behavioral and intellectual disabilities.

Key to the discussion was the semantic distinction between a lie and purposeful deception used by police. The consensus held that the difference lies in the intent of the deception and its impact on the interaction: a lie is a false claim which has a nefarious or improper objective, while deception maybe beneficial during a contact to reduce the likelihood of violence when apprehending suspects. Some participants voiced concern about this distinction, particularly related to the justification of de-escalation and assumption of violence. Participants suggested that deception used for situations where violence is assumed will disproportionately target young Black and Brown men, as evidenced by national trends in stops, arrests, and incarceration. This outcome may further undermine public trust and perceptions of police legitimacy, creating a loop of deception and mistrust.

Ethical Consequences & Community Impact:

A central theme across both meetings was the legitimacy of the use of deception and the impact of deception on community trust in police. Many participants expressed that the use of deception in routine situations undermines public trust and reinforces the idea that police lie frequently and with impunity. This may be particularly true for historically over-policed and BIPOC communities. Public perceptions of legitimacy and procedural justice should therefore remain key priorities in the development of SPD's deception policy.

Participants also noted that deception used in stops and searches frequently represents an entry point to wrongful conviction.¹⁰ Stakeholders and SPD alike recognized that wrongful convictions result in the actual perpetrator being unidentified and free to commit more crime, representing a public safety issue, therefore there is alignment in the goal of identifying actual perpetrators. The participants maintained that the use of deception in investigations should be replaced by other, proven investigatory methods that center both public safety and procedural justice.

Stakeholder Feedback on SPD Policy Development

The following section presents a summary of the issues, concerns, and feedback provided by roundtable participants for consideration by SPD in drafting a policy around deception.⁸⁹ This feedback was gleaned not only from the roundtable discussions, but also stakeholder review of SPD's current draft policy, and an online survey sent to participants following the June 16th roundtable.

After the June 16th roundtable, SPD provided a draft version of a deception policy for review by roundtable participants. The feedback for consideration is summarized below.

⁹ The June 16 roundtable included representatives from the SPD, Seattle City Council, Washington State Criminal Justice Training Commission, ACLU-WA, Washington Innocence Project, Innocence Project, and Public Defender Association.

¹⁰ [Exoneration Detail List \(umich.edu\)](https://www.umich.edu/exonerations)

Definitions & Philosophy:

- Define and distinguish between appropriate use of deception and dishonesty based on intent, interpretation, and justification. Ruses are a type of deception and policy should use accurate language.
- Define “de-escalation” clearly and with examples (specifically distinguish from “calming”) and define appropriate and inappropriate uses of de-escalation by means of deception.
- Define acceptable uses of deception and deception across patrol activities.
 - Prohibit deception used to hide the truth or to avoid telling someone the primary reason they are stopped or questioned.
 - Prohibit deception in traffic stops.¹¹
 - Prohibit the use of deception during protests and large-scale gatherings.
 - Define and expand the deception policy relating to consent searches.
 - Prohibit deception used to obtain evidence or information by knowingly communicating false facts about evidence or unauthorized statements regarding lenience.
- Develop the policy to take into consideration the impact of the use of deception on BIPOC, as well as to individuals in crisis and those with behavioral and intellectual disabilities.
- Replace “lawful” with “legitimate” in all instances. Lawfulness should not provide the standard for appropriate police conduct in certain aspects that create community concerns; centering legitimacy creates protections for the community and encourages community trust.¹²

De-Escalation:

The current draft deception policy states “Communications made by an officer in furtherance of de-escalation to calm or providing comfort to people are not ruses.”

- Add “deceptive” before “communications made by an officer in furtherance of de-escalation...are not ruses,” as the clause is specific to deceptive communications.
- SPD should consider removing this de-escalation exception as it has the potential to swallow the rule. To the extent that deception is part of a planned operation it should be approved and documented prior to use. State policies provide examples of alternative de-escalation strategies. Failure to do this may undermine SPD credibility and community trust and may instead escalate the situation.
 - Follow Washington State’s 2021 Use of Force law¹³ requiring the use of de-escalation tactics in interactions with members of the public to “minimize the likelihood of the need to use force during an incident.”¹⁴
 - Follow the Washington Attorney General’s model guidance¹⁵ for de-escalation practices, which recommends “speaking slowly, regulating tone and body language,” and

¹¹ An example came up in the discussion around using deception to make a high-risk vehicle stop without sufficient personnel. The group recognized that the better approach is to simply follow existing policy on high-risk vehicle stops.

¹² The forthcoming Sentinel Event Review Wave 3 Report examines the negative impact of the 2020 broadcast ruse on community perceptions of legitimacy.

¹³ [RCW 10.120.010: Definitions. \(wa.gov\)](#)

¹⁴ SPD currently follows this requirement in their Use of Force policy.

¹⁵ [Washington State Office of the Attorney General Model Use of Force Policy](#)

“communicating in a way that demonstrates respect for people’s dignity” instead of using deception.¹⁶

Accountability:

- Uses of deception that have not been approved run the risk of undermining community trust. If “when feasible” or “if practicable” are included in the policy, then that discretion should be limited and highly scrutinized. All uses of deception should require supervisory approval.
- All use of deception must be documented. Remove “as appropriate” from procedures for documenting deception. Documentation must include pre-deployment justification, details of the deception, and after-action reporting on the outcome of the deception. Documentation must also include demographic information about the subject where known. Body-worn cameras should be in use throughout the entirety of the use of a patrol deception.
- For planned operations and where otherwise feasible, a risk assessment should be conducted prior to the use of deception to identify possible alternatives that could reduce the need for deception. SPD should track and review when deceptive tactics are used, for what purpose, and the subsequent results, this will help SPD and oversight entities evaluate and enact changes necessary to enhance equitable policing practices.

Survey

An online survey was administered to capture participant’s views on the use of deceptive tactics and on possible accountability measures for SPD to include in their deception policy. The responses are drawn from five individuals across three different stakeholder organizations, and are summarized below:

Use of Deception During Patrol:

Two of the five respondents believe deception should be categorically allowed during patrol activities, pointing to the history of deception as a legitimate and long-established tool for law enforcement. The remaining three respondents believe officers should be allowed to use deception only within strictly defined parameters, not as a general tool. Specifically, deception should be used only where necessary to avoid death or great bodily injury to the public¹⁷ and should never be used to develop evidence or to induce an otherwise innocent person to falsely commit or admit to a crime.

Accountability Measures:

Respondents recommended several factors for supervisors to assess prior to the use of deceptive tactics: 1) the lawfulness and legitimacy of the deception (intent and outcome); 2) the risk of death or great bodily injury to subject of deception and public, as well as to officer; and 3) the potential for false confessions.¹⁸ Two accountability measures were also highlighted for review after deception is used: 1)

¹⁶ SPD currently follows this guidance in their Use of Force Policy.

¹⁷ “Officer safety” as an unspecified, blanket concern should not be the sole justification for a ruse, as it has been subject to misuse and overuse in the past. Officer safety concerns that justify use of deception must be specific and based on credible information and belief.

¹⁸ To this end, respondents noted the importance of training for officers to accept and understand risk of and potential for false confessions arising from ruse activities, and the necessity of a pre-deployment risk assessment to gauge whether ruse is likely to generate bad leads and evidence.

documenting the deception in paperwork by describing why and how the deception was used; and 2) sharing documentation with appropriate city agencies for review.

Lastly, participants were asked if a dataset on deception would be helpful in shedding light on the practice. While two respondents noted the absolute necessity of a publicly available dataset, two others questioned the specific intent of the dataset and the appropriate data necessary to collect. One respondent suggested the reduced benefit of requiring additional documentation if pre-deployment supervisory review and post-deployment documentation are required.

OIG Feedback

Incorporating the feedback from stakeholders and SPD summarized above, OIG suggests that a sound policy governing the use of deception should minimally include the following:

- Clearly differentiate between appropriate deception and unacceptable dishonesty.
- Clearly and narrowly define “de-escalation,” exclude calming a subject or victim from this definition.
- State when a deception can be used as a tool for patrol officers.
- Prohibit deception used to hide the truth or to avoid telling someone the primary reason they are stopped or questioned.
- Prohibit the use of deception during protests and large-scale gatherings.
- Define the difference between “lawful” and “legitimate” and use legitimacy as the baseline for the use of deception.
- Require documentation of all uses of deception.
- Officers should not engage in deception in obtaining evidence or information by knowingly communicating false facts about evidence or unauthorized statements regarding leniency.¹⁹

Next Steps

The Use of Deception white paper authored by Professor Hendricks discussed issues related to deception used in patrol, investigation, and interrogation, and can be used as part of the framework for future work on deception in public safety. OIG will continue its collaborative work with SPD and other stakeholders to address deception, with additional phases of the project covering deception in investigations and interrogations. Both phases will incorporate issues identified in the Use of Deception white paper, as well as stakeholder input and additional roundtable discussions facilitated by Professor Hendricks. OIG will continue working to improve interviewing practices to further prior collaboration with Dr. Griffiths in support of limiting uses of deception in interrogations.

¹⁹ This feedback from elected leadership was deemed to be a critical inclusion for SPD policy.

Appendix 1. Use of Deception White Paper

The OIG commissioned AH Strategic Consulting to author a white paper to discuss issues related to deception use in patrol, investigation, and interrogation to be used as part of the framework for the current and future work in public safety. This white paper is an academic perspective on the use of deception and is a source material for further discussion by stakeholders.

AH STRATEGIC CONSULTING LLC SEATTLE OFFICE OF THE INSPECTOR GENERAL

SPD Use of Deception

The law enforcement use of deceptive tactics has been examined in the context of interrogations, consent for searches, and undercover work. Contrarily, the law enforcement use of deceptive tactics in protest movements has not been similarly assessed. This white paper will review federal, state, and local laws that may touch upon the law enforcement use of deceptive practices across several areas of policing, as well as evaluate the Seattle Police Department's draft directive on the use of deception.

Deception in Policing Protests

As law enforcement attempt to guarantee the safety of those exercising their first amendment rights to their freedom of speech and assembly, there have been identifiable accounts of unethical, sometimes criminal, practices during the deployment of police tactics. Law enforcement use unlawful assembly laws to regulate protest members and their activities.²⁰ However, these laws routinely rely on the discretion of law enforcement personnel to determine the legality of the assembly;²¹ creating an environment whereby personnel may unilaterally engage in improper tactics to restrict the movement of protest members.

Following the 2014 killing of Michael Brown, protestors in Ferguson, Missouri sued law enforcement to prevent law enforcement from deceiving protestors of rights afforded to them by arbitrarily arresting protestors without indication that individuals committed force or violence.²² In her ruling, Judge Carol Jackson commented that "it might be helpful for the officers to be instructed on exactly what they are and are not allowed to do".²³

After the murder of George Floyd, protest movements appeared across the nation, with more identifiable accounts of law enforcement using deceptive practices. In Seattle, police personnel

²⁰ See John Inazu, *Unlawful Assembly as Social Control*, 64 UCLA L Rev. 2 (2017).

²¹ *Id.*

²² *Id.*

²³ Transcript of Temporary Restraining Order Hearing at 132, *Templeton v. Dotson*, No. 4:14-C2019 (E.D. Mo. Dec. 11, 2014) (indicating the testimony of Stephen Dodge).

faked an allegation of armed Proud Boys over police radio, ²⁴with the motive to allegedly dissuade protestors from gathering but instead causing a city-wide emergency prompting an investigation into the disinformation. The Seattle Office of Police Accountability (OPA) investigation concluded with two Seattle Police personnel being sustained for violations of Standards and Duties 6, relating to when employees may use discretion, and violations of Standards and Duties 11, relating to employees being truthful and complete in all communications.²⁵ However, the OPA investigation overlooked the assessment on if the Proud Boys disinformation ruse violated any federal and state criminal laws or Seattle ordinances, as well as violations to the Seattle Police manual requiring police personnel to adhere to such laws.²⁶

In Washington, the actions described within the OPA report may rise to the level of false reporting.²⁷ The Washington, the false reporting statute states that:

A person commits false reporting if, with knowledge that the information reported, conveyed, or circulated is false, he or she initiates or circulates a false report or warning of an alleged occurrence or impending occurrence knowing that such false report is likely to cause: Evacuation of a building, place of assembly, or transportation facility; public inconvenience or alarm; or an emergency response.²⁸

According to the OPA investigation, on June 8, 2020, police personnel had knowledge that the information that was shared over police radio was false but nevertheless continued the ruse,²⁹ a possibility a state crime. Similarly, the federal crime of false information and hoaxes prohibits the false or misleading conveyance of a possible crime.³⁰ Even though the federal crime “does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency”,³¹ the exception would not apply for the June 8, 2020 incident since the OPA investigation determined that Named Employee #1 was not authorized to use such discretion.³² Lastly, false reporting is additionally a local ordinance. The Seattle Municipal Criminal Code declares that a person is guilty of false reporting if the person:

Initiates or circulates a written or oral report or warning of an alleged or impending occurrence of a fire, explosion, crime, catastrophe, or emergency that such report contains false information and knowing that such report is likely to cause evacuation of a building, place of assembly, or transportation facility, or to cause substantial public

²⁴ Daniel Beekman, *Seattle police faked radio chatter about Proud Boys as CHOP formed in 2020, investigation finds*, Seattle Times (Jan. 5, 2022), <https://www.seattletimes.com/seattle-news/politics/seattle-police-improperly-faked-radio-chatter-about-proud-boys-as-chop-formed-in-2020-investigation-finds/>

²⁵ <https://www.seattle.gov/Documents/Departments/OPA/ClosedCaseSummaries/2020OPA-0749ccs123021.pdf>

²⁶ Seattle Police Manual, 5.001-2, Employees Must Adhere to Laws, City Policy and Department Policy

²⁷ While city administrators may have indicated that the tactic was legal, it is unclear which state law allows law enforcement to be shielded from prosecution for false reporting.

²⁸ Wash. Rev. Code Ann. § 9A.84.040 (West)

²⁹ <https://www.seattle.gov/Documents/Departments/OPA/ClosedCaseSummaries/2020OPA-0749ccs123021.pdf>

³⁰ 18 U.S.C.A. § 1038

³¹ 18 U.S.C.A. § 1038

³² <https://www.seattle.gov/Documents/Departments/OPA/ClosedCaseSummaries/2020OPA-0749ccs123021.pdf>

inconvenience or alarm.³³

Overall, the incident described on June 8, 2020, possibly rises to the level of criminal activity under local, state, and federal laws. There are, however, deceptive tactics that are legally allowed to be deployed by law enforcement under strict parameters, which sections II-V will discuss.

Deception in Interrogations

During interrogations, individuals are afforded protections including the right to remain silent,³⁴ and the right to an attorney.³⁵ The most widely used interrogation technique in the United States is the Reid Technique.³⁶ This technique was depicted in the Ava DuVernay's Netflix series "When They See Us", depicting the Central Park Five, and consists of three stages: a fact analysis, an investigative interview, and a more confrontational interrogation.³⁷ A large part of this technique, is the deceptive practice of informing suspects that law enforcement has discovered evidence that suggests the suspect committed the crime.³⁸

This practice has been cited as being used in several instances of wrongful convictions and law enforcement agencies have committed to altering its interrogation methods. Wicklander-Zulawski, the nation's leading training institution on interrogation tactics, announced in 2017 that it will "no longer offer training in the controversial Reid Method".³⁹

Deception is not only found in lying to suspects, but it can also be seen in officers omitting valuable information. In *Moran v. Burbine*, the Court found that omitting valuable information regarding the whereabouts of a suspect's attorney did not violate the suspect's Fifth or Sixth Amendment rights.⁴⁰ Either affirmative deception, or omission, courts have drawn the line on what action transforms permissible deceptive to prohibited coercive tactics. Law enforcement may not deceive someone into believing that their children will be taken away if they do not cooperate during an interrogation.⁴¹ Law enforcement may not elicit a non-Mirandized statement from a suspect, and then subsequently Mirandize the suspect and elicit the statement again.⁴²

Apart from these specific cases, federal courts generally apply a totality of circumstances test to determine if an interrogation technique is permissible or coercive.⁴³ This test was applied in the Ninth Circuit, persuasive for the State of Washington, in which the federal court held that

³³ Seattle Municipal Code section 12A.16.040

³⁴ See *Miranda v. Arizona*, 384 U.S. 436 (1966).

³⁵ U.S. Const. amend. V

³⁶ Rachel Harmon, *The Law of the Police*, Aspen Publishing (2021), 148.

³⁷ Jacey Fortin, *Interrogation Company Insists That "When They See Us" Got It Wrong*, N.Y. Times (Oct. 17, 2019),

www.nytimes.com/2019/10/17/us/reid-technique-when-they-see-us.html

³⁸ *Id.*

³⁹ <https://njdc.info/wp-content/uploads/2018/10/Wicklander-Zulawski-Press-Release.pdf>

⁴⁰ *Moran v. Burbine*, 475 U.S. 412, 413 (1986).

⁴¹ See *Lynumn v. Illinois*, 372 U.S. 528 (1963).

⁴² See *Missouri v. Seibert*, 542 U.S. 600 (2004).

⁴³ Miriam Gohara, *A Lie for a Lie: False Confessions and the Case for Reconsidering the Legality of Deceptive Interrogation Techniques*, 33 Fordham Urb. L. J. 791 (2006).

detectives may not inform a suspect that a statement will not be used against him.⁴⁴

Deception within interrogation practices, however, is widely permissible when not specifically prohibited by law, which some jurisdictions have done. In 2021, Illinois became the first state to ban police from lying to juveniles during interrogations,⁴⁵ with Oregon following shortly later.⁴⁶ Even though the technique is legal to deploy, within defined parameters, empirical studies have shown that deceptive interrogation techniques have induced false confessions. A 1996 experiment found that false incriminating evidence can lead people to accept guilt for a crime that they are innocent,⁴⁷ and paradoxically, a 2005 study found that trained investigators were less accurate at identifying true and false confessions.⁴⁸ Collectively, these studies have the potential to show that not only are suspects susceptible to false information given by law enforcement, but law enforcement may be ill equipped to identify when a false confession occurs. Unfortunately, investigator trainings to detect deception have not been statistically proven to be helpful at preventing false confessions.⁴⁹

To help deter inappropriate law enforcement practices during interrogations, some jurisdictions have enacted laws requiring the recording of interrogations. As of January 2022, Washington State now requires law enforcement to audio and video record interrogations of juveniles and felony crime investigations.⁵⁰ Additionally, if the interrogation is not recorded, the law requires for the investigator to submit an explanation as soon as practicable after completing the interrogation.⁵¹ If an officer conducts their interrogation outside of an official place of detention, the law also requires the officer to submit an explanation as to their “decision to interrogate outside a place of detention”.⁵² Overall, even though deceptive tactics within interrogations are wildly permissible in Washington, interrogations involving juveniles and felony crimes must be recorded, and ideally held in a place of detention, unless the timely repair of monitoring equipment is not feasible or some exigent circumstance precludes the interrogation in a place of detention.⁵³

⁴⁴ Henry v. Kernan, 197 F.3d 1021, 1027 (9th Cir. 1999)

⁴⁵ <https://innocenceproject.org/illinois-first-state-to-ban-police-lying/>

⁴⁶ <https://innocenceproject.org/deception-bill-passes-oregon-legislature-banning-police-from-lying-to-youth-during-interrogations/>

⁴⁷ Saul Kassin and Katherine Kiechel, *The Social Psychology of False Confessions: Compliance, Internalization, and Confabulation*, Psychological Science, https://web.williams.edu/Psychology/Faculty/Kassin/files/kassin_kiechel_1996.pdf

⁴⁸ Kassin, S. M., Meissner, C. A., Norwick, R. J. (2005). “I’d Know a False Confession If I Saw One”: A comparative study of college students and police investigators. *Law and Human Behavior*, 29(2), 211-227.

⁴⁹ Olivia Preston, *Applying Deception Detection to True and False Confessions: a Novel Approach to Conducting Experiments in Legal Psychology*, <https://pdxscholar.library.pdx.edu/honorstheses/261/>

⁵⁰ West's RCWA 10.122.030

⁵¹ *Id.*

⁵² *Id.* section 4.

⁵³ *Id.* section 3.

Deception in Consent for Searches

In 1973, the United States Supreme Court held that it is not necessary for police to advise a subject that they have a right to refuse consent.⁵⁴ However, states can impose additional protections. In Washington, prior to entering a person's home, police must inform the person of whom consent is sought of the right to refuse consent, the right to revoke consent at any time, and the right to limit the scope of the search to certain areas of the home.⁵⁵ Any Seattle Police consent form must inform suspects of these rights, collectively known as "Ferrier rights". In addition, police may not elicit a consent for a search from a person who is mentally incapable of understanding.⁵⁶ Overall, Washington has a clear rule that officers may not use deception to gain warrantless entry into a home to conduct a search.

Deception in Undercover Work

Undercover policing necessitates deceptive practices that is subjected to little regulation or guidance.⁵⁷ Courts have traditionally strayed from imposing regulations on undercover police conduct. In *Illinois v. Perkins*, the Supreme Court held that undercover agents are not required to provide Miranda warnings prior to eliciting an incriminating response.⁵⁸

However, administrative guidelines at the state level may be useful at establishing clear guidelines for when and how the practice may be employed. Florida became the first state to regulate the use of undercover work with confidential informants in 2009 following the murder of Rachel Hoffman, a police informant. Known as Rachel's Law, limits the way police may use deception in recruiting informants. The law requires law enforcement to:

Inform each person who is requested to serve as a confidential informant that the agency cannot promise inducements such as a grant of immunity, dropped or reduced charges, or reduced sentences or placement on probation in exchange for serving as a confidential informant.⁵⁹

Overwhelmingly, except for Florida, states have no statutes that regulate covert policing.⁶⁰ There are examples, nevertheless, of individual law enforcement agencies creating their own guidance for covert and undercover tactics. The Philadelphia Police Department has a directive requiring all covert intelligence gathering efforts to be documented in a memorandum to the Commanding Officer of the Criminal Intelligence Unit.⁶¹ As it relates to protest movements,

⁵⁴ See *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).

⁵⁵ See *State v. Ferrier*, 136 Wash.2d 103, (1998).

⁵⁶ See *State v. Sondergaard*, 86 Wash.App. 656 (1997).

⁵⁷ Elizabeth Joh, *Breaking the Law to Enforce It: Undercover Police Participation In Crime*, 62 Stan. L. Rev. 155 (2009).

⁵⁸ See *Illinois v Perkins*, 496 U.S. 292 (1990).

⁵⁹ West's F.S.A. § 914.28

⁶⁰ Rachel Harmon, *The Law of the Police*, Aspen Publishing (2021), 139.

⁶¹ [PHILADELPHIA POLICE DEPARTMENT DIRECTIVE 126 \(DRAFT\) \(phillypolice.com\)](#)

groups, or organizations, officers must first establish and seek approval for a physical infiltration only once it is reasonably suspected that the group plans to engage in “misdemeanor or felony level criminal conduct that threatens public safety”.⁶² Currently, the Seattle Police directive allows for the infiltration of political and religious organizations but only with the authorization from the Chief of Police or their designee,⁶³ but with no indication that a written report must follow. A review the Seattle Police Informant Management directive reveals that the department also curtails tactics that can be deployed while working with confidential informants.⁶⁴

Deception in Search and Arrest Warrants

The Fourth Amendment of the US Constitution has been interpreted to critically examine affidavits that were sworn by law enforcement which may include misstatements or false statements, or recklessly omitting material facts.⁶⁵ To curtail deceptive tactics in the filing of affidavits, many departments outline clear guidelines in the drafting of affidavits. The Philadelphia Police Department prohibits misstatements and requires that all exculpable information must be incorporated into the affidavit.⁶⁶ A review of the current Seattle Police Department manual on Search Warrants does not reveal a prohibition on misstatements and omissions in the drafting of affidavits,⁶⁷ even though Washington courts have also held that reckless or intentional material misstatements or omissions will invalidate a search warrant.⁶⁸

Impact on Community

An unfettered authority to engage in deceptive tactics across policing has the potential to undermine police legitimacy, especially when deception is broadly criminalized when commissioned by civilians but immunized when committed by law enforcement; creating a deception double standard.⁶⁹ The June 8, 2020 false report in Seattle is but one example of how deceptive tactics may negatively impact policing. These tactics have been observed within Philadelphia during the infiltration of protest movements,⁷⁰ in New York during the deceptive practice of collecting and storing individuals’ DNA,⁷¹ and other jurisdictions. These examples highlight that any decision to engage in a ruse has the potential to negatively impact entire law

⁶² *Id.*

⁶³ SPD Manual 6.060-12

⁶⁴ [6.130 - Informant Management - Police Manual | seattle.gov](#)

⁶⁵ See *Franks v. Delaware*, 438 U.S. 154 (1978)

⁶⁶ [PHILADELPHIA POLICE DEPARTMENT \(phillypolice.com\)](#)

⁶⁷ [6.185 - Search Warrants - Police Manual | seattle.gov](#)

⁶⁸ See *State v. Chenoweth*, 160 Wash. 2d 454 (2007).

⁶⁹ See Bonnie Trunley, *A Double Standard in the Law of Deception: When Lies to the Government Are Penalized and Lies by the Government Are Protected*, 55 Am. Crim. L. Rev. 487, 497 (2018).

⁷⁰ Anna Orso, *Philadelphia police asked federal drug agents to infiltrate protests last June, emails show*, Phila. Inquirer. (Apr. 19, 2021), [Philadelphia police asked federal drug agents to ‘infiltrate’ protests last June, emails show \(inquirer.com\)](#)

⁷¹ Aaron Katersky, *NYPD accused of illegally obtaining, storing the DNA samples of nearly 32,000 people*, ABC News (Mar. 22, 2022), <https://abcnews.go.com/US/nypd-accused-illegally-obtaining-storing-dna-samples-32000/story?id=83598107>

enforcement agencies. Due to the potential of great harm on the community, some jurisdictions have expanded beyond what is legally permissible for law enforcement to instead holding conversations centering an ethical and equitable evaluation of practices.

Evaluation of Seattle Police Department draft directive

The Seattle Police Department draft policy on the Use of Deception outlines the philosophy, definitions, purpose, and procedures for deploying a permissible ruse. However, the policy continues to extend large discretion to individual officers on decisions that include how to deploy a ruse, on which individual(s), and for how long. The policy neither requires authorization from the appropriate chain of command, nor an acknowledgement that some forms of deception are impermissible or illegal, including false reporting, deceptions within affidavits, and interrogations. To improve the recommendations, it is suggested that the drafters:

Recommendations

Acknowledge False Reporting

The draft policy should acknowledge that not only will ruses over telecommunications impact public confidence, but it may also violate criminal laws. In addition, the Office of Police Accountability may also need assistance identifying when police activity rises to the level of a criminal offenses described in 5.001-2 “Employees Must Adhere to Laws, City Policy and Department Policy.”

Ensure consent form 9.54 aligns with Ferrier rights

SPD Manual policy 6.180 on searches mandates that officers ask for consent prior to searching a home without a warrant. To document this consent, the policy requires individuals to sign a consent form or be recorded on a recording device extending their consent. To ensure that Ferrier rights are adequately conveyed to individuals, form 9.54 must inform individuals that they have the right to refuse consent, the right to revoke consent at any time, and the right to limit the scope of the search to certain areas of the home.

Incorporate policy on consent searches in policy on deception

Washington state courts have held that law enforcement agencies may not attempt to deceive someone in gaining access to their home to conduct a search. Even though the draft deception policy states, “deception which enables officers to gain access to places and things they otherwise have no legal authority to reach is not a ruse and is prohibited”, it does not fully elaborate on which places and things officers may not have legal authority to reach. Cross referencing 6.180 may provide additional clarification.

Describe prohibited deceptive tactics within interrogations/interviews

Seattle Police policy 7.110 related to recorded statements does not reflect the recent Washington state law that requires the audio and video recording of certain interrogations. The new law, RCW 10.122.030, reflects that the entirety of an interview regarding a felony crime must be recorded, including the giving of any required warnings, rights, the waiver of those

rights, must be recorded in its entirety. In addition, the United States Supreme Court has held that interviewers may not threaten subjects with the loss of their children.

Describe prohibited deceptive tactics within drafting affidavits

Reckless and intentional misstatements and omissions of information should be avoided within affidavits. The draft policy should discuss the dangers of deceptive practices in drafting affidavits for search and arrest warrants.

Mandate reporting requirements for all deceptive tactics, not merely those that touch upon an official report or investigative file.

The plain reading of the draft policy only requires for a ruse report to be documented when it is appropriate, without further explanation as to what is appropriate; examples may help clarify this subsection. This requirement also does not require a review of the deployment of the ruse; drafters should deliberate reporting and review requirements of ruses.

Incorporate policy on confidential informants in policy on deception

The informant management policy precludes SPD personnel from offering promises to confidential informants without prior approval from both the Assistant Chief of the Investigations Bureau and the prosecuting attorney of the crime the confidential informant was charged. The use of deception policy should reinforce officers are prohibited from making promises or considerations in a deceitful manner according to 6.130.

Elaborate on what is considered a lawful purpose

To quash confusion surrounding what is considered a lawful purpose, the policy should specifically include what is and is not considered a lawful purpose. Without guidance, officers are relying upon their own subjective belief of what is considered a lawful purpose. Some suggestions include listing examples of a lawful purpose, or creating a rubric, such as used for calculating appropriate force measures, to establish guidelines for determining what is considered a lawful purpose, which some scholarship has suggested.⁷²

Conduct risk assessment for ruse/deceptive tactics

When it is determined that a ruse is lawful, accompanying that decision should be a risk assessment on the potential impact on others.

Identify metrics for future evaluations of practice

The use of these tactics across policing has been limitedly examined, largely due to the lack of proper record keeping. Tracking when these tactics are used, for what purpose, and the subsequent results, help evaluate what changes need to be made to enhance equitable policing practices.

⁷² See James Mooney, *The Power of Police Officers to Give “Lawful Orders”*, 129 Yale L. J 5 (2020).

Conclusion

The draft policy may be difficult for officers to discern which behaviors are permissible and which are prohibited. Contemporaneously, due to the great latitude of discretion that is afforded to officers in this policy, it also creates an environment whereby punishing violations of the policy may not stand due to the vast absence of specific behaviors that are prohibited. The draft allows personnel to operate within a silo, instead of operating as a united department with a chain of command structure. Without a structure which requires authorization prior to the deployment of any ruse, it may make it difficult to identify the perpetrator of a ruse, the extent of the ruse, and how many members participated in the operation. Additionally, the policy neglects to address deceptive tactics deployed in other areas across policing, that may occur more frequently than actions specifically prohibited within this policy. Overall, several stakeholders may be susceptible to the inappropriate deployment of a ruse including, but not limited to, community members, those suspected of committing a crime, fellow SPD personnel, city leaders, judicial officers, and federal partners. The policy on the use of deception will be most inclusive and exhaustive by describing specifically what is permissible and what is prohibited within all aspects of policing.

Review prepared by:

Anjelica Hendricks

AH Strategic Consulting LLC

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