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Broken Trust

The Pervasive Role of Deceit in American Policing

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EXECUTIVE SUMMARY

Sanctioned by the courts and taught in police manuals, deceptive tactics are employed by virtually every police department across the country. Officers seeking to elicit a confession will routinely lie to suspects about the evidence and make statements that imply leniency. While effective at times, deception is ethically dubious and can result in severe consequences for suspects. The United States is an outlier in allowing police to deceive suspects, as the practice is prohibited or highly restricted in most peer nations, including England, France, Germany, and Japan.

First, deceptive interrogation tactics frequently induce false confessions, which are a leading cause of wrongful convictions in the United States. Further, the acceptability of lying to suspects during interrogations seems to encourage deception in other, more troubling contexts. Research shows that testimonial lies, such as perjury in court and falsifying police reports, are commonly employed by officers to secure convictions and circumvent constitutional protections. While such practices remain illegal, testimonial lies are rarely identified or punished. As a result, the justifications and skills cultivated through deceiving suspects in interrogations naturally bleed over into other police work.

Ultimately, the pervasiveness of police deception undermines the integrity and legitimacy of the criminal justice system. It leads to wrongful convictions, weakens civil liberties, and erodes public trust in law enforcement. While there are difficult trade-offs in regulating police deception, its negative consequences require policy responses. Contrary to contentions that deceit is a necessary tool of law enforcement, experiences in other nations suggest that restricting police deception does not hamper criminal investigations. Policymakers should consider measures to curtail police deception, such as requiring that interrogations be recorded, banning or limiting certain deceptive tactics, and increasing judicial scrutiny of interrogation practices.

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INTRODUCTION

In interrogating a suspect, police often seek to extract an admission of guilt. Officers have found that deceit can be a remarkably effective tool in eliciting confessions from even the most hardened suspects. Since the Supreme Court has put few limits on the practice, the varieties of deceptive techniques police may use are limited chiefly by officers' ingenuity.[1] Officers learn deceptive techniques from interrogation manuals and rely heavily on these practices, often to the exclusion of using other strategies.[2]

While at times an effective tool, deception is ethically dubious and can result in severe negative consequences for suspects. First, deceptive tactics have been shown to frequently result in false confessions, which are a leading cause of wrongful convictions in the United States. Additionally, training and encouraging officers to lie to suspects during interrogations likely promotes an unduly permissive attitude toward deceitful behavior that carries over into testimonial lying. This includes perjury in court, lying on warrant applications, and falsifying police reports. While lying to suspects in theory (though not always in practice) pursues the truth, testimonial lying subverts justice by creating a false record meant to deceive authorities and courts. Yet from the officer's perspective, the goal of each type of lie is generally the same: achieving criminal convictions.

> "While at times an effective tool, deception is ethically dubious and can result in severe negative consequences for suspects."

Research shows that testimonial lies told by police are commonplace, routinely used to circumvent constitutional protections, and rarely punished due to systemic biases and close relationships between prosecutors, judges, and police. Since officers rarely face consequences for their testimonial lies, the justification for lying and the deceitful skills learned in interrogations naturally spill over to other policing contexts where prevarication remains illegal.

Policymakers may face difficult trade-offs in regulating police deception, but its negative consequences nonetheless require policy responses designed to promote justice, protect civil liberties, and maintain public trust in law enforcement.

DECEPTIVE INTERROGATION PRACTICES AND PREVALENCE

In the United States, the use of deception by police as a tool in interrogations to elicit confessions is routine, and officers rely heavily on deceptive practices, often to the exclusion of using other strategies.[3] Specifically, the vast majority of interrogations are conducted according to the "Reid Technique." Emerging from the 1960s with the publication of *Criminal Interrogation and Confessions* (commonly known as the Inbau Manual) by John E. Reid and Fred Inbau, the Reid Technique has since become the dominant interrogation model in the United States.[4] The primary goal of this technique is not to uncover facts or discover the truth, but instead to elicit incriminating statements and, if possible, a full admission of guilt from a suspect the officer believes to be culpable.[5] The technique incorporates deception and manipulation as intrinsic parts of the interrogation strategy.[6]

The Reid Technique: Maximization and Minimization Tactics

The Reid Technique is designed to manipulate the suspect's perceived cost-benefit calculus in order to favor confession, irrespective of actual guilt or innocence. As explained by social psychologists Richard Ofshe and Richard Leo, the Reid Technique typically relies on two principal strategies of psychological manipulation: maximization and minimization.[7] "Maximization" is the interrogator's attempt to convince a suspect of the hopelessness of their position, while "minimization" tactics are used to downplay the perceived costs of a confession.

Maximization Techniques

In the maximization phase, the interrogator adopts an aggressive stance, bluntly confronting the suspect with the gravity of their situation and the imminent threat of severe punishment. Regardless of the actual evidence at hand, the officer's goal is to convey their certain belief that the suspect is guilty and that denials will fail. The interrogator seeks to persuade the suspect that the evidence against him or her is overwhelming, to the point that no reasonable person could reach any conclusion other than guilty. The crux of this

technique lies in persuading the suspect that he or she has no choice but to cooperate with the authorities and hope for favorable treatment.[8]

> "Regardless of the actual evidence at hand, the officer's goal is to convey their certain belief that the suspect is guilty and that denials will fail."

Investigators employ a variety of strategies to render the suspect hopeless and cornered, with no perceived way out. The investigator is likely to accuse the suspect of having committed the crime, cut off denials, and dismiss assertions of innocence. In an attempt to undermine the suspect's alibi, the interrogator will present it as inconsistent, implausible, or impossible, irrespective of the veracity of these claims. Frequently, officers endeavor to convince suspects of their guilt even if they lack any recollection of perpetrating the crime, asserting that such memory loss is due to repressed memories.[9] Over and over, the examiner emphasizes to the suspect that maintaining innocence is pointless, and the only realistic option left is to confess to the alleged wrongdoing.[10]

Commonly used in the maximization strategy is the false evidence ploy, a contentious tactic whereby law enforcement officers assert the existence of incriminating evidence, even when no such evidence exists.[11] The false evidence ploy has been recognized as one of the most effective methods of eliciting a confession.[12] False evidence ploys can convince a suspect that resistance to confession is futile since sufficient incriminating evidence already exists for conviction.[13]

False evidence ploys typically involve direct claims that putative "evidence" confirms the suspect's guilt—for example, assertions that the suspect's DNA was found at the crime scene or that video footage exists of the suspect committing the crime. Officers have also been known to engage in more extensive gambits, including falsely informing the suspect that an accomplice has implicated them, claiming that an eyewitness or the victim has identified them, orchestrating a lineup with a coached witness falsely identifying the suspect, or administering a polygraph test and falsely informing the suspect that the results corroborate their guilt.[14]

Minimization Techniques

The minimization phase is often paired with the maximization phase.[15] At this stage, officers adopt a more sympathetic demeanor, building rapport with the suspect and affirming his or her inherent goodness.[16] The underlying intent is to provide the suspect with moral justifications or excuses that might diminish his or her sense of guilt or shame.[17]

The interrogator may downplay the severity of the crime, suggesting that the suspect's actions were understandable or justifiable.[18] For instance, an alleged embezzler might be persuaded that his or her actions were driven by low pay or poor working conditions.[19] Alternatively, the officer might suggest that the crime was spontaneous, provoked, peer-pressured, or accidental.[20] In employing these techniques, the officer implies that anyone could potentially commit the same crime given similar circumstances, subtly hinting at the possibility of leniency if the suspect decides to confess. These inducements are designed to persuade the suspect that he or she is psychologically, materially, or legally better off by cooperating with police.[21]

Many additional tactics fall under the umbrella of minimization. Officers may appeal to the suspect's conscience, for example, by suggesting that confession would benefit not only the suspect but also his or her family and society at large, or would alleviate a burdened conscience. Another common tactic to convey empathy involves role-playing. Here, interrogators might portray friendly, familial, or counseling figures to induce a sense of intimacy and trust, downplaying the adversarial aspect of the interrogation.[22]

An even more deceitful minimization technique involves agents concealing their identity, often portraying themselves as criminals to earn the suspect's trust.[23] In this way, a confession may be obtained from suspects who believe they are confiding in a fellow inmate, unaware that they are in fact speaking to an undercover officer. At times officers may also outright misrepresent the crime being investigated to lower a suspect's defenses. This tactic could involve questioning a suspect about a lesser crime while the actual intention is to probe a more serious offense.[24] Finally, officers frequently use vague or indirect promises to elicit a confession.[25] These promises tend to be deceptive in nature as they create an expectation of leniency, often leading to unfulfilled expectations.

Both maximization and minimization tactics are fundamentally deceptive. They aim to diminish a suspect's confidence in escaping the interrogation without arrest and convince them that cooperation and confession are their most beneficial options.

Prevalence of Deception in Interrogation

The Reid Technique is widely accepted in the field of policing, implemented in virtually every police department, sheriff's office, and other law enforcement agency across the country.[26] The use of deception is so widespread among American police that Richard Leo, a leading expert on police interrogations, has described it as "the single most salient and defining feature of how interrogation is practiced [in the United States]."[27]

> "Lying during interrogations is prevalent in American policing in large part because the law tolerates it."

Empirical studies reinforce this claim. Before writing his frequently cited study of police interrogations, Leo spent nine months observing 182 police interrogations in a major urban police department. His research revealed that officers lied about the existence of evidence in nearly one-third of interrogations. Similarly, in 34 percent of cases, officers offered suspects moral justifications for their actions to convince them that their behavior was acceptable.[28] In another seminal survey of 631 officers, 92 percent of police interrogators conceded to using the false evidence ploy. Half of the officers surveyed reported "having the suspect take a polygraph and telling him that he failed it," and a similar number reported threatening suspects with consequences for failure to cooperate.[29]

LEGALITY OF DECEPTION IN INTERROGATION

Lying during interrogations is prevalent in American policing in large part because the law tolerates it. The use of deception is an adaptive strategy by American police, developed over the years in response to a jurisprudence that places strict limits on the use of physical and psychological coercion but imposes minimal constitutional restrictions on the use of deception.[30] A "totality-of-the-circumstances test" is used to assess the legality of coercion in interrogation, allowing judges to selectively emphasize evidence to reach desired conclusions.

Legal History

At the turn of the 20th century, it was commonplace for American police to employ "third-degree" methods of interrogation to extract confessions from suspects. These tactics involved inflicting physical and psychological pain to extract confessions.[31] Tactics ranged from physical abuse and torture to subtler methods of duress such as sleep deprivation, prolonged isolation, and severe sensory discomfort.[32]

Interrogation methods changed in the early 1900s as physical coercion became constitutionally unacceptable. In *Hopt v. Utah* (1884), the Supreme Court first recognized that physically abusive interrogation tactics might deprive the defendant of "that freedom of will or self-control essential to make his confession voluntary within the meaning of the law" and therefore that these confessions should be "subjected to careful scrutiny."[33] A decade later in *Sparf v. United States*, a case involving the questioning of suspects in custody, the Supreme Court emphasized that when it comes to admitting confessions into evidence, they should be "entirely free and voluntary, uninfluenced by any hope of reward or fear of punishment."[34] Finally, in *Brown v. Mississippi* (1936), the Supreme Court categorically held that confessions extracted via physical coercion violate the due process clause of the Fourteenth Amendment and are therefore inadmissible at trial.[35]

These rulings prompted a drastic change in interrogation methods, from physical to psychological extraction techniques.[36] Instead of inducing pain, police began to adopt a more professional approach designed to break the resistance of suspects: deception.[37] While less egregious than their third-degree predecessors, these new psychological methods still carried an inherent risk of coercion.

In a number of pre-*Miranda* cases, the Supreme Court recognized that deception in interrogations could induce involuntary confessions. For example, in

Bram v. United States (1897), the Supreme Court ruled a suspect's confession inadmissible, in part because the interrogator had told the suspect he should name an accomplice "and not have the blame of this horrible crime on [his] own shoulders." This statement, of course, represents a deceptive minimization tactic, suggesting that the suspect would be punished less severely if he confessed. The Supreme Court overturned Bram's conviction, holding that a confession "must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight."[38]

"Rather than prohibiting deceptive practices, the Supreme Court sought to counterbalance their coercive effect by empowering suspects with the right to terminate the interrogation."

A minimization tactic also played a role in the *Leyra v. Denno* case decided by the Supreme Court in 1954. After the suspect asked to see a physician, police brought in a psychiatrist who posed as a general physician and subsequently induced a confession after questioning, which included "assurances that [the suspect] had done no moral wrong and would be let off easily." The Supreme Court determined that the confessions "given in rapid succession" after the psychiatrist's questioning were a result of mental coercion and that admitting those confessions into evidence violated due process.[39] Similarly, in *Spano v. New York*, the suspect confessed to an officer who was a longtime friend.[40] During a subsequent interrogation, the police falsely told the suspect that his failure to confess to other officers was causing difficulties for his friend and could cost his friend his job. The Court noted that these untruthful statements were a major factor in rendering the eventual confession involuntary. However, while the Court condemned deceptive tactics in these cases, it stopped short of issuing a categorical ban on such techniques.

By the 1960s, it appeared the Supreme Court might extend the rationale of *Bram* and *Spano* more widely to contemporary psychological interrogation methods. In *Miranda v. Arizona* (1966), the Court criticized the maximization and minimization tactics advocated by Reid, noting that these techniques "are designed to put the subject in a psychological state where his story is but an elaboration of what the police purport to know already—that he is guilty." The Court went as far as to directly compare these tactics to the physical interrogation techniques that preceded them, noting that "without employing brutality, the 'third degree' . . . custodial interrogation exacts a heavy toll on individual liberty, and trades on the weakness of individuals."[41] However, rather than prohibiting deceptive practices, the Court sought to counterbalance their coercive effect by empowering suspects with the right to terminate the interrogation. *Miranda* was ultimately interpreted to stand not for the inherently coercive nature of deception, but rather for the permissiveness of these methods—if the suspect was read his rights.

Thus, in the aftermath of *Miranda*, the Supreme Court displayed a more deferential attitude toward law enforcement in what might be called its "confession jurisprudence," explicitly approving the use of at least some overtly deceptive interrogation techniques. For example, in *Frazier v. Cupp* (1969), the Court explicitly endorsed lying about evidence during interrogations to obtain a confession. In that case, officers used a false evidence ploy, telling one defendant that the other defendant had already confessed, and that he should confess as well because he couldn't get in any more trouble than he was in already. The detective also used minimization, suggesting to the defendant that he might have started a fight with the victim because the victim made sexual advances toward him. The Court held that the defendant's confession was not coerced, and reasoned that, while not irrelevant, the lies did not make an otherwise voluntary confession inadmissible.[42]

The Law Today on Deceptive Interrogation

In the years since *Frazier*, federal courts have repeatedly affirmed cases involving police deception, allowing officers to exaggerate the strength of the case against a suspect and fabricate evidence wholesale, among other things.[43] For instance, in *Illinois v. Perkins* (1990), the Supreme Court approved the use of a confession obtained by an undercover

officer pretending to be a fellow inmate in the defendant's jail cell.[44] The Court concluded that "*Miranda* forbids coercion, not mere strategic deception by taking advantage of a suspect's misplaced trust in one he supposes to be a fellow prisoner." While some state courts have placed limits on the wholesale fabrication of physical evidence such as laboratory reports or audiotapes, there are few limits on what fake evidence an officer can verbally communicate to a suspect.[45]

Today, the use of lies and deception to obtain a confession is evaluated through a circular and ill-defined totality-of-the-circumstances test. A confession is inadmissible, the Supreme Court ruled in *New York v. Quarles* (1984), if the "interrogation was . . . unreasonable or shocking, or if the accused clearly did not have an opportunity to make a rational or intelligent choice."[46] Ostensibly, this test gauges whether the confession was voluntary; however, its imprecision allows judges to either permit or reject the use of deceptive interrogation techniques without offering a coherent rationale for their decision.[47] Indeed, some courts have proceeded by simply citing *Frazier* for the proposition that "false statements by the police are insufficient to invalidate an otherwise voluntary confession," thereby drawing a bright line that permits police lying.[48]

The lack of clear guidelines has emboldened law enforcement officers to test the boundaries of coercive psychological interrogation techniques.[49] As one prosecutor notes, "the variety of deceptive techniques is limited chiefly by the ingenuity of the interrogator" because the Supreme Court itself has placed so few limits on deception.[50] Ultimately, unless presented with clear evidence of coercion or torture, courts rarely find deceptive police practices unconstitutional.

DECEPTIVE INTERROGATION TECHNIQUES INDUCE FALSE CONFESSIONS

One of the gravest consequences of police deception is the production of false confessions, a leading cause of wrongful convictions in the United States. Once a confession is obtained, it casts a long shadow over subsequent proceedings, shaping further investigation, prosecutorial decisions, and even courtroom judgments. Simply stated, "a confession is the most incriminating and persuasive evidence of guilt that the State can bring against a defendant."[51] No matter how it is obtained or whether it's supported by other evidence, a confession harms a defendant's case even if persuasively shown to be unreliable or even demonstrably false.[52]

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False confessions, therefore, present a formidable challenge to the integrity of criminal justice proceedings, often shaping the trajectory of a criminal case by swaying the perceptions of jurors, undermining the reliability of testimonies, and influencing the judgment of even the most hardened legal professionals. While deceptive techniques may be effective in some cases, the costs they impose on innocent suspects are correspondingly steep. After a confession, prosecutors tend to charge defendants with the most severe offenses and are less willing to make favorable plea offers on reduced charges.[53] Higher bail is also common for defendants who have confessed.[54]

And then there's the innocence problem. As Figure 1 shows, of the 375 wrongful convictions overturned by the Innocence Project between 1989 and 2020, 29 percent involved police-induced false confessions; 61 percent of wrongful murder convictions during that time frame involved false confessions.[55] False confessions also led to the wrongful convictions of 13 percent of the nearly 3,500 individuals listed on the National Registry of Exonerations.[56] One study on 125 false confession cases showed that over four-fifths (81 percent) of innocent defendants who persisted in fighting their case in court were wrongfully convicted at trial. Despite the many procedural safeguards in place for American criminal defendants, an innocent defendant who took their case to trial was approximately four times more likely to be convicted than acquitted.[57]

The Prevalence of False Confessions

False confessions, which contradict common sense and feel lifted from novels and movies, seem implausible to most people. However, false confessions are far from unusual. In a

comprehensive study of 631 police detectives, investigators estimated that roughly 1 in 20 innocent suspects provide a false confession during interrogation.[58] In a study of Icelandic youths, over 12 percent of those interrogated by police maintained that they had falsely confessed.[59] Rates of false confession are even higher among younger suspects and the mentally disabled.[60]

As numerous experts have opined, one of the primary psychological causes of false confessions is the investigator's use of deceptive interrogation tactics. Comprehensive reviews of false confession cases reveal a clear pattern: Deceptive interrogation tactics involving false evidence ploys are a common denominator in causing the innocent to confess.[61] According to one expert, the false evidence ploy "has been implicated in the vast majority of documented police-induced false confessions."[62] Aggregations of actual false confession cases have also revealed that minimization, such as an explicit promise of leniency, is involved in a considerable number of cases where innocents confess.[63]

Psychology of False Confessions

While it may seem counterintuitive that an innocent suspect would falsely confess to a crime they had no role in, false confessions are rooted in well-accepted psychological proclivities.

Memory Failure

The combination of certain deceptive interrogation techniques and inherent human susceptibilities can sway a person's belief about their own guilt. When law enforcement officials manipulate the perceived strength of evidence, they can create an environment so coercive that innocent suspects become convinced of their guilt, leading to false confessions.[64] Authorities can provoke false confessions by inducing suspects to doubt their memories or by inciting fabricated recollections of the crime, a phenomenon known as confabulation.[65]

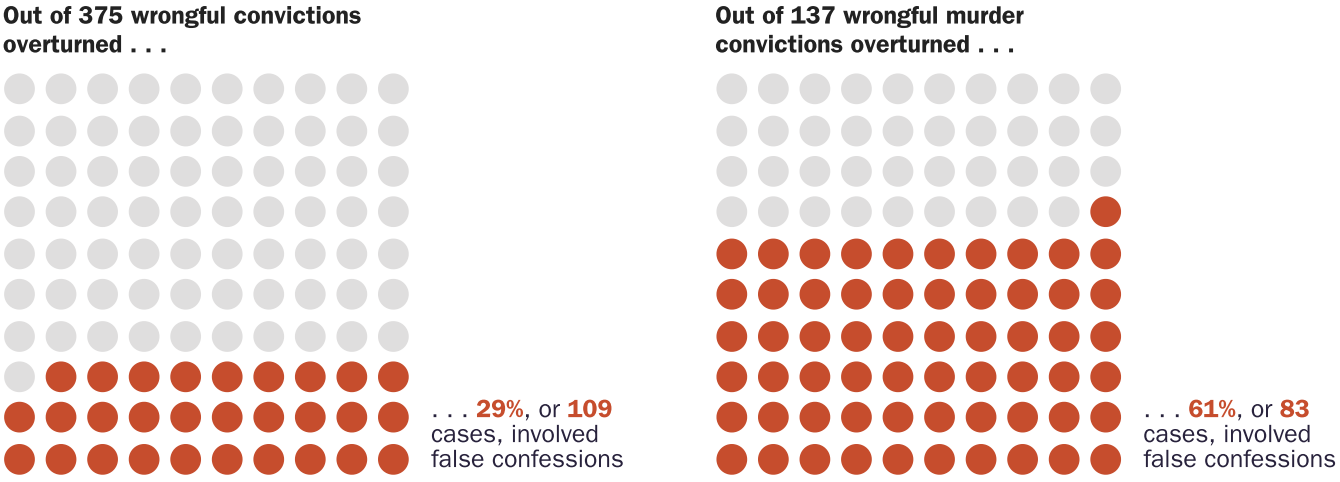
Social compliance plays a role in the process of fabricating false memories. People are social animals and highly susceptible to influence from authority figures, particularly in high-pressure environments such as police interrogations.[66] Officers may convince suspects that their memories of the crime are suppressed, instilling doubt in the suspects about their own ability to remember.[67] Subsequently, interrogated individuals attempt to fill memory gaps with imagined but seemingly genuine experiences.[68] For instance, a suspect may begin to question his or her innocence if police allege that a witness identified them or claim that their DNA was found on incriminating evidence.[69]

In most cases, the internalization of guilt is temporary, typically resolving itself once the suspect is no longer under the pressure of interrogation.[70] Unfortunately, by the time

Figure 1

Deceptive interrogation techniques often induce false confessions

Convictions overturned by DNA exonerations, 1989–2020, percent



Source: "DNA Exonerations in the United States (1989–2020)," Innocence Project.

many suspects come to realize their innocence, the police have already obtained their confession and it is often too late to rectify the situation.

Rational Choice

Deceptive interrogation techniques can also produce false confessions by manipulating a suspect's perception of the costs and benefits associated with confession. According to the "rational choice" model of human behavior, individuals base their decisions on perceived self-interest, evaluating the potential advantages and disadvantages of their actions.[71] People are highly responsive to rewards and make choices that they perceive will enhance their circumstances.[72] Consequently, a suspect will often confess, regardless of guilt, when they perceive that the benefits of confessing, such as lenient sentencing or termination of a stressful interrogation, outweigh the costs—even if those costs might include a false conviction.

Interrogation techniques like the Reid Technique exploit rational-choice tendencies by portraying the benefits of confession as high and the potential costs as low, thus convincing suspects that confession is in their best interest. This approach is particularly potent due to its ability to manipulate the suspect's perception of the situation.[73] Specifically, when police use a false evidence ploy and confront a suspect with seemingly irrefutable evidence, confession can seem like a rational choice, even if the suspect is innocent. The false evidence ploy is particularly effective when imbued with the weight and credibility of modern technology, such as DNA or fingerprints.[74] Even innocent suspects struggle to rationalize evidence purportedly derived from ostensibly sound scientific methodologies. Further confusion is caused by a widespread misconception that police are not permitted to lie about evidence, which leads many suspects to take officers at their word.[75]

MOST DEVELOPED COUNTRIES PROHIBIT THE USE OF DECEPTION IN INTERROGATION

The American system stands out from its peers in allowing the use of deceptive tactics in interrogation. In most developed countries, including England, France, Germany, Spain, New Zealand, Australia, Japan, Taiwan, and all of Scandinavia, police are generally not permitted to deceive suspects.[76]

Deception is seldom used, for instance, during police interrogations in the United Kingdom.[77] The Police and Criminal Evidence Act of 1984 (PACE) regulates interrogation techniques in England. PACE takes a less confrontational approach than the Reid Technique, which presumes guilt and uses leading questions to elicit confessions. In contrast, PACE emphasizes openness, transparency, and accountability. It focuses on building rapport through exploratory, open-ended questions to gather information and uncover evidence of guilt or innocence. The goal is to find the truth, not induce confessions.[78]

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PACE also serves to provide courts with guidelines in assessing whether a particular confession made by a suspect is likely to be unreliable. This assessment largely focuses on the extent to which police conduct complied with the uniform PACE guidelines; however, courts may also take into account the suspect's circumstances, such as age, mental state, and experience with interrogations.[79] As a result of this analysis, English courts have declared that misrepresentation of evidence and other forms of deceit are impermissible.[80] Defendants may challenge confessions obtained through the use of tricks as unfair under PACE. If the defendant can sufficiently demonstrate that the police made deliberately deceitful representations, courts will typically exclude the confession from evidence.[81] Thus, unlike American law, which has practically sanctioned the practice, English law has ensured that deceptive interrogation techniques are rarely used against suspects.

Implementation of the PACE model has overwhelmingly been considered a success. Following its implementation, psychologically manipulative interrogation tactics decreased substantially, but the rate of confessions did not decline correspondingly.[82] Today, police in England rarely act confrontationally or use maximization and minimization techniques.[83] In fact, recent analyses suggest that the PACE

model might be more successful than confrontational modes of interrogation at eliciting truthful accounts, including confessions.[84] Success of the PACE model has led other countries, including New Zealand and Norway, to adopt it as national policy.[85]

> "The success of alternative models abroad suggests that curtailing deception in interrogations would not necessarily impede law enforcement objectives."

Like England, Germany also has strict rules barring the use of deceptive interrogation techniques. When compared to American police, German officers are expected to take on a more neutral role during pretrial investigation, and thus deceptive practices conflict with their duty to uncover exculpatory and incriminating evidence in an unbiased fashion.[86] Affirmative misrepresentation is prohibited and any misimpressions about the law created by the officer must be corrected.[87] All forms of "deception," a term the law defines very broadly, are entirely banned during interrogations.[88]

Deception includes not only outright lies, such as misrepresenting existence of evidence, but also nonverbal conduct that may induce misleading impressions. For example, in a murder case in which the gun was never recovered, police may not place a gun on the table in front of a suspect without further comment, thereby giving the impression that the police possess the murder weapon. The ban on deception even extends to true statements that may lead to false impressions, such as assertions that police are investigating a disappearance when in fact the body has already been found. Police also may not take fingerprints from a suspect and then, before telling him if they match, inform him that he has an opportunity to confess, since this prompt implies that the match was positive.[89]

In Germany, these policies against coercive interrogation techniques are enforced by imposing rules directly on investigators that govern what police may and may not say to suspects during interrogation. An officer employing a banned interrogation technique is subject to disciplinary action as well as claims for damages by the suspect. These rules are enforced at the trial level as well, through the use of nondiscretionary exclusionary rules that require judges to disregard all statements obtained through prohibited interrogation techniques such as deception.[90] In these ways, German law ensures that the use of deception during interrogations is almost nonexistent.

The approaches of England, Germany, and other developed nations starkly contrast with permissive American policies on police deception. These democracies have concluded that the costs of such techniques outweigh any benefits in the pursuit of justice. The success of alternative models abroad suggests that curtailing deception in interrogations would not necessarily impede law enforcement objectives. America's outlier status in permitting police lies underscores the need for thoughtful reexamination of a tactic considered unethical and counterproductive throughout much of the developed world.

HOW INVESTIGATIVE DECEPTION LEADS TO TESTIMONIAL LIES

American courts have deemed lies told to suspects in the investigative setting acceptable in the pursuit of justice. However, another category of police lies is deemed unacceptable—indeed illegal—yet is arguably just as prevalent in American policing: testimonial lies. While investigative lies are told to gather evidence, testimonial lies represent falsifications of the factual record in a legal proceeding. That is, investigative lies are told to arrive at the truth, while testimonial lies are told to subvert the truth. Testimonial lying is widespread in American policing and manifests across various contexts—court testimony, warrant applications, and written reports—often to circumvent constitutional safeguards. The ubiquity of testimonial deception suggests that once lying becomes an acceptable tool of police investigations, it cannot be contained within the interrogation room.

Testimonial Lying by Police Is Commonplace in the United States

Police testimonial lies such as perjury are so commonplace that some have invented a name for it: "testilying."[91] Criminal procedure scholars agree that testimonial lying is

common among American police. As law professor Donald Dripps noted, "police perjury has been called 'pervasive,' 'an integral feature of urban police work,' and the 'demon in the criminal process.'"[92] "It is an open secret long shared by prosecutors, defense lawyers and judges that perjury is widespread among law enforcement officers," said Judge Alex Kozinski.[93] Former US Attorney and New York judge Irving Younger echoed the sentiment, noting that "every lawyer who practices in the criminal courts knows that police perjury is commonplace."[94]

While the extent of the practice is debated, investigative reports, studies, and surveys uniformly document "a widespread belief that testilying is a frequent occurrence."[95] One of the most comprehensive accounts of police perjury comes from the 1994 report of New York's Mollen Commission, which spent two years investigating various allegations of police misconduct. The Commission analyzed thousands of police department records and conducted over 100 private hearings and informal interviews. The report found that police "falsification," which includes "testimonial perjury . . . documentary perjury . . . and falsification of police records," was one of "the most common forms of police corruption" within the criminal justice system.[96] The Commission noted that perjury was "widely tolerated by corrupt and honest officers alike, as well as their supervisors."[97]

Additional evidence for the widespread nature of testilying comes from numerous observational studies conducted by scholars of police departments across the country. For one 1966 study, Professor Jerome Skolnick spent two years observing and speaking with police in a city of roughly 400,000 residents. He found that officers frequently fabricated grounds for probable cause when they believed that search and seizure law would impede their work.[98] In another observational study published in 1971, Joseph Grano spent a year working in a Philadelphia prosecutor's office and found that in preparing to testify at suppression hearings, officers demonstrated an open willingness to change facts. As he noted, police are "not adverse [sic] to committing perjury to save a case."[99] Similarly, Dallin Oaks explored criminal proceedings in Chicago and Washington, DC, and reported that "high-ranking police officers . . . admitted . . . that some experienced officers will 'twist' the facts in order to prevent suppression of evidence."[100] Professor Richard Uviller, a former prosecutor, spent eight months observing the NYPD and gave similar accounts of police misconduct. Uviller recounted in his 1988 book, *Tempered Zeal*, that most officers view police perjury as "natural and inevitable" and expressed how common it was for officers to make slight alterations to the facts to satisfy constitutional constraints and fortify the probable cause upon which a search was based.[101]

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Some of the most stunning evidence of testilying comes from Myron Orfield's 1992 study of Chicago. Orfield's findings are notable because they represent the views of prosecutors, judges, and defense attorneys, those closest to the problem and best equipped to assess its pervasiveness. On average, judges and prosecutors surveyed for the study estimated that they disbelieved police testimony 18 percent and 19 percent of the time, respectively; for public defenders the figure was 21 percent. Orfield noted that these "figures alone suggest a shocking level of police perjury" and added that "the majority of judges and public defenders, and almost half of the state's attorneys, believe that police lie more often than they are disbelieved."[102]

A study of misdemeanor narcotics cases in New York in the wake of *Mapp v. Ohio* (1961) provides compelling empirical evidence of the prevalence of police perjury.[103] In *Mapp*, the Supreme Court held that the states were bound by the exclusionary rule in search and seizure cases, forcing illegally obtained evidence to be excluded from state trials.[104] After *Mapp*, "police made the great discovery that if the defendant drops the narcotics on the ground, after which the policeman arrests him, the search is reasonable and the evidence is admissible."[105] That is, with the implementation of the exclusionary rule, officers began to lie about how evidence was obtained, testifying that contraband was dropped, since telling the truth would now mean the suppression of the relevant evidence.

Researchers found that in cases after *Mapp*, there was a precipitous decline in police testimony that "contraband was found on the defendant's body" and a "suspicious rise in cases

in which . . . officers alleged that the defendant dropped the contraband to the ground"—colloquially known as "dropsy testimony."[106] As Figure 2 shows, in misdemeanor narcotics cases in New York, cases where evidence was hidden on a person dropped from 35 percent of arrests in the months before *Mapp* to just 3 percent in the months after. Meanwhile, cases where evidence was dropped or thrown to the ground increased from 17 percent to 43 percent of arrests.[107] The authors concluded that police were fabricating grounds for arrest to circumvent *Mapp*. A separate study conducted the same year reached similar conclusions, showing that police testified to the abandonment of narcotics more than twice as often after *Mapp*.[108]

More recent newspaper reports from across the nation further substantiate the pervasive nature of police testimonial deceit. In 2015, WNYC reviewed more than a thousand New York civil and criminal court records and discovered "more than 120 officers with at least one documented credibility issue over the past 10 years."[109] In 2016, the *Chicago Tribune* identified "more than a dozen examples over the past few years in which police officers, according to judges, gave false or questionable testimonies."[110] A *New York Times* investigation found that there were more than 25 cases between 2015 and 2018 in which "judges or prosecutors determined that a key aspect of a New York City police officer's testimony was probably untrue."[111] In reality, the numbers are likely much higher, considering that these reports cover only *identified* cases of police perjury. The nature of testilying means that the vast majority of instances are never identified to begin with.

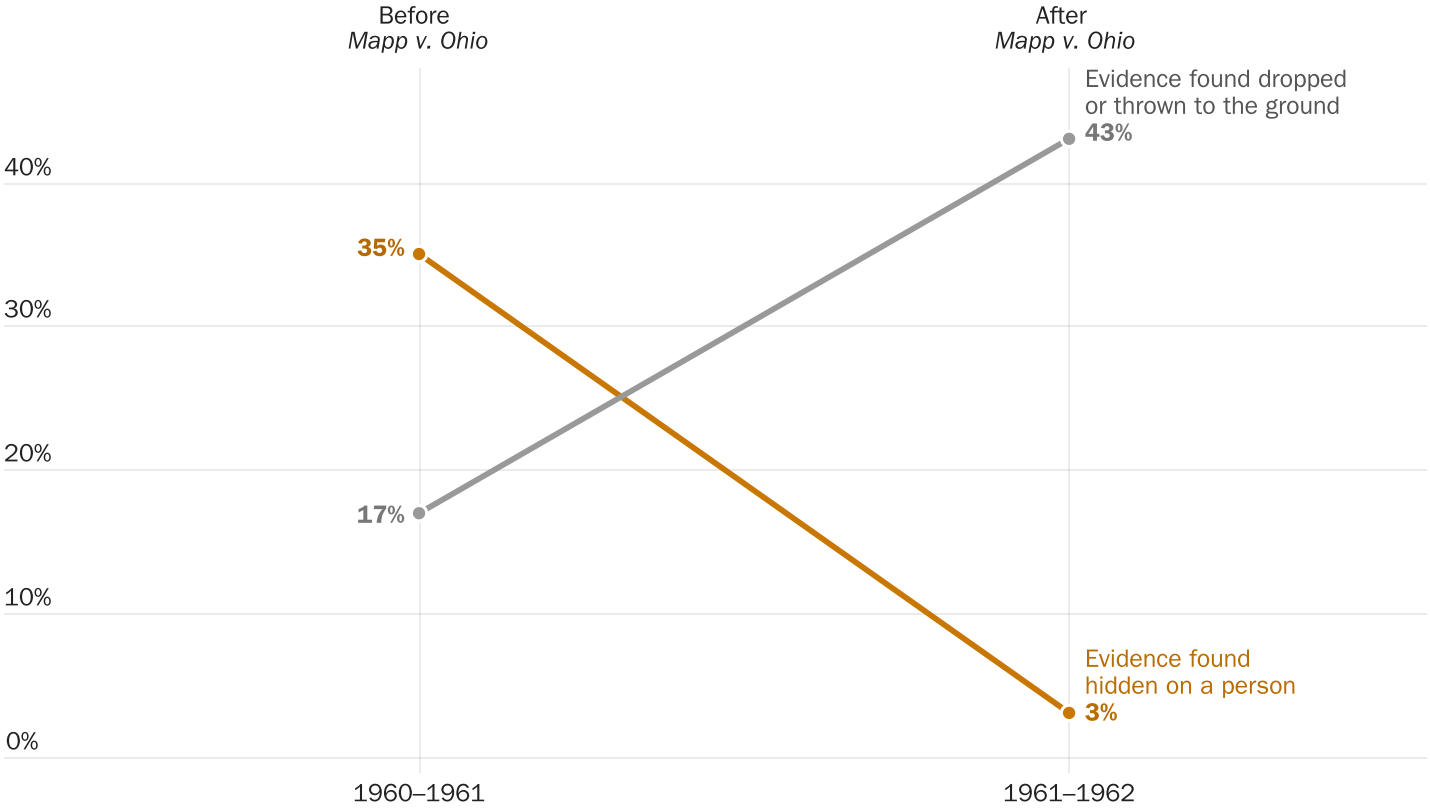
Types of Lies Officers Tell

Police testimony occurs in three basic settings—court testimony, warrant applications, and written reports—and often contains inaccuracies designed to circumvent constitutional protections for suspects. These lies primarily take three forms: fabricating consent, inventing probable

Figure 2

The suspicious adaptation of allegations to fit post–*Mapp v. Ohio* requirements suggests police sometimes fabricate grounds for arrest

Type of incriminating evidence recorded by police in New York misdemeanor narcotics cases, percent



Source: "Effect of *Mapp v. Ohio* on Police Search-and-Seizure Practices in Narcotics Cases," *Columbia Journal of Law and Social Problems* 4, no. 1 (1968): 95.
Notes: 1960–1961 = September 15, 1960, to March 15, 1961; 1961–1962 = September 15, 1961, to March 15, 1962.

cause, and falsely claiming compliance with criminal procedure rules, especially *Miranda* rights governing custodial interrogation.[112] By lying about consent, probable cause, or interrogation procedures, officers can unilaterally conduct searches, make arrests, and interrogate suspects and then provide false testimony to legitimize their unconstitutional actions after the fact.

Among the most common subjects of testimonial deceit are false claims of consent to a search. Consent to a body search is easy to fabricate because those searches are quick, common, and informal. Consent, if any, is almost invariably verbal, though forged signatures are not unheard of.[113]

"Police perjury is often used to establish probable cause for unconstitutional searches or arrests."

False claims of consent extend to property searches as well. In a number of documented cases, officers have manufactured consent to justify warrantless entries into homes or the search of a vehicle. For example, in one case, officers who forced a suspect out of his car at gunpoint later testified at a suppression hearing that the suspect voluntarily stepped out of his vehicle to talk.[114]

Police perjury is often used to establish probable cause for unconstitutional searches or arrests. In Orfield's survey of judges, prosecutors, and defense attorneys, a third indicated that police manufactured evidence of probable cause either "half of the time" or "most of the time."[115] The most common type of lie told to establish probable cause is falsely reporting that seized evidence was in plain view—there is no warrant requirement for gathering evidence that is in plain view of the public or police officers.[116] Lies about "dropsy" cases are well known and, as explained above, surged following the *Mapp v. Ohio* decision that extended the exclusionary rule to the states.[117]

Similarly, as documented by the Mollen Commission, officers have been known to indiscriminately stop and search motor vehicles, later testifying that the suspect committed a traffic violation and that seized evidence was in plain view on the floor. In another variant described by the Commission, officers would "falsely assert that they saw a bulge in the person's pocket" in order to "conceal an unlawful search of an individual who officers believe is carrying . . . a gun."[118] In his observational study of the NYPD, Uviller similarly described that officers would "add a small but deft stroke to the facts—say, a visible bulge at the waistband of a person carrying a pistol. Just enough to put some flesh on the hunch."[119] What unites these lies is an effort to reverse cause and effect, convincing the court that plain-view evidence is what prompted the search, rather than the reality that it was only after an unconstitutional search that incriminating evidence was discovered.

Another common type of probable-cause perjury involves misstatements about the location where an arrest was made or where contraband was found. The Fourth Amendment provides especially stringent protections for the search of a home, requiring a warrant in almost all circumstances. Thus, in cases where police conduct a warrantless search of a home, they are incentivized to falsify reports, stating that the arrest took place on the street or that contraband was found in a vehicle.[120] Uviller wrote that it is common for officers to "go into the flat, grab the suspect, and later say you busted him as he was leaving his mother's apartment to get a six-pack at the corner bodega."[121] The Mollen Commission also described instances where narcotics officers would "falsify arrest papers to make it appear as if an arrest that actually occurred inside a building . . . took place on the street."[122]

In other cases, officers have been found to lie about directly observing suspicious or criminal activity.[123] For example, officers have falsely claimed that suspects pointed a gun at them, made furtive movements, or made violent threats.[124] In one case, officers lied about having observed the sale of narcotics to establish probable cause for a search.[125] Reports like these involving direct observation of criminal conduct are particularly egregious because the false statement not only insulates the evidence from suppression but also provides direct affirmative evidence of the suspect's guilt, increasing the chances of a false conviction.

Officers have a history of creating fictional confidential informants—imaginary witnesses whose invented testimonies serve to support claims of probable cause.[126] As described in the Mollen Commission's report, "to justify unlawfully entering an apartment where officers believe narcotics or cash can be found, [officers] pretend to have information from an unidentified civilian informant . . . after

responding to the premises on a radio run."[127] As part of his study, Orfield reviewed over 250 search warrants supported by unidentified "reliable informant" affidavits and found an alarming sameness in their content. In one case, eight warrant affidavits submitted by a particular officer were found to be virtually identical.[128] This strategy is particularly devious, as police typically need not identify the "informant" by name and defendants may struggle to obtain disclosure of this information at trial.[129]

"Many police even come to rationalize dishonesty as part and parcel of their crime-fighting duties."

While police predominantly tell testimonial lies to circumvent the Fourth Amendment, deceit also violates other constitutional constraints, including *Miranda* rights. In *Miranda v. Arizona*, the Supreme Court held that in custodial interrogation, police officers must inform suspects of their right to remain silent and that their statements can be used against them.[130] To encourage police officers to advise suspects of their *Miranda* rights, courts apply an exclusionary rule that renders inadmissible incriminating remarks a custodial suspect makes if they have not been advised of their *Miranda* rights. Officers have been known to misrepresent whether a suspect's rights were read to him to prevent exclusion of the suspect's incriminating remarks in trial evidence.[131] As Uviller described, an officer, "eager to have the jury hear the bad guy's full and free confession, might advance slightly the moment at which the *Miranda* warnings were recited to satisfy the courts' insistence that they precede the very first question in a course of interrogation."[132] Finally, police sometimes lie simply to conceal misconduct, frequently in cases of excessive force.[133]

Academics Have Proposed a Connection between the Legality of Lying in Interrogations and the Prevalence of Police Perjury in the United States

Though the nature of police lying makes it difficult to prove causality, many scholars have hypothesized a connection between the legality (and ubiquity) of deception in interrogations in the United States and the prevalence of police perjury. Professor Jerome Skolnick has argued that "courtroom lying is justified within the police culture by the same sort of necessity rationale that courts have permitted police to employ at the investigative stage: The end justifies the means." A Machiavellian mindset is prevalent in the police community, with at least some officers believing that unethical acts are justified in pursuit of the greater good. From the Mollen Commission report:

> As one dedicated officer put it, police officers often view falsification as, to use his words, "doing God's work"—doing whatever it takes to get a suspected criminal off the streets. This attitude is so entrenched, especially in high-crime precincts, that when investigators confronted one recently arrested officer with evidence of perjury, he asked in disbelief, "What's wrong with that? They're guilty."[134]

While lying is typically considered unethical, many officers appear to believe that deceiving suspects in interrogation is justified because it increases the likelihood of eliciting a confession and by extension a conviction. As Professor Deborah Young notes, "the officer wants to convict the criminal, punish him, and protect other potential victims throughout the officer's involvement in the case, not just during interrogation."[135] Thus, an officer may extend this rationale to lying on a warrant affidavit for a search or on the stand at trial. When an officer makes this leap, "he has the same motives that he had pretrial: he wants conviction and punishment for the criminal and protection for the innocent."[136] In both contexts, this pushing of ethical boundaries is perceived as a minor sacrifice in the larger struggle against injustice.[137] Many police even come to rationalize dishonesty as part and parcel of their crime-fighting duties.[138]

Skolnick contends that the legality of "deception in one context increases the probability of deception in the other"—meaning testimonial contexts where deceit is officially proscribed.[139] Thus, "judicial acceptance of deception in the investigation process enhances moral acceptance of deception by detectives in the interrogatory and testimonial stages of criminal investigation, and thus increases the probability

of its occurrence."[140] The transferability of this moral justification for lying is heightened by the fact that the "law permits the policeman to lie at the investigative stage, when he is not entirely convinced that the suspect is a criminal, but forbids lying about procedures at the testimonial stage, when the policeman is certain of the guilt of the accused."[141] From the perspective of the officer, if lying in the first instance is justifiable, lying in the second instance should be as well. Regardless of the latter's illegality, there are difficulties in finding "moral justification for distinguishing between governmental deception at the investigative stage and at the interrogation stage."[142] Skolnick concludes that "because of this appearance of [legal] inconsistency, police are not likely to take the stated rules of the game seriously and are encouraged to operate by their own codes, including those which affirm the necessity for lying wherever it seems justified."[143]

"As police become accustomed to lying to suspects, these skills effortlessly transfer to other settings, such as in embellishing the facts for a warrant affidavit or at trial."

There is "always a problem with constraining the limits of an 'ends justify the means' rationale," Skolnick believes.[144] Young adds: "the inherent problem with lying for the public good is that people who believe their entire work is for the public good . . . may use this rationale to justify any and all lies that they tell."[145] Even if an officer rationalizes lying to a suspect during interrogation as lying to an enemy, this hardly prevents the transference of the justification. Rather, these officers simply come to see constitutional rules as trivial impediments or technicalities that make policing unreasonably difficult and allow criminals to evade appropriate punishment.[146] Consequently, judges who strictly enforce constitutional standards are viewed, like suspects, as enemies who pose an obstacle to a guilty verdict.[147] Police therefore feel justified in manufacturing probable cause, believing that doing so facilitates the pursuit of "justice."[148]

There is a second reason lying during interrogations incentivizes lying in court: Many aptitudes are readily transferable from one context to another. As Young proposes, "lying is a skill that people acquire and improve with practice. Lying in the course of an hour's interrogation requires the liar to 'keep straight' the details of the lie."[149] As police become accustomed to lying to suspects, these skills effortlessly transfer to other settings, such as in embellishing the facts for a warrant affidavit or at trial.[150]

Professors Geoffrey Alpert and Jeffrey Noble have shared similar thoughts, suggesting that lying can become a learned behavior that, once applied in one context, becomes natural to apply in others. They note, "literature on social cognition suggests that responses to situations are learned behaviors that develop after repetitive activities."[151] That is, "if police officers use deceptive practices and 'lie' repetitively with nonnegative results, they will likely develop cognitive scripts that link deception and success. If officers are taught to be deceptive in one aspect of their work . . . the success will be transferred to other aspects of work."[152] Over time, as an officer continues to lie without consequences, the schema is reinforced, lying becomes a natural response, and ultimately "becomes a learned behavior and one of the common tools of the job."[153] In the words of Skolnick, lying simply becomes a "technique of the trade," a craft to be perfected rather than a moral ill to be critiqued.[154]

The Criminal Justice System's Ineffectiveness in Controlling Deceptive Spillover

Investigative lies are legal in the US and sanctioned by the courts. Yet testimonial lies such as perjury are plainly illegal. In theory, the illegality of lies told in the testimonial context should serve as a barrier to police dishonesty in this setting. However, the criminal justice system demonstrates a marked inability to effectively identify and penalize lying in court by police officers, thereby allowing the spillover of deception from the interrogation room into testimonial contexts.

An overwhelming majority of legal practitioners acknowledge the criminal justice system's ineffectiveness in curbing police perjury. In Orfield's survey of prosecutors, judges, and defense attorneys in Chicago's criminal justice system, 69 percent of respondents believed the system was ineffective in controlling police perjury at suppression hearings. The acceptance of testimonial lies told by police is

so deeply ingrained within the system that nearly a third of those surveyed did not equate lying at a suppression hearing with the crime of perjury.[155]

The inability to prevent police perjury is a systemic pathology that relies on the complicity and passive acceptance of other actors within the legal system. From prosecutors to judges to other police officers, key actors within the criminal justice system often overlook this troubling phenomenon, due to either incentives or biases. Various aspects of the legal system, including ethical rules and standards of review, are structured in a manner that discourages the rigorous scrutiny of police testimony. Moreover, juries are typically given insufficient information to assess an officer's credibility and are thus blinded to an officer's history of misconduct and self-interest. Even when testimonial lies are discovered, disciplinary action against police officers for perjury is rare. A code of silence among law enforcement impedes investigations and prosecutors are typically reluctant to press charges. The lack of effective safeguards against police perjury generates a perception among police that they can lie in court with impunity.[156] Consequently, the system as it currently stands facilitates a paradigm where police perjury goes largely unchecked.

Prosecutors

Given their critical role in the criminal justice system, prosecutors wield significant influence over how acts of testilying are addressed and whether such testimony is brought at trial. However, various factors often lead prosecutors to overlook and at times even enable such misconduct.

Studies have shown that prosecutors are often aware of cases where police fabricate evidence or perjure themselves. Orfield's study, for instance, revealed that 52 percent of prosecutors believed that at least half the time, the prosecutor knows or has reason to know that police fabricated evidence at suppression hearings. Fifty percent of prosecutors believed the same with respect to warrants.[157] Despite this awareness, prosecutors typically fail to challenge this misconduct. The Mollen Commission found that police misconduct such as perjury "though not condoned, [is] ignored" by prosecutors.[158] This phenomenon may be attributed to several key factors.

First, the ethical guidelines governing prosecutors' conduct do not explicitly mandate that they investigate the veracity of police testimony. The Model Rules, which form the basis of a prosecutor's ethical code, prohibit a lawyer from introducing evidence known to be false but do not impose any duties on prosecutors to actively discern the truthfulness of the evidence proffered by the police.[159] In cases where a prosecutor "reasonably believes" the evidence may be false, the decision to introduce it is left to their discretion.[160] Consequently, a prosecutor has little external incentive to prevent perjured police testimony from being introduced in court.

"From prosecutors to judges to other police officers, key actors within the criminal justice system often overlook police perjury, due to either incentives or biases."

Another significant reason prosecutors often ignore police perjury is that prosecutors have a symbiotic relationship with the police. Prosecutors are heavily reliant on police to bring them cases and develop evidence, and the success of their careers often hinges upon maintaining good relations with the police.[161] The strain that challenging police credibility could put on this relationship discourages prosecutors from investigating potential perjury. Thus, prosecutors may choose to maintain a congenial relationship even at the cost of tolerating some degree of police misconduct.[162]

Judges

Judges also frequently fail to prevent police perjury, as they tend to default in favor of police narratives. At trial, judges play a crucial role in discerning the validity of police testimony, predominantly within the context of suppression hearings. In suppression hearings, judges must assess the veracity of a police testimony, often about the facts officers relied on in conducting a search or seizure. The judge must determine whether the search was constitutional and by extension whether the evidence may be brought at trial. In

most suppression hearings, the defense lacks corroborating evidence of the defendant's account of events due to the time, location, and circumstances of the incident, and thus these hearings frequently boil down to swearing contests between the officer and the defendant.[163] Judges must therefore choose whose account they find more compelling.

Former New York judge Irving Younger remarks that in swearing contests between an officer and a defendant, judges "almost always accept the policeman's word."[164] Similarly, Boston defense attorney Michael Avery has claimed that every criminal court judge "routinely has appearing before him or her police officers who commit perjury in order to make charges stick in criminal cases. Everyone knows this."[165]

Empirical evidence supports these observations. In Orfield's study of narcotics officers, for example, 86 percent of those interviewed indicated that it was unusual for judges to disbelieve police testimony at a suppression hearing.[166] Melanie Wilson conducted a study in the Federal District Court of Kansas and also found a low rate of judicial identification of testilying. Reviewing suppression motions in which the credibility of an officer was challenged, she found that judges identified police perjury in a mere 8 percent of cases. In cases where the evidence was close and the motion turned entirely on the question of an officer's credibility, judges sided with the government 100 percent of the time. Wilson found that judges rejected even the strongest proof offered by the defense around 78 percent of the time.[167] Together, this evidence suggests a systemic judicial reluctance to question police testimony.

"A significant reason prosecutors often ignore police perjury is that prosecutors have a symbiotic relationship with the police."

Judges seem to know police lying is common. Orfield's survey of prosecutors, judges, and defense attorneys in Chicago found that officers lie in anywhere between 22 percent and 53 percent of suppression hearings. When asked to estimate the frequency with which police officers lie in court to avoid suppression, "92% responded that the police lie at least 'some of the time' to avoid suppression and 22% reported that police lie more than half of the time they testify in relation to Fourth Amendment issues."[168] These estimates suggest that judges are systemically enabling police perjury. There are a number of potential explanations for this phenomenon. Judges might be doing so subconsciously, falling prey to a pro-police bias, or in some cases perhaps even consciously permitting officers to lie in their courtrooms.

Juries Not Given Sufficient Information to Assess Officer Credibility

In cases where police perjury is not excluded by the judge, jurors theoretically have both the ability and the duty to independently assess the veracity of officers' testimony. However, jurors can fulfill that role only if they are provided with sufficient evidence to assess the credibility of the officer, the defendant, and other witnesses, if any. Yet defendants are overwhelmingly at an unfair disadvantage in swearing contests, as the evidence that juries receive tends to be biased in favor of the officer.

First, while prosecutors typically have myriad ways to evaluate a defendant's veracity, defense attorneys face significant obstacles in obtaining information that could undermine the credibility of police witnesses. Data-collection systems ensure that a defendant's entire history of encounters with the law are easily accessible to the government. Conversely, evidence of police misconduct is often inaccessible to the defense. Police departments themselves are responsible for the creation and review of misconduct records. Since departments have an incentive to downplay or overlook their own misconduct, these records are often either nonexistent or inaccurate.[169] Further, many jurisdictions have laws that protect the confidentiality of police personnel records and make it exceptionally difficult for defense counsel to gain access to them.[170] The inaccessibility of an officer's misconduct records often hampers the defense's efforts to challenge the jury's inherent presumption of an officer's credibility.

Second, jury instructions fail to highlight the vested interest police might have in the case outcome, unfairly framing them as impartial while simultaneously casting the defendant's account as potentially biased. Typically, juries are informed when witnesses have a legally recognized interest in the trial outcome. In most jurisdictions, jurors are informed that a

criminal defendant's testimony may be influenced by their interest in the case outcome and, accordingly, jurors are entitled to give the testimony less weight.

> "Perjury is a crime and, like all illegal conduct, can be sufficiently deterred only through punishment."

For example, a criminal jury instruction in the District of Columbia reads: "[Y]ou may consider the fact that the defendant has [a vital] interest in the outcome of his trial."[171] However, almost universally, courts decline to apply similar guidelines to the testimony of police officers.[172] So, in contrast, the jury instruction in the District of Columbia relating to police testimony reads: "In no event should you give either greater or lesser weight to the testimony of any witness merely because s/he is a police officer."[173]

This asymmetry in jury instructions persists even though police often work closely with prosecutors and may have a strong professional interest in a case's outcome. For instance, an officer may have devoted countless hours pursuing a case and be invested in the outcome. Nonetheless, existing legal protocols deemphasize the possibility of bias, effectively portraying the police as entirely impartial.

Why Police Perjury Is Rarely Punished

Despite the many barriers, sometimes an officer's perjured testimony may nevertheless be excluded from trial or disbelieved by a jury that might exonerate the defendant. Yet the fact that testilying may in select cases fail to accomplish its intended purpose will hardly deter an officer from lying on the stand. At worst, even if the case is dismissed, officers are free to continue going about their business. Thus, another reason police perjury persists despite its professed illegality is that officers are rarely if ever held to account for their lies in court.[174]

Perjury is a crime and, like all illegal conduct, can be sufficiently deterred only through punishment. If the officers face no consequences for lying in court, there is little reason for them to curb the practice. Yet there is no private right of action for defendants to sue officers who lie at trial. Typically, under the Civil Rights Act of 1871, known as Section 1983, an individual who is deprived of their rights because of, say, a false conviction may pursue civil damages against any officers involved. Under Section 1983, civil liability is imposed on "every person who, under color of [law] . . . subjects . . . any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws."[175] However, victims of police perjury cannot rely upon Section 1983 to provide adequate relief. The Supreme Court has held that all witnesses who commit perjury at trial, including police officers, enjoy absolute immunity from civil liability under Section 1983, even when it produces a false conviction.[176]

Without a private right of action for victims of testilying, police perjury can be deterred only by internal departmental sanctions and criminal prosecution. However, as one legal scholar summarizes, police crimes such as perjury "are underreported, underinvestigated, underprosecuted and underconvicted."[177] News reports and investigations confirm this assertion.[178]

Police Culture and the Blue Wall of Silence

Police departments tend to be governed by a code, the so-called blue wall of silence, which represents a significant barrier to uncovering instances of police perjury. This code, rooted deeply within police culture, discourages officers from exposing any misconduct or dishonesty, such as perjury, committed by their colleagues. The blue wall has therefore been identified as a significant hurdle to investigations into police corruption.[179]

The blue wall of silence is often maintained through threats of retaliation toward officers who dare to breach it, and officers who violate the code are often subjected to severe reprisals that range from harassment and ostracism to physical harm and life-threatening retaliation.[180] Some officers interviewed for the Mollen Commission reported a fear "that they will be left alone on the streets in a time of crisis."[181]

The blue wall of silence thus serves as the single greatest impediment to investigations into police corruption. As the Mollen Commission noted, the blue wall thwarts "efforts to control corruption . . . by lead[ing] officers to protect or cover up for others' crimes—even crimes of which they heartily

disapprove."[182] Similarly, New York's earlier investigation into police misconduct, the 1972 Knapp Commission, described that "the tradition of the policeman's code of silence was so strong . . . that it was futile to expect . . . testimony [regarding corruption] from any police officer, even if he himself were caught in a corrupt act and were offered immunity in exchange for his testimony."[183] By obstructing investigations, the blue wall of silence protects police officers from potential consequences of their perjury, making it difficult to hold police accountable.

Failure to Prosecute and Convict Lying Officers

As noted, police perjury is rarely prosecuted and even more rarely convicted.[184] Despite numerous instances of their falsehoods being exposed in court, officers are rarely indicted.[185] Even when they are indicted, conviction is rare. An analysis of federal court sentences from 1999 to 2004 indicates that fewer than 3 percent of federal sentences for perjury included an "abuse of trust enhancement" that would apply if an officer was convicted.[186]

Ultimately, police face few consequences for perjury. While testimonial lies, unlike investigative lies, remain illegal, barriers, biases, and incentives within the criminal justice system foster an environment where an officer's lies are rarely identified and even more rarely punished. These conditions allow law enforcement to effortlessly apply skills learned in the investigative setting to the testimonial setting.

Ramifications of Testimonial Lies

The spillover of police deception from interrogations to the courtroom is a major concern with broad implications. It leads not only to wrongful convictions but also infringes on constitutional rights, undermining our legal system's perceived legitimacy.

Wrongful Conviction

When an officer's narrative is falsified, it can result directly in a wrongful conviction. An officer may truly believe that a suspect is guilty and may perceive their actions as assuring justice. However, police, like anyone, can make mistakes. Police are prone to tunnel vision in pursuing suspects and at times make misjudgments.[187] When officers decide that the ends justify the means and that lying on the stand is justifiable, they risk imprisoning the innocent.

One lie can destroy a life. In the American justice system, an officer's words exert significant influence in determining the course of legal proceedings.[188] Given the supposed credibility and neutrality often associated with law enforcement, an officer's false narrative of events can infect the prosecutor's, judge's, and jury's understanding of the facts. Once police testimony is introduced, the defendant faces an uphill battle, as undermining the credibility of the officer's testimony is often their only chance for acquittal; for reasons previously discussed, doing so is incredibly difficult. Thus, an officer's perjured testimony can materially increase a defendant's chances of being wrongfully convicted. The threat is particularly salient in trials concerning gun possession and drug offense. In these cases, an officer's testimony establishing that the defendant was found in possession of contraband can be the primary and sometimes only evidence leading to imprisonment.[189]

"By obstructing investigations, the blue wall of silence protects police officers from potential consequences of their perjury, making it difficult to hold police accountable."

Police perjury is a leading cause of wrongful conviction. The Innocence Project estimates that police misconduct, including perjury, contributes to approximately half of all wrongful convictions.[190] A House Judiciary subcommittee report found that of death row inmates exonerated due to appellate determinations of innocence, most were convicted due to perjured testimony or evidence withheld by prosecutors.[191] One estimate put the number of exonerated individuals who were victims of intentional police lies and cover-ups at over a thousand.[192]

Several high-profile cases illustrate the extent and impact of such misconduct. The Rampart scandal within the Los Angeles Police Department in the late 1990s led to the overturning or dismissal of 156 convictions due to

misconduct such as perjury and planting of evidence.[193] A few years later in Tulia, Texas, the perjury of a single police officer resulted in the false conviction of 35 individuals.[194] More recently, in St. Charles Parish, Louisiana, 70 narcotics cases were dismissed due to the discovery that an undercover officer had lied under oath.[195] These alarming instances underscore the widespread nature of wrongful conviction as a result of police perjury.

Besides contributing to wrongful convictions, police perjury can also have a profound impact on another facet of the judicial process: plea bargaining. Lies told by police can help coerce innocent individuals into pleading guilty to crimes they did not perpetrate. An innocent defendant, perceiving police witnesses' willingness to lie on the stand to support the government's case, may rationally conclude that going to trial is not in their self-interest.[196]

Undermining of the Constitution and Legal System

The criminal justice system operates within the confines of a constitutional system that secures certain rights. The Fourth Amendment safeguards against unreasonable government intrusions into privacy. The Fifth Amendment protects against compelled self-incrimination and promises due process of law. When police lie on the stand to justify an unreasonable search or misrepresent the circumstances surrounding a confession, they undermine these rights, divesting them of their potency. By committing perjury, officers take it upon themselves to unilaterally determine the limits of constitutional protection. In effect, they seize the privilege to decide whom the Constitution protects and to what extent, outside of any legislative or judicial oversight.[197]

While police often justify their lies as a means to serve the truth, truth-seeking in our criminal justice system does not mean ensuring that the guilty are incarcerated at any cost. Our legal process does indeed pursue truth—not through the unilateral determinations of individual officers, but through legal systems established by voters and the Constitution. Moreover, the role of our justice system extends beyond simply securing convictions. It is also committed to ensuring that these convictions occur in a fair and just manner. The Fourth and Fifth Amendments, in conjunction with the exclusionary rule, ensure this fairness.[198] So does the trial process comprised of judges, prosecutors, defense attorneys, and juries, who all have crucial roles to play. Allowing police to lie on the stand degrades the role of these rules and actors and by extension undermines our entire system of justice.

THE PERVASIVENESS OF POLICE LIES DELEGITIMIZES THE POLICE

Public trust in law enforcement is undermined when lying becomes a routine feature of American policing. While police may engage in deception during interrogations and lie on the stand with the goal of enhancing public safety, doing so inadvertently sabotages their own legitimacy.[199] The widespread nature of these lies not only erodes public confidence in law enforcement, it also directly influences public perception of the system's fairness.[200] This loss of credibility creates a ripple effect, diminishing public cooperation with police and increasing noncompliance with the law.[201] Thus, when police lie, they may secure convictions in the short term at the expense of undermining their long-term goal of promoting public safety.

> "Public trust in law enforcement is undermined when lying becomes a routine feature of American policing."

In the realm of law enforcement, trust is a pivotal determinant of the perceived legitimacy and overall effectiveness of police. Institutionalized trust arises from the public's belief in the benevolent, good-faith conduct of individual officers, as well as the perception of the police force as an honest and competent entity acting in the best interest of all citizens.[202] As one scholar explains, trust is "confidence in one's expectations" in the face of risk.[203] Any demonstration of dishonesty or unreliability by an officer tarnishes this trust, undermining the legitimacy of law enforcement.

Accordingly, when police lie to elicit information or achieve a conviction, public confidence in police officers is damaged.[204] Those with little experience with law enforcement typically believe that police must tell the truth.[205] For communities and families with a high degree of

contact with police investigations, the discovery that officers frequently lie in various contexts erodes their trust in law enforcement.[206] When law enforcement employs deceptive interrogation tactics as a first resort, treating all suspects like criminals, such behavior suggests to many members of the public that the system may not genuinely presume citizens innocent until proven guilty.[207] When police lose the public's trust, law enforcement's job becomes more difficult and its effectiveness in controlling crime diminishes.[208] Among the general public, lack of trust creates reluctance to cooperate with the police, impeding critical information flow from witnesses and potential informants to investigators.[209]

SOLUTIONS

Addressing the issue of police deceit during interrogation is indispensable for ensuring a fair justice system rooted in truth. Police interview techniques are not set in stone and require systemic and continual improvement to maintain the principles of fairness and justice that the Constitution requires. Independent research on the coercive nature of these deceptive techniques must be fed back into police practice to maintain the integrity of the criminal justice system.

At the heart of an ethical criminal justice system is not merely securing a conviction, but using methods that are consistent with our broader societal values. In a system whose purpose should be to uncover the truth, it is socially destructive to allow law enforcement officers to ascertain truth by defaulting to lies and deception. Allowing as much undermines the integrity not only of law enforcement agencies but also the criminal justice system that enables it. Given this backdrop, it is high time for our courts and legislatures to reevaluate the police interrogation techniques rooted in misrepresentation.

Videotaping

The most widespread proposal discussed among scholars to ameliorate the issue of deception in interrogation is to implement videotaping of all suspect questionings. Videotaping is an embodiment of the concept that sunlight is the best disinfectant. Recording interrogations would lift the veil of secrecy that often shrouds the interview process and provide an accurate factual record that could subsequently be evaluated by judges and juries. With that in mind, scholars have proposed recording the entire interrogation process, not merely the final act of confession, with a camera angle focused equally on the suspect and officer.[210] This approach would not only promote transparency but also ensure a balanced presentation of the interaction.

"It is high time for our courts and legislatures to reevaluate the police interrogation techniques rooted in misrepresentation."

The benefits of videotaping are twofold. First, the creation of an accurate factual record would aid in the evaluation of confessions. By maintaining a video and audio record of the interrogation process, judges and juries could better assess the voluntariness and credibility of presented confessions.[211] The absence of electronic recording has been flagged as a challenge in proving coercion claims.[212] There might be disputes about which tactics the police used to elicit a confession. Even absent disagreement about the events, it is difficult to effectively convey the coercive nature of an interrogation through a transcript or testimony alone. A comprehensive video documentation of the interrogation process would resolve these issues, producing an objective and accurate record of the events that transpired in the interrogation room and the process by which a statement was taken. The visual record would empower judges and jurors to evaluate the integrity of the interrogation thoroughly, thereby enhancing their understanding of confession evidence.[213] The practice has proven effective in the UK, where mandated electronic recordings have served as invaluable devices in identifying coercion and false confessions.[214]

Second, videotaping could enhance police accountability and serve as a deterrent for officers who might resort to coercive interrogation tactics. The simple presence of a camera can have a profound psychological impact on interrogators. The knowledge that their actions are being recorded may compel interrogators to abstain from using the most egregious psychologically coercive tactics.[215] Videotaping would also encourage a higher level of scrutiny internally within the police force, thereby promoting best practices during interrogations.

Banning Certain Deceptive Techniques

The most straightforward solution to curtailing the use of deception in interrogation is to ban the practice outright. Scholars have suggested a number of variations on this proposal, from banning deceptive tactics altogether to restricting only a subset of these techniques.

The most comprehensive solution involves banning all deceptive interrogation techniques and rendering invalid any confessions resulting from these tactics. Advocates of this solution propose that policymakers pass legislation preventing police from misrepresenting incriminating evidence or resorting to trickery during custodial questioning.[216] Such laws would prohibit police from falsifying the existence or integrity of forensic evidence against suspects, and from misrepresenting alleged incriminating statements from supposed accomplices or eyewitnesses. Police would also be prohibited from using particularly egregious minimization techniques that manipulate suspects into believing officers are offering implicit promises of leniency.[217] This approach is not without precedent; as previously discussed, similar prohibitions have been successful in countries such as England, Iceland, and Germany.

> "By maintaining a video and audio record of the interrogation process, judges and juries could better assess the voluntariness and credibility of suspects' confessions."

Although critics may argue that such a ban could impede confession rates, evidence suggests otherwise. Studies into the UK's Police and Criminal Evidence Act of 1984 illustrate a significant reduction in deceptive practices, with no consequential fall in confession rates.[218]

Taking a more moderate approach, some scholars propose a ban specifically on false evidence ploys, while permitting certain minimization strategies.[219] Since minimization tactics are less likely to coerce false confessions than false evidence ploys, these scholars suggest that reform efforts be focused there. In the context of minimization techniques, some scholars advocate for an even more nuanced approach, suggesting a ban on only those tactics that imply leniency. While psychological and moral forms of minimization would be allowed, the scholars argue that techniques implying promises of leniency should be prohibited. Under this proposal, interrogators might be allowed to tell a suspect that confessing would offer emotional relief (psychological minimization) or that they are still inherently a good person (moral minimization). However, interrogators could not suggest that a confession would reduce the legal consequences of the suspect's actions.[220]

Limiting Circumstances in Which Deception Is Used

Some scholars have proposed that deception might be justifiable only in certain circumstances. In their perspective, the issue with deception is many police officers' apparent belief that deception is without consequences. Many officers seem to resort to deceit impulsively, using it as an initial approach rather than a strategic, final option. These researchers advocate for a shift toward a more carefully considered decisionmaking process, one that factors in the costs and benefits of employing deceptive tactics before their implementation. This proposed evaluation would be contingent on various elements such as the nature of the deception, alternative strategies available to the interrogator, the severity of the crime, and the urgency of procuring the relevant information.[221]

Similarly, other scholars have outlined circumstances in which deception might be prohibited. One proposal would allow deception only in felony investigations, and then only after a suspect's arrest, when there is a judicial determination of probable cause.[222] Another proposal calls for the protection of vulnerable populations such as juveniles, who are at higher risk of false confessions, from deceptive techniques.[223] A third variation of this proposal would prohibit lying by the police unless warranted by imminent necessity. This exception would apply only to rare situations where urgent crises arise and a suspect has key knowledge necessary to prevent them.[224]

Increasing Judicial Scrutiny

A final proposal is greater judicial scrutiny of interrogation practices. Scholars have proposed that courts reevaluate the

voluntariness standard for admissibility of confessions in light of scientific research on the unreliability of confessions obtained through deceptive methods. Specifically, judges should shift from the vague voluntariness standard to one based on the reliability of confessions.[225] In doing so they should scrutinize deceptive tactics more heavily, given the body of research that identifies risks posed to innocent suspects. As previously discussed, the mere presentation of a confession to a jury often leads to conviction—even in cases where the confession inaccurately describes the crime, lacks corroborative evidence, or contradicts other evidence pointing toward the suspect's innocence.[226] Thus, the decision of whether to admit confession evidence is a weighty one.

"Judicial scrutiny should be heightened in cases where confessions were obtained by deceptive means, lacked independent corroboration, did not align with crime facts, or lacked an official record of voluntary admission."

To prevent the admission of false confessions, scholars suggest that courts take into account the psychological dynamics at play during police interrogations. Under this system, judges, acting as gatekeepers of evidence, would exclude confessions that do not meet minimal standards of trustworthiness. Scrutiny would be heightened in cases where confessions were obtained by deceptive means, lacked independent corroboration, did not align with crime facts, or lacked an official record of voluntary admission.[227] Thus, confessions of questionable probative value would be excluded from trial.

CONCLUSION

The widespread use of deception during police interrogations in the United States raises profound ethical concerns and practical consequences that warrant thoughtful examination by policymakers. While deceptive techniques may aid criminal investigations in some cases, these practices risk eliciting false confessions, incentivizing testimonial lies by police, eroding public trust, and undermining the legitimacy of the criminal justice system. The costs of police deception underscore the need for limitations and oversight of these methods. Reforms such as curtailing deceptive tactics, limiting circumstances in which such tactics are permissible, increasing accountability through videotaping, and instituting greater judicial scrutiny deserve serious consideration to ensure ethically sound policing aligned with core societal values. Though curtailing deception may require difficult trade-offs, its substantial downsides necessitate careful analysis to balance investigative efficacy against the integrity of the justice system and protection of civil liberties. Thoughtful examination of deception's risks and benefits is crucial to identify interrogation policies that uphold justice, protect the innocent, and maintain public faith in law enforcement.

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