

Just Say NOTHING
by Dave Kopel
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What if you've just been arrested for something which shouldn't be a crime? For instance, if a burglar breaks into your home, attacks your children and you shoot him. Should you talk to the police? In a word, "No." Shut up, call the best lawyer you can find, and then continue to shut up. If you talk to the police, you will only make things worse for yourself.

Sociologist Richard Leo has written several articles which detail the deliberately deceptive techniques which police use to extract a confession.

First of all, since 1966 the United States Supreme Court has required that all persons under arrest be given the Miranda warnings, so that they will know that they have a right to remain silent, and the right to a lawyer. So how do police convince a suspect to talk, even after the Miranda warning?

Professor Leo explains that "police routinely deliver Miranda warnings in a perfunctory tone of voice and ritualistic behavioral manner, effectively conveying that these warnings are little more than a bureaucratic triviality." Of course, the Miranda warnings are not trivial; your liberty may hinge on heeding those warnings.

No matter how strong the other evidence against you, a confession will make things much worse. A confession often makes the major difference in the district attorney's willingness to prosecute the case, and his willingness to accept a plea bargain. If your confession gets before a jury, your prospects of acquittal are virtually nil.

If you are foolish enough to reject the Miranda warnings, simply put, the police interrogators will attempt to deceive you into confessing. As a result of increased judicial supervision of the police, deception, rather than coercion ("the third degree") has become the norm for interrogation.

First of all, you will be kept in a physical environment designed to make you want to waive your rights and talk. You will most likely be kept in isolation, in a small, soundproof area. By isolating you, the interrogator attempts to instill feelings of anxiety, restlessness and self-doubt on your part. Left alone for long periods, you may think you are being ignored, and will therefore be happy to see the interrogator return.

Ideally, from the interrogator's viewpoint, you will begin to develop the "Stockholm syndrome," in which persons held captive under total control begin to

Just Say NOTHING by Dave Kopel

identify and empathize with their captors. This can occur after as few as ten minutes of isolation in captivity.

While increasing your dependence, the interrogator works to build your trust by pretending that he cares about you, that he wants to hear your story, and that he understands how difficult it may be for you to talk. The interrogator works to become your only source of social reinforcement.

There is no law against outright lies or other deceptions on the part of police during an interrogation. Almost certainly, you will be told that the prosecutor and the judge will be more lenient if you confess. This is a complete lie. The district attorney will be more lenient if you don't confess and he can't make a strong case against you, and therefore has to settle for a plea bargain. Nothing the police promise in the interrogation room is binding on the police, much less on the district attorney.

There are five "techniques of neutralization" which the interrogator may use in order to make you feel that the crime really wasn't so bad, and that it is therefore all right for you to confess. Of course the interrogator's pretense that he doesn't think the crime was serious will last only as long as necessary to obtain the confession.

The first technique is called "denial of responsibility," allowing the subject to blame someone else for the offense. For example, "it was really the burglar's fault for breaking in; he's the one to blame for getting shot." (That's true, but it's you, after all, that the police are interrogating.)

Another technique is "denial of injury." For example, "The burglar wasn't really hurt; he walked out of the hospital two hours ago." Maybe true, maybe not. In truth, the burglar could be in intensive care and the interrogator could be laying the groundwork for a murder case against you.

In the "denial of the victim" technique, the interrogator will suggest that the victim deserved what he got.

"Condemnation of the condemners" is always popular. For instance, "the real problem is all those anti-gun nuts who let criminals run loose, but don't want guys like you to defend themselves." True enough, but when the policeman saying this is holding you prisoner, take his sincere expression with a large grain of salt.

Finally, there's the "appeal to higher loyalties" such as "What you did is a common sense thing. Regardless of some legal technicality, the most important thing is for you to protect your family. Your family comes first, right?" True again, but the man saying this wants you to confess to violating the legal technicality, so you can be prosecuted for it.

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A close cousin to the denial strategies are the "normalizing" techniques, in which the interrogator claims to understand that the crime was not typical behavior for the subject; "I can see that you're not a violent person. You're not a criminal. You're a tax-paying, home-owning, regular kind of guy. What happened tonight was really unusual for you, wasn't it?"

You have nothing to gain, and everything to lose by talking. You are not going to outsmart the interrogator. Even if you don't end up producing a full confession, you may reveal details which will help build a case against you.

Most violent criminals are too stupid to read, and too lazy to pursue a time-consuming, high-precision hobby like handloading. So I'm not worried that a violent criminal will read this column, and avoid confessing to a serious crime. Too often in America, good citizens are arrested for victimless "crimes," including unjustifiable (and unconstitutional) gun regulations. The routine use of deception in order to trick good citizens into confessions is something that deserves more scrutiny than it has thus far received.

In the long run, routine deception by the police tears at our social fabric, and undermines the law enforcement system. The more police lie, the more skeptical juries are going to be, even when police are telling the truth.

Moreover, there are about 6,000 false confessions for felonies every year in the United States. (Huff et al., "Guilty Until Proven Innocent," *Crime & Delinquency*, vol. 32, pages 518-44, 1986). False confessions are one of the major reasons for the conviction of innocent persons.

Sources: Richard Leo, "Police Interrogation and Social Control," *Social and Legal Studies*, vol. 3, pages 93-120 (1994); "From Coercion to Deception: The Changing Nature of Police Interrogation in America," *Law and Social Change*, vol. 18, pages 35-39 (1992); Jerome Skolnick and Richard Leo, "The Ethics of Deceptive Interrogation," *Criminal Justice Ethics*, vol. 11, pages 3-12 (1992).

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