

An Ethical Look at Pretexting
by Kitty Hailey, CLI*

The concept of pretexting or rusing is nothing more than method acting; temporarily being someone else. However, instead of for entertainment, it is for the purpose of eliciting information not obtainable in any other manner. Pretexting by investigators is not done without discretion. It is not used upon the public in general to abuse bank accounts or steal credit cards. It is a tool that is helpful in determining where a thief is hiding assets, where a fraud is actually working, the name of the creep who has abused the child, the location of the parent who doesn't pay child support, and the place to serve process upon the dead-beat who has successfully hidden from law enforcement for the last five months. Putting an operative undercover in a workplace to identify product theft or drug abuse is sometimes the only way to prove such secretive activity. Like any other undercover operation, it is the use of a mild deception for the greater good. The simple ruse should hurt no one, but can uncover information of value to many.

I have followed the debates and the changing laws. I am severely disappointed in those who chose to label the work that investigators perform with such negativity. I am saddened by national associations that meekly support the idea that investigators work fraudulently or break laws. It has taken years for most of us to break the stereotype of the misguided gumshoe. Unfortunately, we are all lumped together because of our politicians pandering to fear mongers. Like any other prejudice, it is wrong.

Yes, Identity theft is a problem. NO, it was not created by investigators. Yes, Investigators actually help to identify the Identity thieves. NO, properly licensed investigators are not wantonly seeking to invade the privacy of the general public. Yes, properly licensed investigators are using a variety of sources and skills to PROTECT the rights of those who have been defrauded or abused.

Investigators are licensed to perform a service. That service is the pursuit of information for a fee. All but five states regulate the work of the investigator to insure that the job is being performed by people of acceptable character with appropriately legitimate purposes so that the public is protected from potential misuse of authority. Regulatory authorities govern the work of the Investigator and assign penalties to those who abuse the privilege afforded by license. The investigator is not permitted to do more than the average citizen, but generally has knowledge

accrued from years of experience that enables a swifter finding of solutions. Using this, or any other investigative tool in an inappropriate or illegal manner deserves punishment.

It is not always possible to obtain necessary information through public records, surveillance or library research. Frequently, because of the delicate or dangerous nature of the search, information is being overtly hidden by persons who are knowingly breaking laws, hiding assets, abusing children, or worse. The hands of the investigator are regularly and methodically being tied by unnecessary and frivolous laws imposed by a scared society. Investigators are not performing illegal acts, but uncovering them. Punish the thieves, not the innocent!

Years ago, prior to the privacy scare, I testified in a court of law about having infiltrated a situation whereby I observed child who had been kidnaped from the father. I had simply knocked on a door and “pretended” to be a new neighbor (this was a pretext). I actually held the child as I spoke with the women who had abducted him. As a result of this work we were able to recover the baby and I subsequently testified in court to my actions. I was praised by the judge. In fact, using a similar ruse I was lauded from the stand by a second judge who said something to the effect that, “an investigator uses ruses and pretexts like an undercover police officer. You wouldn’t expect a police officer to say, ‘I’m here to find out if you are selling drugs in this neighborhood’ now would you?”

My use of pretexting in the past has always been for the purpose of fulfilling my job, solving an unsolved problem, and locating information necessary for litigation purposes or to assist in a conundrum of some sort. The purpose of my work has always been in pursuit of legitimate purposes. I do not and have not “stolen” information for personal use or to further any fraudulent endeavor for a client. Pretexting has been one of many investigative tools that can and should be used ethically, in the same manner as all other investigative tools. When applied properly with consideration for the rights of all people (clients, attorneys, witnesses and the public in general) a pretext can elicit necessary information to execute on judgments, locate missing persons, identify the identity thief, or find the insurance fraud who is raising rates for all of us.

Instead of belittling the work done by it’s members, I would be much happier to see state and national associations support their good works, provide education for those who need it, embrace an ethical code that demands fair and equitable treatment by the investigator and enforcing penalty only upon those who knowingly break the law or abuse the privilege of their license.

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