

Pretexting: A Case of Mistaken Identity

Using a plausible but false assertion to conceal one's true purpose or intent has been an acceptable method of investigation for investigators for more than 100 years. Not until a small group of contractors working for Hewlett-Packard misused this valuable tool in 2006, did lawmakers or anyone else even take notice of it. Since then, privacy advocates, the media and others have demanded that the practice be outlawed and those that use it be punished.

Organizations such as the National Council of Investigation and Security Services and the California Association of Licensed Investigators however recognize that pretexting is invaluable to investigators in both the public and private sector and have fought to defend this tool and prevent its ban. On the other hand, ASIS International has taken a position which opposes many of its members and decided "it will not invest its reputation in an effort to convince lawmakers to not outlaw pretexting until such time as the investigations community (read *private investigators*) is able to develop and present a convincing code of self-regulation". This position which ASIS International most recently disclosed in a short article in its 3rd Quarter, 2007 ASISPAC newsletter, appears to be based in large part on the definition of pretexting offered in the same article: "Pretexting is described as the use of *false, fraudulent*, or fictitious information in order to gather *personal information* during investigations (emphasis added)." Any ethical investigator knows pretexting is not about gathering *personal information*; it is about gathering *information which is often unavailable by other means*. But by incorrectly defining this important investigative tool as this article does, ASIS damages the professional reputation of all lawfully practicing investigators and jeopardizes their ability to properly

perform their jobs and provide services to those that employ them. Furthermore, the gathering of personal information by *false* or *fraudulent* means under most circumstances is in fact unlawful. Thus by including the word *fraudulent* in the definition is unnecessary, if not inappropriate. Fraud is theft by deception and experienced, law abiding investigators would not commit theft or fraud to further an investigation. To do otherwise would be unethical, and well, unlawful.

The most recent edition of Black's Law Dictionary defines pretext as an "Ostensible reason or motive assigned or assumed as a color or cover for the real reason or motive; false appearance, pretense." While the Federal Trade Commission's website states that pretexting is against the law when used to obtain personal information in order to commit a crime, rational thinkers recognize pretexting has many legitimate uses. Even the International Association of Security and Investigative Regulators, whose stated purpose is "enhancing public safety by promoting professionalism in the private security industry through effective regulation" has acknowledged that pretexting is a legitimate investigative tool. In fact, most covert investigations use pretexts at some level. Whether an organization uses private sector investigators or its own employees to conduct a workplace undercover investigation, investigate criminals counterfeiting its products, or seeks to prove malingering by an insurance claimant, pretexts are necessary in order to gain the confidence of those investigated and conceal the investigator's true purpose. As most security professionals know, these and other covert investigations can only be successful if the investigators do not reveal their real identity or intent.

California ASIS members vainly attempted to make this point and defend the use of pretexting. However, their message has largely fallen on deaf ears. According to the

ASISPAC article, their concern even failed to fully resonate with former ASIS president, Steve D. Chupa. His response was to send a letter to the California State Assembly Committee urging them “to work closely with members of the *private investigations community* (again, emphasis added) before passing a law totally prohibiting the use of pretext in investigations.” Hopefully, California’s private investigators will prevail in their effort to protect this important tool and the dignity of their profession and in doing so, prevent many ASIS members (including Mr. Chupa’s own investigators) having to join them on the unemployment line. But here is another thought, if pretexting is really “the use of *false, fraudulent, or fictitious* information in order to gather personal information during investigations,” and the gathering of personal information by *false or fraudulent* means is indeed unlawful, why would anyone ask our lawmakers to make something that is already unlawful, *unlawful*? Maybe someone on the editorial or advisory staff of the ASISPAC newsletter could answer that.

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