Case Three: Ethics of Coercion

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A woman is murdered in a small town. At autopsy, the pathologist notes the woman had engaged in sexual relations shortly before her murder. The police department determines the male partner should be considered a person of interest in their investigation. They begin a canvas of the town, asking every male to voluntarily consent to a DNA test. Men refusing to provide the specimen will be publicly listed as potential suspects and perhaps arrested. All 1500 men in the town provide a specimen and none is identified as the sex partner. The DNA results are entered into the FBI's database and made available to every law enforcement agency in the country.

INDEX TERMS: autonomy; bioethics; informed consent; Kant; Mill; utilitarianism.

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The investigative techniques involved in this case are well within the bounds of acceptable police practice.[1] There is a compelling state interest in apprehending the woman's killer and the police have an obligation to use all reasonable and legitimate means to solve the crime.[2] These techniques include a number of methods designed to influence, persuade, and sometimes pressure people to cooperate with criminal investigations.

It could be argued that the police should not have asked the men to submit to DNA testing because some might have felt pressured to comply. This did not appear to be the case. All the men agreed to be tested when they all could have declined participation. Insofar as the testing exonerated them it is reasonable to suppose many agreed to be tested because they knew that the analysis would exclude them as suspects. Most rational individuals when faced with this set of circumstances would agree to assist the investigation even under pressure to comply. That is to say, a decision to submit to DNA testing under pressure is consistent with voluntary participation.[3]

The police may have asserted undue influence by informing the men that their refusal to participate might result in a public listing and/or possible arrest. Did this play a role in some of the men's decision to agree to be tested? In all probability, it did. The question is not whether it played a role in the men's decision to participate, but whether it represented an undue influence.

Influence is not necessarily coercion and police are permitted to attempt to influence people who are cooperating in criminal investigation.[4] Police routinely withhold information from potential suspects and witnesses to gain their collaboration and in some cases outright deception is recognized as a legitimate investigative method.[5] Given compelling state interest in apprehending the murderer, it seems reasonable the police would use this technique to get the men to agree to a non-invasive test that would potentially exclude them as suspects.

While it is important to note again that in this case all of the men obliged and none were publicly listed as uncooperative, the question of public listing raises a moral question as it may lead to unjustified sanctions against innocent people. This, in turn, raises an interesting question: can the threat of public listing be justified when the police have no intention of following through?

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If the threat of public listing is a deception designed to gain cooperation, then it could be argued that it is a legitimate investigative technique. Many people are reluctant to cooperate with police investigations and it is a common practice for the police to apply pressure to ensure cooperation. This is a problem only if the police act on the threat, and in this case, they did not.

Finally, it might be argued that even though the men did consent to the testing they were not informed the results would be permanently recorded and made available to law enforcement agencies throughout the country. Had the men known the implications of their participation in this investigation would they have still agreed to be tested?

For non-forensic genetic defect testing, the facility conducting the DNA tests has an obligation to inform patients of the risks and benefits. Informed consent is a legal requirement for laboratories performing DNA testing.[6] Personnel are required to explain it fully and answer all questions.

Informed consent, however, is not a requirement for criminal investigation.[7] Consequently, the fact that the men were not completely informed of the full implications of their decision is not itself evidence of wrongdoing on the part of the police.

Even if police have an obligation to inform potential suspects the results would be entered into the FBI's database, they could solve this problem by simply not sharing the findings. The question of whether or not to share any outcomes is not relevant to the criminal investigation.

This case poses no insurmountable ethical problems. The men regarded as suspects voluntarily agreed to provide DNA for testing. Even if some of the men felt pressured to submit to the DNA testing, the use of pressure is a commonly accepted investigative practice. Even if it could be shown that the public listing of the uncooperative persons is wrong, it doesn't logically follow that the threat of such a public listing is unethical. Even if it can be shown that the men had the right to know that the results would become part of the FBI database, this could be easily remedied in a way that does not compromise the criminal investigation. The investigative techniques in this case are completely acceptable.

ENDNOTES

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