Serious discussions needed on police tactics and false confessions

It’s a phenomenon that detectives, prosecutors, jurors and even defense lawyers typically have trouble believing: Sometimes suspects will confess to serious crimes even when they are completely innocent.

“I certainly wouldn’t confess to a crime I didn’t commit!” we all think. But false confessions happen all the time and recent DNA exonerations and psychological studies suggest they occur more frequently than anyone involved with the criminal justice system should tolerate.

Journalists and academic researchers increasingly understand how the typical police interrogation in the United States is structured to elicit confessions rather than gather accurate information about a crime. The techniques used by detectives are so effective that innocent people will often confess even if they are not physically abused by the interrogator.

The Innocence Project provides us with a snapshot of the problem, showing how to date documented 311 post-conviction DNA exonerations, of which approximately 25 percent involved a confession to the crime by an innocent defendant. And because most crimes cannot be disproven through DNA testing, there’s every reason to believe these numbers are just the tip of the iceberg.

How do these false confessions happen, if not by police torture? After all, we’re not talking here about the conduct of convicted felon and former Chicago police Lt. Jon Burge and his “Midnight Crew” — a wolf pack of detectives who gave scores of confessions through electrocution, suffocation and other abuses in the 1970s and 1980s.

Douglas Starr compellingly suggests in a recent New Yorker article that much of the problem derives from the pervasive use by police of the “Reid Technique” — an interrogation method, originally developed here in Chicago in the 1950s, that in theory teaches detectives how to spot behavioral cues that indicate when a suspect is lying. “The Interview,” The New Yorker (Dec. 9, 2010).

As described by Starr, the Reid Technique proceeds in stages. First the detective asks the suspect a series of non-threatening questions (perhaps, for example, about his job) to set a baseline for the suspect’s behavior. Then the detective will toss out a “behavior provoking” question (asking, for example, how someone who committed this crime should be punished). Or he might “bait” the suspect by suggesting, whether truly or falsely, that he has incriminating physical evidence of the crime.

At this stage the detective is looking for nonverbal cues that the suspect is not being truthful — cues like crossing his arms, picking non-existent lint off of his shirt, touching his face or looking down and away. Once the detective determines the suspect is lying, the interrogation phase begins.

Procurin a confession at the interrogation stage is done through a variety of techniques that might include refusing to accept denials of guilt or by lying to the suspect about a result, victim statement or piece of physical evidence. Another successful tactic is “minimizing” the moral consequences of the crime — for instance, by suggesting to the suspect that anyone would have lashed out violently if provoked in that manner by the victim.

The procedure is remarkably effective at procuring confessions. Unfortunately, it’s effective at getting both the guilty and the innocent to confess.

Here are the problems. First, the “behavioral analysis” stage of the Reid Technique is premised on junk science. Experiments show that police officers perform no better at distinguishing between truthful and lying suspects by relying on behavioral cues than if they had just flipped a coin.

Second, psychological experiments have shown that subjects are prone to falsely confess to infractions with an alarming frequency when they are directly accused of misbehavior — and that their confession rate increases threefold when “minimization” techniques are used by the experimenter.

Third, many advocates of the Reid Technique champion so-called “devil’s advocacy” — encouraging suspects to confess even if police have no reason to believe they are guilty.

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