

Responding to Defense Experts Characterization of Interrogation

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In 1998 David Lykken wrote a book titled, "A Tremor in the Blood: The Uses and Abuses of the Polygraph Technique". In it, he advocated the use of his own "Guilty Knowledge Test" and attacked the existing Control Question Technique by initially offering a naive description of control question theory. He then picked apart his own implausible theory. The uninformed reader was left with the forgone conclusion: 'Of course the control question polygraph technique is invalid, look at how faulty the underlying theory is.'

History is repeating itself. Defense "experts" are condemning contemporary interrogation techniques by presenting their own distorted portrayal of what occurs during an interrogation and then attacking their own inaccurate description. Fortunately, most courts have seen through their blatant attempt to discredit any confession obtained through a police interrogation. Nonetheless, it is instructive to know what these defense experts are saying.

The Defense Experts' Characterization of Interrogation

The following is taken from a report prepared by Dr. Richard Leo on a contested confession case in Wisconsin (Brendan Dassey). It is representative of how many defense experts describe the interrogation process:

A. "The sole purpose for custodial interrogation is to elicit a confession. Contemporary American interrogation methods are structured to persuade a rational person who knows he is guilty to rethink his initial decision to deny culpability and instead choose to confess."

B. "The first step of successful interrogation consists of causing a suspect to view his situation as hopeless. The interrogator communicates to the suspect that he has been caught, that there is no way he will escape the interrogation without incriminating himself, and that his future is determined - that regardless of the suspect's denials or protestations of innocence, he is going to be arrested, prosecuted convicted and eventually incarcerated."

C. "The second step of successful interrogation consists of offering the suspect inducements to confess - reasons or scenarios that suggest the suspect will receive some personal, moral, communal, procedural material or other benefit if he confesses to some version of the offense." There are three forms of such inducements:

. "Low-end inducements refer to interpersonal or moral appeals the interrogator uses to convince a suspect that he will feel better if he confesses."

. "Systemic inducements refer to appeals that the interrogator uses to focus the suspect's attention on the processes and outcomes of the criminal justice system in order to get the suspect to come to the conclusion that his case is likely to be processed more favorably by all actors in the criminal justice system if he confesses."

. "High-end inducements refer to appeals that directly communicate that the suspect will receive less punishment, a lower prison sentence, and/or some form of police, prosecutorial, judicial, or juror leniency if he complies with the interrogator's demand that he confess."

This portrayal of the interrogation process clearly describes techniques that are illegal and, if used, may cause a confession to be suppressed. It certainly does not describe The Reid Nine Steps of Interrogation. In fact, it contains a number of procedures that we specifically teach as being improper.

Reid's Response

We certainly take issue with the stated purpose of an interrogation being to elicit a confession. On page 4 of our

training manual we state that the objective of an interrogation is to elicit the truth from a suspect, not a confession.

There are a number of possible outcomes of a successful interrogation other than obtaining a confession. Some of these are: (1) The suspect is innocent; (2) The suspect did not commit the offense under investigation but lied about some aspect of the investigation (motive, alibi, access, etc.) ; (3) The suspect did not commit the offense under investigation but knows who did. Throughout an interrogation the investigator's goal is always to learn the truth. Leo states that the first step of an interrogation is to convince the suspect that his situation is helpless. This is an outright false statement. This statement or goal never appears in our text books or seminar manuals. On page 49 of our training manual we teach the opposite, that it is improper to tell the suspect that he is facing inevitable consequences. We reference cases where innocent people falsely confessed because the investigator convinced the suspect that he would suffer consequences regardless of his denials. On page 64 we offer information on how to identify truthful from deceptive denials and, on that same page, acknowledge that sometimes innocent suspects are mistakenly interrogated.

What we do teach is that, at the outset of the interrogation, the investigator should express high confidence that the suspect was involved in committing the crime. Guilty suspects are unlikely to tell the truth unless they believe the investigator already knows that they committed the crime. Consequently, expressing confidence in the suspect's guilt is necessary to learn the truth from guilty suspects. However, this procedure certainly does not result in false confessions from innocent suspects. Leo, and others, have taken the concept of expressing high confidence in the suspect's guilt and converting it to a self-serving portrayal that interrogations are designed to convince the suspect that he is in a helpless situation. This is simply not the case.

As to the second step of the process, any successful interrogation technique must offer the guilty suspect a real or perceived benefit of telling the truth. This is fundamental to persuasive communication and, on a daily basis, the average person is bombarded with incentives designed to influence their behavior. Whether the message is to buy a particular product, get a medical checkup, or watch a particular television program, all persuasive arguments involves a promise of benefit with one choice and adverse consequences with another choice.

Common law recognized that some promises of benefit or threats of adverse consequences may cause an innocent person to confess. Examples include promises to avoid a lengthy sentence or threats of physical pain if the suspect does not confess. These would fit the description of what Leo calls, "high-end inducements." Countries whose criminal justice system is based on common law forbid interrogation procedures that involve inflicting, or threatening to inflict pain or discomfort onto a suspect in an effort to obtain a confession. However, they differ somewhat on the use of promises to obtain a confession. In the United Kingdom, promises of leniency in exchange for a confession are codified within their law, e.g., if a suspect confesses early during an investigation, by statute, he increases the probability of receiving a lesser sentence. In 2000 the Canadian Supreme Court provided a bright line distinction with respect to promises of leniency. In *Oickle*, the court ruled that only a quid pro quo offer by the interrogator for leniency in exchange for a confession is impermissible. The United States has the most stringent legal requirement concerning rewards for a confession. Very simply, an investigator cannot offer or imply a promise of lenience in exchange for a confession.

Applying legal standards, Leo's description of low-end inducements are certainly legal and are advocated in the Reid Technique. The high-end inducements are clearly illegal in the United States as well as Canada and we teach investigators not to use these tactics. There are multiple references to these illegal interrogation tactics in both our training manual as well as our text, *Criminal Interrogation and Confessions*.

This leaves "systemic inducements" which are designed to get the suspect to come to the conclusion that if he confesses, his case may be processed more favorably by the criminal justice system. From the interrogator's perspective, of course, this is desirable and yet the interrogator cannot mention or imply a benefit of more favorable treatment in exchange for telling the truth. It is perfectly legal, however, to allow the suspect to form his own conclusion that he may benefit in some way by telling the truth.

To allow a suspect to believe that it may be beneficial if he tells the truth, the Reid Technique takes advantage of two fundamental principles of human nature. The first is that criminal suspects justify their crime in some manner (blaming

the victim, an accomplice, intoxication, financial pressure re-describing the intentions behind their crime, contrasting their crime to worse behavior, etc.). Second, it is human nature to not want to be blamed for something we didn't do. Given the choice, the average person will choose to suffer consequences for something he did wrong rather than have people think something about him or his behavior that was not true.

With this in mind, the first tactic within the Reid Technique that is used to allow a suspect to perceive some benefit of telling the truth is an interrogation theme. During the theme we express understanding toward the suspect's crime and offer moral justifications and excuses for committing it. The theme is intended to reinforce the existing justifications already present in the guilty suspect's mind. The guilty suspect who hears the interrogation theme may well conclude,

"The investigator is right. I did have a good reason for robbing that store. I'm not a bad person and I really did need that money to help out my family. If the investigator can understand why I robbed that place, maybe others will too." An innocent suspect who has not gone through the process of justifying the crime will not relate to the interrogator's theme and will reject the interrogator's suggested justifications. When presented with a theme, most innocent suspects offer persistent denials of involvement in the offense.

The second tactic takes advantage of the drive within each of us to not want others to think things about us or our behavior that are not true. We call it the use of an alternative question. An alternative question offers the suspect two choices concerning some aspect of his crime. Accepting either choice represents an admission of guilt. For example: "Did you plan this out for months in advance or did it just happen on the spur of the moment?"; "Did you steal that money and blow it on drugs and booze or did you take it for something important?" The perceived benefit offered through the use of an alternative question is that by choosing to confess, the guilty suspect may keep others from believing something about him or his crime that is not true, e.g., that he planned the crime out for months or that he blew the money on drugs and booze. The suspect, of course, always has a third choice which is to state that neither alternative is true - that he did not commit the crime.

Whether Reid's use of an interrogation theme or alternative question falls within the category of Leo's low-end or systemic inducements is insignificant since neither procedure offer a direct or implied promise of leniency. Rather, the techniques represent legally persuasive tactics that increases the likelihood that a guilty suspect will choose to tell the truth during an interrogation.

In summary, defense experts have attempted to suppress confessions by first providing a distorted and inaccurate description of the "standard police interrogation" and then presenting studies demonstrating that these improper interrogation techniques result in false confessions. As explained in this web tip, these experts are not describing procedures or tactics taught in the Reid Technique, nor tactics that are considered legal by most courts.

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