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The plague of false confessions

Today I am assigning you some reading. Science journalist Douglas Starr authored an important article in The New Yorker's Dec. 9 issue. Its subject is clear from its title: "The Interview: Do Police Interrogation Techniques Produce False Confessions?"

Starr begins by reminding us that of the 311 people exonerated through post-conviction DNA evidence, more than a quarter had given false confessions. In trying to determine why people falsely confess, he examines the famous "Reid method" taught by Chicago's John E. Reid & Associates.

The Reid firm trains more interrogators than any other company in the world. You may recall that Reid produced the interrogation manual discussed by the U.S. Supreme Court in *Miranda v. Arizona*.

To learn the Reid method, Starr signed up for its basic course. The instructor emphasized that the interrogator's first job is to determine whether the suspect's denial of guilt is a lie. In making this determination, the method relies heavily on non-verbal cues.

If it is determined that he is lying, the police officer then shifts into the "interrogation" phase. There is now only one goal: To get the suspect to confess. The police officer needs to take complete control of the interrogation. He or she must adamantly reject any and all denials from the suspect.

One technique taught to obtain a confession is called "minimization." The interrogator is told to "downplay the moral consequences of the crime without mentioning the legal consequences." Thus, in a sexual assault case the interrogator suggests to the suspect that the victim's clothes indicated that "she was asking for it."

When the suspect finally admits guilt, the interrogator

then needs to get the suspect to fill in details. If he is having trouble remembering, the Reid method even suggests presenting him with multiple-choice questions to jog his memory.

Starr then proceeds to critique the Reid method. He notes that three decades of research have shown that non-verbal signals bear no relation to deception. He cites studies showing that an interrogator's refusal to ever listen to a suspect's denial creates feelings of hopelessness that can lead a vulnerable suspect simply to cave in and agree to something he did not do.

Most strikingly, Starr discusses controlled studies showing how the "minimization" technique can cause false confessions. One laboratory study even showed that use of "minimization" caused the confession rate among innocents to triple.

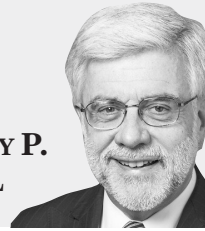
To sum up, Starr cites one researcher who chillingly concluded that although "Reid tactics are extremely effective in producing confessions," they are "not very good at separating true ones from false ones."

So as a defense attorney challenging the veracity of your client's confession, are you allowed to bring in an expert witness to tell the jury why the interrogation tactics used in your case may have produced a false confession? Illinois courts have refused such requests in the past. *People v. Scurlock*, 2012 Ill. App. Unpub. LEXIS 1895; *People v. Carter*, 2008 Ill. App. LEXIS 2523.

This is why it is so important to look at the recent Utah Supreme Court decision in *State v. Perea*, 2013 UT 68 (decided Nov. 15, 2013). The trial judge in Marcos Perea's criminal case rejected the defense request to introduce expert testimony that would explain the phenomenon of false confessions to the jury. In doing so, the judge relied largely on a 1999 law review article criticizing the use of such experts.

CRIMINAL PROCEDURE

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The Utah Supreme Court reversed and held that the defense should have been allowed to use the expert. The court held that, "More contemporary, laboratory-based studies have [been performed since 1999] and they demonstrate that the science surrounding false confessions now meets the reliability standards" for admissibility.

The court found that a wealth of recent studies show that the following factors affect the rate of false confessions: sleep deprivation, presentation of false evidence, questioners' minimization techniques, the subject's age, the subject's intelligence and certain personality traits.

Although the court conceded that an expert might not be appropriate in every case, with those confessions in which such indicia are present, expert testimony should be allowed.

Perea is significant for recognizing the important research that has been conducted by Richard J. Ofshe, Richard Leo and Saul Kassin. All three have concluded that false confessions are much more prevalent than we once believed. All three agree that jurors need to be aware of what factors might cause a suspect to make a false confession.

Illinois is no stranger to false confessions.

In fact, Starr's New Yorker article describes the harrowing story of Juan Rivera, who was convicted of murder on the basis of his confession in Waukegan in 1992. He served 20 years in prison before an Illinois court finally conceded that his confession was false. *People v. Rivera, Jr.*, 2011 IL App (2d) 091060.

Rivera is currently suing his prosecutors, the members of the police and sheriff's offices who questioned him and, most interestingly, John E. Reid & Associates.

A recent indication that Illinois may be slowly coming around to Utah's position can be found in the 1st District Appellate Court's decision in *People v. Hughes*, 2013 IL App. (1st) 110237 (decided Dec. 18, 2013). The court found the murder confession was involuntary based on a plethora of factors.

Although not explicitly finding the confession to be false, the opinion includes some thoughtful comments about the phenomenon of false confessions. Noting the Juan Rivera case, the court quotes a study which concluded that, "False confessions are more common than sometimes believed and standard interrogation techniques designed to elicit confessions ... do elicit false confessions."

It then cites Kassin's finding that an innocent person may confess from "fatigue, stress and being worn down through relentless questioning and sleep deprivation; some people confess out of fear; some people confess with the expectation of future exoneration; some people confess due to coercive or suggestive methods of interrogation."

Defense attorneys trying to present a false confession expert to a jury should show a copy of *Hughes* to the trial judge and say, "Judge, you and I already know this. It's the jurors who need to be told."