Modern United States Police Interrogation Techniques: Effective or Cruel?

In the United States’ Criminal Justice System, false confessions are not a rare occurrence. Police tend to use unjust and inhumane police tactics in order to get a confession from someone; they do not necessarily care if this person is the actual offender or not. The worst, yet most effective of these tactics, is misinformation. It is completely legal for police interrogators to psychologically torture their suspects until they are released or charged with a crime. However, in many instances, people do not even last a few hours without confessing, even if they are completely innocent. Therefore, are these interrogation techniques justifiable even if it means an innocent person may end up in prison?

First and foremost, let's talk about the environment in an interrogation room. Inbau et al. (1986) notes that interrogators “seat the suspect in a small, sound-proof, skeletally furnished room—thus creating a physical environment that is designed to promote feelings of social isolation, sensory deprivation, and helplessness” (as cited in Kassin et al., 1999, p. 500). This is essentially a tiny, dimly lit room with a table and a few chairs. This set-up has remained virtually untouched since the beginning of modern United States’ police interrogations. This is because it has proved successful in receiving information that either exonerates or implicates the suspect. Essentially, the suspect has no choice but to focus on his or her thoughts because there is no one and nothing else in the room. They are often left here for hours without being able to sleep, eat, or have any other human contact until the interrogation begins. As a result, suspects tend to overthink and obsess over what they have “done”, even if they have not done anything. It also
forces them to think about what life on the outside has for them like their spouse, children, and career. Moreover, this causes the suspect to try and create a plan to get out of the situation.

Once, the interrogation begins, there is no end until the 48 hours of preliminary questioning is up, the suspect is cleared, or the suspect confesses. The police may begin by giving the suspect something to eat or drink to gain their trust, or create small talk. Other times, the police may go straight into accusing the suspect of the crime. The important thing to remember is that in interrogation, every detail is perfectly planned out. The interrogator decides their initial approach and rhetoric based on the specific individual that they are interrogating. Interrogators are masters at “reading people”. By watching the suspect’s body language and tone of voice, they can get a sense of the person’s personality and therefore, choose the method that they believe will best suit the person they are interrogating. Next, they go in with the interrogation methods they are trained with. Inbau et al. (1986) describe a “multistep process of social influence in which the interrogator confronts the suspect with his or her guilt, refuses to accept statements of innocence and denial, offers sympathy and face-saving alternative explanations for the crime, and then gets the suspect to recount his or her guilty actions in a full written confession” (as cited in Kassin et al., 1999, p. 500). Essentially, the only answer the interrogators accept is a confession. If the suspect does not confess, they will continue to assert that the suspect did the crime, as well as list reasons and evidence, real or fake, that “prove” that they committed the crime. Like the interrogation room set-up, this approach has not been changed in years because the justice system sees correlation between the use of this technique and the amount of confessions obtained.

However, throughout my research, I have seen time and time again that these data statistics do not consider whether the confession was eventually proven false. This, in my
opinion, immediately calls for a loss in credibility. According to The National Registry of Exonerations, as of December 3rd, 2020, there have been 2,696 exonerations in the United States since 1989. Of these over 2,500 people, 246 were exonerated due to proof that the initial confession itself was false. This means that another suspect truthfully confessed to the crime(s) with ample proof to exonerate the other person. Though approximately 250 people may not seem like a significant amount, these people lost a total 643.9 years of life while in prison, and this number does not include those who falsely confessed, but were exonerated for other reasons like DNA evidence. Therefore, the number is significantly higher (Cabral, 2020).

Furthermore, in a 2004 study, Ricardo A. Leo and Steven A. Drizin analyzed 125 cases of proven false confessions that were recent at the time that the study was conducted. In this study, they found that approximately ⅔ of the confessions were proven false before conviction. Despite when the police found out that these confessions were false, it did not matter because the police still counted all of these false confessions towards their total number of confessions. However, I believe that in order to get more accurate data about the effectiveness of certain techniques, only the confessions with convictions should be counted. Furthermore, if the confession is proven false, that confession should be taken away from the total.

Moreover, police are legally able to lie about evidence to gain a confession. They are permitted to “bolster their accusations by telling suspects that there is incontrovertible evidence of their guilt” (Kassin, 2008, p.250). This false evidence could be an eyewitness testimony stating that they were seen leaving the crime scene, a DNA sample, or even video footage of them committing the crime. Because of this, people are more likely to confess because they are often “backed into a corner”, per se. They have someone constantly denying their proclamations
of innocence and stating that they have concrete proof of their guilt. Therefore, the only logical thing to do is find what seems to be the easiest and safest way out of this situation.

Detectives are trained to detect shifts in body language and speech of a suspect, so that he/she can tell when the suspect is most vulnerable for coercion. By this point, the detective sees the grand opportunity to “go in for the kill” and uses the second misinformation tactic to finally compel the suspect into making the confession. This tactic is making false promises. Because the suspect feels trapped, they will practically agree to anything that will potentially secure their release. Interrogators can promise anything; this includes freedom, family, food, or whatever else the suspect may desire. All they must do is confess. However, most “average” civilians cannot decipher that these promises are all malarky. Given that “people are only about 54% accurate in judging truth and deception” (Kassin, 2008, p. 250) regularly, paired with the use of these mind games, it is almost a miracle that some people do not confess. The constant gas-lighting and emotional manipulation are very difficult things for most people to overcome.

Conor Friedersdorf, a writer for The Atlantic focusing on politics and national affairs, references the National Center for Women and Policing stating, ‘Two studies have found that at least 40 percent of police officer families experience domestic violence, in contrast to 10 percent of families in the general population...indicating that domestic violence is two to four times more common among police families than American families in general’ (Friedersdorf, 2014, para. 6). Though the tactics that I have discussed thus far may not seem extremely intrusive and horrendous, given this information, I believe that it is plausible that police are actually more violent in interrogation rooms than the official data reports. Think about it this way, if 40% of police officers or more are abusing their family members, wouldn’t they be comfortable abusing strangers as well?
However, first and foremost we must define the terms “abuse” and “torture”. Merriam-Webster.com defines abuse as “a corrupt practice or custom” and torture as “to punish or coerce by inflicting excruciating pain”. Personally, I would consider these tactics corrupt, coercive, and causes of excruciating pain. Though the pain may be psychological, it is still significant. In the field of law enforcement, the words “corrupt” and “justified” are thrown around quite often. This is where many legal experts begin to disagree with each other. Some believe that practices as readily used as sleep deprivation are considered abusive or torturous, while others believe that certain practices are abusive, but not others, and other people agree with all forms of interrogation practices. Therefore, how can we decide as a society whether these interrogation tactics are justifiable solely because they elicit a confession or whether they are corrupt because of the intense manipulation with a lack of verifiable results?

One of the main opponents of the use of these interrogation tactics is Harold Hongju Koh, Legal Adviser of the Department of State under President Barack Obama. Koh states “there is abundant evidence that torture is not effective either as an interrogation tactic or an information-extracting device” (Koh, 2005, p. 653) nor is it legally justifiable. Koh makes it clear that torture is a loosely used term, as everything from sleep deprivation, a commonly used police tactic, onwards could be described as torture. He believes that under the Eighth Amendment, which bans the use of “cruel and unusual punishment”, civilians are protected from experiencing both physical and emotional abuse. Furthermore, he told the Committee Against Torture in Geneva, “In every instance, torture is a criminal offense. No official of the government, federal, state or local, civilian or military, is authorized to commit or to instruct anyone else to commit torture. Nor may any official condone or tolerate torture in any form. No exceptional circumstances may be invoked as a justification for torture” (Koh, 2005, p. 644). To Koh, it is extremely important
to treat all suspects with utmost respect and conduct interrogations as humanely as possible. This includes giving suspects access to ample food and water, as well as conducting interrogations at reasonable hours to ensure that the suspect is in the best frame of mind to answer questions.

On the contrary, Mirko Bagaric, the Dean of the Swinburne University Law School and international punishment expert, and Julie Clarke, an Associate Professor in Competition Law in the Melbourne Law School, have been two major proponents of the United States’ interrogation techniques; the harsh ones in particular. To them, the word “abuse” has little significance because they believe that “abuse” has immense value when searching for justice. As cited in Rumney 2006, Bagariac and Clarke have stated that “…torture is ‘morally justifiable’ and should be permitted as an ‘interrogation device’ in order to ‘prevent significant harm to others’”(p.465). This is because they believe that the cost of hurting one person can save the lives of thousands more. In their eyes, this is an ethical dilemma like the trolley problem; it is best to sacrifice one person despite their potential innocence in order to save many more.

However, I would have to argue that there is no concrete way to prove that these psychological manipulation techniques have been the sole reason that a suspect has confessed. Correlations can be proved, but no direct evidence can say this certainly. There are many reasons, including a person’s own conscience, that would cause them to confess. Therefore, no one can say for certain whether this psychological abuse is truly saving lives, which in turn makes it unjustifiable. Furthermore, a confession means nothing when it is not from a guilty person. Anyone can proclaim that they committed a crime, but until the actual offender is behind bars, the justice system has failed. The purpose of the justice system is to requite wrongdoings and correct the behavior of those who have committed crimes, not lock people up solely based on words.
Because Koh’s argument, as well as Bagariac and Clarke’s arguments were written around the time of the Bush Administration Era, the war in Iraq, as well as post 9/11, some may conclude that these arguments are outdated. However, I believe that Koh’s argument proves that even in a time where a sense of security was the top priority of the United States, there were still people, including highly educated ones, that believed that we must protect the rights of everyone; even those who have committed horrendous crimes. Furthermore, a more recent study conducted by William Jordan, an expert in political and current affairs, concluded that approximately 24% of Americans believed that torture is never justified, even in cases involving terrorists (Jordan, 2014, para. 2). Therefore, even 8 years later when times were much more settled down, our economy was prospering, and people were in a much different state of mind, almost a quarter of Americans agreed with the ideals presented by Koh. 24% of Americans believed that no torture of any kind, great or small, was to be imposed on anyone; even those who aim to kill our own people. That data alone shows great significance.

Yet for most people, their opinion on interrogation is not black or white. They fall somewhere in between, in a “gray area”. They believe that certain circumstances call for certain interrogation methods, however this is not a “blanket statement”. Alan M. Dershowitz, a former professor at Harvard Law School is one of those who stays in the middle ground regarding these practices. As cited in Rumney 2006, Professor Dershowitz claims that intense interrogation “sometimes works, even if it does not always work... there are numerous instances in which torture has produced self-proving, truthful information that was necessary to prevent harm to civilians” (p. 466). Dershowitz has criticized the overall effectiveness of all forms of interrogation tactics; however, he believes that there have been times when these methods have provided significant information that potentially saved thousands of lives.
Though this assertion by Dershowitz may seem logical on the surface, looking through a legal perspective, I personally believe that we cannot justify the use of these techniques given our current set of laws. As Koh had mentioned, Amendment Eight of the Bill of Rights protects each and every person from “cruel and unusual punishments”. If we allow interrogators to disregard this right, this could lead to the downfall of our justice system as we know it. Once the government gets the ability to take away some of our individual power, it will be extremely difficult to stop them from taking more. Though lives may be at stake, making this single exception to the law puts citizens at risk of losing the very freedoms we have worked so hard to protect. The United States’ Criminal Justice System has been effective because citizens are able to exercise their rights and freedoms. Without these protections, we lose the essence of what it means to be an American. The beginning of the Declaration of Independence itself states “....they are endowed by their Creator with certain unalienable Rights... to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed” (Jefferson, 1776). This means that we, the people of the United States, are entitled to irrevocable rights which are protected by the government to the extent in which we give them power to. Therefore, it is our job to keep enough space between our own privacy and the government's ability to “protect” us.

All in all, there are many different perspectives when looking at the use of certain methods of interrogation. Although each perspective is trying to look for the best and most effective way to protect our society from crime, there does not seem to be a single answer that could fix all of these issues. There is no way to perfectly balance the rights of the accused with the lives of the public, and especially not while simultaneously upholding the current laws in the United States. Furthermore, every crime, suspect, victim, and circumstance are different
therefore it is impossible to create a singular process in which will take all these different aspects into account. However, we can begin taking steps in the right direction by verifying confessions with significant evidence and not just taking suspects for their word.

References


http://jaapl.org/content/37/3/332.


