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COLUMNIST

Guilty of talking too much

Someday soon, when you least expect it, a police officer may receive mistaken information from a confused eyewitness or a liar, or circumstantial evidence that helps persuade him that you might be guilty of a very serious crime. When confronted with police officers and other government agents who suddenly arrive with a bunch of questions, most innocent people mistakenly think to themselves, "Why not talk? I haven't done anything. I have nothing to hide. What could possibly go wrong?"

Well, among other things, you could end up confessing to a crime you didn't commit. The problem of false confessions is not an urban legend. It is a documented fact. Indeed, research suggests that the innocent may be more susceptible than the culpable to deceptive police interrogation tactics, because they tragically assume that somehow "truth and justice will prevail" later even if they falsely admit their guilt. Nobody knows for sure how often innocent people make false confessions, but as Circuit Judge Alex Kozinski recently observed, "Innocent interrogation subjects confess with

surprising frequency."

It happens especially in cases when the suspect is young and vulnerable. An analysis of 125 proven false confessions found that 33 percent of the suspects were juveniles at the time of arrest, and at least 43 percent were either mentally disabled or ill. Another study of 340 exonerations found that 13 percent of adults falsely confessed compared to 42 percent of juveniles. And nearly half of the exonerated children were put behind bars because of something they said to police without an attorney present.

In Oakland, Calif., police isolated and interrogated a 16-year-old named Felix in the middle of the night without a lawyer and denied his requests to see his mother. Eventually he gave them a detailed, videotaped confession to a murder, allegedly filled with numerous specifics only the real killer would have known. At that point, it looked like there was little chance this young man would be able to avoid a conviction; when a jury hears that someone has confessed, they are almost certain to convict. But fortunately for young Felix, it was later revealed that he

had an airtight alibi: He had been locked up in a juvenile detention facility the day of the killing. The charges were dismissed, and he was released from jail.

Eddie Lowery was a 22-year-old soldier stationed at Ft. Riley, Kan., when he was interrogated for an entire workday about a rape and murder he never committed. Like a typical innocent man, he persisted for hours in emphatic assertions of innocence. Like typical police officers, the interrogators acted open-minded and unconvinced. Perhaps, he foolishly hoped, he might persuade them of his innocence if he repeated his story over and over again at greater and greater length. After the daylong interrogation, he was worn out and gave them a detailed confession.

He served more than 20 years in prison until he was recently released, after evidence proved that he was actually innocent.

So why in the world did Lowery confess, when we now know that he was innocent all along? He explained the mindset of someone who has been broken down by hours of relentless interrogation: "I didn't know any way

out of that, except to tell them what they wanted to hear, and then get a lawyer to prove my innocence. ... You've never been in a situation so intense, and you're naive about your rights. You don't know what (someone) will say to get out of that situation."

One analysis of 44 proven false-confession cases revealed that more than a third of the interrogations lasted six to 12 hours, many lasted between 12 and 24 hours, and the average length was more than 16 hours. The longer you speak to police officers, the more likely it is that you will confess to some crime that you did not commit — isn't that enough of a reason to avoid speaking to them?

Don't talk to the police — except to tell them, respectfully, that you will not answer any questions and that you would like a lawyer.

James Duane is a professor at Regent Law School in Virginia Beach, Va. This essay, first published by the Los Angeles Times, is adapted from his book "You Have the Right to Remain Innocent," forthcoming from Little A in September.