

False Confessions – The Issues to be Considered

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In this document we discuss the primary causes of and contributing factors to false confessions, and the Best Practices to follow to minimize the possibility of obtaining a false confession.

Historical View:

Over 50 years ago in the 1967 edition of their book, Criminal Interrogation and Confessions, John Reid and Fred Inbau expressed concern about the possibility of a false confession from individuals with a “mental illness” and suggested that there were two ways to test the veracity of their incriminating statements:

- 1) determine if they could offer details about the crime that had been concealed from the public, and/or
- 2) refer to some fictitious aspects of the crime and test whether the subject will accept them as actual facts relating to the occurrence

They also detailed cases in which the courts ruled that confessions were inadmissible that were the result of

- physical abuse of the subject
- threats of harm
- threats that if the subject did not confess he would be sent to the penitentiary for more serious crimes
- threats that his family members would be arrested

They also detailed cases in which the subject’s incriminating statements were found to be inadmissible because of a promise of leniency

- specifically, that if he confessed he would be released from custody
- that he would not be prosecuted
- that he will be granted a pardon
- that he will receive a lighter sentence than the law prescribed

The knowledge that potentially false confessions may occur as the result of coercive behavior, such as threats and promises, has been known to investigators for many decades, but undoubtedly the awareness heightened with the development of DNA exonerations

According to the Innocence Project between 1989 and 2020 there have been 367 DNA exonerations, approximately 100 cases (28 %) involved false confessions. In almost half of these cases the subjects were under 18 years old or mentally impaired at the time of their arrest

According to The National Registry of Exonerations, of the exonerees with reported mental illness or intellectual disability, 72 percent had confessed. Forty percent of the exonerees who were under 18 years old at the time of the crime falsely confessed

Clearly, individuals who are mentally impaired and juveniles should be considered more susceptible to false confessions than the population at large

While the overwhelming majority of confessions are true and accurate, certainly false confessions do occur.

With very few exceptions, false confessions are caused by the investigator engaging in coercive or inappropriate behavior, as illustrated in a careful examination of the first 250 DNA exoneration cases. As pointed out by Davis and Leo “Many, and perhaps most, of the interrogations in the (DNA exoneration) cases.... crossed the line of proper interrogation techniques through the use of explicit threats and promises, feeding suspects crime facts, and/or other coercive practices.”

This assessment was confirmed, by J.P. Blair, who reviewed over 100 false confession cases and reported that

- "This study failed to find a single false confession of a cognitively normal individual that did not also include the use of coercive tactics by the interrogator....such as
- the use of physical force; denial of food, sleep or the bathroom; explicit threats of punishment; explicit promises of leniency; and extremely lengthy interrogations."
- False confessions

The following are the primary causes of and contributing factors to false confessions:

Physical abuse and the threat of physical harm

The courts have long recognized that physically abusing the suspect or threatening them with physical harm can cause an innocent person to confess. In our book, *Criminal Interrogation and Confessions*, as well on our website, we document numerous cases in which the courts have ruled confessions to be inadmissible because the subject was physically beaten or abused, or he was threatened with physical harm if he did not confess

- *In one case an 18-year-old father was being interrogated about the suspicious death of his 6-month-old child, he was told by the investigator, “You don't get punished in this justice system for telling the truth. You get punished by.... doing something intentional and showing no remorse. Those people are called killers. And what do you think happens to baby killers in prison? What do you think is going to happen? You're eighteen.” A second investigator stated, “It's mandatory life.” The subject was also told, “And your life won't be long as a baby killer in prison. Check the history papers. Stay online when you get a chance in the county jail. See what happens to baby killers in jail.”, and, “When you get convicted of this and you go over for sentencing in front of that judge, every judge wants to send a baby killer to prison forever.” The court found that these “baby killer” statements were threats of physical violence that case law has reasonably found to be indicative of improper coercion.*

Threats of inevitable consequences

An example of a threat of inevitable consequences would be telling a suspect that if he did not confess his children will be taken away from him, or, telling a suspect that “if you don’t cooperate and tell us that you did this, I’m going to make sure that you never see your wife or kids again.”

- *In one case the investigators threatened to have federal authorities charge the suspect with a crime for having his mother's gun in his room. They implied that he would not see his infant son grow up. They also threatened him by saying his mother would lose her Section 8 housing and end up in the street with all of his younger siblings if he did not admit to committing the armed robbery.*

Promises of leniency

The courts have consistently found that advising a suspect of the potential penalties he may face based on the type of crime that he committed is not coercive, but that promising the suspect a benefit for confessing, such as receiving a shorter sentence, getting counseling instead of going to jail, or being able to go home and not getting arrested, can nullify a confession

- *For example, in the interrogation of a man who allegedly abused a 7-year-old child he was told by the investigator that the case would go away and would not proceed if he met the victim halfway and apologized to her... He further told the subject that he could put the case "in a drawer" if he admitted to some "inappropriate sexual stuff."*

Denial of rights

In reviewing false confession cases in a number of instances the subject was denied their rights – they were in custody but when they asked for an attorney that request was ignored, or they advised the investigator that they did not want to talk anymore, but the interrogation continued. In some juvenile interrogations they were denied the opportunity to see a parent or guardian in violation of the law.

- *In a recent custodial interrogation, the subject made what the court viewed as an unambiguous invocation of his right to an attorney (and the court found that the interrogation should have been terminated) when he stated, “If I'm going to answer questions, I'm going to need a lawyer here.” Seconds later, he restated his request: “I want to talk to you, but I just need my lawyer.” And after an investigator asks, “here’s what you're telling us—you do want your lawyer?” Defendant once more affirms his request: “I want to talk, yeah. But I need my lawyer present.” The interrogation continued without a lawyer present*

Denial of physical needs

In a number of false confession cases that lasted an excessively long period of time (in some cases 16 hours or more), the subject never had the opportunity to get something to eat or drink, sleep or use the washroom

Excessively long interrogations

In many false confessions cases the interrogation process lasted an excessively long period of time. One study of 44 false confession cases noted that the average length of interrogation was 16.3 hours. Several individuals who gave false confessions subsequently stated that they confessed just to end the process, just to be able to go home. They felt confident that the subsequent investigation would prove that they had nothing to do with the crime

False confessions

- *Over the course of almost two days the police detained the suspect, a man of limited intelligence and little education, who was unaccompanied by a friend or an attorney, for about 30 hours and questioned him almost continuously for about 17 of those hours. The investigators persisted in telling the suspect that he was guilty, "hollering and screaming" at him...despite being aware of his mental limitations and despite his repeated denials. At one point the suspect feared for his life and signed an incriminating statement.*

Disclosure of crime details

Many false confession cases include details about the crime that only the guilty person should know. However, a careful analysis in many of these cases found that these details were revealed to the subject by the investigator (oftentimes inadvertently) during the questioning, or were revealed in photographs that the investigators showed the subject. The disclosure of crime details to the subject contaminates the confession in that it is difficult, if not impossible, to determine if the subject had independent knowledge of these details or was just repeating what he was told.

Failure to properly take into account the subject's mental limitations and/or psychological disabilities

In numerous false confession cases the subjects had severe mental limitations, a very low IQ, or in several cases were found to be extremely psychologically susceptible to suggestions of their guilt. In those instances where it is readily apparent that the subject has a significant mental limitation, the investigator should not engage in active persuasion but rather engage in a logical sequence of questions. The key factor in these instances where there is a concern about the subject's mental or psychological capacity, is to establish in the confession that the subject offered corroborating information that the police did not know, such as the location of the murder weapon, the bloody clothes or the stolen jewelry

- *For example, in one case the defendant was being questioned about committing a robbery – he was 19-years-old with an IQ of 55 and the intellectual functioning of a nine-year-old. According to the court "It was clear from the beginning of the interview that [the suspect] had mental handicaps." When the investigators asked him to read a sign out loud, he began sounding out the words, but could not read the word "monitored." He told the officers, "I am slow in the head," "I lose memory real fast," and "Can you bring me to memory?" The court found that the investigators "took advantage of his intellectual deficiencies to intimidate, coerce or trick him into signing a waiver of his Miranda rights and falsely confessing to the robbery."*

Failure to properly modify approaches with socially immature juveniles

Socially immature juveniles, as well as very young subjects, can be more susceptible to suggestion (active persuasion) and are motivated to please persons in authority, so caution must be exercised in the questioning of these individuals. We detail the cautions the investigator must exercise when dealing with this group later in this document.

Failure to properly corroborate confession details

A review of false confessions will reveal that a number of these confessions contain details that were significantly different than the actual crime, such as the subject stating that he stabbed the victim when the victim had actually been shot. The best form of corroboration is for the subject to reveal accurate details about the crime that were not disclosed by the investigators, or to disclose details that the investigators did not know.

- *A classic example of a case in which the details offered by the subject, in what turned out to be a verified false confession, should have been seen as significant red flags, included the fact that the subject did not know what happened to the gun used in the murder he had allegedly committed; did not know how many times the victim was shot; did not know when the murder occurred; and, drew a picture of the crime scene but placed the body in the wrong location from where it was actually found*

To summarize our discussion up to this point, the primary causes and contributing factors for false confessions are the following:

- Physical abuse of the subject
- Threats of physical harm
- Threats of inevitable consequences
- Promises of leniency
- Denial of rights
- False confessions
- Denial of physical needs
- Excessively long interrogations
- Disclosure of crime details
- Failure to properly take in to account the subject's mental limitations and/or psychological disabilities
- Failure to properly modify approaches with socially immature juveniles
- Failure to properly corroborate confession details
- False confessions

What Social Psychologists, Academicians and Defense Attorneys Say About False Confession Issues and Law Enforcement Interrogation Techniques

In anticipation of testifying on a case in which the defense claims that the defendant gave a false or coerced confession, it is important to know the type of arguments that they may make in order to try to establish this point. These arguments may be supplemented by the testimony of social psychologists. (The statements in bold represent claims that may be the defense/social psychologists.)

The purpose of an interrogation is to get a confession

The purpose of an interrogation is to learn the truth. There can be several successful outcomes to an interrogation:

- the suspect admits their guilt in a corroborated confession
- the suspect may reveal the fact that he did not commit the crime but that he knows (and has been concealing) who did
- the suspect may reveal that while he did not commit the crime he was lying about some important element of the investigation (such as his alibi – not wanting to acknowledge where he really was at the time of the crime), or
- the investigator determines the suspect not involved in the commission of the crime

Interrogation is a guilt presumptive process

Social psychologists oftentimes describe the interrogation as a guilt presumptive process in that investigators interrogate individuals who they believe are guilty (oftentimes erroneously) “and will stop at nothing to get a confession.” It is accurate to say that investigators interrogate individuals that they believe, based on the available investigative evidence, committed the crime, but the alternative, to interrogate people you do not believe committed the crime, would be absurd.

Investigators offer the suspect inducements to confess, referred to as minimization/maximization

Social psychologists describe the minimization/maximization process as one in which the investigator suggests inducements that motivate the suspect to confess by minimizing the consequences or the punishment they will receive by offering a suggestion or promise of either leniency or reduced punishment in exchange for cooperation – specifically a confession. They then contrast this “minimization” with what they call “maximization” in which the investigator threatens or implies more severe treatment or punishment if the suspect refuses to confess.

The problem with this description of the interrogation process offered by social psychologists is that the behaviors they refer to **we teach investigators not to do**.... we teach never to engage in making threats of harm or inevitable consequences or promises of leniency.

There are two types of acceptable minimization that can occur during an interrogation:

- minimizing the moral seriousness of the behavior
- minimizing the psychological consequences of the behavior

The third type of minimization is to minimize the legal consequences of the subject’s behavior, which we teach never to do.

There are three errors that lead to false confessions: Misclassification, Coercion and Contamination

Social psychologists define these terms as follows:

- Misclassification – erroneously labeling an innocent person as guilty based on their demeanor and the behavior they displayed during the investigative interview
- Coercion – using tactics that offer reduced punishment if the suspect confesses, harsher punishment if they do not

- Contamination – revealing to the suspect details about the crime that only the police or the guilty person should know

Regarding *misclassification*, while evaluating a subject’s verbal and nonverbal behaviors during the interview can certainly be helpful in assessing their credibility, in the majority of cases the decision to interrogate a suspect is the result of information developed during the investigation. For example, during the interview a suspect may relate an alibi, and then subsequent investigation proves the alibi to be false; or the subject claims he never saw the victim at or near the time of the murder, and yet the subsequent discovery of video shows the suspect going into the victim’s home moments before the murder.

As for *coercion*, we teach never to engage in coercive behaviors such as threats of harm, promises of leniency or denial of rights, and as for the issue of *contamination*, we have taught for over 50 years to keep some details of the crime secret so the investigator can use the disclosure of those details by the subject as corroboration for his statement

It cannot be overstated the importance of developing corroboration to establish the authenticity of a confession. There are two primary types of corroboration – dependent and independent

Dependent Corroboration

At the outset of any investigation, the lead investigator should decide what evidence or information will be withheld from the public and all suspects for the purpose of verifying any subsequent confession. This is called *dependent corroboration* because the information is dependent upon the crime scene or other investigative source. In theory, only the person guilty of committing the crime should be able to provide this dependent corroboration.

Independent Corroboration

Clearly the most convincing evidence of a truthful confession is one which contains verifiable information not known until the confession - this is called *independent corroboration* because the investigator does not know about the evidence until the suspect reveals it, and the evidence is obtained independent from the initial investigation. In a murder case, independent evidence would include such things as the tool used to gain entry to the victim's bedroom window (tool marks), a witness who could place the suspect near the crime scene (gas station attendant), the location of the murder weapon, the location of the bloody clothing or a souvenir kept from the victim (bracelet).

Lying to a suspect about evidence causes false confessions

In 1969 the United States Supreme Court ruled in *Frazier v. Cupp* that misrepresenting evidence to a suspect (in this case falsely telling the suspect that his accomplice had confessed) “is, while relevant, insufficient in our view to make this otherwise voluntary confession inadmissible. These cases must be decided by viewing the “totality of circumstances....”

Numerous court decisions have upheld the investigator’s capacity to verbally misrepresent evidence during an interrogation. However, we do urge caution. From our book *Criminal Interrogation and Confessions*, we suggest the following:

- Introducing fictitious evidence during an interrogation presents a risk that the guilty suspect may detect the investigator's bluff, resulting in a significant loss of credibility and sincerity. For this reason, we recommend that this tactic be used as a last resort effort.
- Introducing fictitious evidence should not be used for the suspect who acknowledges that he may have committed the crime even though he has no specific recollections of doing so.
- Introducing fictitious evidence should be avoided when interrogating a youthful suspect with low social maturity or a suspect with diminished mental capacity. These suspects may not have the fortitude or confidence to challenge such evidence and, depending on the nature of the crime, may become confused as to their own possible involvement if the police tell them evidence clearly indicates they committed the crime

It should also be noted that misrepresenting evidence in an otherwise proper interrogation does not cause innocent people to confess, but the "aggravating circumstances" within the interrogation can create an environment conducive to a false statement. Consider the court's opinion in *US v. Graham* in which the court pointed out that there are a number of cases in which statements elicited from a defendant in response to police deception were found involuntary... but that, "these cases all involve significant aggravating circumstances... such as, subjecting the accused to an exhaustingly long interrogation, the application of physical force or the threat to do so, or the making of a promise that induces a confession."

In other words, it is not the misrepresentation of evidence that is the genesis of a coerced or even false confession, but the "aggravating circumstances" present during the interrogation.

Investigators interrogate children the same way they interrogate adults

It is important to note that when questioning juveniles and individuals with significant mental or psychological disabilities the investigator has to make a number of modifications in their approach. Here are a few of these modifications that we discuss in our courses and our book, *Criminal Interrogation and Confessions*:

- ...caution must be exercised in evaluating a youthful person's behavioral responses. Due to immaturity and the corresponding lack of values and sense of responsibility, the behavior symptoms displayed by a youthful suspect may be unreliable.
- It is our general recommendation that a person under the age of 10 should not be subjected to active persuasion techniques such as themes and alternative questions. At this age the child is susceptible to suggestion and is motivated to please a person in authority. The interaction between the investigator and child should be limited to a question and answer session which is centered on factual information and simple logic
- When a child is taken into custody and advised of his or her *Miranda* rights, the question of whether the child is capable of making a knowing and voluntary waiver of those rights may arise. Certainly, a child under the age of 10 is incapable of fully understanding the implications of waiving *Miranda* rights. Younger adolescents also may fall into this category

- When a juvenile younger than 15, who has not had any prior experience with the police, is advised of his *Miranda* rights, the investigator should carefully discuss and talk about those rights with the subject (not just recite them) to make sure that he understands them. If attempts to explain the rights are unsuccessful, no questioning should be conducted at that time. The same is true for a person who is mentally or psychologically impaired

Best Practices that investigators should follow so as to minimize the possibility of obtaining a false confession

The best way to avoid false confessions is to conduct interrogations in accordance with the guidelines established by the courts, and to adhere to the following Core Principles and Best Practices:

- Do not make any promises of leniency
- Do not threaten the subject with any physical harm or inevitable consequences
- Do not deny the subject any of their rights
- Do not deny the subject the opportunity to satisfy their physical needs
- Withhold information about the details of the crime from the subject so that if the subject confesses the disclosure of that information can be used to confirm the authenticity of the statement
- Exercise special cautions when questioning juveniles or individuals with mental or psychological impairments
- Always treat the subject with dignity and respect
- Conduct an interview before any interrogation. Absent a life-saving circumstance the investigator should conduct a non-accusatory interview before engaging in any interrogation
- Conduct an interrogation only when there is a reasonable belief that the suspect committed the issue under investigation or is withholding relevant information
- Attempt to verify the suspect's alibi before conducting an interrogation
- When interrogating a non-custodial suspect, do not deprive the suspect from his freedom to leave the room
- Do not conduct excessively long interrogations
- When a suspect claims to have little or no memory for the time period when the crime was committed the investigator should not lie to the suspect concerning incriminating evidence
- Electronically record the interview and interrogation
- The confession is not the end of the investigation.

Following the confession, the investigator should investigate the confession details in an effort to establish the authenticity of the subject's statement, as well as attempt to establish the suspect's activities before and after the commission of the crime.

For additional information on the issue of false confessions, visit www.reid.com, our YouTube page - The Reid Technique Tips, and our book, *Criminal Interrogation and Confessions*.