

The Assessment of Disputed Confessions

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Abstract

Claims of false confessions lead to individualized case assessment embedded in often-elusive understandings of the potential causes of false confessions. Details from undisputed false confessions are the source of empirical knowledge about what leads to false confessions, be they interrogation-driven or suspect-generated. Suspect vulnerabilities, events and features of the interrogation, and the context of questioning together converge and lead, sometimes in synergy, to false confessions. This chapter reviews the salient data and methodological approach needed to maximize relevant, reliable, and valid findings by qualified forensic examiners.

Introduction

Justice aspires to ensure that only the guilty are convicted. The use of DNA as an investigative tool revolutionized justice and now solves cases that otherwise run cold. At the same time, DNA has demonstrated the undisputedly wrongful conviction of numerous individuals that well-meaning juries once believed to be guilty beyond a reasonable doubt. Among these wrongful convictions are cases in which suspects confessed to guilt. Unless there was evidence that the confessions were physically coerced, triers of fact would understandably reason that an average person would not confess to a crime one did not commit.

False confessions leading to wrongful convictions came into scrutiny in the 1990s, as more cases were identified by undisputable evidence (Leo and Ofshe, 1997). Early academic discussion tracked a typology distinguishing different types of false confessions. The earliest forensic-inspired research focused on suspect vulnerabilities leading to false confessions. As more cases were identified, advocates in social sciences published critiques of police interrogation practice and highlighted the contribution of interrogation to false confessions. These publications heightened awareness and sensitivity to interrogation integrity. However, in promoting presumption of police misconduct whenever false confessions occur, this advocacy incorrectly overemphasizes a presumption of police misconduct, thus potentially obscuring false confessions when no police misconduct occurred.

Even as more cases of false confessions have been confirmed, other features of investigations culminating in false confessions emerged. The body of knowledge arising from empirical research on why people confess, and data from confirmed cases in which people confessed falsely are the early islands of scientific knowledge informing this developing area of the law and criminal justice. Responsible assessment maintains evidence-driven approaches within the boundaries of the adversarial justice system. Transparency aids validity in the assessment of disputed confessions and elevates examinations from otherwise theoretical and speculative advocacy otherwise best left to litigant's attorneys.

Statements: Admissions, Confessions, and False Confessions

Various communications contribute to the evidence of a case. A statement may be given by a witness, suspect, or other informant. **Statements** recount history or background and mesh with others' statements or other convergent case evidence. Suspects, including those who are guilty of a crime, may provide statements that neither confess to a crime nor admit to incriminating or circumstantially troubling matters. Statements within interrogation include denials or other explanations that redirect the investigation away from a suspect. Some statements may nevertheless be used against one to contribute to suspicion of guilt, particularly when they contradict available evidence and illustrate evasiveness.

An **admission** is a statement in which a person reveals or acknowledges a point that reflects upon potential involvement in a crime, or knowledge as a witness. An admission is not a confession—the person does not take responsibility for a criminal act. However, an admission may contribute to the perception of guilt, especially if that admission attaches the person to a crime and conveys a self-serving quality. For example, a person may admit to having been present when a crime was committed but deny involvement in a crime. A person may admit to being present at a death scene but deny that a homicide took place, insisting a death was due to suicide.

Confessions distinguish themselves with a person's statement taking ownership for a crime. A person who confesses knowingly takes responsibility for an offense, for which justice and accountability are to be expected. If the offense is a major crime, the person confesses with the knowledge that the punishment one faces is likely to be significant. The confession, even as it seemingly embraces responsibility, may still portray a suspect in the least culpable light. To that end, confessions may be inconsistent with other more reliable evidence in the case.

A **false confession** reflects someone who falsely takes responsibility for a crime that he or she did not commit. False confessions to major crimes are particularly compelling because a person has embraced responsibility and the major penalties expected to follow.

When confessions show conflict with available case data, additional investigation helps to resolve whether a confession contradicts available evidence because of a suspect's innocence, or because a suspect would have other reasons to confess as he did. Confessions of the guilty may conflict with evidence because of (1) a self-serving account that diminishes one's role in an offense, or otherwise mutes its enormity (2) distortion of one's memory because of an offender's shame about the offense (3) repression of conflictual or traumatic memories from the event that may haunt the offender (4) degrading of memory because of intoxication, psychosis, or the effects of time, among other explanations.

For the above reasons, confessions that contain falsehoods may be false confessions of the innocent or may be confessions of the guilty that include factually inaccurate or even exculpatory data. The enormous implications of a statement with clear inaccuracies underscore why it is so necessary to evaluate such claims amidst a full review of pertinent case data, which will be discussed below.

The Decision to Confess

The police interrogation in a major crime is a distinctive high-stakes experience. A person being questioned in such a context recognizes the long-term consequences of being implicated in murder, rape, or other offenses that draw significant prison time upon conviction. This awareness creates pressures on a suspect not to confess. Police interrogation strategies aim to overcome such pressures not to confess. Each interrogation is unique and reflects the dynamic between the detective(s) and suspect. Interrogating officers either draw out information or, if they have reason to suspect guilt, employ persuasive approaches based on what they conclude the suspect will be responsive to.

Research of confessors identifies three contributors to the decision to confess (1) perception of proof (2) external pressures, and (3) internal pressures. **Perception of proof** refers to a suspect's appraisal of the strength of evidence against him (Gudjonsson and Sigurdsson, 1999). This includes the belief that strong evidence was already established to demonstrate one's guilt, that police ultimately would prove one's involvement anyway, or that there was no point denying guilt.

External pressure refers to pressure from police, or even one's family, to confess. In more extreme interrogations, that pressure may be coercive (Gudjonsson and Sigurdsson, 1999).

Internal pressure refers to one's own emotions, such as shame or guilt, that may drive a decision to confess. In major crimes, especially sex offenses, shame also contributes to pressures not to confess, as does fear of consequences in jail and fear of reprisals against family (Gudjonsson and Sigurdsson, 1999).

The importance of perception of proof has been demonstrated in a number of studies of inmates who confessed in interrogation (Deslauriers-Varin et al., 2011; Gudjonsson and Petursson, 1991; Wachi et al., 2016). Research also demonstrates that a suspect is more likely to deny responsibility if the suspect believes there is no evidence against him (Deslauriers-Varin et al., 2011; Wachi et al., 2016). Perception of proof is the most common driver for a suspect to confess (Gudjonsson, 1992). Not surprisingly, interrogators often confront a suspect with the weight of evidence against him, without revealing crime details that would contaminate an ensuing confession (Inbau et al., 2012).

How False Confessions are Established

There is no psychological or sociological methodology for determining a false confession of an innocent person. What a guilty suspect chooses to say includes enough variables such that distinction from statements of the innocent may be impossible, even under scrutiny from experienced law enforcement and legal professionals. Prosecuting agencies and police struggle with these ambiguities as necessary complications of day-to-day case investigation and police work. No one wants to try and convict an innocent person and to thus allow a guilty person to not answer for his crimes, no one wants to waste efforts and resources on pursuing an innocent person, and no one wants to ruin one's professional career on a bad decision.

High profile false confessions (Gudjonsson, 2018) and their depiction in documentary and other major media (Demos and Ricciardi, 2015; Burns et al., 2012) contribute to juror caution (Mindthoff et al., 2018) in contemporary America. Juries no longer presume guilt because a suspect confessed when interrogated, especially in urban communities where mistrust of the police is high.

Criminal defense attorneys have a strategic imperative to negate confessions by claiming police misconduct. In some instances, they are successful in eliciting not guilty verdicts from juries who do not believe in guilt beyond a reasonable doubt. Sometimes, evidence emerges to demonstrate that indeed a suspect was innocent and confessed falsely (Garrett, 2010). In other instances, the defendant was acquitted by divine grace and skilled representation but was likely responsible for the crime.

Reversal of a conviction or acquittal may reflect a false confession. A successful legal outcome, however, does not establish a false confession for someone whose guilt may remain contested long after a verdict. This is especially important because most of what we know about false confessions arises from the study of undisputed false confessions and their antecedents.

False confessions to major crimes are demonstrably rare, with no more than a few hundred confirmed in the past several decades. The law and forensic scientists are still at an early learning stage about this phenomenon. Therefore, it is vital to be instructed by cases in which valid data exists for cases of confessions of the actually innocent. The following are benchmarks by which false confessions would be no longer disputed:

- When evidence undisputedly establishes that there is no way the confessor could have committed the crime, such as the timing and location
- When an alternative perpetrator's guilt is established beyond a reasonable doubt and there is no connection to the confessor as a collaborator taking on a different role
- Scientific evidence (DNA of an identified, unrelated perpetrator, authenticated video recorded or other digitally validated evidence, or an alibi) undisputedly establishing the confessor's innocence

Empirical research on false confessions does not yet exist. The body of scientific knowledge on false confessions and what causes them emerges from empirical data from the study of these undisputed false confession cases.

Types of False Confessions

There are four different types of false confessions, each with different causes and associated features.

Coerced Compliant False Confessions—These confessions arise in interrogations in which police were either assaultive or menacing to the end that the suspect was so afraid of what was to come that he confessed to end an intolerable experience, or to escape acute threat (Kassin and Wrightsman, 1985). The confession puts an immediate end to the interrogation, which is so intolerable that the suspect discounts the outcome of legal consequences to save life, welfare, or to eliminate a threat deemed credible. Coerced compliant confessions are often followed very quickly by a retraction of the confession as soon as the suspect is liberated from the interrogation.

Coerced compliant confessions, which reflect physical coercion, are legally inadmissible. However, confessions of both the innocent or guilty may be elicited under such intolerable circumstances. A compliant individual by personality and history may be easier to drive into a false confession through such an abusive approach. However, when such police misconduct occurs, it happens because the detective has abandoned professional conduct and to a degree that a suspect would experience an atmosphere as threatening whether one is more compliant or not. A suspect's compliance contributes to the coerced compliant confession, but in high stakes cases, it is the abusiveness of an officer that is needed to overcome a suspect's resistance to taking ownership of a major crime.

Internalized False Confessions—This type of false confession is more a reflection of the suspect's distinct qualities than the overt police misconduct as seen in the coerced compliant confession. It is for this reason that internalized false confessions may not be readily appreciated until well into the disposition of justice. Internalized false confessions were originally known as coerced internalized confessions. However, the term "coerced" is a misnomer, because the qualities of such false confessions do not leave the suspect feeling coerced as they occur. Rather, the suspect is persuaded of one's guilt and eventually internalizes the idea of guilt over the course of interrogation.

Internalized false confessions arise during interrogation of a suspect who is (a) impacted by the shock of the crime, (b) experienced emotional trauma over the unexpected death of the known victim, and/or (c) intoxication or unconsciousness at the time of the event that contributes to distrust of one's own memory for what one was doing at the time of the crime (Gudjonsson and Lebegue, 1989). This confluence of factors resides in an interrogation in which the suspect believes he is assisting the investigation, that the police are there to help him (counseling him through the shock of the loss or the news), and naïve to the perspective of the detective who believes him to be guilty.

Suspects who are naïve to police procedure are more vulnerable to find themselves in situations in which officers prompt the suspect's memory distrust. Those who are suggestible are all the more vulnerable to questioning that raises scenarios to seemingly aid the suspect to recall one's movements at the time of the crime. The suspect—who does not realize he is a suspect—does not appreciate that he is gradually adopting details and internalizing a false narrative based on these suggestions. By the end of the interrogation, the suspect has internalized a false story of one's guilt, a narrative of what has transpired, and eventually issues a confession, often quite detailed.

Although adults can offer internalized false confessions, such events occur among teenage suspects to a greater degree, reflecting the naivete of the suspect. Such an outcome is dependent on a suggestible person who is naïve to police and readily aligns with

them. This is why one does not see internalized false confessions among seasoned criminals and among gangs (no matter how young the suspect) who fundamentally relate to police as their adversaries.

Leverage False Confessions—These false confessions may arise within customary and uncontroversial interrogation technique. In multiple suspect cases, when different suspects and witnesses are interviewed in succession, suspects' statements are leveraged against one another. An officer can tell one suspect that another suspect has been interviewed and has identified this suspect as a prime actor in the crime. This creates pressure within the interrogation for a suspect to then provide a statement that best exculpates himself—and incriminates another. And so on. Such a technique is responsible for collecting confessions from some or all of those involved and guilty of criminal activity. However, multiple undisputed false confessions have also occurred when an innocent suspect confessed to seemingly less culpable actions because he believed the testimony against him by one of his peers (who admitted some role himself) was otherwise too powerful to overcome.

Police do not want to wrongly arrest multiple suspects any more than they would wish to arrest one innocent suspect. However, as admissions and confessions accumulate, history demonstrates that police can overlook that what they perceived as a strength—multiple suspect confessions—is actually a weakness, because they are the confessions of suspects that would not have occurred other than in response to leverage of those willing to incriminate themselves. Unless identified by the methodology above, these false confessions may likewise be difficult to recognize within what might otherwise be a thoughtful, professional investigation.

Voluntary False Confessions—Unlike the other types of false confessions, voluntary false confessions are not driven by interrogation. Instead, the engine for the false confession is the person who turns himself or herself into a suspect. There are several vectors by which voluntary false confessions occur.

The most common of false confessions involve those who have attention-seeking motivation to attach themselves to a high-profile crime (Kassin and Wrightsman, 1985). Such individuals may be overtly psychotic or otherwise pathologically attention seeking (Gudjonsson, 1999), reflecting intellectual disability or personality dysfunction. The less overtly ill such a suspect is, the more one's lack of involvement may not manifest until evidence emerges that clearly separates one from the crime.

Another type of voluntary false confession involves knowingly taking responsibility in order to shield another person from arrest (McCann, 1998; Gudjonsson, 2021). This type of confession is embedded in the culture of some criminal gangs. Lesser soldiers may voluntarily confess to crimes to shield gang leaders from criminal penalty and arrest that would remove them from operating in the community or cause them to be deported, in the case of non-citizens. These actions are rewarded in the gang and carry less punishment to the false confessor if he is a youth or adolescent, because the gang and the individual anticipate that then justice system will treat the confessor more leniently and restore his freedom far sooner than it would an adult offender (Redding, 2005) Recent research of those who claim to have falsely confessed shows that confession to protect another person occurs more frequently than previously considered (Gudjonsson, 2021).

Still other, but far more rare voluntary false confessions may be made by those who are pathologically attached to a particular case because of extreme guilt over a death. These principally involve cases of the death of a loved one.

Suspect Vulnerability

In the early 1990s, the first research on individual vulnerabilities contributing to false confessions was published. Gisli Gudjonsson, a former Iceland police officer who became a forensic psychologist, drew information from samples of inmates who claimed to have falsely confessed. This research (while not able to confirm whether these were actual false confessors as opposed to those merely professing innocence) introduced the legal and forensic community to the importance of compliance and suggestibility as personal qualities associated with false confessions.

Dr. Gudjonsson developed the Gudjonsson Suggestibility Scales (GSS) (Gudjonsson, 1984) to gauge the degree of suggestibility, as well as a suspect's memory problems; and developed the Gudjonsson Compliance Scales (GCS) to (Gudjonsson, 1989) assess one's compliance. Those who claimed to have confessed falsely scored higher on both measures. The constructs have been illustrated in cases of confirmed false confessions. Moreover, compliance and suggestibility are characteristically elevated among the naïve who come to make internalized false confessions. As a group, adolescents are more likely to be compliant and/or suggestible (Gudjonsson, 2002) For this reason, additional protections to adolescents who would otherwise appear alone in interrogation are in place in many jurisdictions around the world.

Intellectual disability is overly represented among cases of false confessions (Cassell, 1999). The naivete of those with intellectual disability or very low intelligence is naivete for the criminal justice system in particular. This population is additionally vulnerable because the intellectually disabled are more likely to be highly suggestible and/or compliant (Welner, 2016). Those who possess these vulnerabilities are to be distinguished from others who may be intellectually limited and score poorly on neuropsychological and intelligence testing, but otherwise have savvy for the criminal justice system because of their personal experience and/or peer group.

Other than the voluntary false confessors referenced above, those with psychosis are not overly represented among false confessors. Reasons for this are unknown but may relate to the same reason why the highly intoxicated are not overly represented, either. Police are not given to interrogate suspects who are in the throes of a psychotic episode, nor do they interrogate individuals who are highly intoxicated. This is not to preclude those instances in which an opportunistic law enforcement officer questions a highly

impaired suspect and elicits a false confession. However, layers of accountability would be expected to identify such potentially false statements and subject them to closer scrutiny based on other case evidence.

Case Context

In addition to multiple suspect cases that lead to false confessions, other case contexts have been identified to have more frequent representation of false confessions. High profile cases often carry unusual pressures on police to close a case. Individual police interrogators operating within these pressures may lose self-discipline and patience with suspects of whose guilt they are convinced.

The interrogators' judgment is ultimately proven incorrect, because the suspect was innocent, but not before such interrogators may cross a physical line, or become all too threatening, either physically or with threats of maximized punishment should the suspect not confess. Undisputed false confessions have occurred, for example, in cases in which police threatened the suspect that he would receive the death penalty if he did not confess. This interrogation approach is an example of maximization.

Undisputed false confessions have also occurred when interrogations have confronted suspects with failed polygraphs (Leo and Ofshe, 1997). The polygraph is a widely employed investigative asset and assists in identifying suspects and clearing others. Many who fail the polygraph and who ultimately confess are guilty. It is the failure of the polygraph that prompts them to appraise the futility of continuing to deny guilt. However, some innocent suspects are so impressed with the weight of a failed polygraph that they feel compelled to confess (Leo and Ofshe, 1997) because they believe their guilt will not only be demonstrated through their having "lied," but because continuing to deny in the face of evidence of lying may be even more damning in the court's eyes (State of LA v Damon Thibodeaux, 1999).

One suggested risk to false confessions that remains inadequately understood is length of interrogations. In 2004, a law review on false confessions included findings from 48 reported cases that claimed that interrogations were typically 6 h or more (Drizin and Leo, 2004). However, the authors did not distinguish interrogation time from overall time in custody. Empirical research has demonstrated that the suspect's experience of interrogation and its tension and stakes are qualitatively very different from a suspect's solitude in custody, waiting for the next steps of interrogation or the investigation (Cleary, 2014). Therefore, that case sample is unable to establish the significance of interrogation length as a risk factor for false confessions. No other empirical study of interrogation length and any association with false confessions has been done.

Despite a lack of underlying empirical research, police organizations are sensitive to the argument that extended interrogations create a risk for false confessions. Police interrogation training counsels against interrogations longer than 4 h without a confession except in unusual circumstances (Inbau et al., 2012). The training explains that longer interrogations tie up resources where otherwise needed on questioning that is not likely to yield a confession or useful information.

Surveys of defendants reveal that lengthy interrogations are far more common than realized (Cleary and Bull, 2021). What then, is the contribution of lengthy interrogations to undisputed false confessions? Closer study of these false confession cases reveals that the longer such interrogations extended, the involved police became increasingly forceful and unorthodox in their techniques to the end of creating an intolerable environment or cultivating an internalized and false guilty narrative.

Investigation remains reliant on detectives' introspection to recognize when continued questioning without more evidence is futile, as opposed to risking coercing a false confession. Sometimes, more time is needed to secure a true confession, and patience is rewarded. In some false confessions, however, the interrogating officer was so determined to get the confession that with time and frustration, he abandoned professionalism to do so.

The Assessment of Disputed Confessions

Technology and transparency are pivotal contributors to assessments of disputed confessions. Laws that codify the videotaping of complete interrogations create contemporaneous data about a suspect's denial of guilt and how that posture evolves to a confession. A videotape record has unmatched capacity for reproducing exactly what was asked, what was said, what was answered, the dynamic between suspect and interrogating detectives and how that culminates in the confession, how the interrogation changes over time, and aversive forces within the interrogation that may or may not create an intolerable atmosphere.

Furthermore, the exact content of the discussion informs what the suspect has been exposed to, and accounts for whether police are a source of contamination of the suspect's confession. Details consistent with the crime data, particularly if such data is more obscure, reflect on the guilt of the confessing suspect. Nevertheless, research on false confessions has demonstrated that confessions of the innocent may be detailed (Garrett, 2010), and that contamination contributes details which one would surmise that only one with guilty knowledge would know.

Body cam footage of a suspect entering custody is likewise informative. This evidence helps to establish the tenor of arrest and custody and whether any intimidation took place even before a suspect came into the interrogation room. Other documentation from the police station is helpful but does not approach the value of a videotaped record.

The confession statement itself, if not videotaped, is best captured in the suspect's own words by his own writing or a stenographer transcribing an interview. Reanimation of a suspect's statement, even if well done, cannot replicate the accuracy of a court reporter. Any pictures from the interrogation or witnesses to it, such as cellmates or other officers, further inform the atmosphere of drawing out the confession.

Suspects are transferred to jail after arrest. Examinations by doctors from entering custody identify any injuries from abuse. Doctors also record assertions by defendants of their guilt or having confessed under coercion or mistreatment. Also informative are recorded jail calls; a defendant's support system may field his account of an interrogation or may in turn chastise the defendant for confessing, and then prompt false claims of coercion.

The most valid recollection of a point or period in time is closest to that point. For this reason, an attorney's first meetings with a defendant client is the point at which the interrogation events should be fully detailed. Any improprieties, abuse, threats, promises, or other notable atmospherics are well accounted by reviewing the notes that the criminal defense attorney makes from client meetings.

As a defendant appreciates that a confession may be the most powerful evidence available of his guilt, he has an understandable incentive to delegitimize how the confession was obtained. In this context, a defendant's story may elaborate to later elaborate a rich tale of abuse. This may be fed by one's support system or advocates. Comparing a suspect's account to the stated memory that presents months or even years after the interrogation establishes whether an account is valid or embellished by the contamination of trusted others' influence. Indeed both confessions and retractions of confessions are potentially contaminated.

All of the above source materials inform an understanding of how a suspect moved from denial to acceptance of responsibility. Motions to suppress and suppression hearings may add more to the atmospherics between suspect and detective, and the internal process of the defendant who opts to confess. Still later, and subject to the effects of contamination or shifting a story to arrive at a more cogent argument, trial testimony is also a window to events leading to confession.

The more time that passes from the original confession, the more memory for what transpired in the interrogation erodes or is vulnerable to absorbing the influences of litigation strategy and evolving from its original facts.

Forensic assessment benefits from interviewing a litigant. Even years later, there may be questions that a claimant of a false confession may be asked for the first time that inform about the interrogation, the then-suspect's vulnerabilities prior to the interrogation, and other aspects of the case and its investigation that may have been overlooked. In some cases, courts do not give mental health professionals access to the litigant. When that happens, certain aspects of the litigant's experience and thought process may be lost forever, while other data can be gathered from collateral interviews or other investigation.

Psychological testing aids in diagnostic clarity and maps where deficits are revealed. In order for the testing to be relevant to a disputed confession that allegedly occurred years earlier, the testing data needs to correlate with input from collateral sources about the defendant litigant's compliance, suggestibility, naivete, and other qualities. Because such testing of the defendant typically occurs well after arrest for the instant offense, it cannot account for how and examinee's thinking and relatedness may differ from the earlier day of interrogation and arrest. Experiences change us, and suggestibility and compliance do change with passage of time in custody and a litigant reflecting on the conditions of arrest.

Despite a yet-underdeveloped research base, an evidence-driven evaluation of the granular circumstances of a suspect's transition from denial to acceptance, an understanding of his relatedness to authority, and appreciation of how evidence came together helps to inform the examiner about risk factors from the interrogation and suspect vulnerability that may heighten risk of false confession.

Conclusions

False confessions are well-represented among miscarriages of justice. Easily overlooked because they are unanticipated, false confessions are at times the product of coercive interrogation that prompts false self-incrimination from more vulnerable suspects. Yet we are only now learning more about this very poorly researched area. The signal events of false confessions contribute to an appreciation of complete videotape records of interrogation that allow for objective assessment of how a suspect moved from denial to acceptance.

Transparency allows for valid assessment of confessions in settings of dispute, to include all communications of the defendant as soon as possible after arrest. Full exposure of data allows for false confessions to be detected earlier and appropriately and contributes to proper disposition of justice and remedies as needed. Empirical research, when it will be done, will enable the scientific community to better inform courts deliberating these cases without speculation and infusion of biases to fill gaps in our current knowledge of why false confessions happen.

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