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INTERROGATION AND FALSE CONFESSIONS IN RAPE CASES

RICHARD A. LEO

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INTRODUCTION

At the end of 2015, the National Registry of Exonerations at the University of Michigan had logged 1,705 post-conviction DNA and non-DNA exonerations since 1989 (National Registry of Exonerations, 2015). Approximately 13% (N=217) of these wrongful convictions were due to false confessions, and virtually all of these have occurred in either homicide or rape cases. Many more false confessions occur in cases that do not go to trial or result in acquittal (Gould et al., 2013; Drizin and Leo, 2004), and most false confessions are simply never discovered (Leo, 2008). In a recent survey, police investigators in America estimated that 5% of the suspects they interrogated falsely confessed (Kassin et al., 2007). Although researchers have documented hundreds of proven false confessions in recent decades, these cases are universally believed to be the tip of a much larger problem (Kassin et al., 2010).

Researchers and practitioners alike have long wondered why the innocent might confess to serious crimes, especially ones that carry lengthy prison sentences or life imprisonment (Leo, 2008). For more than a century – but especially in the last three decades -- social science researchers have undertaken various types of empirical studies (field, observational, laboratory, documentary) to advance scientific knowledge about how interrogation procedures influence suspects' perceptions, overcome a suspect's denials and elicit the decision to confess (Kassin et al., 2010). Although there now exists

a substantial empirical body of research explaining why the innocent sometimes falsely confess when interrogated, this phenomenon remains poorly understood and counter-intuitive, as numerous recent survey studies have shown (Chojnacki et al, 2008; Henkel et al, 2008; Leo and Liu, 2009; Costanzo et al., 2010; Blandon-Gitlin et al., 2011)

Most people continue to believe in what the author calls the *Myth of Psychological Interrogation* – that an innocent person will not falsely confess unless he is physically tortured or mentally ill (Leo, 2001). However, confessions by the innocent continue to occur with troubling frequency (Leo, 2008), and most documented ones are from cognitively and intellectually normal individuals (Drizin and Leo, 2004; Leo and Ofshe, 1998). False confessions still lead to erroneous convictions of the innocent (National Registry of Exonerations, 2015), and thus continue to pose a serious problem for the American criminal justice system in general and law enforcement in particular (Garrett, 2011).

The central issue for researchers and practitioners is no longer whether false confessions exist, but why they occur and what can be done to prevent them.

No responsible scholar or practitioner suggests that the police knowingly seek to seek to obtain false confessions from the innocent or that prosecutors knowingly seek to convict the innocent. Indeed, there is little evidence that intentional abuses of power currently occur with significant frequency. Rather, false confessions now occur primarily due to a lack of proper training, poor investigative practices, and the use of scientifically invalidated and/or high risk interrogation techniques and strategies. American police do not always receiving training on how to avoid eliciting false confessions, which interrogation methods and individual characteristics increase the risk of eliciting false

confessions and why, or how to recognize different types of false confessions and their distinguishing characteristics. This chapter briefly describes the psychological process of interrogation and explains why false confessions, like truthful ones, can be understandable responses to certain interrogative procedures and strategies.

PRE-INTERROGATION INVESTIGATION

Police investigators do not choose to interrogate individuals randomly. Rather, they typically first investigate a case before deciding whether to interrogate. Reid and Associates, the creators and trainers of the dominant police interrogation approach in the United States, instruct detectives to thoroughly investigate before interrogating (Inbau et al., 2013). In other words, police investigators should have solid evidence before placing a suspect in an interrogation, a psychological process of pressure and persuasion that once started, according to the Reid Method of interrogation, seeks to validate the investigators belief in the suspect's guilt (Leo, 2008). Whether to interrogate is therefore a critical decision point in the investigative process, and a mistake at this early stage may be the first error that contributes to a false confession (Leo and Drizin, 2010).

Sometimes well-meaning police investigators mistakenly conclude based on poor decision criteria that an innocent person is likely guilty, and, as a result, commence an accusatory interrogation. Empirical studies have shown that such mistaken judgments may result from poor police training that is not consistent with the findings of scientific research or best practice standards. For example, Reid and Associates trains investigators to engage in behavioral analysis – i.e., to evaluate a suspect's body language and demeanor to determine whether a suspect is likely lying (and thus likely guilty) or telling the truth (and thus likely innocent) -- during pre-interrogation interviewing in order to

decide whether to place the suspect in an interrogation (Inbau et al., 2013). Detectives are taught, for example, that subjects who avert their gaze, slouch, shift their body posture, touch their nose, adjust or clean their glasses, chew their fingernails, or stroke the back of the head are likely to be lying and thus likely guilty. Suspects who are guarded, uncooperative and offer broad denials and qualified responses are also believed to be deceptive and therefore guilty.

Although police trainers usually mention that no single nonverbal or verbal behavior is, by itself, indicative of lying or truth telling, they nevertheless teach detectives that they can reliably infer whether a subject is deceptive if they know how to interpret his or her body language, mannerisms, gestures and styles of speech (Inbau et al., 2013). Yet empirical studies have shown that police investigators, like lay people, cannot reliably distinguish truth tellers from liars based on their analysis of someone's demeanor and body language at levels much greater than chance (Bond and DePaulo, 2006; Ekman and O'Sullivan, 1991), and that the method of behavior analysis taught by Reid and Associates appears to lower pre-interrogation judgment accuracy, while increasing investigators' self confidence in their assessments (Kassin and Fong, 1999; Vrij et al., 2006). This research shows that speculative judgments about a suspect's likely guilt or innocence based on a subjective assessment of his or her demeanor is a poor substitute for an analysis of real evidence on which base the decision to interrogate.

THE POLICE INTERROGATION

After identifying a suspect, investigators often meet with that person to elicit information. The detective(s) may intend the meeting to be an investigative interview, or that it be the first step of an adversarial interrogation. The initial use of an interview

format allows the investigator to better develop rapport, to lead the suspect to believe that he is helping authorities solve the crime (Leo, 1996), and to perceive that the questioning is non-threatening (Leo and White, 1999). If the detective(s) decides to move from an interview to an interrogation, the elicitation of a Miranda waiver typically signals the transition (Leo, 2008). Empirical studies show that 80-90% or more of suspects typically waive their Miranda rights (Thomas and Leo, 2012).

Modern interrogation techniques and strategies are designed to break through the resistance of a rational person who knows he is guilty, convince him to stop denying his culpability, and persuade him to confess (Ofshe and Leo, 1997; Inbau, Reid, Buckley and Jayne, 2013). Investigators elicit the decision to confess by influencing the suspect's perception of a) the nature and gravity of his immediate situation; b) his available choices or alternatives, and c) the consequences of each of these choices (Ofshe and Leo, 1997). Detectives seek to persuade the suspect that he has few options but to confess and that the act of admitting his knowledge and/or involvement in the crime is the most sensible course of action in his situation.

Step 1: Shifting the Suspect from Confident to Hopeless

From a psychological perspective, American police interrogation is essentially a two-step process (Ofshe and Leo, 1997). The goal of the first step is to cause the suspect to perceive that he has been caught; that his guilt can be objectively and conclusively demonstrated to any reasonable person; and that there is no way out of this predicament. Presuming the suspect is guilty, the investigator is likely to rely on several well-known interrogation techniques to successfully communicate that the suspect has been caught, that no one will believe his denials, and that the case evidence objectively establishes his

guilt. The interrogator may repeatedly accuse the suspect of having committed the crime, express unwavering confidence in the suspect's guilt, and seek to reverse a suspect's denials by either cutting them off or challenging them as implausible, illogical, or contradicted either by the detective's superior knowledge and experience or the existing case evidence (Leo, 2008). These techniques may lead a suspect to believe that he has the burden of proving his innocence.

The most effective technique used to convince the suspect that it is futile to deny his guilt is to confront him with what appears to be objective and irrefutable evidence of his guilt. Empirical studies have shown police interrogators often tell criminal suspects that the evidence establishes their guilt (Leo, 1996; Feld, 2013): if police possess real evidence, researchers call this a true evidence ploy. If police are making up, lying about, or exaggerating non-existent evidence, researchers call this a false evidence ploy (Ofshe and Leo, 1997). Police investigators may, for example, tell a suspect that physical or trace evidence, eyewitnesses, or even polygraph results show the suspect participated in or committed the crime when in fact such evidence may not exist. The purpose of doing so is to convince the suspect that his guilt will be established beyond any reasonable doubt and thus that his best option is stop denying and start confessing.

Step 2: Offering the Suspect Inducements to Confess

In the second step of interrogation, the detective seeks to persuade the suspect that the benefits of agreeing with the investigators assertions clearly outweigh the costs of continuing to deny culpability, and thus the only way to improve his situation is by admitting guilt (Ofshe and Leo, 1997). To accomplish this, the officer may present the

suspect with incentives or inducements that communicate that he might receive some personal, moral, legal or other benefit if he confesses to the crime.

These inducements can be arrayed along a continuum and for analytical purposes have been classified into three categories: low-end, systemic, and high end inducements (Ofshe and Leo, 1997). Low-end inducements refer to self-image, interpersonal and/or moral appeals that suggest the suspect will feel better or improve his social standing if he stops denying and starts confessing. Systemic inducements are intended to focus the suspect's attention on the discretionary ability of criminal justice officials to positively influence the processing and/or outcome of his case if he accepts responsibility, cooperates with authorities, and admits guilt. An investigator uses high-end inducements if he implicitly or explicitly suggests that the suspect that he will receive less punishment, a lower prison sentence or prosecutorial or judicial leniency if he confesses and/or more severe treatment by the criminal justice system if he does not confess (Ofshe and Leo, 1997).

Through this two-step psychological process of interrogation, the investigator's goal is to move the suspect from denial to admission by motivating him to perceive that -- given the nature of his situation, the limited choices available to him, and the consequences of each choice -- it is futile to continue to deny the crime and the only way to improve his situation is by confessing. As Kassin has recently observed: "As to why anyone would confess to police, research on human decision-making has shown that people make choices that they think will maximize their well-being given the constraints they face....In this context it is easy to appreciate the power of a psychological approach to interrogation -- which is explicitly designed to increase the anxiety associated with

denial and to decrease the anxiety associated with confession, thereby making it easier for the rational suspect to make the decision to confess” (Kassin, 2015: 33). Recent experimental research has shown that suspects often tend to make admissions in order to avoid the negative short term consequences of continued denial even if it increases the negative long-term consequences of confession (Madon et al et al, 2012; Madon et al., 2013).

RISK FACTORS FOR FALSE CONFESSION

Social scientists have extensively studied and identified factors that elevate or increase the risk of eliciting false confessions (Kassin et al., 2010). Factors associated with the techniques, methods, strategies, and/or environment of interrogation are referred to as *situational* risk factors. Factors associated with an individual’s personality traits and characteristics are referred to as *dispositional* or *personal* risk factors.

Situational Risk Factors.

1) Lengthy Interrogation. Lengthy interrogation/custody is a *situational* risk factor for making or agreeing to a false confession during police interrogation (Kassin et al, 2010). Empirical studies indicate that the overwhelming majority of routine custodial interrogations last less than one hour (Leo, 1996; Feld, 2013), whereas the combined time period of custody and interrogation in most interrogations leading to a false confession is more than six hours (Drizin and Leo, 2004). The Reid and Associates’ police interrogation training manual specifically recommends that police interrogate for no longer than four (4) hours absent “exceptional situations” and that “most cases require considerably fewer than four hours” (Inbau et al, 2013: 597). Lengthy detention and

interrogation is a significant risk factor for false confessions because the longer an interrogation lasts, the more likely the suspect is to become fatigued and depleted of the physical and psychological resources necessary to resist the pressures and stresses of accusatory interrogation (Davis and Leo, 2012). Lengthy interrogation can also lead to sleep deprivation, which heightens interrogative suggestibility (Blagrove, 1996; Harrison and Horne, 2000).

2) False Evidence. Social science research has shown that false evidence ploys are virtually always present in interrogations leading to false confession, and are substantially likely to increase the risk of eliciting false confessions from innocent suspects (Kassin et al., 2010). Most suspects do not know that police detectives can legally lie by pretending to have incriminating evidence that does not exist. The use of false evidence ploys can lead a suspect to perceive that he is trapped, that there is no way out of his situation because the alleged evidence against him assures he will be convicted, and thus that he has little choice but negotiate the best available outcome to mitigate his eventual punishment. As substantial basic and applied psychological research has shown (Loftus, 2005; Kassin et al., 2010), the use of false evidence ploys are effective at eliciting compliance (Leo 2008), confusing some suspects into believing that such evidence really does exist (Ofshe and Leo, 1997), causing some suspects to doubt themselves, and even causing some suspects to develop false beliefs and/or memories of committing crimes (Leo, 2008; Wright et al., 2013; Shaw and Porter, 2015).

3) Minimization. Sometimes investigators portray the offense in a way that minimizes its moral, psychological and/or legal seriousness, thus lowering the perceived cost of confessing by communicating that the consequences of confessing will not be that

serious (Leo, 2008). Interrogation techniques and strategies that minimize the legal seriousness of the crime, in particular, are associated with and known to increase the risk of eliciting false confessions (Kassin et al., 2010). Such minimization strategies can imply leniency, reduced punishment, or even no punishment at all if the suspect perceives that there is no consequence to confessing (*i.e.*, either that the act to which the suspect is confessing is not a crime or that it carries little or no penalty) (Kassin and McNall, 1991). Conversely, interrogation techniques and strategies that exaggerate the legal seriousness of the crime – *i.e.*, suggest that the suspect will face a bad or perhaps the worst possible outcome if he or she does not make or agree to an incriminating statement -- are also associated with and known to increase the risk of eliciting false confessions (Kassin et al., 2010). Such interrogation strategies can imply harsher treatment, confinement, punishment, sentencing and/or other negative outcomes if the suspect fails to comply and confess (Ofshe and Leo, 1997).

4) *Threats and Promises.* The use of implied and/or explicit promises of leniency, immunity and/or a tangible benefit, as well as the use of implied and/or explicit threats of harm, significantly increases the risk of eliciting a false confession (Kassin et al., 2010). Indeed, as empirical social science research has repeatedly demonstrated, promises of leniency—like threats of harm or harsher punishment and whether explicit or implicit—are widely associated with police-induced false confession in the modern era and are believed to be among the leading causes (Drizin and Leo, 2004). Like other *high-end* inducements, promises and threats contribute to creating a sense of despair and hopelessness in a suspect's perceptions of his available options during interrogation (Ofshe and Leo, 1997).

Individual Risk Factors.

While the use of high-risk interrogation techniques are often the primary cause of false confessions, certain types or groups of individuals are far more vulnerable to the pressures of interrogation, having their will overborne and/or making a false confession. This includes individuals who are mentally ill, and therefore may confess falsely because they are easily confused, disoriented, delusional or experiencing a non-rational emotional or mental state. This also includes juveniles and individuals with a low IQ or low-level cognitive functioning, who may be more vulnerable to interrogators because of their inability to understand the nature or gravity of their situation, their inability to foresee the consequences of their actions, their inability to cope with stressful situations and/or their eagerness to please others, especially authority figures. Juveniles may also be more easily intimidated than adults and may lack the maturity, knowledge, or sense of authority needed to resist simple police pressures and manipulations. Finally, this also includes individuals who, by their nature and personality, are naive, excessively trusting of authority, highly suggestible and/or highly compliant and who are therefore predisposed to believe that they have no choice but to comply with the demands of authorities or who simply lack the psychological resources to resist the escalating pressures of accusatorial interrogation (Kassin et al, 2010).

THE PROBLEM OF CONTAMINATION

Contamination is the leakage or disclosure to a suspect of non-public case facts that are not likely guessed by chance (Ofshe and Leo, 1997). A suspect's knowledge of unique case facts may be contaminated by third parties such as the media, witnesses to a crime or by investigators. Researchers have found that contamination by police regularly

occurs in false confession cases. In a study of the first two-hundred and fifty (250) post-conviction DNA exonerations of innocent prisoners in the American criminal justice system, Garrett (2011) found that contamination was present in 95% of the false confession cases in this data set. In a recent follow-up study, Garrett found that 91% of the more recent DNA exonerated false confessions were contaminated (Garrett, 2015). Police interrogation training manuals universally instruct police not to provide suspects with crime facts that are likely to be known only by the true perpetrator and the police (Inbau et al, 2013). The problem with contaminated confessions is that they contain detailed case facts that create the misleading appearance of corroboration to third parties and thus increase the risk that a false confession will be treated as true one and thus lead to an erroneous prosecution and wrongful conviction.

THE DIFFERENT TYPES OF FALSE CONFESSION

Kassin and Wrightsman (1985) first identified three conceptually distinct types of false confession – voluntary, coerced-compliant and coerced-internalized. Kassin and Wrightsman’s typology or classification scheme offers a useful conceptual framework for better understanding confessions (Gudjonsson, 2003). Synthesizing the existing research literature, Ofshe and Leo (1997) have extended and modified Kassin and Wrightsman’s initial typology.

Voluntary False Confessions

A voluntary false confession is offered either in the absence of police interrogation or in response to minimal police pressure. Individuals volunteer false confessions in the absence of police questioning for a variety of reasons – a morbid desire for notoriety, the need to atone for real or imagined acts (Gudjonsson, 2003), a need for

attention or fame, the desire to protect or assist the actual offender, an inability to distinguish between fantasy and reality, or a pathological need for acceptance of self-punishment (Kassin et al, 2010). High profile crimes such as the Lindbergh kidnapping in the 1930s, the Black Dahlia murder in the 1940s, or the JonBenet Ramsay and Nicole Brown Simpson murders in the 1990s may attract hundreds of voluntary false confessions (Gudjonsson, 2003).

Compliant False Confession (Stress-Compliant and Coerced-Compliant)

A compliant false confession is given when the pressure, stress and/or coercion of custodial questioning overwhelms the suspect and he comes to believe that the only way to end the experience is by confessing (Ofshe and Leo, 1997). There are three potential sources of stress during the interrogation; the environment, the detective's interpersonal style, and the techniques and strategies used during the process. During interrogations, detectives commonly (and legally) structure the environment to induce stress. They place the suspect in an unfamiliar setting, they separate him from others, and they control the pace, length, and intensity of the questioning. The officer's interpersonal style may be one that is alternately confrontational, demanding, and insistent. Finally, the techniques and strategies of the questioning officers may be designed to induce anxiety by attacking the suspect's self-confidence and appearing not to listen when he claims his innocence. Even though the suspect knows he is innocent, he may make a false confession because the prospect of continued interrogation is intolerable. If the officer suspects that the person making the confession is doing so simply to end the interrogation, he should attempt to obtain crime information from the individual that will corroborate the confession absent any contamination. Such information should be known only to the

police and true offender (Leo et al., 2013). Officers should be aware of the legal ramifications of engaging in verbal and non-verbal behavior that threatens the well being of a suspect and should avoid engaging in such activities. Furthermore, officers should make no promises that they are not legally empowered to make.

Persuaded False Confessions (Coerced-Persuaded and Non-Coerced Persuaded)

Persuaded false confessions occur when an innocent suspect comes to doubt the reliability of his memory and becomes temporarily persuaded that it is more likely than not that he committed the crime, despite having no memory of doing so. In rare cases, a persuaded false confessor may develop actual false memories of having committed the crime (Wells and Leo, 2008). The suspect usually comes to believe that he probably did or could have committed the crime, or logically must have committed have done so in light of what he has been told, and he “confesses” in hypothetical, tentative, or speculative language that he could have, he probable did, or must have, or he may have committed the crime. The language he uses to confess reflects his uncertain belief state and lack of personal knowledge about the crime facts (Ofshe and Leo, 1997).

Persuaded false confessions occur in part when investigators refuses to accept the suspect’s report of having no memory of committing the crime. Reid and Associates emphatically admonishes police interrogators never to tell a suspect who states that he cannot remember committing the crime that he did so (Inbau et al., 2013). When it appears that such a confession is being made, the investigator should be careful to avoid providing the suspect with case details or answering the suspect’s questions about the crime. The investigator should also determine whether the information provided by the suspect could have been obtained from other police officers, the media or the community.

THE CONSEQUENCES OF FALSE CONFESSIONS

While it is not presently possible to provide a valid quantitative estimate of the incidence or prevalence of false confessions (Leo and Ofshe, 1998), it is well established that false confessions occur with troubling frequency and sometimes lead to the wrongful conviction of the innocent. A person who confesses is likely to be treated more harshly by those within the criminal justice system. An officer who obtains a confession is inclined to consider the case solved. Prosecutors tend to make the confession the centerpiece of their cases and are less likely to initiate or accept plea bargains (Leo and Ofshe, 1998). The defendants may have more difficulty in obtaining bail, and defense attorneys are more likely to pressure their clients to plead guilty because the risk of conviction is greatly increased. Even the triers of fact may become biased in favor of conviction when confession is involved. For all these reasons it is imperative that police and prosecutors do their best to catch false confessions prior to trial.

CONCLUSION

False confessions can be prevented, and it is imperative that all reasonable steps be taken to ensure that they do not occur. One of the most important procedural safeguards to reduce the possibility of false confessions is a comprehensive training program for law enforcement officers who will conduct interrogations.

As a minimum, investigators should be trained in the following four areas:

1. The existence, variety, causes, and psychology of false confessions – if investigators are taught the logic, principles, and effects of psychological interrogation methods, they will not only become more knowledgeable about false confessions but they will also be more effective in obtaining truthful ones.

2. The indicia of reliable and unreliable statements and how to distinguish between them – it has long been a generally accepted principle in law enforcement that valid confessions are supported by logic and evidence. The proper way to assess the reliability of a confession is by analyzing the suspect’s post-admission narrative (detailed discussion of the crime after an admission has been given) against the underlying crime facts to determine whether it reveals guilty knowledge and is, in fact, corroborated by existing evidence (Leo et al, 2013).
3. Officers cannot reliably intuit whether a suspect is innocent or guilty based on their uncorroborated suspicions – police must base their opinions about an individual’s guilt on much more reliable and conclusive evidence and should ensure that they have done all within their power to corroborate the confession. True confessions most often provide information that leads to corroborating evidence, whereas false confessions, absent contamination, by their nature cannot do so.
4. Investigators must be trained to avoid inadvertent contamination of non-public case facts to suspects during interrogation

Professional investigators are aware that false confessions sometimes happen, and that confessions must always be independently verified and corroborated. A confession that cannot withstand objective evaluation should not be accepted.

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