Police Interrogation, Psychological Coercion and False Confessions

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Outline

I. The Phenomenon of False Confession
II. The Impact of Confession Evidence
III. The Causes of False Confession
IV. Litigating Coerced and False Confessions
The Data on False Confessions

Real World Data
- Individual Case Studies
- Aggregated Case Studies
- The DNA Exonerations
- The National Registry of Exonerations

Laboratory Data
- Experimental Induction of False Statements and Confessions
DNA Exoneration

- N>365 DNA Exoneration since 1989
- 15-25% = False Confessions
DNA and Non-DNA Exonerations

The National Registry of EXONERATIONS

- 2,496 Exonerations Since 1989
- 303 False Confessions
Laboratory Studies
What Do Potential Jurors Know About Police Interrogation Techniques and False Confessions?

Richard A. Leo, Ph.D., J.D.* and Brittany Liu, B.A.

Psychological police interrogation methods in America inevitably involve some level of pressure and persuasion to achieve their goal of eliciting confessions of guilt from custodial suspects. In this article, we surveyed potential jurors about their perceptions of a range of psychological interrogation techniques, the likelihood that such techniques would elicit a true confession from guilty suspects, and the likelihood that such techniques could elicit a false confession from innocent suspects. Participants recognized that these interrogation techniques may be psychologically coercive and may elicit true confessions, but believed that psychologically coercive interrogation techniques are not likely to elicit false confessions. The findings from this survey indicate that potential jurors believe that false confessions are both counter-intuitive and unlikely, even in response to psychologically coercive interrogation techniques that have been shown to lead to false confessions from the innocent. This survey provides empirical support for the idea that expert witnesses may helpfully inform jurors about the social science research on psychologically coercive interrogation methods and how and why such interrogation techniques can lead to false confessions. Copyright © 2009 John Wiley & Sons, Ltd.

INTRODUCTION

Confessions are one of the most important types of evidence for solving crimes (Greenwood & Pettersilia, 1978). Because criminal suspects rarely spontaneously confess, however, police detectives regularly employ interrogation techniques to overcome denials and elicit confessions (Feld, 2006a,b; Leo, 1996; Wald, Ables, & Ables, 1995). The implications of these confessions are significant, as they often lead to the conviction and punishment of defendants. However, the reliability of these confessions is a matter of concern, as they can be the result of psychological coercion rather than voluntary admission of guilt.

Psychological research on interrogation techniques has shown that these methods can elicit false confessions, which can have serious legal and ethical implications. Potential jurors may not be aware of the potential for false confessions, which can result in wrongful convictions. Therefore, it is important to educate potential jurors about the risks associated with psychological interrogation techniques.

In this study, we surveyed potential jurors about their perceptions of interrogation techniques and the likelihood of false confessions. We also examined the role of expert witnesses in informing potential jurors about these issues. The results of this study provide insight into the effectiveness of expert witness testimony in informing potential jurors about the risks associated with psychological interrogation techniques.

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Judicial Bias and Ignorance

- Judges are just as susceptible to assumptions that an individual would not admit culpability, take responsibility for actions they didn’t commit.
U.S. Supreme Court in *Colorado v. Connelly* (1986)

“No other class of evidence is so profoundly prejudicial... Triers of fact accord confessions such heavy weight in their determinations that the introduction of a confession makes the other aspects of trial in court superfluous, and the real trial, for all practical purposes, occurs when the confession is obtained.”
Causes: Three Errors that Lead to (Persuasive) False Confessions

1) Misclassification

2) Coercion

3) Contamination
1) Misclassification
Table 2
Deception Accuracy Means and Standard Deviations in Observer Groups

<table>
<thead>
<tr>
<th>Observer group</th>
<th>M</th>
<th>SD</th>
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</thead>
<tbody>
<tr>
<td>Secret Service</td>
<td>64.12</td>
<td>14.8</td>
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<tr>
<td>Federal polygraphers</td>
<td>55.67</td>
<td>13.3</td>
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<tr>
<td>Robbery investigators</td>
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<td>Judges</td>
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<td>15.8</td>
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<tr>
<td>College students</td>
<td>52.82</td>
<td>17.3</td>
</tr>
</tbody>
</table>
2) Coercion: The Psychology of Police Interrogation

- **Step 1**: Convince the suspect he is caught and denial is futile
- **Step 2**: Convince the suspect that confession is beneficial and the only way out
THE CONFRONTATION INTERROGATION TECHNIQUE

INTRODUCTION

Proven to be successful in situations where the guilt of the suspect is fairly certain.

It is employed after completion of administrative and humanitarian questions, and after obtaining a Miranda waiver.

It operates on the principle of - “You did it. We know you did it. We have overwhelming evidence to prove you did it. But the reason makes a difference. So why don’t you tell me about it?”

Although you can use this technique on virtually every type of suspect and psychological profile, you will not interrogate all suspects the same way.

Think of the Confrontation Interrogation Technique as an outline for an interrogation. The type of suspect and/or psychological profile will determine how you present each heading or component of the outline.
Step 1: Breaking Down Resistance

- Isolation
- Rapport-building
- Accusation
- Attack suspect’s denials
- Confront with (true or false) evidence
- Treat suspect’s guilt as an established fact
- Apply pressure and stress
- Repeat
Step 2: Motivating Suspect to Confess through Inducements

- Inducements (Appeals to Self-Interest)
  - Moral
  - Psychological
  - Legal

- CJS System benefits
  - Minimization
  - Offers of help
  - Promises and threats
Types of False Confessions

- Voluntary
- Compliant
- Persuaded
Voluntary False Confessions

Who Killed Lindbergh’s Baby?
Compliant False Confessions
Persuaded False Confessions
Situational Risk Factors for False Confession

- Lengthy Interrogation
- False Evidence Ploys
- Minimization
- Implied Promises and Threats
Individual Risk Factors for False Confession

- Juveniles
  - Especially Under 15
- Mentally handicapped or impaired
- Some personalities
  - Highly suggestible
  - Highly compliant
- Mental Illness
3) Contamination and Scripting

- Leaking/Disclosing suspects non-public crime facts
- Scripting confession narrative
- False confessions appear authentic

WARNING
Avoid Contamination.
Litigating Confessions: Read The Social Science Research
Unrecorded Interrogations

- Have client write detailed, narrative “Time-Line”
- Need to do right away, not superficially; buy client a special notebook if necessary
- Then debrief client about “Time-Line”
- Time-line will be invaluable for:
  - Reconstructing interrogation
  - Learning new information
  - Structuring cross-X
Recorded Interrogations

- Have independent transcript made immediately
- Listen to the tape – All of it
- Play the tape for our client, and if possible go over it with them in their presence
Recorded Interrogations

- Identify specific interrogation techniques and strategies
- Identify coercive factors
- Demonstrate
  - Repetition of techniques
  - Sequencing of techniques
  - Cumulative coercion
  - Effect on suspect
Do You Have a Coerced Confession?

- What inducements did the interrogators use?
- Did they implicitly convey a deal or minimization of consequences?
- Did they implicitly threaten worse consequences if your client continued to deny?
Do You Have a Coerced Confession?

- What other interrogation techniques were used?
- How were they developed over the course of the interrogation?
- How long was the interrogation?
Practical Suggestions: Suppression Hearing

Cross-X cops on:
- Assumptions and goals of interrogation
- Specific interrogation techniques and strategies
- Training on psychological coercion
- Training on proper and improper inducements
- Training on false confessions
  - Understanding why they occur
  - Recognizing them
  - Preventing them
Putting on a False Confession Defense

Two Questions that Must Be Answered:

1) Why Did Your Client Confess Falsely?

2) How Do We Know It Is a False Confession?
Types of Possible Experts

- Social/Cognitive Psychologist
- Clinical Psychologist
- Neuro-Psychologist
- Intoxication Expert
- Culture Expert
- Gang Expert
Confession Cases Are Never Easy…

“We find the defendant guilty as sin.”

“We also find the defendant’s lawyer guilty by association.”
But If You Do Your Homework…
You Can Win…