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An introduction to the psychology of interrogations and confessions

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## Abstract

There is a growing body of information, including naturalistic observation and empirical research, regarding the psychology of interrogations and confessions. While consideration of this information may be unnecessary for determinations of voluntariness of confessions which have been extracted with obvious methods such as physical torture, consideration of this research is necessary when it is argued that a retracted confession was extracted via psychological coercion. The legal standard requires consideration of the totality of the circumstances, which includes the psychological characteristics of the suspect, the circumstances of the interrogation, the suspect's mental and physical state at the time of the interrogation, and the interrogation methods employed. A forensic psychologist with knowledge, training, and experience in the psychology of interrogations and confessions can assist the court in properly deciding legal questions involving interrogations and confessions.

### An introduction to the psychology of interrogations and confessions

My first participation in a legal case involving the psychology of interrogations and confessions began in late 1992 or early 1993. An assistant public defender asked if I would be interested in learning about the field, then conducting a psychological evaluation of a defendant whose confession may have been coerced. I agreed to do so, studied a stack of books and articles, and conducted the evaluation as requested. In my report I stated that that was the first such case on which I had worked. I concluded that a “coerced confession is a distinct possibility and that an expert in this area should be called in to explore the matter fully.” The judge did appoint an experienced expert, Dr. Richard Ofshe. I had completed my evaluation at that point, and I was allowed to observe Dr. Ofshe’s interview with the defendant. Both Dr. Ofshe and I testified at a suppression hearing. As it turned out, the judge suppressed the defendant’s confession and the defendant was released. (At the time of this writing, some documents about that case are available online at [http://www.nettally.com/fpda/pages/life\\_o\\_death\\_articles/MtA%20Expert.doc](http://www.nettally.com/fpda/pages/life_o_death_articles/MtA%20Expert.doc)).

Since then I have consulted on a few confession cases a year, and courts have recognized me as an expert in the psychology of interrogations and confessions. In one 1998 case, my expertise was seriously challenged by an assistant state attorney. During deposition he attempted to narrowly define the field in which I would testify as “suggestibility.” Although I resisted that characterization during deposition and again during *voir dire*, he succeeded in making the issue so confused that the judge called the hearing to a halt and assigned me the task of defining for her the area of expertise that would be the context for my testimony. That would have been a fun assignment, except that I had only from about 5:00 p.m. one day until 9:00 a.m. the next. I spent the night preparing the paper that follows this preface. I was relieved to hear the judge decide that there is such a field as the psychology of interrogations and confessions, and that she recognizes me as an expert in that field.

Although this paper was written in 1998, it continues to provide a good introduction. For a more detailed and current presentation, I invite interested readers to watch for my book to be published by Professional Resource Press <http://www.prpress.com/>. The working title is *Disputed Confessions: A Manual for Practice*. When available, I will post the table of contents at my website: <http://gregdeclue.myakkatech.com>.

### The Socio-cultural Background

The report of Attorney General George Wickersham and the Wickersham Commission in 1931 is as good a place to start as any. Wickersham was appointed by President Herbert Hoover to head the National Commission on Law Observance and Law Enforcement in 1929. In 1931 the Commission issued the “Report on Lawlessness in Law Enforcement” as volume eleven of a fourteen volume report on criminal justice in America.

Documenting various in-custody abuses, the Wickersham Commission concluded that police use of brute physical force, threats of harm, intimidation, and protracted, incommunicado detention during interrogation was widespread. In short, the ‘third degree’ flourished in most American police departments (Leo, 1992, p. 38).

Leo goes on to note that

Although force and duress were common police interrogation tactics through the first three decades of this century, the use of coercive methods began to decline in the 1930s and 1940s. By the 1980s and 1990s, interrogation practices have become psychologically oriented, relying on the strategic use of manipulation, persuasion, and deception to induce admissions and confessions from reluctant suspects (p. 38).

David Simon (1991), a journalist who recently spent a year observing Baltimore homicide detectives, described the police interrogator as:

a salesman, a huckster as thieving and silver-tongued as any man who ever moved used cars or aluminum siding, more so, in fact, when you consider that he’s selling long prison terms to customers who have no genuine need for the product (p. 213).

Interrogators utilize influence techniques like those described by Robert Cialdini (1984, p. 24):

[T]he weapons of automatic influence lend their force to those who use them. It’s not that the weapons, like a set of heavy clubs, provide a conspicuous arsenal to be used by one man to bludgeon another into submission. ... [This] process allows the exploiters an enormous additional benefit—the ability to manipulate without the appearance of manipulation.

Interrogation training manuals describe how interrogators can recognize and utilize personal characteristics of suspects which can be used to manipulate the suspect into confessing. For example, Inbau, Reid, and Buckley (1986, p. 78)<sup>1</sup> state that

Emotional offenders can be identified behaviorally during an interrogation in that they tend to be emotionally moved by the interrogator's words and actions. ... Because of the "troubled conscience" feeling, the most effective interrogation tactics and techniques to use on such a subject are those based primarily upon a *sympathetic approach*—expressions of understanding and compassion with regard to the commission of the offense as well as the suspect's present difficulty.

The behavioral identification process is an integral part of the Inbau et al. method. Interrogators are encouraged to form opinions about a suspect's truthfulness on the basis of observations of his verbal and nonverbal behavior.

The suspect who, after being accused, says, "No offense to you, sir, but I didn't do it," "I know you are just doing your job," or "I understand what you are saying" is evidencing his lying about the matter under investigation (p. 47).

*...Generally speaking, a suspect who does not make direct eye contact is probably being untruthful (p. 51).*

Kassin (1997, p. 222) rather generously notes that "Inbau et al. may well be correct in this diagnostic advice," but adds:

It is important to realize, however, that there is currently no hard empirical support for their propositions. Research has consistently shown that people are poor intuitive judges of truth and deception... In fact, even so-called experts who make such judgments for a living—police investigators; judges; psychiatrists; and polygraphers for the Central Intelligence Agency, the Federal Bureau of Investigation, and the military—are highly prone to error.

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<sup>1</sup> A previous version of this text was quoted in the *Miranda* decision.

Kassin then quotes Simon (1991, p. 219) as follows:

Nervousness, fear, confusion, hostility, a story that changes or contradicts itself—all are signs that the man in an interrogation room is lying, particularly in the eyes of someone as naturally suspicious as a detective. Unfortunately, these are also signs of a human being in a state of high stress.

Although Inbau et al. generally encourage interrogators to trust their hunches, they do acknowledge that behavioral signs can be misread.

[An] example of how misleading behavior symptoms may surface is one in which a male friend of a female murder victim was interrogated about her death. He displayed a number of guilty symptoms, according to his initial interrogators. It was reported that he could not look them “straight in the eye,” that he sighed a lot, that he had a disheveled appearance, and that he seemed to be going through a great deal of mental anguish. An investigator reported that “He looked guilty as hell!” During a subsequent interrogation, conducted by a professionally competent interrogator, however, it was ascertained that the suspect was emotionally upset because of the young woman’s death and that he had been crying uncontrollably over it. ... The investigators mistakenly confused his emotional behavior as indicative of guilt, and therefore, he became the prime suspect. Later developments in the case produced factual evidence that totally exonerated him from any part in the murder (p. 59).

Nevertheless, interrogators are encouraged to use body language, etc., to determine the likely guilt of a subject, and then use the “Nine Steps to Effectiveness” to extract a confession from a subject *whom they believe to be guilty*. Specific themes are recommended to manipulate a suspect into confessing. For example, “It is advisable, whenever possible, to point out the relative insignificance of the offense in terms of how much worse it could have been” (Inbau et al., 1986, p. 127). Psychologists analyzing confessions include this in the “soft sell” technique of *minimization*, “in which the detective tries to lull the suspect into a false sense of security (Kassin, 1997, p. 223). In another approach, *maximization*, “the interrogator uses ‘scare tactics’ designed to intimidate a suspect believed to be guilty (Kassin, 1997, p. 223).

To summarize, maximization communicates an implicit threat of punishment, whereas minimization implies an offer of leniency. Yet, although trial judges

exclude confessions elicited by *explicit* threats and promises, they often admit into evidence those prompted by *implicit* threats and promises. For all intents and purposes, these commonly used techniques circumvent laws designed to prohibit the use of coerced confessions. Indeed, Inbau et al. (1986, p. 320) were quick to reassure their readers that “although recent Supreme Court opinions have contained derogatory statements about ‘trickery’ and ‘deceit’ as interrogation devices, no case has prohibited their usage” (p. 224).

As we turn to legal considerations, we find that although courts may not have prohibited the use of trickery and deceit across the board, some courts have recognized that such methods can contribute to false confessions, and have included them in lists of factors for judges to consider in determining the voluntariness of confessions, or, in other words, whether a particular confession is the product of coercion.

### Legal Issues

Prior to its decision in *Brown v. Mississippi* in 1936, the Supreme Court did not proscribe physically coercive practices in state cases. In that case, three black defendants were repeatedly whipped and pummeled until they confessed. This was the first case in which the Court ruled that confessions could not be coerced, but had to be voluntary to be admitted into evidence (Skolnick and Leo, 1992). Some police practices—including physical force, threats of harm or punishment, lengthy or incommunicado interrogation, denial of food and/or sleep, and promises of leniency—have been designated as presumptively coercive, but, in general, whether a confession is coerced or voluntary is to be judged by “the totality of the circumstances” (Skolnick and Leo, 1992, p. 4).

The Supreme Court has held that psychological pressure could be coercive since 1940, beginning with the case of *Chambers v. Florida*. The initial reason for excluding coerced confessions was to guard against false confessions. Beginning with *Lisenba v. California* in 1941 and *Ashcraft v. Tennessee* in 1944, two additional reasons for excluding coercive confessions have been mentioned in Supreme Court decisions.

[T]hree sometimes competing principles underlie the law of confessions: first, the truth-finding rationale, which serves the goal of *reliability* (convicting an innocent person is worse than letting a guilty one go free); second, the substantive due process or *fairness* rationale, which promotes the goal of the system’s integrity; and

third, the related *deterrence* principle, which proscribes offensive or lawless police conduct (Skolnick and Leo, 1992, pp. 4-5).<sup>2</sup>

The *Miranda* decision by the Supreme Court led to specific requirements for warnings given to suspects in custodial interrogations; subsequent rulings have led to non-intuitive findings that police questioning outside of the station may be custodial in some circumstances, and police questioning inside the station may sometimes be considered non-custodial (Skolnick and Leo, 1992).

The Supreme Court has held that the psychological characteristics of the defendant *per se* need not be considered sufficient grounds for suppressing a confession, even if the defendant is psychotic and confessing in response to “the voice of God,” as did the defendant in *Colorado v. Connelly*. No matter how mentally disturbed the defendant might be, and no matter how illogical, irrational, or downright crazy the motivation for the defendant’s confession, the legal test of voluntariness is not the defendant’s intelligence, mental health, or freedom from suggestibility. Rather, a confession is only to be suppressed if there is some police misconduct.

The suspect’s mental condition is not irrelevant. Courts recognize that some suspects are more prone to be influenced by the bullshit thrown at them by detectives seeking a confession.<sup>3</sup> If there is any evidence of police coercion, then the suspect’s mental state becomes a relevant consideration in determining whether the suspect’s confession was voluntary or coerced.

Law enforcement officers are willing to utilize whatever tricks will work to extract a confession, as long as the courts will permit it. There are few bright-line standards, though courts have ruled (*Florida v. Cayward*), that, though spoken lies may at times be permissible, fabricated documents are not.

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<sup>2</sup> While Skolnick and Leo’s (1992) paper is titled “The Ethics of Deceptive Interrogation,” they do not hesitate to look at the practical consequences of rampant lying by police officers:

Police misconduct—and lying is ordinarily considered a form of misconduct—undermines public confidence and social cooperation, especially in the second America. People living in these areas often have had negative experiences with police, ranging from an aloof and legalistic policing “style” to corruption, and even to the sort of overt brutality that was captured on the videotape of the Rodney King beating in Los Angeles. ... Police lying might not have mattered so much to police work in other times and places in American history. But today, when urban juries are increasingly composed of jurors disposed to be distrustful of police, deception by police during interrogation offers yet another reason for disbelieving law enforcement witnesses when they take the stand, thus reducing police effectiveness as controllers of crime (p. 9).

<sup>3</sup> Today, Ness said, interrogation is not a matter of forcing suspects to confess but of ‘conning’ them. “Really, what we do is just to bullshit them.” (Hart, 1981).

For those of us in the second DCA in Florida, the lead case is that of Tom Sawyer, (*State v. Sawyer*). This was not the lad who talked his friends and acquaintances into whitewashing a picket fence for him, but the golf-course groundskeeper who, temporarily, came to believe that he probably raped and murdered his neighbor, opining that he must have been in an alcoholic blackout when he did it. The court notes that there must be some finding of coercive police misconduct, and that the coercion could be psychological or physical in nature. The test of whether there was police coercion is determined by reviewing the totality of the circumstances under which the confession was obtained.

As part of the totality of the circumstances analysis, many factors have been considered by the courts, including: whether the confession was given in the coercive atmosphere of a station-house setting; whether the police suggested the details of the crime to the suspect; whether the suspect was subjected to a barrage of questions during predawn hours and not given an opportunity to sleep or eat; whether psychological coercion was applied; whether the police made threats, promises of leniency, or made statements calculated to delude the suspect as to his or her true position; whether the police made threats of harm; and whether the police exerted undue influence or made direct or implied promises of benefits. Although particular statements or actions considered on an individual basis might not vitiate a confession, when two or more statements or courses of conduct are employed against a suspect, courts have more readily found the confession to be involuntary. Furthermore, an accused's emotional condition is an important factor in determining whether statements were voluntarily made. *State v. Sawyer*, 281-282; citations omitted.

### Psychological Issues

Despite the protections offered defendants in the American judicial system, innocent people are sometimes found guilty. Despite our expectations that it wouldn't make any sense to do so, innocent people sometimes confess to crimes. "The reason is typically a combination of factors which are associated with the circumstances and nature of the custodial interrogation and the accused's psychological vulnerabilities" (Gudjonsson, 1992). Psychological studies into miscarriages of justice have identified coerced confessions<sup>4</sup> as, along with eye-witness mistakes,

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<sup>4</sup> Note that all of these are false confessions.

one of the two leading causes of known miscarriages of justice (Bedau & Radelet, 1987; Borchard, 1932). Borchard succinctly described the process whereby police interrogation procedures can sometimes lead to a false confession:

The influence of a stronger mind upon the weaker often produces, by persuasion or suggestion, the desired result (p. xviii).

Kassin's (1997) article in the *American Psychologist*<sup>5</sup> is summarized in the table of contents as

Confessions play a vital role in law enforcement and crime control. Psychologically oriented techniques used to elicit confessions may undermine their validity. Psychologists should systematically investigate how the conditions under which a confession is obtained affect the validity of the confession.

Kassin states that for a person to fully understand the psychology of criminal confessions three sets of questions must be addressed:

1. How do police interrogators get people to confess; that is, what techniques of social influence do they use?
2. What are the effects of these methods on behavior; that is, do they elicit confessions only from suspects who are guilty, or do innocent people sometimes confess to crimes they did not commit?
3. When an involuntary confession is introduced in court, does the jury discount that evidence, as necessary, in accordance with the law? (p. 221)

Kassin then goes on to review the recent research of relevance to those questions and concludes as follows:

1. The police often use deception, trickery, and psychologically coercive methods of interrogation;
2. these methods, at times, cause innocent people to confess to crimes they did not commit;
3. and when coerced confessions are presented in the courtroom, juries do not sufficiently discount the information in reaching a verdict (p. 230).

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<sup>5</sup> A highly influential journal distributed to all members of the American Psychological Association.

Clare and Gudjonsson (1995) found that people with low intelligence underestimate the importance of a coerced false confession, expressing the vague, naïve belief that an innocent suspect would be protected because his innocence would somehow become evident to others. This helps to explain the consistent finding that people with low intelligence are more prone to give false confessions (e.g., Borchard, 1932).

Kassin and Wrightsman (1985) derived a categorization scheme for distinguishing among three types of false confessions: voluntary, coerced-compliant, and coerced-internalized. The 200 people who confessed to kidnapping Charles Lindbergh's baby are examples of people who give voluntary false confessions. The three black tenant farmers in *Brown v. Mississippi* who confessed to murder after being brutally whipped are considered to have given coerced-compliant false confessions. Kassin (1997) considers the following finding particularly relevant to coerced-compliant false confessions:

Research has shown that a suspect's perception of the strength of the evidence is a highly significant predictor of whether he or she will confess (p. 225).

Tom Sawyer, the golf-course groundskeeper who confessed in *State v. Sawyer* is considered to have given a coerced-internalized false confession. During a lengthy interrogation, for a little while, long enough to sign a confession, he actually believed that "I guess I must have done it."

### The Role of the Forensic Psychologist

Guideline VII. F. of the Specialty Guidelines for Forensic Psychologists includes:

Forensic psychologists are aware that their essential role as expert to the court is to assist the trier of fact to understand the evidence or to determine a fact in issue.

Grisso (1986; 1988) is a respected and oft-cited expert on how to conduct psychological assessments to assist the courts. He states that a forensic psychologist must first identify what legal question is to be answered, utilize tools appropriate to address the question, conduct a psychological assessment, and analyze and report the results. While this may seem simple and obvious, it is all too easy for psychologists to begin with traditional psychological assessment and then try to mold their assessments into something useful to the courts, rather than beginning with an understanding of the psycho-legal question.

Grisso (1986) reviews the Gudjonsson Suggestibility Scale as “a research and clinical method to assess an individual’s response to ‘leading questions’ and to ‘negative feedback instructions’ when asked to report a factual event from recall” (p. 142). He states:

Much of the research by Gudjonsson and associates used deduction of hypotheses based on theoretical relations between the construct of suggestibility and other personality constructs, then used the GSS as an operational definition of suggestibility to test these hypotheses. This has produced an impressive network of results lending considerable construct validity to the GSS as an index of suggestibility (p. 146).

Gudjonsson (1992) describes three basic requirements for assessment of retracted confessions:

There are three basic requirements for a complete assessment, which are equally true whether the case is being referred by the defense or by the prosecution. First, the psychologist must be properly instructed by the lawyers who refer the case. This includes receiving clear instructions about the issues to be addressed in the expert’s report. ... Second, the psychologist must have access to all relevant documents and papers in the case... Third, the psychologist should be familiar with the literature on false and retracted confessions. He or she should know about the basic assessment tools, including the validation data for the tests used. Furthermore, the psychologist needs to be able to relate the findings of the assessment to the particular circumstances of the case (pp. 299-300).

Gudjonsson (1992) goes on to identify four groups of factors which should be assessed when one is dealing with issues relevant to voluntariness and reliability of self-incriminating statements:

1. Characteristics of the defendant
2. The circumstances of the arrest and custody (interrogation)
3. Mental and physical state during custody (interrogation)
4. Interrogation factors (methods) (p. 301)

I have resisted the prosecuting attorney’s attempts to narrowly define my area of expertise as “suggestibility” because that term refers only to certain characteristics of the defendant. As I use the term, “suggestibility” would not include the circumstances of the arrest and interrogation, the defendant’s mental and physical state during interrogation, and the interrogation factors themselves.

Analysis of some of the defendant's traits alone would not provide the trier of fact with all of the assistance available and helpful for deciding whether a confession was coerced, nor whether it should be considered reliable. As Gudjonsson (1992, p. 304) puts it:

When leading questions have been asked by the interrogators and persuasive manipulation and pressure used, then these have to be related to the accused's personality and mental state, as well as to the circumstances of the situation. Occasionally police officers are found to play on suspects' weaknesses, which in vulnerable suspects can result in a false confession (p. 304).

The forensic psychologist's role in assisting a court regarding the voluntariness of a confession properly encompasses all four areas listed above.

### Possible Remedies

It is my understanding that (a) the state carries the burden of proving that the defendant's statements were freely and voluntarily given, (b) it is up to the judge to determine whether the statements are admissible, and (c) it is up to the trier of fact (judge or jury) to decide whether the defendant is guilty or not guilty as charged.

As I understand it, the factors mentioned in *Sawyer* provide some guidance for a trial judge, but it remains the responsibility of the trial judge to determine whether a confession was given voluntarily or whether it was coerced. Can the prosecution ever provide assurance to a judge that a confession which was attained through procedures that have been found to sometimes be coercive is nonetheless a *true* confession? Absolutely. This can be accomplished if

1. the interrogators record (preferably via videotape) the entire interrogation;
2. the suspect gives a detailed confession which includes information not provided by—and, even more convincing—previously unknown to the interrogators; and
3. subsequent investigation shows that new details provided by the suspect match independent evidence.

If the above is not accomplished, and if the interrogators used two or more techniques which have been found to be coercive, then there is a very real possibility that the statement is coerced and false. When the interrogators do not get a detailed confession which includes information not fed to the suspect, the state may have no way of meeting its burden to prove that the defendant's statements were voluntary. When there is no clear independent evidence to prove that a crime was committed

and that the defendant committed it, as appears to be the case here, then there may be no way for the state to prove that the defendant's statements were true.

So why don't interrogators take the extra steps to videotape statements, get the suspect to give a *detailed* confession, and follow up the process by verifying the new details provided by the suspect?<sup>6</sup> Because courts don't make them do it. Interrogators comply with legal requirements as they conduct interrogations. When courts do not allow certain procedures, the interrogators modify their techniques enough to comply with—or get around—the law. To the extent that courts allow interrogators to use psychologically coercive techniques, interrogators use them. The interrogator's goal is to extract a confession that will hold up in court. Unless courts require it, there is no real incentive for the interrogator to put in the extra steps of obtaining verifiable details and actually verifying them, or to videotape the interrogation.

What happens when interrogations are routinely videotaped? In some jurisdictions, courts have required interrogators to videotape the entire interrogation. Geller (1993) reports a national survey leading to an estimate that one third of all large police and sheriff's departments in the United States videotape at least some interrogations, and 97 percent have found them useful. Beginning in 1996, Great Britain has required that all suspect interviews be taped (Kassin, 1997).

What is the likely practical result of actually making the State meet its burden in retracted-confession cases? If trial courts in any given jurisdiction consistently find that, when suspects who confess after multiple potentially coercive police interrogation procedures have been applied, the State must show tangible evidence to meet its burden, then law enforcement departments can be predicted to videotape interrogations, get more detailed confessions, and verify the new details provided by the suspect. The inevitable results will be increased fairness, greater respect for law enforcement officers, and increased reliability (fewer false confessions).

### Summary

There is a growing body of information, including naturalistic observation and empirical research, regarding the psychology of interrogations and confessions. While consideration of this information may be unnecessary for determinations of voluntariness of confessions which have been extracted with obvious methods such as physical torture, consideration of this research is

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<sup>6</sup> It would not add much time or effort to the process. Interrogations are already held in rooms specifically designed for the purpose—adding a mounted camera and turning it on would not be much trouble. Getting an already-confessing suspect to provide additional details should not take much more time or effort. The effort required to following up on the details provided by the suspect would vary from case to case.

necessary when it is argued that a retracted confession was extracted via psychological coercion. The legal standard requires consideration of the totality of the circumstances, which includes the psychological characteristics of the suspect, the circumstances of the interrogation, the suspect's mental and physical state at the time of the interrogation, and the interrogation methods employed. A forensic psychologist with knowledge, training, and experience in the psychology of interrogations and confessions can assist the court in properly deciding legal questions involving interrogations and confessions.

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