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False Confession Cases – The Issues

In the past several years a number of false confession cases have received extensive publicity. In several of these cases the convicted individual has been exonerated by DNA testing and the actual perpetrator, in turn, has been identified. In these cases it is important to examine in detail exactly what happened; what went wrong; what are the lessons to be learned, and what are potential safeguards that can be put into place to prevent future mistakes.

To be sure, in the experience of most professional interrogators the frequency of false confessions is rare. When we do learn of them, however, the interrogation tactics and techniques should be scrupulously examined, as well as the circumstances surrounding the interrogation. When this has been done, there are four factors that appear with some regularity in false confession cases:

- The suspect is a juvenile; and/or
- The suspect suffers some mental or psychological impairment; and/or
- The interrogation took place over an inordinate amount of time; and/or
- The interrogators engaged in illegal tactics and techniques

Juveniles/Mental Impairment

Every interrogator must exercise extreme caution and care when interviewing or interrogating a juvenile or a person who is mentally or psychologically impaired. Certainly these individuals can and do commit very serious crimes. But when a juvenile or person who is mentally or psychologically impaired confesses, the investigator should exercise extreme diligence in establishing the accuracy of such a statement through subsequent corroboration. In these situations it is imperative that interrogators do not reveal details of the crime so that they can use the disclosure of such information by the suspect as verification of the confession's authenticity.

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

Threats/Promises

A review of the available information in false confession cases has revealed that in many of the interrogations the investigators engaged in the use of impermissible threats and promises. Interrogators in these cases have made such statements as:

“You’re not leaving this room until you confess.”

“If you tell me you did this you can go home and sleep in your own bed tonight (when such is not the case).”

“You will be sentenced to the maximum term unless you confess.”

“With the evidence that we have, there’s no doubt that you will be convicted of this. The only question is how long you are going to sit in jail.”

“If you don’t tell the truth I will get your children turned over to protective services and you’ll never see them again.”

“The other guys want to charge you with 1st degree murder but if you tell me it was just manslaughter nothing bad will happen to you.”

It goes without saying that in the questioning of a criminal suspect no professional interrogator should engage in any illegal interrogation practices, including any threats, promises of leniency or the exercise of any physically abusive tactics. Furthermore, the rights of the suspect should be scrupulously respected.

Theme Development

It has been suggested by some that the interrogator’s effort to develop a theme during the interrogation is not just offering the suspect a moral excuse for his criminal behavior, but is actually offering the suspect a promise of reduced punishment. Here are several quotes from our books that clarify this issue:

Excerpts from Criminal Interrogation and Confessions (4th edition, 2001 Inbau, Reid, Buckley and Jayne)

- “During the presentation of any theme based upon the morality factor, caution must be taken to avoid any indication that the minimization of the moral blame will relieve the suspect of criminal responsibility.” (p.93)

- “As earlier stated, the interrogator must avoid any expressed or intentionally implied statement to the effect that because of the minimized seriousness of the offense, the suspect is to receive a lighter punishment.” (p.100)
- “In applying this technique of condemning the accomplice, the interrogator must proceed cautiously and must refrain from making any comments to the effect that the blame cast on an accomplice thereby relieves the suspect of legal responsibility for his part in the commission of the offense.” (p. 114)

Excerpt from The Investigator Anthology 2000 Jayne and Buckley

- “During theme development, caution must be exercised, however, not to tell the suspect that if the crime was committed for a morally acceptable reason that the suspect will be accorded leniency.” (p. 414)

Alternative Questions

In The Reid Technique the alternative question should never threaten consequences or offer promises of leniency. The following are improper alternative question examples:

“Do you want to cooperate with me and tell me what happened, or spend the next five to seven years behind bars?” (improper)

“Do you want to be charged with first degree murder, which will mean life in prison, or was this just manslaughter?” (improper)

“Are you going to get this straightened out today, or do you want to spend a few days in jail to think about it?” (improper)

There has been the suggestion by some critics of police interrogation techniques that the alternative question – “Was this your idea or did your buddies talk you into it?” is potentially dangerous because it only offers a suspect (including an innocent one) only two choices, both of which amount to an admission of guilt. Obviously the third choice is for the suspect to deny any participation in the commission of the crime that is under investigation.

However, there is an additional issue raised by some critics about the alternative question – namely, that saying “Was this your idea or did your buddies talk you into it” is essentially the same as saying “If this was your idea you are going to spend time in jail, but if your buddies came up with the idea you won’t have any problems.” This theory is called “pragmatic implication” and was developed from a research study in which college students read various transcripts of interrogations and then speculated on the type of punishment the suspects would

receive based on the interrogation process used. Specifically, the students theorized that when the interrogator suggested in a murder case interrogation that the victim may have done or said something to have provoked the suspect, that he would receive the same punishment as in those interrogations in which the suspect was directly offered a promise of leniency that if he confessed he would receive less punishment.

The courts have rejected the idea that a confession is inadmissible if a suspect confesses because he harbors some internal hope that his confession may lead to a lesser sentence.

State v. Nunn - "...even if a suspect ...influenced perhaps by wishful thinking ...assumed that he would get more lenient treatment...[this] would not, as a matter of law, make the confession inadmissible."

R. v. Rennie - "Very few confessions are inspired solely by remorse. Often the motives of the accused are mixed and include a hope that an early admission may lead to an early release or a lighter sentence."

R v Oickle - The Supreme Court of Canada indicated that the type of alternative question we suggest does not create an inadmissible confession, and offered a clear test of whether or not an implied threat or promise crosses the legal line: "The most important decision in all cases is to look for a *quid pro quo* offer by interrogators, regardless of whether it comes in the form of a threat or a promise."

Confession Corroboration

As we have stated earlier, it is imperative that interrogators do not reveal details of the crime so that they can use the disclosure of such information by the suspect as verification of the confession's authenticity. In each case there should be documented "hold back" information about the details of how the crime was committed; details from the crime scene; details about specific activities perpetrated by the offender; etc. The goal is match the suspect's confession against these details to establish the veracity of the statement. It should be remembered, however, that suspects do not always tell us everything that they did and they do not always remember all of the details themselves.

Excerpt from Criminal Interrogation and Confessions (4th edition, 2001 Inbau, Reid, Buckley and Jayne)

- "... it is also a fact that most confessors to crimes of a serious nature will lie about some aspect of the occurrence, even though they may have disclosed the full truth regarding the main event. They will lie about some detail of the crime for which they have a greater feeling of shame than that which they experienced with respect to the main event itself." (p. 106)

Excerpts from The Investigator Anthology 2000 Jayne and Buckley

- “Lies of justification and omission are commonplace in written confessions. Many of these lies represent the suspect’s attempt to present his crime in the most favorable light, others have a more direct bearing, such as protecting the name of an accomplice or concealing involvement in another crime.” (p. 472)
- “Some confessions contain misinformation because of the suspect’s perceptual distortions. During a kidnapping and murder of a child, the suspect may have vivid recollections of committing the crime, but have no specific recollections of the clothes the child was wearing.” Many crimes are committed when the suspect is experiencing intense emotions (fear, anger, frustration). Just as victims tend to focus on the robber’s weapon during a robbery, the emotions a guilty suspect experiences can bias attention and memory retrieval of specific details. As cognitive psychologist Daniel Schacter writes, “When a person has actually experienced trauma, the central core of the experience is almost always well remembered; if distortion does occur, it is most likely to involve specific details.” Searching for Memory: The Brain, The Mind and the Past 1996 (p.473)

Nevertheless, when significant and substantial contradictions exist between the known facts about the crime and what the suspect describes in his confession, extreme care must be exercised in the assessment of the confession’s validity.

Factors to Consider

With the above discussion in mind, the following represents some factors to consider in the assessment of the credibility of a suspect’s confession. These issues are certainly not all inclusive, and each case must be evaluated on the “totality of circumstances” surrounding the interrogation and confession, but nevertheless, these are elements that should be given careful consideration:

1. The suspect’s condition at the time of the interrogation
 - a. Physical condition (including drug and/or alcohol intoxication)
 - b. Mental capacity
 - c. Psychological condition
2. The suspects age
3. The suspect’s prior experience with law enforcement
4. The suspect’s understanding of the language
5. The length of the interrogation
6. The degree of detail provided by the suspect in his confession

7. The extent of corroboration between the confession and the crime
8. The presence of witnesses to the interrogation and confession
9. The suspect's behavior during the interrogation
10. The effort to address the suspect's physical needs
11. The presence of any improper interrogation techniques

The Testimony Data Sheet provided below will help to document information relevant to these considerations. For more information on these issues go to **Helpful Info** at our web page www.reid.com and then click on the **Critics Corner**.

TESTIMONY DATA SHEET

Name:

DOB:

Language:

People involved in the interrogation:

1. Was Miranda given? Y N time _____ place _____ Witness _____

2. Behavior Analysis Interview start _____ end _____

How do you feel about being interviewed today?

Why have you agreed to talk to me about this matter?

How would you describe your physical health right now?

How much sleep did you get in the last 24 hours?

When was your last full meal?

Have you had any alcohol or drugs in the last 24 hours?

3. Interrogation start _____ end _____

Primary Theme:

Alternative Question:

First admission of guilt time _____

Suspect left interrogation room time _____

Did the suspect request an attorney? Y N

Did the suspect say he no longer wanted to answer questions? Y N

Did the suspect attempt to leave the room? Y N

4. Document any washroom breaks; beverages; food; cigarette breaks, etc: _____

5. Confession Witnessed by _____

Why did you decide to tell the truth about this?

Do you have any complaints about the way you were treated today?

Completed by:

