# Commentary: Ethics-Related Implications and Neurobiological Correlates of False Confessions in Juveniles

Robert Weinstock, MD, and Christopher Thompson, MD

Forensic psychiatrists typically have no role in the process of obtaining confessions. They may believe, as do others, that a confession removes any doubt about guilt, but false confessions are not rare. Like the police, forensic psychiatrists can inadvertently elicit or solidify a false confession through the evaluation process by presuming guilt and forgetting that they are ethically obligated to strive for objectivity. Adolescents are at high risk of making false confessions because of their immaturity and vulnerability, extrinsic factors (such as interrogation techniques), and the dynamic interplay between them. Adolescent immaturity can have a direct bearing on a juvenile's appreciation of his *Miranda* rights and his vulnerability to making a confession (or a false confession) when exposed to coercive interrogation techniques designed for adults. Adolescents need special protection from such interrogation techniques. Forensic psychiatrists have an obligation to be alert to the potential for false confessions and to avoid compounding the problem by presuming guilt.

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Professor Richard Leo[1] calls attention to a problem frequently ignored by forensic psychiatrists. Psychiatrists should not participate in the process of obtaining confessions, and so it would be easy to assume that these problems are not relevant to our work. However, like everyone else, psychiatrists can believe false confessions or assume that a defendant who claims innocence is guilty. This assumption may be correct at times, since guilty people frequently claim that they are innocent. Moreover, much of forensic psychiatric work is dependent on an admission of guilt by the defendant who is being evaluated (e.g., assessing criminal responsibility). As a result, the evaluator can either add to the pressure on a defendant to confess or can ignore evidence of a false confession because an admission of guilt is thought necessary so that a meaningful assessment can be performed (i.e., one that focuses on criminal responsibility).

Dr. Weinstock is Clinical Professor of Psychiatry, and Dr. Thompson is Assistant Clinical Professor of Psychiatry, David Geffen School of Medicine, UCLA, Los Angeles, CA. Address correspondence to: Robert Weinstock, MD, David Geffen School of Medicine at UCLA, 1823 Sawtelle Boulevard, Los Angeles, CA 90025. E-mail: rweinstock@earthlink.net

## Claims of Innocence and Their Potential Impact on the Forensic Psychiatric Evaluation

Forensic psychiatrists may knowingly or inadvertently pressure an evaluee/defendant to confess to a crime because to perform an insanity evaluation, the evaluator must hear an explanation of why the evaluee/defendant committed the crime. The psychiatrist must know the defendant's thought process before and at the time of the crime, his motivation for the crime, his view of the wrongfulness of the crime, and factors that may indicate a lack of control in his failing to refrain from committing the crime (if relevant in that particular jurisdiction). In what may be perceived as an honest attempt to help, the evaluator may tell the defendant that for him to be of any assistance the defendant must describe in detail both the crime itself and his motivation for committing it. Claims of innocence essentially preclude some assessments, such as performing an insanity evaluation.

What if the defendant did not commit the alleged crime? It is important that the forensic psychiatrist always consider this possibility, and this article alerts us to the many reasons to do so. If a defendant is

innocent, there is no crime or mental state at the time of the crime to assess. If the main evidence against a defendant is a confession, it is essential for forensic psychiatrists not to repeat the error made by many police officers (i.e., asking an innocent defendant to tell us why he committed the crime). Psychiatrists who do so may come across much like the police, and defendants are likely to be much less forthcoming.

Alternatively, if the evaluator presumes guilt and the defendant claims he is innocent, this assumption may adversely affect the objectivity of the remainder of the assessment in several ways. Perhaps most importantly, the presumption that the defendant's claims of innocence are specious may cause the psychiatrist to doubt his statements in other respects. For example, it may lead to the belief that any psychiatric symptoms claimed by the defendant are malingered.

Forensic psychiatrists may also dislike a defendant who is erroneously charged with a heinous crime. Although they are required to strive to be objective, such feelings and negative biases may lead some evaluators to forget that they are bound by ethics guidelines.[2]

Mistakenly believing that a defendant is guilty may bias forensic assessments in more subtle ways not even recognized by the evaluator himself. Forensic psychiatrists should always be mindful of the possibility that a defendant may not be guilty or may have falsely confessed to a crime. Such awareness will help minimize the risk of compounding the problem by accepting all confessions as legitimate and true, no matter what type of coercive techniques may have been used to obtain them.

From a more pragmatic and procedural standpoint, if a defendant falsely admits guilt in response to pressure from a forensic examiner, that psychiatrist can be called by the prosecution to describe the confession (if it was not an evaluation confidential to a defense attorney). Therefore, it is essential for us to remember that even a defendant who has confessed to a crime may, in reality, not be guilty.

## False Confessions

Even individuals without significant psychopathology and of average intelligence are vulnerable to making false confessions after being subjected to psychological pressure (i.e., coercive and potentially misleading interrogation techniques). Those with the least experience with the criminal justice system are typically the most vulnerable to coercive interrogation tactics, because they tend to be more trusting of authority figures. They also tend to believe police promises, assurances, or threats more than do those with prior experience with police interrogation. This article provides evidence that psychological pressure far short of water-boarding can increase the possibility of false confession in many defendants. Some defendants may be at even higher risk of falsely confessing (e.g., children or adolescents, those with lower IQs, and those with significant psychopathology).

As Leo[1] points out, unfortunately, erroneous convictions (particularly those based on false confessions) are not rare. Even though the criminal and juvenile justice systems employ the standard of proof beyond a reasonable doubt to minimize the chances of erroneous convictions, judges and juries often appear reluctant to adhere strictly to that standard. According to Leo, in cases in which a defendant has confessed to a crime, judges and juries are likely to convict the defendant on that basis alone and regardless of other evidence that may be exculpatory. Similarly, the forensic psychiatrist may assume guilt if the defendant has confessed to the crime, and proceed with the evaluation accordingly.

If there is evidence of a false confession that has been obtained through the use of psychological pressure by the police (particularly from a vulnerable defendant), in our view the forensic evaluator is ethically obligated to communicate this concern and the supporting data to the hiring attorney and to include it in the report. Although making such communications may not be the forensic psychiatrist's usual function or role, the evaluator does have expertise relevant to psychological pressure and the heightened vulnerability of some individuals or categories of individuals to such pressure (e.g., children and adolescents, the mentally ill, and those with developmental disabilities or dementia). Because of forensic training, access to information related to the case, and efforts to be objective, the psychiatrist may be in a unique position to recognize false confessions and call attention to the need to explore the possibility more carefully.

In the remainder of this commentary, we focus on adolescents as a population that is especially susceptible to confessing falsely to a crime when under psychological pressure. Those adolescents who have mental illness or below-average intelligence, who are intoxicated, or who are withdrawing from drugs or

alcohol are likely to be even more vulnerable to coercive interrogation tactics.

## Adolescents, Paternalism, and Levels of Proof

Traditionally, society has approached adolescents in a somewhat paternalistic manner. The theoretical underpinning for this approach is the recognition that adolescents are inherently more impulsive and display worse judgment than adults. This approach has been reflected operationally in society's denying such privileges as driving, voting, entering into contracts, and drinking alcohol until an individual reaches a certain age. It is also the essential rationale for establishing a separate juvenile justice system.

This common-sense notion has also found support in the scientific literature, which has generally found that adolescents, when compared with adults, are less temperate, less likely to be able to inhibit responses, and less able to evaluate situations critically and carefully before acting.[3,4] As a result of these factors as well as a greater susceptibility of adolescents to peer influences, there is evidence that a number of dimensions relevant to decision-making competence do not develop fully until late adolescence and perhaps beyond.[5] There is evidence of a propensity for adolescents to be more prone than adults to emotions and psychosocial factors overwhelming pure cognitive assessment of a situation, thereby affecting their judgment and ability to make mature decisions especially under acute stress.[3,6]

However, in recent years and despite the evolving scientific literature, there has been a fundamental ideological shift in the way society approaches adolescents' rights in the criminal justice sphere, with paternalism giving way to a more rights-oriented paradigm. This shift initially occurred with the realization that juvenile courts, in practice, often were not as originally conceived truly paternalistic or necessarily concerned with an adolescent's welfare. Instead, these courts were punitive, either intentionally or as an indirect effect of the placement of juveniles in detention facilities (an inherently punitive solution).

As a result of these operating practices, before the *In re Gault* decision in 1967,[7] juveniles could be incarcerated without access to most of the legal protections afforded adult defendants. Historically, this lack of due process had been predicated on the often false assumption that juvenile courts were exclusively rehabilitative, functioning like a parent to educate and correct wayward youth. With the increase in juvenile violent crime in the late 1980s and early 1990s, the transformation to a rights-oriented, punitive approach was accelerated. Many jurisdictions began to transfer juveniles accused of serious crimes to adult criminal court, where they received the same trial-related rights and potential punishments as adult defendants.

In the criminal justice arena, the risk of false confessions by juveniles is likely to increase if they are treated as if they were adults in legal or quasi-legal settings or proceedings (particularly interrogation). Confessions that may have been inadmissible or of questionable probative value (at least) because a parent or attorney was not present during interrogation are now more likely to be viewed as valid and acceptable (the removal of the special protections given to adolescents in the past notwithstanding), so long as the usual *Miranda* warnings were given.[8] The result is that adolescents who may possess relatively mature cognitive capabilities but also demonstrate important psychosocial immaturities are now subject to the same manipulative interrogation techniques routinely used on adults.

Much of the available psychological and neuroimaging data corroborate the common-sense notion of adolescent immaturity. Although it seems likely that there is some relationship between these two indicia and the phenomenon of adolescent development, the exact nature of that relationship remains unclear. There has not been verification by rigorous, prospective, randomized, controlled, double-blind studies, but such proof also is not available in many areas of medicine. These different levels of certainty are reflected in the different levels and categories of proof accepted in evidence-based medicine.[9] Although some studies supporting causation are still needed, the gold standard prospective, randomized, double-blind, placebo-controlled study is usually impossible to conduct in this area. In our view, the level of proof is not as important as fully disclosing the limitations in the scientific literature cited. Such full disclosure minimizes the chance of misleading the trier of fact and helps forensic psychiatrists to be viewed as (and to be) more objective.

That said, there is clear evidence indicating that adolescents are more likely than adults to confess falsely when faced with pressure to do so from an adult authority figure (e.g., the police).[10–13]

## Adolescence and Its Effect on the Rate of False Confessions

### *The Scope of the Problem*

Although false confessions are not a problem unique to adolescents, they appear to occur at a higher rate in this population. Drizin and Leo[14] examined all available proven cases of false confessions by searching the literature and following up on doubtful cases. In a database of 125 false confessions, they found that 33 percent were obtained from juvenile defendants. According to the Innocence Project (www.innocenceproject.org), in 35 percent of cases of false confession or admission, the defendant was 16 years of age or younger and/or developmentally disabled. False confessions and false incriminating statements led to wrongful convictions in 25 percent of the cases.

### *Intrinsic Factors*

Numerous factors linked to maturity of judgment affect the decision-making of adolescents in the context of comprehending and understanding *Miranda* warnings.[15] Understanding and appreciating the meaning of a *Miranda* warning is essential in avoiding a false confession.

In adolescents, both subtle cognitive deficits and psychosocial immaturity may make them more vulnerable to adult coercion to confess to a crime either truthfully or falsely, despite *Miranda* warnings. For example, although adolescents may have a rudimentary (i.e., cognitive) understanding of a *Miranda* warning, they may not be able adequately to appreciate the consequences of confessing (or falsely confessing) to a crime. This lack of appreciation may not be identified if an adult competence assessment instrument (which focuses solely on cognitive capacity) is employed.[16,17]

From a cognitive standpoint, adolescents 15 years of age and younger also appear less able than older adolescents (and adults) to utilize data to inform their decision-making process. In a study by Viljoen *et al.*,[18] not only were younger adolescents more likely to confess and waive their rights to counsel than were 16 to 17-year-olds, but they were also less likely to plead guilty and accept plea bargains, even if they thought the evidence against them was strong. The younger adolescents' tendency to confess was not related to what they were told about the strength of the evidence against them.[18]

In addition to these cognitive limitations, adolescents' psychosocial immaturity may also make them more likely to confess (or falsely confess) in response to coercive interrogation techniques. Numerous studies have shown that adolescents are generally more likely than adults to want to please an adult authority figure, even if it requires falsely confessing to a crime.[8] Adolescents are also more likely to value short-term gains (e.g., leaving a detention facility after confessing) over long-term gains (e.g., having a better chance of being acquitted by not confessing). Finally, adolescents are more likely to believe (naively perhaps) in the accuracy of verdicts in the United States' juvenile and criminal courts. Therefore, an innocent adolescent may be more likely to make a false confession, with the assumption that he will not only receive a short-term gain, but that he also eventually must be exonerated because he is, in fact, innocent.[19]

### *Extrinsic and Iatrogenic Factors*

As detailed extensively by Leo,[1] police interrogation techniques may contribute to an increased rate of false confessions in youth, for a variety of reasons. Perhaps most importantly, many police officers and detectives are trained to interrogate adolescents as though they are adults, without regard for their potential developmental immaturity and the effect that certain tactics (such as claiming to possess nonexistent evidence) might have on the veracity of a youth's confession and, subsequently, the integrity of the entire adjudicative process.[10] In fact, according to Kostelnik *et al.*,[11] those trained in the Reid interrogation technique (which recommends, among other misleading techniques, presenting false evidence) became less sensitive to developmental immaturity in adolescents.

Unqualified forensic evaluators may also inadvertently increase the risk of a youth's making a false confession or decrease the chance of a youth's recanting a false confession. Forensic assessments of adolescents frequently are performed by those with little or no training in either adolescent psychiatry or forensic psychiatry. Therefore, such evaluators are more likely to repeat police errors (e.g., applying adult paradigms to adolescents; pressuring individuals to confess, albeit for different motives than the police; and discounting protestations of innocence), and subsequently to elicit or reinforce false confessions.

In the past 15 years, studies have been designed specifically and prospectively to study whether coercive interrogation techniques increase adolescents' (particularly younger adolescents') rates of false confessions when compared with adults. In a study by Redlich and Goodman,[12] adolescents were falsely accused of causing a computer to crash and were presented with false evidence against them. A large number confessed falsely, with more 12- and 13-year-olds confessing than college students. Similarly, Richardson *et al.*[13] showed a tendency for adolescents to change their answers in response to negative feedback, even if the only feedback given was asking the question repeatedly. It should be noted that these studies involved hypothetical situations and were conducted in nonlegal settings (i.e., in a place other than a police interrogation room). Therefore, the rates of false confession may have been artificially low.

At least partially for these reasons, recommendations have been made not to interrogate adolescents without the presence of an attorney.[8] Although some have argued that only the presence of a parent (rather than an attorney) should be required during a youth's interrogation, we believe for several reasons that parental presence would not sufficiently reduce the risk of false confessions. First, most parents are not legally savvy enough to apprise their children fully of the panoply of rights afforded them in the interrogation situation (and the potential consequences of waiving these rights). Second, parents may have very different goals from those of defense attorneys, and the advice they provide their children, although generally well-meaning, may not be designed to further their children's legal interest. Parents also might mistakenly think their child guilty and deserving of punishment without realizing how severe that punishment might be.

## Conclusions

This article alerts forensic psychiatrists to an important problem. Unfortunately, they can share the general public's erroneous assumption that innocent people do not confess. It is important to remember that although most people who confess to a crime are guilty, false confessions (confirmed as such by DNA evidence) are not unusual, particularly in vulnerable groups such as adolescents, the developmentally disabled, and the mentally ill. Such awareness is essential, so that forensic psychiatrists do not unintentionally compound this already significant problem.

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