

# “False Confessions” and Identification with the Aggressor: Another Forensic Misuse of a Psychiatric Concept

Irwin N. Perr, MD, JD

Some psychiatrists misuse theoretical concepts beyond their generally accepted dimensions in an attempt to support a conclusion favorable to a litigant or defendant. In the case presented, the concept of identification with the aggressor was used in an attempt to eliminate or minimize the effect of a confession and to buttress the claim that the confession itself was false. Quotations from the actual reports and testimony are used to reflect both this tactic and the context in which these issues were pursued, including a rather startling admission by the psychiatrist dealing with the thoroughness of his professional effort. A brief history of “identification with the aggressor” is presented, a history which contrasts with its application to rather routine police questioning. Similarly, skepticism is clearly merited when a psychiatrist testifies as to truthfulness or falsity of a statement.

Often in criminal cases a suspect is confronted with evidence that he has been involved in an illegal act. The evidence may be an allegation by a victim or be circumstantial in the sense that the reported events implicate the accused. However, with many crimes, there may be no direct physical evidence to support the allegations, and the victim may not be the most persuasive of witnesses particularly if there is no substantiation from other sources. Nonetheless, commonly a suspect when apprehended confesses to the crime. Sometimes this occurs because of a sense of guilt, the anxiety after confrontation with the fact of

having been “caught” or implicated, or circumstances in which the suspect reacts with a sense of futility and can no longer deny his involvement. This is particularly the case with naive, noncareer criminals; the career criminal is more likely to have learned the merits of noncommunication.

Once the confession is made, the defense attorney is then confronted with a written statement, an audio tape, or even a videotape—in which a statement has been given voluntarily with or without a Miranda warning. Defense under these circumstances is often hopeless unless the confession can be eliminated by demonstration of a failure in the administration of the Miranda warning or by a claim of intimidation and coercion.

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Dr. Perr is professor of psychiatry, Robert Wood Johnson Medical School, University of Medicine and Dentistry of New Jersey, Piscataway, New Jersey

The need to confess was described by Theodor Reik in his classic, "The Compulsion to Confess."<sup>1</sup> Very rarely, of course, a person may go to the police and volunteer a confession for a crime that he obviously did not do. In recent years, claims of false confessions due to intrapsychic needs have been rare. Individuals involved are usually easily excluded as suspects because of their lack of knowledge of events, but investigators are not unfamiliar with volunteers who seek out the authorities to proclaim their guilt. Many are grossly mentally ill or at least demonstrate significant psychopathology.

Another special circumstance occurs when multiple defendants, charged with a crime, have confessed in the heat of apprehension by authorities. Later, each may attempt to deny his own confession claiming threat or coercion, not by the authorities, but by the codefendant, another aspect that will not be discussed in this paper.

The attorney confronted with a situation, where his client confessed to the crime, is a legitimate suspect, knows the details and circumstances, and provides a statement that on the face of it seems appropriate, must then attempt to deal with the confession. The first line of defense is to have the confession excluded. In many cases, with no confession to overcome, the defense attorney may be able to use the doctrine of reasonable doubt to obtain an acquittal. Thus the defense attorney's prime consideration is the hearing before a judge and outside the presence of the jury to exclude the confession.

The second line of defense, not nearly as effective, is to attack the credibility of the confession at the trial. Here any avenue of concern will be used—the defendant was brain-damaged or retarded, the defendant was trying to please, the defendant was extremely dependent, the defendant was trying to impress, the defendant was threatened by a codefendant or police authorities. A major problem confronting a defendant under these circumstances is the fact that the confession itself is admitted, and the jury has to decide its weight. When the jury hears the statement, the content itself may speak louder than any argument made to diminish its utility, and the trial becomes more ritualistic than real.

### **The Case of Howie the Postman**

This article reports a case in which a unique defense was attempted using purported psychiatric expert information in support of the defense.

In the early 1980s, two young boys at about eight or nine apparently were sexually assaulted under unusual circumstances. At the time they were living with a mother later determined to be psychotic. She purportedly was promiscuous; the father in turn was charged with sexual abuse and with sodomy (anal intercourse) with one of the boys. Also claimed was picture taking, physical abuse, and insertion of a dildo in the anus of the younger boy by a number of men in the neighborhood. The boys were later put into foster homes, and the mother was hospitalized as mentally ill. The boys a few years later finally told the foster mother of their experiences;

she in turn reported these statements to the police authorities.

The younger boy reported that one of those mentioned, known in the neighborhood as Howie the Postman (and so readily identifiable), paid to have sex with his mother and had put a "long white thing" into the boy's anus. The older boy described sexual contact with his mother since age seven; at eight, she attempted to have sexual intercourse. The mother acknowledged the truth of the events charged by the boys; she saw Howie the Postman put a dildo in the younger boy's anus and took pictures that she no longer had when interviewed. The husband also acknowledged anal intercourse with his younger son.

Howie the Postman gave a statement that three or four years earlier he had had attended three or four parties, that the other men had had sex with the mother and had inserted a dildo into the younger boy (he called it a dido—pronounced "deedo"). He admitted to having done this on three occasions.

The younger boy was about 12 when he made his allegations about the events of three to four years earlier. The father and three of the neighborhood men were charged with sexual penetration of a minor under 13.

In his statement the defendant acknowledged that he had been read the Miranda warnings, understood them, and was willing to talk voluntarily. He acknowledged knowing the family involved three or four years earlier, that he had been invited over about three times by the mother, that he had been out of uniform (postal uniform), and

that sexual activity occurred. He denied doing any drinking. "(T)he other guys started fooling around and the kid came out and they started fooling with the lady . . . , and they wanted to experiment with the child, the young boy, so he used a dido (*sic!*) on him, it was about five inches long, and a little less than a half inch, maybe a little less, so it was inserted in his rectum." Howie stated that five adults were present and identified them. The boy was about eight years old at the time. Howie acknowledged that others had sex relations with the mother, but he denied doing so and denied seeing any of the others having anal intercourse with the boy. He acknowledged inserting the dildo on one occasion and later on three occasions. "I just pushed it back and forth a little bit, easy." He stated that the boy was bent over and that he, the boy, "felt good." The others watched, and the mother took pictures of the various men inserting the dildo.

### The Defense Psychiatric Evaluation

Howie, a 58-year-old single man, was evaluated by a psychiatrist for the defense a number of months later. This psychiatrist in his later testimony indicated that about one-half of his practice consisted of Workers Compensation evaluations but little criminal work. In his report, Howie stated that he was picked up at the post office by the police, that he was put on a polygraph, that he got "nervouser and nervouser." He stated that he had three polygraphs. He was confronted with pictures of himself dressed in woman's clothes, as a result

of which he was "embarrassed" and stated that "they had it all against me." His history revealed little of note. He admitted to having sex relations with two women in his life, that sex should not be a pushy thing, that sex should be like the workings of a rifle—it should not be forced. He denied homosexual activity. The MMPI purported to show repression, denial, and need to make a favorable impression (elevated K). The highest scale was Hs, then D and Hy; this was interpreted as showing low self-esteem and a tendency to react with somatic symptoms. His Mf scale was normal. No specific psychiatric diagnosis was made. The psychiatrist concluded,

"It is likely that this man did indeed make a false confession. Under stress, given feelings of shame and guilt for his transvestite behavior, given his need for approval and identity from others, given his all-pervading low self-esteem, given his sexual inhibitions and perception (compared sex relations to using a rifle, something therefore dangerous), given his tendency to confusion and anxiety under stress, he felt intimidated, if not terrorized by, and then identified with, the "aggressors" (the authorities).

From the academic forensic psychiatric standpoint, questions raised were these:

1. Even assuming that the defendant was anxious and gave his confession because of intrapsychic factors, how could a psychiatrist state to a degree of medical certainty, that such a statement was false?

2. The psychiatrist used the concept of identification with the aggressor as the rationale upon which to explain the defendant's behavior in giving a confes-

sion. He did not allege threat, duress, or coercion—acknowledging only that his identification with the aggressors who "intimidated, if not terrorized" him. How reasonable was the use of this concept?

### **The Evaluation by the Psychiatrist for the Prosecution**

Howie stated that he was picked up between 11 a.m. and noon, volunteered for a polygraph, which he was told, he failed. He gave permission for a search of his house; pictures of him in women's clothes were found. Howie stated that because of this, he confessed.

He apparently would dress in such clothes—underwear, nightgowns, and dresses and would take pictures using a timer—a practice that he followed for three years before his arrest, giving little information as to frequency or the nature of the outfits themselves. He now claimed that he confessed to something that he did not do, that he had never been in the home of the boys adding that he never went inside because it was dirty; asked how he knew it was dirty, he indicated that he could see the inside when he delivered mail. He denied knowing the parents, though he described the mother as a filthy thing who did not know what she was doing, and he denied any participation in the events alleged.

Little relevant information was obtained in review of his background. He was a marginal student, graduated at 19, having repeated one grade, and was in the military for two years during the Korean War. After a number of factory

## False Confessions

jobs, he became a postman, a job that he held for about 27 years until arrested, and he lived with his retired stepfather. He was vague in discussing past social and sexual interactions.

Mental status was not striking. He was of modest height (5'7"), weighing 160 lbs. He spoke well and openly about areas of his life not involved in the charges but was cautious, evasive, and resistant. About neutral subjects he was quite affable. No major deviation in thought processes was noted. Based on five of six verbal subtests on the WAIS, he had a prorated IQ of 92. He was tense during the interview and in general was not very sophisticated. The Rorschach (nine responses) reflected caution with some underlying hostility but no gross abnormality. The thematic apperception test responses again reflected caution and evasion; responses were brief and unspontaneous. He was not considered to be a reliable informant. Problems of sexual identity were suggested in his drawings of persons in which no sexual differentiation was noted. He seemed to be a constricted, immature person with problems in sexual identification and low self-esteem.

The cross-dressing practices suggested transvestite fetishism (though the full details were not known), and the current charges raised a question of pedophilia. Situational anxiety related to the charges, loss of job, financial problems, and possibility of incarceration was also present, though not marked.

The report concluded:

If "false confession" means a statement that the content is untrue or inaccurate, I can find

no professional basis for labeling a statement as true or untrue. The statement itself is straight-forward, is one in which [Howie] acknowledges certain behaviors and not others, and indicates an attempt to reflect a limited participation rather than a denial. Not only do I not see a basis for a likelihood or probability that the statement is false, I question the applicability of a professional judgment in this regard.

I do not find the further statements concerning intimidation, terrorization, and identification with the aggressor as having any factual or professional basis or relevance to a current legal issue.

If the inference is that coercion was involved, then that is a matter to be determined by the fact-finders. In any event, there is no mental disorder that would impair his capacity to give a statement."

The practices in New Jersey require a sharing of reports from experts so that both sides are quite aware, well in advance of legal proceedings, of the contents and the issues raised.

## The Concept of Identification with the Aggressor

The use of the concept of "identification with the aggressor" to negate a confession was rather novel. Review of several major texts on psychiatry resulted in little or no commentary on this issue. Several references were found in the *International Encyclopedia of Psychiatry, Psychology, Psychoanalysis, and Neurology*.

The earliest<sup>3</sup> was the use of the term by Alfred Adler who, after the collapse of the monarchy and dismemberment of the Austrian-Hungarian empire, attacked the ruling class who had caused the war, misled the people, and driven them to slaughter. He criticized writers

and scientists for supporting the establishment and defended the people, who he felt were ignorant. He explained the attitude of the people as "being due to their identifying with the aggressors in order to escape their unbearable feeling of being humiliated and incompetent." This mechanism was later used by Anna Freud as will be noted below.

Another reference under *Mechanisms*<sup>4</sup> in discussing the subject, stated that in identification with the aggressor, the subject assumes the role of an object who has, or who he fears, will hurt him.

In another reference dealing with Anna Freud,<sup>5</sup> the example is given of the little boy, afraid of ghosts, who acts the role of the ghost. Another discussion<sup>6</sup> noted Lewy's application of such internalization of values in discussing Frederick II, who identified with his father after being tormented by him for his effeminate musical and literary interests; his father even compelled him to watch the beheading of his adolescent friend. Frederick II himself ultimately became an aggressive and expert militarist, the son incorporating the external threatening object into his own personality. "This, of course, takes place to some degree between all parents and children, and between student and teachers." Bettelheim later used the concept of identification with the aggressor to describe events in Nazi concentration camps wherein prisoners came to accept SS values, tried to emulate SS games, language, and uniforms. In a discussion of treatment of schizophrenia, the term was used to show how the patient imitates the therapist by identification with

the aggressor (the therapist), thus learning new techniques in facing painful issues.<sup>7</sup>

In Kaplan and Sadock,<sup>8</sup> identification with the aggressor is described as a process in which a person incorporates a mental image of a person who represents a source of frustration. It operates in the interest of the developing ego. The classic example is that of the end of the Oedipal stage where the male child identifies with the father who is a source of frustration, being the rival of the mother. The child cannot master or run away from his father, so that he is obliged to identify with him. Another example<sup>9</sup> is that of counterphobic play where a child, playing doctor, gives the doll a shot, like the one received earlier in the day by the child. Similarly<sup>10</sup>

introjection of a feared object serves to avoid anxiety through internalizing the aggressive characteristics of the object, and thereby putting the aggression under one's own control. The aggression is no longer felt as coming from outside, but is taken within and utilized defensively, thus turning the subject's weak, passive position into an active, strong one.

In the *American Handbook of Psychiatry* (ed 2), the example is given of an individual who takes into himself some or many aspects of the threatening situation or person, the example being given of a child who in the face of a significant threat (castration) from the father becomes cruel to a younger sibling.<sup>11</sup>

The great popularizer of the expression was Anna Freud with her chapter, "Identification with the Aggressor," in the classic text, *The Ego and the Mechanisms of Defence*.<sup>12</sup> In her commentary she focused on childhood development

and noted that identification with the aggressor was "a by no means uncommon stage in the normal development of the super-ego." She noted that such a mechanism may be supplemented by another defensive measure, namely, the projection of guilt. It may also be a stage in the development of paranoia.

### Legal Management of the Concept

The evolution of the term was discussed in detail with the prosecutor, opinion being offered that identification with the aggressor was a somewhat amorphous concept with different nuances but that none of them appeared applicable to the case at issue where a suspect was interrogated by the police and confessed after a number of events, including discovery of his aberrant sexual practices (wearing woman's clothes). The interrogations took place over a few-hour period, and no claim of coercion or abuse was made.

It is not clear which definition of identification with the aggressor was used by the defense psychiatrist. Certainly his use of the word, "terrorized," implied that perhaps the Bettelheim usage was involved. In any event, identification involves a mimicking or incorporation so that the person incorporates the behaviors or values of the aggressor. How this would be applicable to a confession and adoption of a perpetrator role is not clear. Certainly the questioning of a suspect as exemplified in this case is not to be compared to the horrendous circumstances of concentration camps or the examples given in past reports of confes-

sions in totalitarian societies where the will of the person is gradually broken down through other techniques—starvation, physical hardship and abuse, torture, isolation, sleep and sensory deprivation, and so forth.

### Denouement

A hearing was scheduled before the judge to determine the admissibility of the confession. Both psychiatrists were present and ready to testify when the defense attorney indicated that he would not contest the admissibility of the confession but would raise the issue of its credibility at the trial.

The rationale for this was not clear. Perhaps the defense attorney recognized that the argument that the confession was tainted because of identification with the aggressor was not likely to be persuasive to a judge. Or perhaps he felt that the pretrial publicity about the confession might affect his ability to use the issue at trial should the confession be declared admissible. In any event, he was in a difficult position because of the nature of the charges and the content of the confession that fitted in readily with the charges.

Finally the trial was held. Howie the Postman testified before the defense psychiatrist. At the trial he communicated readily, showed no evidence of overt mental difficulty, and was evasive—even to the extent of indicating that he was unclear what words meant even though his use of the terms was quite appropriate. He described his apprehension by the police, subsequent questioning, and his denials of involvement fol-

lowed by his "breaking down" after being confronted with the pictures and because he was nervous. On cross-examination Howie acknowledged his voluntary going with the police. He testified that the police told him the words to use in the confession and that the police had rehearsed the confession with him but acknowledged that many of his remarks were his own and not rehearsed. He continued to deny ever having been in the apartment, reiterating that he said everything under stress. The pictures of Howie in woman's clothes were not introduced at the trial.

The defense psychiatrist was then called as a witness and in essence read much of the body of his report. He described the MMPI as indicating neurotic tendencies. He stated that transvestite behavior resulted when a person reassured himself against castration and said because of Howie's sexual inhibitions, his tendency to react with confusion and anxiety under stress, and a need to be liked, Howie gave a false confession under stress since he wanted to give "people what they wanted to hear just to be approved of." He further stated that the confession was false, a statement that he could make with "reasonable medical probability."

On cross-examination the psychiatrist indicated the Mf scale on the MMPI was normal, reliable, and valid despite Howie's admitted transvestism. He acknowledged that there was no mental illness and that the defendant did not indicate that he was terrorized, intimidated, or harshly handled and that anxiety and fear would not be abnormal under the

circumstances. The psychiatrist was then questioned at some length as to why he felt that the confession was probably false; his responses were rather vague and unclear. He did acknowledge that an argument could be made that the confession was true. He was also asked how the defendant was able to give the details in the confession that comported with the known facts and allegations—if he had not been involved and if the confession was false. The psychiatrist responded, "Now, I don't know what happened. If he spontaneously without any coaching came up with the version that coincided with what he was accused of without any coaching . . . then I want to go home now." The psychiatrist also acknowledged that he never in fact had read the confession that he had testified was false. He also indicated that he did not think that, after having denied involvement, Howie could be coached in 25 minutes as to all the details given in the 17-minute confession (apparently that was the only time period that such coaching could have occurred).

The rather amazing testimony obtained on cross-examination that the expert never read the confession that he testified was false is shown in these actual words:

Q: Did you—by the way, did this confession that he told you he gave that was false, did you ever read it?

A: No.

Q: No? Did you ever ask anybody what it said?

A: No.

Q: You curious about any details maybe?

A: I was curious recently and I asked—

Q: How recently?

A: It occurred myself. I asked myself the same



## False Confessions

questions you're asking me.Q: Just yesterday you got curious?

A: It occurred to me, yes.

The prosecutor felt so comfortable with the results of the cross-examination that he did not call a psychiatrist in rebuttal. He was quite familiar with all the details of the initial report and relevant literature concerning identification with the aggressor. At the trial the defense lawyer stayed away from a discussion of this concept. The prosecutor did not explore this area, probably because the concept would only confuse the jury and because he felt that the defense psychiatrist had been reduced to a stance of noncredibility.

Howie the Postman was found guilty.

### Conclusion

My analysis of recent professional reports and testimony used in legal proceedings indicates that professional input has become more and more inappropriate as courts have become quite tolerant in allowing the expression of all kinds of opinions within the leeway given to experts and the practices of the adversarial environment.

In this case, a psychiatrist claimed that a confession was false, initially basing this opinion on personality characteristics and invocation of the concept of "identification with the aggressor." Forensic psychiatrists generally avoid the use of psychodynamic concepts in court where traditionally juries are quite skeptical particularly of sweeping generalizations based on relatively brief examination contact and ill-defined theoretical postulates.

Some psychiatrists in the past have stated that a given person could not have

committed a crime because his personality was incompatible with the alleged behavior; this has occurred despite overwhelming evidence that the person did do the acts claimed. Obviously psychiatrists would be well advised to avoid such testimony as demeaning to the mental health professions when the facts turn out to be clearly to the contrary.

In this case a similar event has occurred in that a confession was declared to be false by a psychiatrist witness. Such a statement or conclusion at a level of medical probability or certainty is of dubious credibility. This article also provides a good example of psychiatric concepts being misused or distorted far beyond their usual professional dimensions in support of an adversarial position.

In this case, it is probable that "justice" resulted. However, it cannot be said that the cause of the reasonable application of professional knowledge for legal purposes was similarly served.

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