

# Commentary: Overcoming Judicial Preferences for Person- Versus Situation-Based Analyses of Interrogation-Induced Confessions

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The vast majority of false confessions occur in the context of interrogation, and in response to the sources of distress and persuasive tactics of the interrogation. However, there are widely held mistaken assumptions that a false confessor must suffer some personal defect such as a mental disorder. In this article, we explain that many normal people may give false confessions under certain social situations. We examine such situations and their effects on false confessions. We urge courts to recognize that suspect-enhanced vulnerabilities are not a necessary condition for the elicitation of false confessions, but rather that much lesser situational factors have just as much influence on the interrogated. We lay out a set of guidelines to assist expert testifiers in evaluating better an interrogation-induced confession.

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Watson *et al.*<sup>1</sup> have emphasized two ideas regarding the primacy of disposition-based over situation-based expert analyses of disputed confessions. First, they have noted that judicial rulings regarding admissibility of expert testimony have been more favorable toward clinical, disposition-based testimony regarding individual vulnerability to false confession than toward situation-based analyses of how the context or the nature of the interrogation can promote false confessions. Second, they have suggested that expert assessment of the alleged false confessor for mental health conditions consistent with enhanced vulnerability to false confession should always be included in expert testimony on false confession. We identify some fundamentally mistaken assumptions underlying admissibility decisions favoring disposition-related testimony, as well as the authors' recommendation that such analyses should always be included in expert testimony that addresses police interrogation-induced disputed confessions.

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## **Assumption I: A False Confessor Must Have Some Personal Deficiency**

The first assumption with which we take issue is the notion that a person would not falsely confess in the absence of some mental defect or abnormal level of vulnerability, which is inherent in judicial rulings favoring expert testimony that incorporates clinical evaluations of personal vulnerability and in the argument that such evaluations should be part of all testimony on causes of false confession. Such an assumption poses several problems.

### **Failure to Recognize the Power of Social Situations**

Research on perception of the causes of behavior has documented the tendency of observers to explain others' behavior in terms of their personal characteristics, without giving adequate weight to the person's situation. This bias toward explanation of behavior as being related to internal, personal dispositions has been dubbed the "fundamental attribution error,"<sup>2,3</sup> in recognition of the widespread manifestations of this error, the fundamentally situated nature of behavior (all behavior takes place in some situational context with potential to affect it), and the vast body

of scientific literature documenting situational influences on behavior.

In contrast to these commonsense assumptions of the primacy of the person, psychologists have shown in myriad ways that situational forces exert powerful effects on behavior, very often outside the awareness of the target or the observer and even of the agent of influence.<sup>4,5</sup> These forces range from the extremely subtle, such as subliminal or supraliminal priming effects on thoughts or behavior or unconscious mimicry of, or conscious conformity to, those around us; to situational constraints (rules or norms regarding how to behave in social situations, such as class, church, and a restaurant); to powerful, deliberate attempts to influence (such as personal sales pitches, negotiations with a spouse, roommate, or business associate). Many such forces, often at various levels, are present in all circumstances of everyday life and significantly affect the behavior of those present. Notwithstanding such pervasive situational influences, however, most scholars agree that behavior is a function of both the person and the environment, with the influence of personal characteristics being greater in relatively weak situations (those exerting relatively little constraint or influence) and less or near none in relatively strong, or powerful, situations entailing many situational constraints or extremely effective sources of influence.<sup>6</sup> In applying such assumptions to interrogation-related confessions, one would expect that individual differences would bear little relationship to the likelihood of true or false confession when the interrogation itself entails little distress and weak tactics of influence (there would be nothing to counter the apparently powerful punishments associated with confession and almost no one would confess) or when distress and tactics of influence or coercion are maximized (almost everyone would confess). Interrogations that are moderately distressing or influential would be expected to reveal the most difference in the tendency to confess.

On the other hand, given that someone has confessed, as an explanation of why that particular individual would have falsely confessed, individual vulnerability would be most likely to explain the confession when external forces of the interrogation were extremely weak and would become less and less likely to do so as the power of the interrogation forces increase.

As reflected in the comments by Watson *et al.*<sup>1</sup> on the thinking in the legal literature regarding the

causes of false confession, there is clearly a widespread assumption that, barring extreme physical abuse or duress, a normal person is highly unlikely to confess against self-interest.<sup>7</sup> While it is understandable that even normal persons might confess when subjected to sufficient physical or emotional distress or when confronted with credible threats of dire consequences or promises of leniency contingent on confession, it is much more difficult to understand how a mentally normal person would falsely confess in the absence of such extreme pressures—that is, when confession is apparently completely against self-interest.

This notion, that confession (particularly false confession) is obviously against self-interest and is therefore likely to occur only among the mentally compromised, is wrong on both counts. Although psychotic delusions may sometimes underlie false confessions, scholars who have studied interrogation widely agree that the decision to confess falsely is typically the result of the inability to bear up under the continuing stresses of detention and the interrogation or the misperception that confession actually is in one's best interest, is inconsequential, or both.<sup>8–12</sup> Thus, the specific concerns that the expert must consider are much more diverse than simple mental vulnerability. Instead, they center largely on the problem of how the suspect might come to understand that confession is at least not against self-interest and most probably will work to his benefit.

Indeed, this is the stated goal of interrogation as taught in prominent interrogation manuals (e.g. “Psychologically speaking, a successful interrogation is analogous to selling a resident of the Yukon air conditioning in January; for a suspect to acknowledge a criminal act involving negative consequences requires that the suspect believe a confession is in his best interest” [Ref. 13, p 207]). The techniques taught in such manuals and related training seminars incorporate many of the most powerful, empirically supported, scientifically based techniques in which social influence is used to convey this message and to persuade the suspect to confess. Essentially, the entire interrogation conveys a powerful anti-*Miranda*<sup>14</sup> message that the admission of guilt works to one's benefit, whereas the withholding of information works to one's detriment.

The target of an interrogation conducted in conformity with interrogation training is subjected to the most powerful psychological weapons of social

influence that are not forbidden by law.<sup>8,15,16</sup> The single goal of that effort is to induce the suspect to make self-incriminating statements, preferably a full confession, and to induce him to do so in enough compelling detail that it will be difficult for later observers to believe that he would give such an account if he had not actually committed the offense (see Leo<sup>11</sup> for a description of how confessions are shaped by interrogators to appear immune to challenge).

If the forces of the interrogation are sufficiently powerful, most will succumb, regardless of whether they are vulnerable or whether the confession is truthful. Both the judiciary and many who offer clinically based expert testimony on false confessions tend to underestimate the power of the situation faced by criminal suspects and the ability of these situational forces to affect persons at all levels of the mental health and mental ability continua. We would all expect that should an interrogator point a loaded gun at the head of an exhausted suspect at the end of a 48-hour interrogation and tell him that if he does not confess immediately to the cold blooded murder of his own mother the interrogator will pull the trigger, most anyone who viewed the threat as credible would confess—falsely or not. But, as the interrogation becomes less overtly threatening or physically abusive, many assume that only those who have some form of enhanced vulnerability will succumb. The sophisticated psychological weapons of influence more likely to be employed by modern interrogators are both more subtle and more difficult to identify and are viewed by many as less influential.

However, the empirically supported principles of influence incorporated into interrogation technique, as taught in prominent manuals and training seminars,<sup>17</sup> are both jointly and individually much more powerful than the judiciary, juries, and clinicians may assume. For example, the famous Milgram<sup>18</sup> experiments on obedience to authority, widely cited by interrogation experts to illustrate the power of authorities to elicit compliance, showed how very powerful authority alone can be. The principal message of those experiments was that a person with no real authority (but with the trappings of authority) was able to induce two-thirds of participants to give what they believed to be potentially lethal electric shocks to a middle-aged man who had screamed to be let go, complained that his heart was bothering him, and fallen silent. These participants continued

to give escalating shocks to this vulnerable man who (as far as they knew) may or may not have died or had a heart attack, as long as the experimenter told them to. This extreme influence has been obtained repeatedly in countless replications across the world, across many subject populations and many forms of hurtful behavior (including having female subjects shock real little puppies who screamed in pain; even though most of the subjects were crying, they all complied).<sup>19</sup>

While not a behavior against self-interest, the delivery of painful and even potentially fatal shocks to another is arguably, just like false confession, surprising and inconsistent with common sense. However, just as we argue to be the case with interrogation, the assumption that powerful social influences work only on the vulnerable was shown to be in error by the Milgram<sup>18</sup> research. The apparent authority of the experimenter proved to be an unexpectedly powerful situational force that influenced the majority (not just the mentally deficient or weak) to act in ways no one would anticipate. Two-thirds of those in the Milgram research administered the potentially lethal shocks to the other participant, whereas 40 trained psychiatrists at Yale predicted that less than one-tenth of one percent of participants would do so, and a sample of psychology majors at Yale predicted only one percent.

The recent book, *The Lucifer Effect* (by Phillip Zimbardo, a prominent influence expert and past president of the American Psychological Association), lays out in great detail the potential of powerful situations and agents of influence to lead ordinary people to behave in extraordinary and wholly counterintuitive ways.<sup>5</sup> Such sources of social influence have contributed to many real-life forms of extreme influence, such as compliance with cult demands, development of false memories of alien abduction, ritual satanic abuse or sexual abuse, mass suicides, the strip-search scam, and many others.<sup>20,21</sup> Researchers have documented that many of the same basic tactics of influence employed in interrogations are central to these other instances of extreme influence, as well as to common forms of influence by professionals in everyday life (car salesmen or politicians).<sup>22,23</sup>

It should be noted, however, that even the most apparently inconsequential of situational forces can overwhelm the influence of personality. In a classic demonstration of this phenomenon, Lieberman *et al.*<sup>24</sup> obtained ratings of residents in a Stanford dormitory by

their resident assistants. Those rated as especially competitive and those deemed especially cooperative were chosen to participate later in a game in which they could play cooperatively and try to make sure that both they and their partners won some money, or play competitively, and try to maximize their own winnings at their partners' expense. Although everything else about the game was identical, half were told that the game was called The Wall Street Game and half were told it was The Community Game. This seemingly trivial difference in the name of the game overwhelmed any personality differences that were otherwise clearly observed by the dorm assistants. Only the name of the game was associated with competitive behavior, with roughly two-thirds choosing the competitive strategy when it was called The Wall Street Game and only one-third when it was called The Community Game. Such results have been observed throughout the literature in social psychology, where seemingly subtle or trivial aspects of a situation outweigh differences in personality.<sup>25</sup>

The Milgram<sup>18</sup> research provided a very important demonstration of the extremity of behavior that people can be led to via forces of influence that may seem to the observer to be weak or insufficient to elicit such behavior. As with this use of authority, although other influence techniques may also appear relatively innocuous, they are powerfully effective individually and, in addition, are often deployed simultaneously. Influence can only increase when multiple tactics are combined.

As we have detailed in other contexts,<sup>8,11,14</sup> modern methods of psychological interrogation, although often subtle, incorporate a battery of the most powerful social influence techniques identified by science. Even at the level of individual words, phrases, or single sentences, specialized tactics are designed to exert specific effects.<sup>26</sup> This many-pronged attack occurs in a context in which high stakes make the suspect highly attentive to any clues to what will get him the best outcome, in which the bulk of the influence tactics are directed toward those very thought processes, and in which most of the information conveyed by an apparently credible authority is actually false and misleading.<sup>15,16</sup>

When used in police interrogations, these techniques are extremely effective. Note, for example, that although confession, whether true or false, is almost never in one's self-interest, more than 60 percent of suspects do confess,<sup>27</sup> suggesting that many normal suspects are being led to confess against self-

interest. Although confessions, particularly if false, may seem surprising at first glance, they are less so when the full nature of the interrogation techniques is taken into consideration.

We have illustrated in several experiments just how easy it can be to convince normal persons that false confession is the best alternative.<sup>28</sup> Undergraduate students in these experiments were given an introductory case background describing "Eddie," who had been accused by his granddaughter of sexual abuse. Participants were told that Eddie is actually innocent, but that he has been accused and is undergoing interrogation about the abuse. They were to imagine that they were Eddie, that they were innocent, and that they must decide how to react during the interrogation. They then read a four- to six-page transcript of Eddie's interrogation, in which several interrogation tactics were used, after which they were asked to recommend whether Eddie should refuse to talk further and ask for an attorney, keep talking but refuse to confess, confess to an accidental version of the offense (accidentally touching the girl while sleeping and thinking it was his wife), or confess to deliberate molestation. The basic transcript was taken from an actual interrogation of such a suspect and was adjusted to incorporate or not incorporate various tactics. In response to just this short transcript, roughly 26 percent of participants in one such experiment recommended false confession as the best choice for minimizing the likelihood of getting charged with a crime at all, and roughly 77 percent as the best choice for minimizing the seriousness of the charges, if any.

Clearly, these undergraduates were not generally mentally deficient or overly vulnerable, and yet many fell prey to the powerful message of the interrogation that promotes the perception that confession is the best way to optimize one's legal outcomes (all legally within the scope of tactics accepted by the courts and taught in standard interrogation manuals).<sup>18</sup> Similar tactics have also led students to confess falsely to cheating and other offenses with potentially serious academic consequences or financial or other costs,<sup>10</sup> again in a large enough number that the bulk of false confessors must be considered normal.

It is much easier than it would seem to convince a suspect that confession is in his best interest. For example, if the option of establishing innocence is taken off the table through the presentation of false or misleading evidence and the suspect is convinced no one is



going to believe him, it becomes much easier to persuade him that confession is wise. If the interrogator presents minimization scenarios, such as self-defense or accident, and suggests that these are the circumstances under which the crime occurred, the suspect can reasonably believe confession will have no consequences. It is no surprise, given the effectiveness of such interrogation tactics, that false confessors widely report that they expected to be let go.<sup>12,29,30</sup>

A further consideration is that innocent and guilty persons reason differently about the consequences of their behavior during interrogation, a process that Saul Kassin<sup>31</sup> has dubbed the phenomenology of innocence. The innocent are more likely than the guilty to waive their *Miranda* rights,<sup>32</sup> reasoning that they have nothing to lose by talking, but that they will be viewed with suspicion if they fail to talk.<sup>33</sup> The innocent are also more likely to view confession as inconsequential, reasoning that their attorneys or the police investigation of the case will later establish their innocence. Proven false confessor Ted Bradford, who was wrongfully convicted and later exonerated, was told by the police during his interrogation that they had the DNA of the perpetrator and were confident that it was his. Encouraged by the interrogator to believe that the case against him would be dismissed as soon as the DNA was tested and exhausted by the lengthy interrogation, he falsely confessed to rape, believing that he would nevertheless soon be freed.<sup>34</sup> Such thinking among innocents can easily occur among normal suspects, and sophisticated reasoning about how one will be proven innocent may be more likely to be used by the very intelligent or well-informed. Most fail to realize that the investigation will stop cold when the confession is in and the evidence that might have proved their innocence will never be collected or will never be recognized as exonerating if it is collected.

It is clear that interrogation tactics can create the appearance that confession, even false confession, can be in one's best legal interest or completely inconsequential and that normal persons can and do falsely confess in the laboratory and in real life. However, an assumption by judges, juries, and experts that normal persons do not confess against self-interest, particularly falsely, can result in a complete disregard of claims of false confession among those with no identifiable deficiency or relevant abnormality, even though many such persons (even the mentally gifted) have provided known false confessions that

went unrecognized by the police, prosecutors, judges, and juries involved in their wrongful convictions. For example, Derek Tice, who confessed falsely to murder and rape, had an IQ of at least 148,<sup>35</sup> and Beverly Monroe, an organic chemist with a master's degree who worked in the Patents Department at Philip Morris, confessed falsely to murder.<sup>36</sup>

In sum, we suggest that it is problematic for experts in the area of police interrogation and confession (whether they have a clinical background or not) to support judicial bias that requires a foundation of enhanced suspect vulnerability for experts to testify about false confession. It is not the case that such vulnerabilities are a necessary condition for the elicitation of false confessions, and in fact they may be a much lesser factor than currently assumed even by nonclinical experts in the area.

### **Assumption II: One Can Evaluate Individual Vulnerability to False Confession Without Understanding the Full Nature of the Influences Brought to Bear During the Interrogation**

As suggested in the preceding discussion, the appropriate expertise for assessing how and why a suspect may be vulnerable to specific interrogative influences entails knowledge of what, exactly, those influences are, how they work, and how a specific characteristic would enhance the mechanism of influence. If one does not know what the mechanism of influence is or how it works, one simply cannot know who will be more vulnerable.

As noted earlier, scholars in the field of interrogation widely agree that false confessions occur when there is severe physical or emotional distress and the suspect is persuaded by the interrogator that confession offers an escape from the stresses of custody and interrogation, that confession will be inconsequential, or that it will work for rather than against his legal best interest. In other words, the suspect may confess to serve immediate emotional or long-term legal self-interest. Thus, the fundamental question is not why the suspect would make false admissions against self-interest, but rather how police interrogation leads the suspect to believe confession is inconsequential or in his best interest. To understand what could render a person vulnerable to false confession, one would have to ask what factors could undermine the suspect's tolerance of physical and emotional distress and what could render him more vulnerable to

the assumption that confession would be inconsequential or to the influence tactics designed to convince him that confession is in his best interest.

Although clinical experts who focus on individual vulnerability may be well equipped to assess distress intolerance, some may have little or no expertise regarding influence and decision-making, may not know the literature, and may have no real understanding of how interrogations are conducted. They may not be familiar with interrogation techniques, how they are used during questioning, how to recognize that they have been used, or how effective they are and why. Our reading of numerous reports by clinical experts who have evaluated individual vulnerability to false confession showed that some experts focus almost exclusively on factors that cause distress intolerance; on the mental defects that affect rational thinking; or on the enhanced deference that some show to others generally, to authorities in particular, or to specific persons or category of persons. While we agree that such vulnerabilities are important, they address only a subset of the influential forces of the typical interrogation and therefore only a subset of the individual differences relevant to behavior in the interrogation room.<sup>37</sup>

In contrast, the scientific literature on influence, persuasion, and decision-making is replete with models of the mechanisms of individual differences in vulnerability to influence brought to bear by the use of specific techniques. Whereas social psychologists are not licensed to administer some evaluations, such as IQ testing, the Minnesota Multiphasic Inventory (MMPI), and other traditional clinical instruments, as social influence experts, they are aware of the literature relating such assessments to susceptibility to influence. Therefore, they can testify to the increase in vulnerability that may be present in the interviewee during formal assessments. As well, experts in interrogation techniques are aware of and are capable of administering many instruments that measure interindividual differences related to susceptibility to influence (e.g., the Gudjonsson Suggestibility Scales<sup>9</sup>), but are not generally known to clinical psychologists and psychiatrists.

The science of influence and decision-making is well established and relevant to understanding interrogative influence. There is no guarantee that any given influence tactic will be successful when used on an individual in a particular circumstance. However, there is no characteristic that has been shown to ren-

der any category of individual immune to a specific tactic. Some people in all categories will succumb. Further, the overall likelihood that a given person will succumb to influence increases as the use of interrogation tactics increases and more powerful tactics are employed, regardless of individual vulnerabilities. The magnitude of this increase may differ among the categories of vulnerable interviewees. However, both the interrogation tactics used and the vulnerabilities of the suspect are relevant to the weight given to a confession.

## Conclusions

We believe that understanding the forces of influence within the interrogation and the individual differences that enhance vulnerability to these forces are important. It is rare that mental defect leads a person to come to the police station unprompted in any way and confess (again unprompted in any way) to a crime. Most false confessions occur in the context of interrogation and in response to the distress brought on by the pressure of the persuasive tactics used in the interrogation. Thus, we suggest that an expert asked to evaluate an interrogation-induced confession should be prepared to testify to the following concerns:

What are the sources of distress facing the suspect during interrogation and how strong are they? Is the suspect particularly vulnerable to any or all of them? What are the mechanisms through which these sources of distress can be employed to promote confession (for example, willingness to do anything to escape immediately versus impairment of rational evaluation of the consequences of confession)?

What has happened in the interrogation at hand that might promote the suspect's misperception that confession will be inconsequential or in his best interest? Is the suspect particularly vulnerable to any of these forces?

How are distress, distress intolerance, and rational analysis of the consequences of confession interrelated? How might the suspect's vulnerabilities alter the interdependence of the effects of distress intolerance and rational analysis? (For example, are there vulnerable suspects for whom relatively lower levels of distress exert catastrophic effects on rational information processing and decision-making?)

Only knowledge of the basic sources of distress and the influences on the suspect's decision-making will allow the expert to begin to address the second level of analysis of individual vulnerability.

Clinicians tend to be personality psychologists who explain behavior in terms of the dispositions of the actors, rather than in terms of the situational forces providing the context in which they behave. Without the testimony of experts who can clearly and convincingly explain the forces of the interrogation that cause distress, impair rational judgment, and mislead the suspect to decide that confession (truthful or false) will be inconsequential or beneficial, judges and juries are unlikely to recognize false confession in any but the obviously impaired accused. Experts, regardless of their original area of expertise, should make every effort to be familiar with the extensive body of social influence and decision-making literature, the scientific analysis of police interrogation tactics, and the powerfully influential forces brought to bear on criminal suspects who undergo police interrogation, and they should be prepared to explain these influences clearly and convincingly to judges and juries. Without such knowledge, experts will find themselves irrelevant, or even counterproductive, in offering testimony regarding false confessors with no obvious impairment. In the worst case scenario, the expert may mistakenly evaluate the confession as voluntary or true, leaving the false confessor defenseless, without an expert to support his retraction.

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