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Running Head: Understanding False Confessions

Introduction

The development of DNA testing has, for the first time in the history of criminal justice, made it possible to demonstrate with almost certainty that a convicted individual did not commit a crime.¹ Since its inception in 1992, The Innocence Project has identified more than 250 cases wherein DNA testing revealed that the convicted suspect was factually innocent (www.innocence-project.org). False confessions are identified as a factor in about 25% of these cases.² Wrongful convictions are of concern to all members of the criminal

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¹ The fundamentals of the DNA testing process suggest that there is no possibility that a person who does not match the DNA sample was a contributor. We have chosen to use the term almost certain here to reflect the possibility for human error in the DNA testing and interpretation process.

² It should be noted that The Innocence Project's definition of false confessions is very broad and includes incriminatory statements other than "I did it" as confessions. The prevalence of

justice system not only because a wrongful conviction results in the imprisonment of an innocent person, but also because it allows the true offender to remain at large and commit more crimes.

This paper will review what research has discovered about the phenomenon of false confessions. This will be accomplished by answering a series of questions about false confessions using the established research. These are: how often do false confessions happen; what are the types of false confessions; what are the risk factors; and how can false confessions be identified?

How Often Do False Confessions Occur?

Determining how often false confessions occur is extremely difficult and researchers have used a variety of methods to arrive at estimates. Some researchers have explored the rate of false confessions by examining wrongful convictions that were produced, at least in part, by confessions. By using estimates of interrogations, arrests, convictions, and error rates; researchers have suggested that wrongful convictions, resulting from false confessions, range from a low of 10 (.001% of all convictions) to a high of 840 (.04% of all convictions) per year in the United States (Cassell 1998; Huff, Rattner, & Sagarin 1986). One of the limitations of this type of methodology is that both the number of interrogations carried out each year and the number of wrongful convictions are unknown. These issues force researchers to estimate these values and the estimates that they choose may consequently be incorrect.

Another methodology for attempting to determine the frequency of false confessions that result from police interrogations is to select a random sample of cases and then look for false confessions in the sample. Cassell (1998) examined the sample of 173 cases from a prosecutor's office and did not find evidence of any false confessions. Similarly, Leo (a critic who suggests that modern interrogation methods are likely to produce false confessions) did not report any false confessions in his 1996 study of 182 police interrogations. While the purpose of his study was not to look for false confessions, one would assume that he would mention false confessions if he had observed them. Of course, as suggested by the low frequency estimates in the paragraph above, an extremely large sample would be needed to detect any false confessions.

Yet another way to estimate the frequency of false confessions is to survey convicts and ask if they have ever given a false confession to the police. Gud-

false confessions appears to be about 10% when only direct admissions of guilt are included (see Blair 2005).

jonsson and Sigurdsson (1994) and Sigurdsson and Gudjonsson (1996) surveyed Icelandic prisoners. The researchers asked if the prisoners gave a false confession to the crime for which they were currently in prison and if they had ever given a false confession to the police for any crime. Based on the results of these surveys, Gudjonsson (2003) concluded that the false confession rate in Iceland was below 1%.

Although the frequency of false confessions is difficult to determine, the above mentioned studies, using a variety of methodologies, suggest that false confessions are relatively rare events. However, given the large number of interrogations that are conducted throughout the world in any given year, we would expect to see thousands of false confessions every year even with a low base rate of occurrence. We turn now to the types of false confessions.

What are the types of False Confessions?

Research has suggested that interrogations can produce two types of false confessions: (1) internalized false confessions and (2) compliant false confessions (Gudjonsson 2003; Leo 2001). The distinguishing factor between these is whether the false confessor actually believes that he has committed the act to which he has confessed.

Internalized False Confessions

When the false confessor believes that he has actually committed an act in which he had no involvement, the confession is commonly referred to as being internalized (Gudjonsson 2003; Ofshe & Leo 1997b; Kassin & Wrightsman 1985). An internalized false confession is generally assumed to follow a three-step process. First, the interrogator attacks the suspect's confidence in his or her memory. Next, the interrogator suggests that the suspect committed the crime but does not remember committing the crime due to some form of amnesia or blackout. Finally, after the suspect accepts that he or she must have committed the crime, the interrogator and suspect work together to produce a detailed confession (Gudjonsson 2003; Leo 2001).

Research has proposed that memory distrust syndrome (MDS), which occurs when individuals mistrust their memories, as a cause of internalized false confessions. Gudjonsson has conducted extensive research into this type of false confession and has found some evidence to suggest that children, individuals

with low IQs and drug addicts may be particularly vulnerable to this type of false confession (see Gudjonsson 2003 for a thorough review of internalized false confession research).

Compliant False Confessions

False confessions that occur when the individual does not believe that he committed the act are commonly referred to as compliant false confessions (Gudjonsson 2003; Inbau et al. 2001; Ofshe & Leo 1997a; Kassin & Wrightsman 1985). This type of confession is suggested to occur when a subject seeks some form of benefit from confessing, the avoidance of negative consequences from not confessing, or both (Gudjonsson 2003; Inbau et al. 2001; Leo 2001; Kassin & Wrightsman 1985).

A two-step process has been proposed for this type of false confession (Leo 2001; Ofshe & Leo 1997b). Initially, the interrogator convinces the suspect that his situation is hopeless in order to convince him that negative consequences are unavoidable. This is accomplished through repeated accusations of guilt, the presentation of real or fictitious evidence and blocked attempts to deny guilt. Once a suspect is convinced that the situation is hopeless, the interrogator presents the subject with inducements to confess. These inducements are designed to convince the suspect that benefits of confessing outweigh the costs of a continuing claim of innocence (Leo 2001). Inducements include statements like the victim deserved it or people will think better of you if you tell the truth.

What are the Risk Factors?

Kassin, Drizin, Grisso, Gudjonsson, Leo and Redlich (2009), in a white paper for the American Psychology and Law Society, propose that there are two categories of risk factors; situational and dispositional. Situational risk factors include various aspects of the environment of the interrogation (i.e., length and interrogation methods). Dispositional risk factors refer to traits a particular suspect may have that may make him/her more vulnerable to make a false confession. There is general agreement about the dispositional factors. The situational factors tend to be more controversial. We discuss both sets of factors below.

Situational Risk Factors False Evidence Ploys

A false evidence ploy suggests to the suspect that the police have evidence of the suspect's guilt, which does not actually exist. False evidence ploys have been identified in several false confession cases. Experimental research on the effect of this type of ploy has been inconsistent. Two studies have explored the impact of false evidence on confessions when the suspect was not certain that they had committed a crime (Redlich & Goodman 2003; Kassin & Kiechel 1996). Both studies involved a subject typing on a keyboard after instructing them not to press a certain key, as this would cause the computer to crash. After a period of time, the computer automatically crashed and the researcher accused the suspect of pressing the prohibited key. With half of the subjects in Kassin & Kiechel's (1996) study, a confederate claimed to have seen the participant pressing the prohibited key. This false evidence procedure produced significantly more false confessions than when no false evidence was introduced. Participants given the false evidence were also more likely to internalize their involvement in pressing the prohibited key. That is they were more likely to think that they had actually pressed the prohibited key when they had not. In the Redlich & Goodman (2003) study, the experimenter presented half of the subjects with a computer printout that showed that the participant had pressed the prohibited key in the false evidence conditions. This study did not find that false evidence had a significant impact on either false confession or internalization.

To examine the impact of false evidence when participants were certain that they did not commit the prohibited act, Blair (2007) conducted a study in which the participants were told not to simultaneously press the control, alt, and delete keys while conducting a mouse driven task as this would cause the computer to crash. The participants, thus, could be certain that they did not perform the prohibited act. The computer crashed automatically after a set period of time. Participants in the false evidence condition were told that a server, which tracked the computer on which the participant was working, indicated that the participant simultaneously pressed the control, alt, and delete keys. The false evidence in this study did not impact the false confession rate.

Nash and Wade (2009) the subjects were asked to participate in computerized gambling tasks using a fake bank and money. Similar to the studies above, the subjects were accused of cheating. Instead of using a print out from the computer or testimony from a confederate, fake videos were used as evidence

against the subjects. After finishing the gambling tasks, respondents were brought back and accused of taking money from the fake bank when they did not. All of them were asked to sign a confession statement. Some respondents were *told* that there was a video of the subject stealing from the fake bank; the others were *shown* a forged which implicated them in stealing money. Respondents who were told there was a video implicating them were more likely to comply with the accusation on the second request in comparison to individuals who were shown the fake video. Subjects that *saw* the video of him/herself cheating were more likely to sign a confession on the first request (93%) and were more likely to partially or fully internalize the confession (86%) compared to subjects who were merely told there was video that implicated them (60%). The results suggest that individuals are more likely to falsely confess to a crime when there is digital evidence of the subject cheating. Taken together, these studies do not consistently support the belief that false evidence causes false confessions.

Minimization

Interrogators use a variety of statements in their attempts to get suspects to confess. These statements are called inducements when they seek to change the suspect's perceptions of the costs and benefits of a confession. Inducements generally fall into two categories referred to as 'hard sell' and 'soft sell' techniques (Kassin & McNall 1991). The 'hard sell' technique, or maximization, involves tactics such as exaggerating the seriousness of the offense and suggesting that others will think poorly of the subject if he does not confess. 'Soft sell' techniques, or minimizations, seek to minimize the subject's perceptions of the negative consequences of confessing. Offering face-saving excuses, blaming the victim or citing extenuating circumstances are all examples of minimizations.

Critics claim that minimizations and maximizations communicate promises of leniency and threats of punishment that are similar to explicit threats of punishment and promises of leniency through a process called pragmatic implication. Explicit threats and promises are not permitted under the law in many countries because they are believed to increase the likelihood of a false confession occurring. The use of inducements is, therefore, believed to increase the likelihood that false confessions would occur because they are believed to operate in a way that is similar to explicit threats and promises.

One study provides limited support for the view that minimization or maximization techniques may alter perceptions of punishment (Kassin & McNall

1991). In this study participants read transcripts of interrogations that contained various interrogation tactics and then indicated the amount of punishment that they felt the suspect in the transcript should receive. The results found that minimizations or maximizations altered the amount of punishment participants recommended in some, but not all, of the conditions.

Russano, Meissner, Narchet & Kassin (2005) examined the impact of minimization and offering a deal on false confessions. Each participant was matched with a confederate to answer questions. Some questions were classified as "team questions" where both the respondent and the confederate were to participate in answering the question; others were to be answered by the participant on their own. At some point during the session, the administrator left the room. When the administrator left the room, the confederate asked for help on one of the individual questions. Some respondents helped the confederate on this question and thus cheated while others did not. Both innocent and guilty subjects were interrogated and accused of cheating during the process. Minimization methods and offering an explicit deal increased the number of confessions given by both innocent and guilty subjects. The use of minimization and offering a deal increased the rate of true confessions to 81% and 72% respectively, from the original 46% (without any interrogation tactic). The use of minimization and offering a deal to respondents increased the false confession rate to 18% and 14%. The original rate of false confessions, barring minimization and offering a deal was 6%. However, when both methods were collectively used, the rate of false confessions rose to 43% (Russano et al. 2005).

All of the studies that have been used to support the beliefs that false evidence and minimizations produce false confessions have been laboratory based. As a result, the studies lack many of the factors that are present during actual interrogations (Russano et al. 2005). How these studies relate to actual interrogations is consequently unclear. Small changes in the designs of these studies have also produced drastically different results suggesting that the underlying mechanisms are unstable.

Dispositional Risk Factors

Immaturity is a determining factor which negatively influences juveniles during interrogations. Children are more suggestible to suggestion than adults, have a strong trust of people in authority, tend to act on emotions, and are less likely to understand consequences of confessing to a crime they may or may not have committed (Drizin & Leo 2004; Gudjonsson 2003; Dunn 1995; Ceci 1994; Sigurdsson & Gudjonsson 1994; Ceci & Bruck 1993; Ofshe 1989;

Grisso 1981; Loftus 1979). Both academics and practitioners believe that children and the mentally handicapped are at risk for giving false confessions. It appears that juveniles and the mentally handicapped are simply not as able to resist interrogation pressure as normal adults.

Gudjonsson, Sigurdsson, Asegeirsdottir & Sigfusdottir, (2007) examined background factors of 1,896 Iceland students. Their ages ranged from 15–24. One hundred and thirty-eight members of the sample claimed to have falsely confessed. Of those respondents who claimed they had falsely confessed to a crime; bullying at school, LSD use, substance misuse treatment, experienced violence in the street or at home, death of a parent or sibling, being expelled from school, and negative school performance were more common compared to individuals who claimed they did not falsely confess.

Identifying False Confessions

While the situational and dispositional factors mentioned above may increase the likelihood of a false confession occurring, the majority of confessions with one or more of these risk factors will still be true. Additionally, false confessions can also occur when none of the risk factors discussed above are present. It is, therefore, useful to treat every confession as if it could be false and test it for reliability.

Leo (2008) suggests that three factors should be weighed in establishing the reliability of a confession. These are: (1) the confession is consistent with facts known to the public, (2) the confession is consistent with the facts *not* known to the public but known to the police and (3) the confession includes information that led the investigators to new evidence.

At its most basic level, the confession should be consistent with facts known to the public. This type of consistency, however, does not mean that the confession is true, as the false confessor may have heard this information and integrated it into his or her statement.

Information that is consistent with facts not known to the public but known to the police is suggestive of a true confession. Care must be taken, however, to ensure that the information was not accidentally leaked during the interrogation before the confession is considered true. We, also, suggest that information that will be withheld from the public be clearly indicated in the case file. This will help prevent accidental disclosure.

Finally, a confession that leads the police to new evidence in the case is almost certainly true. That is, if the confessor says that he hid the gun in a particular

location, and the police find the gun in that location, the confession is almost certainly true.

Conducting this type of analysis provides a final check to verify that the confession is consistent with the facts of the case. From a logical standpoint, if the confession is not, it cannot be true. Corroboration of the confession with known facts should be a regular part of any investigation. In order to be certain that the corroborative information was not accidentally leaked during interrogation, electronic recording of an interrogation is necessary.

Videotaping Interrogations

Various research has supported the idea of mandated electronic recording of the entire interrogation and has provided reasons why mandating such practices would be beneficial. According to Drizin and Reich (2004), electronic recording of an interrogation allows individuals to make an accurate examination of the confession, prevents coercive interrogation tactics and could improve the relationship between the police and that public. The use of videotape also allows for an examination of what objectively happened during the interrogation rather than relying on the often faulty and subjective accounts of the participants in the interrogation (Kassin et al. 2009; Drizin & Reich 2004).

Others have suggested that electronic recording of an interrogation will also minimize the need for note-taking and ensure that the confession was given voluntarily (The Justice Project 2008). Providing an objective record of what occurred during the interrogation is critical to testing the reliability of a confession. Without it, there is always a possibility that information known to the police was accidentally leaked to the suspect. The objective record also protects both the suspect from misconduct on the part of the interrogator and the interrogator from claims of misconduct on the part of the suspect (Drizin & Reich 2004). That is the interrogator is less likely to misbehave if he or she knows that the session is being recorded. Essentially, electronic recording of interrogations is deemed to help both the defendants and the officers (The Justice Project 2008; Drizin & Reich 2004; Jayne 2003).

A study conducted by the Justice Project (2010) in Texas and Tennessee found multiple reasons why police departments did not record interrogations. The most frequently cited reasons include the cost of recording devices and the suspects' refusal to speak in a recorded interview. Other reasons include the belief that obtaining a confession may be more difficult and that there may be bad reactions to interrogation techniques along with potential equipment malfunctions.

Jayne (2003) conducted a survey of police investigators experience with electronic recording of interviews and interrogations in Alaska and Minnesota in the United States which require recording of interrogations. The results suggested law enforcement agencies' original concern, that obtaining a confession may be more difficult when using recording devices, was not founded. Seventy-eight percent of the participants indicated that electronic recording either did not affect or increased the rate of confessions. Most of the participants also indicated that the recording of interrogations did not give an advantage to the defense and that recording reduced the length of trials.

Conclusion

False confessions can and do happen. This article provided a brief overview of the typology and causes of false confessions. Research has suggested that confessions should be tested for reliability before they are relied upon as evidence. In order for this to occur, interrogations must be recorded in their entirety. It is our hope that the information presented here will help examiners both avoid false confessions and identify them when they do occur.

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