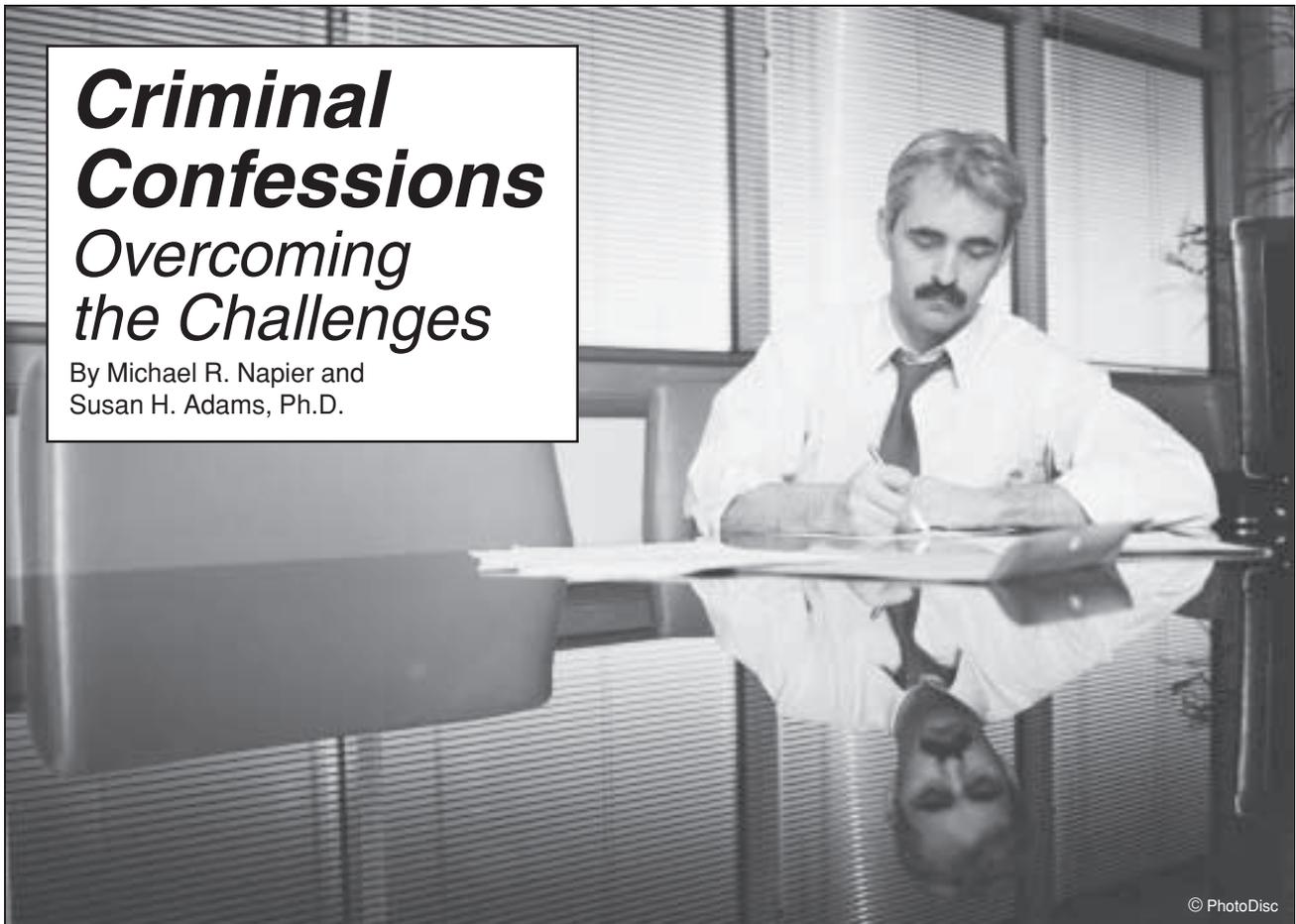


Criminal Confessions Overcoming the Challenges

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American law enforcement consists of dedicated, talented men and women of integrity and vision. Such officers would not sacrifice their sworn duty to catch a criminal by knowingly allowing the conviction of an innocent suspect. To do so would leave a criminal free to act again. Investigators attempt to identify, charge, and prosecute the criminal population by operating within an ethical framework in diverse, sometimes uncertain, but always challenging circumstances.

Widely used law enforcement interview and interrogation techniques recently have come under scrutiny. Fundamental interview

and interrogation principles can counter the criticisms, however, and safeguard the confessions by compiling solid, incriminating evidence.

CHALLENGES TO CONFESSIONS

Some critics of law enforcement techniques have gained notoriety, as well as some credibility.¹ Several criticisms earn merit by reminding investigators of practical procedures to safeguard the interviewers' most valued work product, the confession.

Critics use the term "coercive" to describe interview and interrogation tactics, claiming that they

result in a coerced confession. The difficulty of identifying, with certainty, the number of confessions obtained through coercion hampers the critics' position.² Acquiring an accurate representation of false confessions obtained under police questioning remains imperative, and ongoing research attempts to address this need.³ Even if each alleged false confession was indeed deceptive, the occurrence of alleged false confessions, when viewed in the framework of the millions of suspect interviews conducted annually, is statistically minuscule. Yet, professional officers view a single false confession as one too many.

The challenges to law enforcement interview tactics can be grouped into five categories. The application of corresponding interview principles, which involve simple and appropriate adjustments in style and technique, can address the criticism of law enforcement interview tactics. The application of these corresponding principles will enhance the suspect interview processes and strengthen the admissibility of confessions. When used regularly, these principles will illustrate the good-faith efforts of law enforcement in handling the investigative responsibilities of identifying suspects and obtaining constitutionally admissible confessions.

CATEGORY 1: BEHAVIOR

Challenge: Reading the Suspect's Behavior

One censure of police procedures involves observing the

behavior of suspects in the interview room and selecting specific suspects for more intense investigative inquiry. Critics allege that an officer's ability to interpret behavior, such as the aversion of direct eye contact, is inadequate to protect the innocent from unreasonable investigative focus,⁴ which may cause an improper concentration of limited police resources on the wrong suspect, thereby allowing the guilty party to escape detection. Critics accuse the police of placing excessive reliance on "hunches" and "on-the-spot reading" of verbal and nonverbal characteristics, using methods that are neither scientifically valid nor reliable. Investigations may focus on the wrong person because techniques do not distinguish between stressful responses caused by deception and responses to stress caused simply by accusatory interviewing.⁵ Behaviors improperly interpreted by

investigators may take on the weight of perceived evidence and increase the intensity of the police focus.

Interview Principle: Follow the Facts

Some cases do not contain the gift of clear evidence to follow on the path to the case solution. Investigators, therefore, rely on investigative experience and anecdotal lessons to identify responses consistent with known deceivers or individuals with guilty knowledge. Law enforcement must place "gut instincts" in context, however, by comparing them with investigative and evidentiary facts, which take precedence over instincts. Thorough investigative techniques will avoid a narrow focus on specific individuals by investigating all viable leads capable of identifying additional suspects and eliminating wrongly identified suspects. If the investigative hunch or the supposition does not align with known facts, investigators always should follow the facts.

CATEGORY 2: TRAITS

Challenge: Identifying Personal Vulnerabilities

Several critics point out that certain individuals possess traits that make them overly susceptible to police interrogation techniques, thereby leading to coerced confessions.⁶ These impressionable traits include youthfulness, a low or borderline intelligent quotient (IQ), mental handicap, psychological inadequacy, recent bereavement, language barrier, alcohol or other



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drug withdrawal, illiteracy, fatigue, social isolation, or inexperience with the criminal justice system.⁷ These traits have sufficient strength to affect the suspect's decision-making process, mental alertness, and suggestibility.

Interview Principle: Know The Suspect

The most productive interviews are planned well in advance. Except in exigent circumstances, competent investigators have learned to invest time in the initial information-gathering process.⁸

Investigators can design the initial, low-key interview phase to obtain "norming" information about how suspects normally respond, both verbally and nonverbally. This also presents an opportunity to gather information from suspects about their education and language ability, difficulties in life, and the foundation for their successes in life. By learning details about all aspects of a suspect's life and lifestyle, investigators can avoid subsequent problems.

For example, if officers believe that particular suspects have low IQs, not only should they check school records but also determine social-functioning ability. Do these offenders have below-normal intelligence, but a reputation for being street smart? To what language levels do they respond? What are their language difficulties or drug use patterns? How do they function in the real world? As noted by one interrogation expert, although suspects may have below-normal intelligence, they also may possess "a Ph.D. in social intelligence" or,

what police officers call, street smarts.⁹

By examining varied aspects of suspects' lives and closely questioning each source of information, investigators can compile a witness list to later defend their choice of investigative techniques. Law enforcement should not accept assertions of mental or personality disability. They should ask for specific examples and exceptions

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from witnesses who know the suspects. Vulnerable qualities should not exclude suspects from being interviewed. Such vulnerabilities as reduced mental capabilities, the ability to withstand pressure, bereavement, mental illness, age, or other personal traits that may increase suggestibility require special care when using questioning techniques. Investigators should place the suspect's vulnerability in context, adapt the investigative approach, and fully document any adaptations. Additionally, law enforcement officers should plan specific word use to determine if suspects understand questions at a particular language level or if the investigator's terminology needs an explanation. If suspects understand

language typically used with other offenders, investigators should document that fact, thereby substantiating concern for not overwhelming suspects or taking advantage of any declared vulnerability.

Case Example

A 10-year-old girl suddenly disappeared from a public street while on an errand to a store. A 29-year-old man became a suspect, and, through police investigation, he also became a suspect in a similar incident involving another pre-pubescent female 10 years earlier. Although the suspect was labeled intelligence handicapped at an early age, carefully gathered background information indicated his capability of dealing with life and living alone. Based on this knowledge, investigators felt that language adjustments were not necessary. Later testimony clearly indicated that the suspect understood each question and that he responded appropriately. Challenges to his multiple confessions were denied. The suspect now is on death row; his convictions for the two murders were based on confessions.

CATEGORY 3: STATEMENTS

Challenge: Contaminating Confessions

Some critics believe that police officers inadvertently contaminate confessions by relying on questions that contain crime scene data and investigative results.¹⁰ Using crime scene or investigative photos in the questioning process may amplify this flaw. Through these procedures, the police might, in fact,

“educate” suspects¹¹ by providing knowledge that suspects simply repeat in an effort to escape intense interrogation pressure. As a result, suspects appear to offer a valid confession.

Case Example

A 13-year-old female was raped, murdered, and decapitated. A 16-year-old male was questioned as an alibi witness for the suspect. During the questioning of the alibi witness, the police became suspicious of his personal involvement in the crime. Eventually, he provided a description of the crime and pointed out crime scene details indicative of his direct involvement in the murder and decapitation. Investigators remained persistent, and the youth later provided an explanation of how he knew incriminating details. He reported that, while being questioned, an investigator sorted through crime scene pictures attempting to locate a specific picture. The suspect stated, “...when he switched...the pictures real quick, I saw what was happening before them pictures [the pictures selected for the investigator’s specific question]...he says, where do you think the body was? But when he was switching them, I saw where the body was.... Then he says, where is the head part.... Anybody’s going to know where a person’s place is when they got the big, yellow thing [crime scene tape] around the water thing, the toilet. They had that caution thing all around there. I says, okay, right there” [indicating the exact location of the head]. Of special note, this youth had an intelligent quotient of about 70.¹²

Subsequently, the correct suspect was convicted of the crime and sentenced to life in prison.

Interview Principle: Preserve the Evidence

To avoid contaminating a suspect’s subsequent admissions and unnecessarily revealing investigative knowledge, investigators should initiate the criminal involvement phase of questioning by using only open-ended questions, which avoid the pitfalls of leading or informing suspects. These questions begin with such phrases as “Describe for me...,” “Tell me about...,” and “Explain how....” These questions force suspects to commit to a version of events instead of

lie forecloses avenues by which suspects may later try to defend themselves.¹⁴

Investigators must receive answers to open-ended questions without any type of judgment, reaction, or interruption. By allowing suspects to tell their stories without interruption, investigators fulfill the basic purpose of an interview—to obtain information. Additionally, investigators benefit from committing suspects to a particular position,¹⁵ which may contain information that later becomes evidence of guilt or provides a connection to the crime, crime scene, or victim.

The questioning process does not become contaminated when investigators initiate the interview with open-ended questions. Investigators have not told suspects the details of the crime or subsequent investigation and, thereby, have preserved the evidence. After listening to the narrative responses to the open-ended question, skilled investigators will probe with additional open-ended questions and will ask direct, closed questions later.

Displaying crime scene photos to suspects prior to obtaining admissions appears to have limited usefulness. By showing graphic details of the crime, suspects receive information that, when parroted back, give substance to their confessions. Crime scene photos may include holdout information, which primarily serves to validate confessions. However, from a psychological perspective, few, if any, suspects will be shocked into confessing when they see reminders of their gruesome acts.

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simply agreeing with the investigator; they also prevent disclosing investigative knowledge. Because suspects may provide a wealth of information in this free narrative form, open-ended questions make successful lying difficult.¹³ If, however, suspects decide to lie, open-ended questions provide a forum. This aspect of the open-ended question technique may help investigators because every

CATEGORY 4: OPTIONS

Challenge: Creating False Reality

Some critics allege that police use techniques that create a false reality for suspects by limiting their ability to reason and to consider alternative options.¹⁶ Some argue that the police intentionally present only one side of the evidence or options available to suspects, namely only the ones that benefit the police. Once suspects accept a narrowed option, inferred benefits coerce them, such as avoidance of a premeditated murder charge in favor of describing the crime as an accident. The obvious benefit of accepting a suggested lesser alternative leads suspects to be coerced into a false confession out of fear of the police and possible prosecution.

Interview Principle: Adjust Moral Responsibility

The interviewer should question suspects, not provide legal counsel.¹⁷ The investigator's purpose does not include providing options for guilty suspects to conceal their involvement.

Experienced investigators understand the following aspects of confessions:

- Confessions are not readily given.
- Full confessions originate with small admissions.
- Guilty suspects seldom tell everything.
- Most offenders are not proud of their violence and recognize that it was wrong.

- Guilty suspects omit details that cast them in a harsh, critical light.
- Offenders usually confess to obtain a position they believe to be advantageous to them.¹⁸

Astute interviewers use rationalization, projection, and minimization to remove barriers to obtaining confessions.¹⁹ These represent the same techniques that suspects use to justify and place their sometime abhorrent behaviors in terms that assuage their conscience.

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Thus, these psychological techniques serve two purposes. They allow investigators to protect society by identifying guilty suspects. And, they also provide face-saving opportunities for suspects to make it easier for them to confess.

These techniques initially downplay the suspects' culpability by omitting their provocative behavior, blaming others, or minimizing their actual conduct. In certain circumstances, investigators might need to suggest that the suspects' criminality was an accident²⁰ or the

result of an unexpected turn of events, which the victims might have provoked. Investigators attempt to obtain an admission or to place the suspect near the scene or with the victim. From the original admission of guilt, experienced investigators refine their techniques by using all of the case facts to point out the flaws and insufficiency in the original admission and to obtain a fuller, more accurate description of the suspect's criminal behavior.²¹ Practiced interviewers use the initial admission as a wedge to open the door to additional incriminating statements.

The suggestion that investigators interrupt an admission of guilt in a homicide case to debate whether a suspect committed a premeditated or spontaneous murder is unrealistic. The final disclosure of case facts and laboratory results will provide details to reveal the most likely version of events. Seasoned interviewers know that the interview and interrogation phase constitutes only one portion of the entire investigation.

CATEGORY 5: CONSEQUENCES

Challenge: Promising Coercive End-of-Line Benefits

Investigators move into clearly coercive territory when giving clear and substantial identification of end-of-line benefits to confession. The coercive aspect comes from investigators' statements that remaining silent will lead to greater penalties, but confessing to a minimized scenario will result in reward.²² Investigators may openly suggest that

suspects will receive the most serious charge possible without a consent to the offered lesser interpretation of their actions.²³ Many interviewers blatantly and precisely will state the suspect's expected penalty in unmistakable terms, such as the death penalty versus life imprisonment or life imprisonment versus 20 years. Similarly, investigators may threaten harm via investigation or prosecution of a third party, such as a wife, brother, or child, if suspects reject the lessened scenario. Some critics accurately have identified these tactics as being coercive enough to make innocent people confess to a crime that they did not commit.

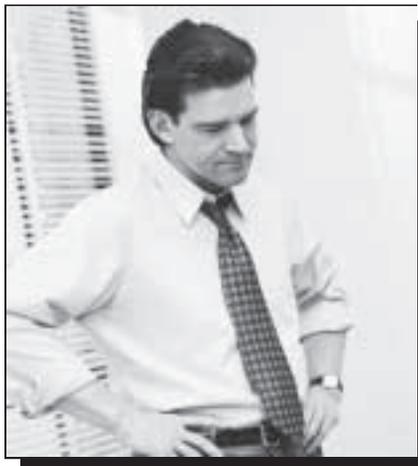
Interview Principle: Use Psychology Versus Coercion

The interview and interrogation system generally recognized as the most widely used and adapted in the United States follows the limitations imposed by the ethical standards, as well as the dictates, of the courts.²⁴ U.S. courts have allowed investigators the breadth of creativity in interviewing suspects, but any coercive investigative acts are offensive to the skilled professional. Successful interviewing does not hinge on coercive techniques because talented investigators have a ready reservoir of productive, acceptable, and psychologically effective methods. Blatant statements by investigators depicting the worse-case scenario facing a suspect who does not accept a lesser responsibility are coercive and unnecessary. In general, these statements follow the pattern of "If you don't cooperate, I am personally

going to prove your brother was up to his eyeballs in this murder. He will go down hard." Statements of this type are clearly coercive and less effective than the use of psychological techniques of rationalization, projection, and minimization.

However, a distinction exists between blatant statements and subtle references offered for interpretation as the suspect chooses. Suspects engage in a self-imposed, personal decision-making process that incorporates their life

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experiences, familiarity with the criminal justice system, and their time-tested psychological processes of rationalization, projection, and minimization. Suspects may explain reasons for the crime (rationalization), blame others (projection), or lessen their culpability and express remorse, even if unfelt (minimization). Guilty suspects attempt to describe their criminal acts as understandable, in a manner that places them in a better position to

obtain the desired lenient treatment. They eagerly listen for any opportunity to look good. Investigators are not responsible if suspects choose to offer an explanation of guilt that places them in what the suspects perceive as a favorable position. Investigators achieve part of their goal because the suspect must admit culpability to achieve this desired perceived position.

Investigators must accept the admission, return to the basics of the investigation, and obtain a statement that comports to the reality of the crime. Likewise, investigators must go well beyond the "I did it" admission. They must press for minute details to tie suspects to the crime scene to disclose their active participation in the crime.

Corroboration anchors the most secure confession. Some suspects may not readily provide information to support their involvement in a crime for fear of exposing the true nature of their evil acts. However, a suspect's corroboration by providing details known to only a few individuals, solidifies a confession. Evidence linking such details as the location of the body, the weapon, or the fruits of the crime provide a superior foundation for preventing the retraction of a confession or one otherwise successfully challenged in court.

PERSONAL DIGNITY

A final principle, underpinning the entire interview process, involves the concept of dignity. All individuals are entitled to maintaining their personal dignity and self-worth. Convicted felons have

explained that they more likely would confess to an investigator who treated them with respect and recognized their value as a person.²⁵ Allowing suspects to maintain dignity, even in adverse circumstances, is professional and increases the likelihood of obtaining a confession. One experienced investigator provides advice for interviewing the suspect of a particularly serious crime, "Remember, he has to go on living with himself."²⁶

Many investigators now videotape their interviews to document the confession, which allows the attorneys and the jury to view it. This also allows investigators to view their interviewing performance and, thus, to learn from critiquing it. Videotaping can remind the investigator to treat the suspect with respect as a person, regardless of the nature of the crime.

CONCLUSION

Law enforcement agencies are governed, sometimes invisibly, by their organizations' value systems. Although organizations are built from the bottom up, their values flow in both directions. The concept of professionalism for the investigator begins with basic duties and carries through to a legal responsibility, providing sworn testimony in open court about ethically and legally obtained evidence.

The manner in which an investigator approaches interviewing and interrogation may symbolize the ultimate reflection of the professional values of a department. "Casual values" appear as a "casual attitude," which translates into matching behavior. The appearance

of casual values in the interview room may result in suppression of admissions or confessions, but it also may reflect a "casual approach" to law enforcement at all levels. All aspects of law enforcement must reflect vigilance to the highest policing values, but nowhere more important than in the interview room and in presenting the investigative product of the interview. ♦

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Endnotes

¹ The word critics is used throughout this article to denote a small number of social psychologists who have testified for the defense regarding the legal admissibility of some confessions.

² Paul G. Cassell, "Symposium on Coercion: An Interdisciplinary Examination of Coercion, Exploitation, and the Law," and "Coerced Confessions: Balanced Approaches to the False Confession Problem: A Brief Comment on Ofshe, Leo, and Alschuler," *Denver University Law Review* 74 (1997): 1127.

³ Brian C. Jayne and Joseph P. Buckley, "Interrogation Alert! Will Your Next Confession Be Suppressed?" *The Investigator*, Winter 1998, special edition, 11 and 12. See also, Reid and Associates Web site at <http://www.reid.com>.

⁴ Richard A. Leo and Richard J. Ofshe, "The Consequences of False Confession: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation," paper prepared for the Annual Meetings of the Law and Society Association in St. Louis, Missouri, on May 30, 1997.

⁵ Richard J. Ofshe and Richard A. Leo, "The Social Psychology of Police Interrogation: The Theory and Classification of True and False Confessions," *Studies in Law, Politics, and Society* 16 (1997): 241.

⁶ Richard J. Ofshe and Richard A. Leo, "Symposium on Coercion: An Interdisciplinary Examination of Coercion, Exploitation, and the Law" and "II. Coerced Confessions: The Decision to Confess Falsely: Rational Choice and Irrational Action," *Denver University Law Review* 74 (1997): 998.

⁷ Gisli Gudjonsson, *The Psychology of Interrogations, Confessions, and Testimony* (Chichester, England: John Wiley & Sons, 1992), 209, 229, and 301.

⁸ David Vessel, "Conducting Successful Interrogations," *FBI Law Enforcement Bulletin*, October 1998, 1-6.

⁹ Warren D. Holmes, "Interrogation," *Polygraph* 24, no. 4 (1995): 241.

¹⁰ *Supra* note 7, 259.

¹¹ David E. Zulawski and Douglas E. Wicklander, "Special Report 1: Interrogations, Interrogation: Understanding the Process," *Law and Order*, July 1998, 87.

¹² Parenthetical emphasis and clarifying comments added. The charges against the alibi witness subsequently were dropped.

¹³ *Supra* note 7, 23.

¹⁴ *Supra* note 11, 85.

¹⁵ *Supra* note 9, 253.

¹⁶ *Supra* note 5, 194-195.

¹⁷ Gerald M. Caplan, "Questioning *Miranda*," *Vanderbilt Law Review* 38, no. 6 (November 1985): 1,417.

¹⁸ *Supra* note 9, 253.

¹⁹ Michael R. Napier and Susan H. Adams, "Magic Words to Obtain Confessions," *FBI Law Enforcement Bulletin*, October 1998, 11-15.

²⁰ *Supra* note 3, 9.

²¹ *Supra* note 3, 9.

²² *Supra* note 6, 999 and 1,000.

²³ *Supra* note 5, 204, 205.

²⁴ Fred E. Inbau, John E. Reid, Joseph P. Buckley, and Brian C. Jayne, *Criminal Interrogation and Confessions*, 4th ed. (Gaithersburg, MD: Aspen Publishers, Inc., 2001).

²⁵ *Supra* note 11, 84.

²⁶ *Supra* note 9, 253.